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JURORS' VERDICTS IN A MOCK RAPE TRIAL EXPERIMENT:
A SOCIAL LEARNING APPROACH

by

Susan Hess Nelson, B.A., M.A.

A thesis submitted to the Faculty of
Graduate Studies and Research
in partial fulfillment of the
requirements for the degree of

Doctor of Philosophy

Department of Sociology and Anthropology

Carleton University

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At various stages this research has received financial support from the Criminal Law Reform Fund Committee, Department of Justice; Dean, Faculty of Graduate Studies and Research, Carleton University; Department of Sociology and Anthropology, Carleton University; and the Dean, Faculty of Social Sciences, University of Ottawa.

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ABSTRACT

This dissertation is a detailed report of an investigation of jury decision-making in a mock rape trial. Social learning theory has been used to guide the analysis of particular factors in relation to jurors' verdicts. Attention has mainly focussed on the possible effects of jurors' social background characteristics, their attitudes toward male and female roles, and testimony concerning the victim's previous sexual experience.

Nine mock juries viewed an eighty-minute videotape of a rape trial. There were three versions of the trial which differed only with respect to the kind and amount of testimony concerning the woman's past sexual behavior. Participants in the study were ninety-five residents of the Ottawa area. Two thirds of them had received notices for possible jury service, and half of these had served on actual juries.

A principal finding in the study was that the specific kinds and amounts of sexual history information in the three versions of the trial appeared to have little consequence for the verdicts that were reached. The jury deliberations revealed that little time was spent discussing this material relative to other matters in the case. Another main finding was a relationship between sex-role attitudes and verdicts among women on the mock juries but not among men. It was only among the female subjects that fewer acquittals were forthcoming from those who were less favorable to traditional sex roles. It was also found that agreement with certain rape attitude items in this study appeared to differentiate among the male and/or female jurors who reached opposite conclusions about the guilt of the defendant.

With respect to social background characteristics and verdicts, sex was an important variable, but the differences in male and female verdicts were not the same for each age and education category. There was a much greater difference between decisions reached by younger men and women than between those reached by men and women in the older age group. In addition, college graduate women were much more likely than college graduate men to return guilty verdicts while little dissimilarity in verdicts was found between men and women in the other education categories.

Still other findings in this study concerned the relationship between background characteristics and sex-role attitudes. Females agreed more often than males with less traditional views of sex roles regardless of age, education, or social class category. However, each of the following was also related to holding less traditional views of sex roles: being younger, having more years of formal schooling, and being in the higher social class category.

The concluding chapter of the dissertation begins with a summary of findings and discussion of the internal and external validity of the study. This is followed by discussion of the methodological difficulties faced by sociologists who advocate the use of social learning theory. Finally, there are recommendations for the elimination of special rules of evidence in rape trials as well as consideration of juror objectivity.

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Chapter I

JURY DECISIONS IN RAPE TRIALS: THE PROBLEM, THEORETICAL POINTS OF VIEW AND THE RESEARCH LITERATURE

Introduction

Rape has received more attention in this decade of the seventies than in any past decade--perhaps more than in all past centuries. An astonishing number of books and articles in newspapers, popular magazines, and professional journals have recently been published on rape. Movie makers and producers of popular television crime and police dramas have capitalized on the new interest in this offence and have thereby drawn even more attention to it.

A significant amount of this recent concern about rape has focused on rape laws and the treatment accorded rape victims in police stations and courtrooms. Rape laws have been challenged as being unfair to women; and rape victims testifying in court have been depicted as feeling as if they were on trial.

People involved in the women's movement have, in particular, been responsible for the upsurge in attention paid to rape. These people have attacked traditional conceptions of rape and rape victims. They have identified traditional notions relating to this offence as myths to be demolished; and they have written about rape and treatment accorded to rape victims as rooted in social inequality between men and women in society.

Rape has been shown to have been the most underreported of serious offences and the most likely to be "unfounded" by police. Compared

to other offences against the person, moreover, rape has been the least likely to result in conviction when charges have been brought to court even though a relatively smaller number of rape cases have ended in court.

Victimization surveys in the United States have suggested that perhaps one out of four rapes is reported to police (U.S. President's Commission, 1967:21). Canadian statistics have consistently shown, on the other hand, that rape has been at least three times more likely to be "unfounded" by police and that the rate of convictions in court for rape has been lower than for other crimes against the person (Nelson, 1977: 57-59).

What has been responsible for this exaggerated funnel effect? The court decisions in rape trials are one important factor. The fact that rape convictions are relatively difficult to obtain undoubtedly influences the behavior of the police and prosecuting lawyers. They would have very little to gain from repeatedly suggesting that charges should be laid or cases carried forward if their decisions were to be rebuffed at the next stages.

Closer to the concerns of this study, the courtroom treatment of rape victims has also influenced the behavior of the police in a way that has affected the reporting of the offence. Where questions concerning the woman's previous sexual behavior have been allowed in court, the police have typically asked these kinds of questions at an early point to determine if the victim could withstand such questioning in court. In turn, women have been discouraged from reporting rape to the police and exerting pressure to have offenders brought to trial. Holmstrom and Burgess have summarized this point in the following manner:

Although it is only a minority of the cases that went to court, these cases are influential far beyond their numbers. The stereotyped image portrayed in the mass media of rape trials as really 'raking the woman over the coals' holds up in fact. And the treatment that the woman receives in court is one factor influencing other women in whether or not to press charges. Even when interviewed at the hospital, one reason women give for not wanting to press charges is that they cannot face 'the hassle of court.' As one victim put it, 'Why should I suffer any more?' (Holmstrom and Burgess, 1973:33).

The object of the inquiry described in the pages that follow has been to learn about factors affecting jury decisions in rape trials. Special attention has been given to the possible effects of jurors' social background characteristics, their attitudes toward male and female roles, and testimony concerning the victim's previous sexual experience.

The approach taken has been a social learning one which assumes that behavior is primarily the result of conditioning. Social background characteristics have been regarded as factors setting the stage for different conditioning. Jurors' attitudes toward male and female roles have been taken into account as the result of prior social learning and as variables that are likely to be related to decisions about the guilt of men on trial for rape. The trial itself has been viewed as a situation in which experimental manipulations could be carried out to assess the possible influence of the presentation of different evidence about the victim's previous sexual behavior.

Thus, this empirical study has attempted to bring sociological reasoning and research methods to bear on the way that rape cases are handled in Canadian courtrooms and factors involved in jurors' rendering of verdicts. Experimental and non-experimental research techniques have been employed to examine these matters.

The specific ideas which guided the formulation and design of this research have been mainly derived from social learning theory, feminist writing on rape, legalistic articles pertaining to rape, and previous research on decision-making in rape cases. Social learning theory has contributed most as a general framework, but it has also been a significant factor in the decision to design an experiment. On the other hand, feminist and legalistic articles on rape and previous empirical studies have been important in pointing the way to substantive issues to be explored. Each of these topics has been dealt with immediately below.

Social Learning Theory and Decisions in Rape Trials

A major concern in this dissertation has been to utilize social learning theory in order to comment on the advantages and disadvantages of conducting sociological research from this perspective. In using the term "social learning theory", I mean to refer to a behaviouristic perspective which has guided much modern research in psychology and which has attracted the attention of a small number of sociologists.

Social learning theorists in general have worked with concepts such as conditioning, modeling, generalization, discrimination, conditioned response, reinforcing stimulus, and aversive stimulus.¹ Many social learning theory studies have focused on differences in the

¹ The following are some of the psychology books in which one can find descriptions and examples of social learning theory concepts and processes: Skinner (1959), Reynolds (1968), Ullmann and Krasner (1965), and Bandura (1969). Sociologists who have set about to define social learning theory terms and principles include Burgess and Bushell (1969), Scott (1971), Akers (1973), Kunkel and Nagasawa (1973), and Kunkel (1975).

acquisition, maintenance, or extinction of human behaviors which could be attributed to different schedules of reinforcement or punishment. Other studies from this perspective have revealed differences in human behavior which appeared to result from modeling or discriminative stimulus control.

An important underlying assumption of social learning theory has been that behavior is primarily the result of phenomena which are external to the individual and therefore observable. This assumption has gone hand-in-hand with social learning theorists' proclivity for the use of scientific methods which permit quantification of data, public verification of results, and replication.

Among social learning theorists in psychology, experimentation has been the preferred research strategy, and experimental evidence has been a highly valued commodity. The numerous behavior modification studies in the last decade and a half clearly illustrate the nearly exclusive use of experimental designs in the research done by psychologists who have adopted this theoretical perspective.²

A few sociologists (e.g. Burgess and Bushell, 1969; Scott, 1971; Akers, 1973; Kunkel and Nagasawa, 1973; and Kunkel, 1975) have

² See, for example, issues of the Journal of Behavior Therapy or the Journal of Applied Behavior Analysis.

been enamored of the development of social learning theory in psychology. They have stressed that it is also relevant for sociological analysis and that it offers several advantages for sociological work.³

They have pointed to a congruence between much that sociologists have had to say and the social learning theorists' assumption that human behavior is primarily the result of environmental conditioning. Moreover, these sociologists have emphasized the benefits of focussing, as social learning theorists do, on observable aspects of behavior. They have suggested that social learning theory holds considerable promise for the development of effective social action programs.

There is an important difference, however, between the use of social learning theory by psychologists and its use by the small group of sociologists interested in it. This difference is in research strategy.

³ This should not be misinterpreted as meaning that there have not been other noteworthy attempts by sociologists to draw upon behavioristic perspectives in psychology. Indeed, the work of Homans, Blau and others may be suggested as proof to the contrary (see, for example, Ritzer, 1975, and Friedrichs, 1974).

I have maintained that in recent years sociologists such as Burgess and Bushell, Scott, Akers, and Kunkel have relied much more directly on their own interpretations of behavioristic work in psychology than on the work of Homans or Blau. They have not, for example, borrowed Homans' terminology but have accepted that which is used in the social learning theory literature in psychology. Moreover, they have worked directly from the principles stated and researched by social learning theorists in psychology rather than from Homans' discussion or statement of propositions (Nelson, 1973; Kunkel, 1975:84-86).

While a thorough introduction to sociological utilization of ideas gleaned from behavioristic psychology would perhaps prove to be interesting, it would at best be peripheral to an understanding of the development of the research undertaken for this dissertation. At this point, I have therefore confined the textual discussion of social learning theory to aspects of the works which were clearly central to my thinking as I planned this study.

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In employing social learning theory, the sociologists have tended toward ex post facto analysis of situations (e.g., Scott, 1971; Akers, 1973; and Kunkel, 1975).⁴ This is in sharp contrast to the reliance on experimental designs by social learning theorists in psychology.

Constructing social learning theory interpretations, rather than making controlled empirical studies, has likely been one consequence of sociologists' tendency to be concerned with large numbers of people in situations which do not readily admit to laboratory control.⁵ In uncontrolled field settings each individual is and has been subject to innumerable schedules of reinforcing, punishing, and modeling stimuli which may affect his or her present behavior.

Among sociologists who have adopted a social learning perspective, Scott (1971) has explicitly stated that there is a need to move away from exclusive concern with experimentation, and he has called for

⁴ The work by Burgess and Bushell (1969) represents an exception inasmuch as these sociologists have advocated not only social learning theory principles but experimental methods as well. However, the experimental studies which they include in their book have been carried out in very limited settings and have involved only one subject or a small number of subjects at a time. Experimental studies carried out by Burgess, Bushell and their colleagues have generally been concerned with problems which are not likely to interest large numbers of sociologists; and these studies have been published in a journal chiefly read by psychologists (e.g., Burgess, Clark and Hendee, 1971; Bushell, Wrobel and Michaelis, 1968).

⁵ Even Skinner seems only able to engage in loose interpretations when he turns his attention to everyday behavior and addresses concerns which are usually subsumed under sociology or political science (e.g., Skinner, 1953). Scott recognizes Skinner's use of speculation as well as his own when he remarks, "Like the great Skinner himself, I am often an armchair Skinnerian" (1971:xv).

the use of questionnaires and interviews.⁶ On the other hand, Akers (1973) and Kunkel (1975) have not addressed the question of research methodology. In their own applications of social learning theory, however, all three sociologists have tended to be broadly speculative.⁷

Social learning theory as a preliminary guide. From the outset of this study of jury decision-making, I felt that applying social learning theory would be useful. Focussing on observable aspects of behaviour, seeking quantitative data, and using terms and principles of social learning theory were appealing ideas. In addition, I was interested in the amelioration of problems relating to rape, and social learning theorists have promoted their framework for its usefulness in designing effective social change strategies.

To begin with, jurors' decisions, like other human behaviour, could be seen from a social learning perspective to result from conditioning. In other words, they could be viewed as determined by prior and ongoing reinforcing, punishing, and discriminative stimuli and by modeling tendencies.

⁶ Scott argues that although experiments produce relevant evidence, "...not all scientifically useful evidence comes from experiments and that (at least for some time to come) the experimental study of human affairs is likely to be most fruitful when complemented by (often highly imperfect) nonexperimental data" (1971:xv).

⁷ Scott (1971) uses social learning principles in writing about the socialization of children and adult conformity to norms. Akers (1973) argues that various kinds of criminal behaviour are shaped and maintained by social and economic reinforcers. Lastly, Kunkel (1969, 1975) describes social and economic changes in a Peruvian village using terms and principles from social learning theory.

In considering the complex behavior of decision-making in rape trials, however, I soon became lost amidst uncontrolled factors. Such factors included the large numbers of possible responses, different cues or discriminative stimuli, complicated schedules of reinforcement (or erratic administration of reinforcing stimuli), and different prior learning experiences to which each person had been subject.

At this early point, there was the realization that social learning theory did not in itself direct one to the learned responses or stimuli which would be most important in a given situation. It appeared possible to proceed only if a limited number of variables were selected for investigation. It, therefore, became imperative to look for information about the salient aspects of prior and ongoing social learning in a rape trial situation. Moreover, it was eventually necessary to focus on certain salient aspects as being more worthy of study now than others.

Recent theorizing about rape and several empirical studies were especially important for the clues they provided as I searched for variables to include in my dissertation research.⁸ I shall, therefore, briefly mention these theories and studies, and I shall suggest from a social learning theory perspective some of the ways in which certain variables may figure into jurors' decisions. First, however, I would like to discuss demographic characteristics of jurors which may affect their decisions.

⁸ Several personal experiences which I had while doing volunteer work with the Ottawa Rape Crisis Centre were also important. These included talking to victims when they called the rape crisis telephone number, accompanying a victim to a police station, attending a rape trial, and working with a wide variety of people on the Board of Directors.

Sex, age, education, and socioeconomic status of jurors. At the outset, it seemed embarrassingly obvious that some attention ought to be paid to differences in jurors' sex and age and their varied social backgrounds. It seemed to be an obvious necessity inasmuch as sociological studies traditionally have given these variables attention. It also tended initially to be somewhat embarrassing because, although social learning theory provided a rationale for considering these variables, it did not lead to any predictions about their effects on jurors' decisions. In order to say something about the direction of association, I was forced to rely on common sense or generalize from previous studies. Given the conflicting common sense views and the inconclusiveness of previous studies, however, the feeling that demographic characteristics were an embarrassingly obvious consideration soon disappeared.

The social learning theory rationale for considering particular social background characteristics has been suggested by Scott. He has pointed out that variables which indicate certain statuses are important "organizers" of social reinforcements in society (Scott, 1971:128). People are differently reinforced for certain behaviors depending upon their age, sex, and social class.⁹

In this research, information on jurors' demographic characteristics has been used in several ways. For the time being, however, discussion of demographic characteristics is restricted to their possible

⁹ Mischel (1966) provides a general social learning theory interpretation of ways that young boys and girls are differently socialized.

effects on trial outcomes. Furthermore, the main focus is on deriving hypotheses from previous research because common sense notions lead to opposite conclusions.¹⁰

In spite of the fact that previous jury research has sometimes focused attention on the sex, education and socioeconomic status of jurors, it has been difficult to draw firm conclusions concerning the effects of any of these variables on jurors' decisions.

With respect to sex of jurors, extensive reviews of previous jury research leave the impression that sex differences in juror participation (favoring males) and accuracy in recall (favoring females) have been demonstrated, but that there still may or may not be clear sex differences in arriving at verdicts (Gerbasi, Zuckerman and Reis, 1977; Mitchell, 1973). Mitchell, in speaking about trial outcomes, concludes,

"Studies of simulated trials have shown no effects for sex of juror (Landy and Aronson, 1969; Mitchell and Byrne, 1973), that females were less lenient than male jurors (East, 1973; Snortum, 1971) or that the sex of juror variable interacted with the sex of defendant. Typically this interaction revealed a bias in favor of same sex defendant (Klinger, Albaum and Hetherington, 1964; Rose and Prell, 1955; White, 1960) or a tendency for males to be more lenient to female defendants (East, 1973; Richey and Fichter, 1969) ...

These inconsistencies in trial outcomes due to

¹⁰ Nagel and Weitzman (1972) have given five different common sense views of the effects of sex on jurors' decisions. Four of these views could possibly be applied to rape trials where males are always the defendants. The first one is the "opposites attract hypothesis" which predicts that males will favor female defendants and females will favor male defendants. Secondly, there is the suggestion that both sexes will favor male defendants "...because they have both been indoctrinated to believe that men are more valuable". The third suggestion is that neither men nor women favor one sex over the other, and it is termed the "equality hypothesis". Finally, there is the hypothesis that men favor men and women favor women (Nagel and Weitzman, 1972:108).

sex of juror and defendant are not easily resolved. Possibly, the greatest determinant of the inconsistent patterns may lie in the nature of the crimes employed by the various researchers. Such crimes as murder, adultery, burglary, cheating on an examination, possession of marijuana and a traffic fatality were used as case materials in these studies (Mitchell, 1973:30-31)."

Unfortunately, however, even experimental studies which have only involved the presentation of rape cases have not been consistent in their results. Excluding those studies which have not considered possible sex differences (i.e., L.S.E. Jury Project, 1973; Jones and Aronson, 1973), there remain a few studies which have looked at sex of jurors in relation to punishments assigned and/or in relation to the guilt of the defendant. Two studies have shown that females recommended longer sentences for the rapist than males (Smith, et al., 1976; Feldman-Summers and Lindner, 1976). With respect to verdicts, two studies found that females were somewhat more likely than males to find the defendant guilty. However, the majority of males and females in one of these studies found the defendant guilty (Feldman-Summers and Lindner), while the majority of both sexes in the other study (Davis, et al., 1975) found the defendant not guilty.¹¹

Given these previous studies, one could not simply predict that males would tend to find a rape trial defendant not guilty and that females would tend to find him guilty. The experimental studies dealing with rape situations do, however, suggest that males will tend more often

¹¹ On a nine-point scale (not guilty to guilty) in the Feldman-Summers and Lindner study, the mean score for females was 7.74. The mean score for males was 7.29 (1976:114). Davis, et al. (1975) reported that prior to deliberation 82% of the males and 69% of the females thought the defendant was not guilty. Further, the postdeliberation results were that 89% of the males and 81% of the females gave not guilty verdicts (1976:10).

than females to give not guilty verdicts although majorities of both sexes may find the defendant guilty or not guilty.

As for juror characteristics such as age, socioeconomic status, and education, I found that previous jury studies involving rape cases were of little or no value in suggesting hypotheses. With a single exception, these experiments had all involved college students as subjects. As a consequence of this homogeneity in their samples, none reported similarities or differences in verdicts among people who differed in terms of age, socioeconomic status or education.¹²

Earlier studies which had involved different kinds of offences had sometimes shown differences in participation of people in different socioeconomic categories (Strodtbeck and Mann, 1956; James, 1959; and Strodtbeck, James and Hawkins, 1957). There were inconsistencies, however, in results concerning education categories in relation to participation and influence (Gerbasi, et al., 1977:326). Overall, the studies suggested that if one had juries which were sufficiently heterogeneous with respect to socioeconomic status and education, one might expect to find higher status jurors participating more and having greater influence than lower status jurors. In addition, jurors with elementary school education or less might differ in participation or influence from jurors with college educations.

¹² The L.S.E. Jury Project (1973) did not report social class differences in jurors' decisions for a rape case. It did, however, also involve presentation of a theft case. In that instance, they reported that jurors "...drawn on a random basis from the adult population as a whole showed a bias towards acquitting the defendants, which had not been nearly so evident amongst the first group with its greater proportion of young and white-collar participants" (1973:222).

Neither the earlier jury studies nor the more recent ones which focused on rape provided clear theoretical reasons for associations between jurors' verdicts and their age, sex, education or socioeconomic status. This point can be illustrated with reference to sex as a variable and the experimental studies on rape cases which found sex differences in their results. These studies show that sex differences were not predicted, nor were they central to the studies.

The first study which found sex differences in reactions to a rape case presentation was an investigation by Davis, et al., (1975). This study was mainly concerned with determining effects of jury size and unanimous versus majority decision rules. It simply did not contain any theoretical rationale for the sex differences that were found with respect to jurors' decisions.

Another study which found sex differences was carried out by Feldman-Summers and Lindner (1976). These authors used balance theory in discussing their results.¹³ There is no suggestion, however, that balance theory would operate differently for males and females.

¹³ Balance theory deals with the nature of relationships in situations involving three elements. Balance theory can be used, for example, to suggest that the orientation of a person (X) to some event (Z) will be negative if the person's (X's) orientation to another person (Y) is positive and the other person's (Y's) orientation to the event (Z) is negative. In diagram form:

It is this kind of reasoning that underlies Feldman-Summers and Lindner's (1976) interpretation of their findings on the relationship between victim respectability and attributions of blame.

The third study which found sex differences was designed to test the possible limits of "just world" theory (Smith, et al., 1976).¹⁴ One of the aims in this study was "to extend the parameters of respectability ... by varying the occupational role of the victim so as to make sexually provocative behavior ... more or less likely" (347). Another aim was to vary the relationship between the victim and the accused such that in half of the experimental conditions the victim and accused were seen to have had a prior acquaintance. Again, however, there is no theoretical rationale at all for the sex differences which were found.

As stated earlier, social learning theory suggests that demographic and social background characteristics are of importance insofar as they are delimiters for distinctive patterns of socialization. Men and women, the old and young, the rich and poor, the well-educated and poorly-educated, exhibit different behaviors due to differences in conditioning.

What is it that people with these different characteristics have learned about rape? What responses have they learned which are important factors in the decisions they reach in rape trial situations? It is to these questions that attention is directed immediately below.

¹⁴ Smith, et al., have provided the following brief description of "just world theory": "Instances in which good things happen to bad people, or good people suffer bad fates threaten a conception of a 'just world'. In some instances people respond to such incongruities by altering their perception of the victim and/or his behavior so that he becomes more 'deserving' of his fate" (1976:347).

Views of Sex Roles, Rape and Rape Victims:
Reléance for Trial Verdicts

For this research, I have selected certain attitudes¹⁵ which I felt might be significantly related to jurors' decisions. Moreover, I have been concerned with aspects of a rape victim's behavior which might evoke the disapproval of jurors. In this section of the dissertation, I have addressed these issues and tried to give some perspective on them from a social learning theory standpoint.

Rape, rape laws and inequality between men and women. The attitudes in which I was primarily interested as the formulation of the research problem progressed were sex-role attitudes. In recent literature on rape, a central argument has been that there is a strong connection between social inequality of men and women, on the one hand, and rape and rape-related phenomena, on the other. The incidence of rape, the nature of rape laws, pervasiveness of certain attitudes about rape, behavior toward rape victims, and the way that rape is dealt with in the courts have all been seen to be greatly influenced by societal views of women as inferior to men.

Forceful and direct statements relating the occurrence of rape to social inequality between men and women have been made by feminists. The 1970's have seen rape become a rallying point for women involved in or supportive of the women's movement. It has been a unifying issue,

¹⁵ Social psychology textbooks reveal many different ways of defining "attitude"; and these vary with respect to the degree that they include cognition. I have tried in this research, however, to define the term as a tendency to agree or disagree with statements about certain behaviors as indicated by responses to questionnaire items.

and it has been treated as symbolic of inequality between men and women.

Members of the New York Radical Feminists have seen rape to be "...the logical expression of the essential relationship now existing between men and women" (Manhart and Rush, 1974:xvi). In Chicago, Medea and Thompson have written that "Rape is all the hatred, contempt, and oppression of women in this society concentrated in one act" (1974:11). In California, Griffin has described rape as the "all-American crime" (1971). In Toronto, Clark and Lewis have said, "It is our deeply-held conviction that the causes of rape lie within the present social system, a system which is, among other things, fundamentally sexist. Rape is one of the products of a sexist society..." (1977:29).

Feminists have written about the ways in which rape has served male interests (e.g.; Millett, 1969:70; Griffin, 1971; LeGrand, 1973; Brownmiller, 1975). Brownmiller, in particular, has written about rape as a social control mechanism used to keep women "in their place" by fear and resultant attachment to male "protectors". She has also stated, however, that for a man to rape a woman does not require "a sophisticated political motivation beyond a general disregard for the bodily integrity of women" (1975:37).

Brownmiller has provided an extensive history of rape. She has documented political and social consequences of rape through the centuries and in different societies. She has also discussed the cultural embeddedness of rape and the origins and functions of rape laws.

Concerning rape and culture, Brownmiller has pointed to the impact of cultural training on both rapists and victims. She has written

about the way in which cultural notions about male supremacy and sexual aggressiveness have been passed from generation to generation. "Women", on the other hand, "are trained to be rape victims" (Brownmiller, 1975:309).

With rape, there was evidence everywhere of sexism in society-- or so it seemed. Rape victims began to talk about the humiliation and degradation involved. An immense amount of information about the behavior and attitudes of rapists began to be heard from rape victims who decided to talk about their experiences. Those victims who chose to report the crime to police often told of the disbelief which greeted them. Over and over, their stories showed the prejudices they encountered among many friends, relatives, policemen, doctors and hospital workers (e.g., Wood, 1973; Russell, 1975; Burgess and Holmstrom, 1974; Connell and Wilson, 1974; Medea and Thompson, 1974; Brownmiller, 1975; and Robin, 1977).

A number of people chose to write about the "myths of rape" (Griffin, 1971; LeGrand, 1973; Schwendinger and Schwendinger, 1974; Rioux, 1975; and Brownmiller, 1975). These myths revealed stereotypes of rapists, rape situations and rape victims. Examples of rape victim stereotypes included the notions that no woman could be raped against her will, that all women secretly harbored a desire to be raped, that women said "no" when they meant "yes", that many women "cried rape" against blameless men, that women were likely to mistake fantasized rape for reality, and that women who were raped had "asked for it".

These stereotypes of rape victims all appeared to be based on untested assumptions about female sexuality.¹⁶ Nevertheless, it also

¹⁶ Several of them seemed, in particular, to be based on unproven psycho-analytic notions about female sexual behavior. See, for example, Brownmiller's discussion of Deutsch's hypotheses about female masochism and sexual fantasies (Brownmiller, 1975:315-325).

seemed that belief in such stereotypes had a number of real consequences. One such consequence was the kind of response--skepticism and derision--which generally followed stories or reports of rape.

Concerning rape laws, feminist authors not only found connections with stereotypes like those mentioned above, but they also set forth certain notions about the development of these laws. Feminists were outraged to find that the history of rape laws seemed to show regard for the damage or despoiling that might befall men's private property overshadowing regard for the well-being of the women who might be raped (Griffin, 1971; LeGrand, 1973; Brownmiller, 1975; and Clark and Lewis, 1977). "Rape", Brownmiller has pointed out, "entered the law through the back door, as it were, as a property crime of man against man. Woman, of course was viewed as the property" (1975:18).¹⁷

¹⁷ An editorial in the Yale Law Journal ("Forcible and Statutory Rape", 1952) provided evidence that Freudian notions, rape victim stereotypes, and masculine pride in possessing women were all significant parts of the picture surrounding rape laws. The idea that modern rape laws were still meant to protect one man's property from other men emerged rather clearly in this article. Consider the following:

"The consent standard in our society does more than protect a significant item of social currency for women; it fosters, and is in turn bolstered by, a masculine pride in the exclusive possession of a sexual object." The consent of a woman to sexual intercourse awards the man a privilege of bodily access, a personal 'prize' whose value is enhanced by sole ownership. A man may fear loss of the woman's sexual consent to a competitor. Against the potential seducer, the threatened lover is supposed to employ devices such as the manly art of wooing or recrimination of the woman to restore the relationship and maintain his masculine self-esteem. These devices, however, may do little to allay his anxiety. And he may not be able to resort to direct action against his competitor without a symbolic admission of impotence. Hence the fear
(continued next page)

LeGrand argued that rape laws reinforced traditional attitudes about social and sexual roles (1973:919); and she, furthermore, argued that rape laws were structured in such a way as to be overly solicitous toward defendants and overly suspicious with respect to rape victims (1973:930). These arguments have been supported by studies which have related the character of rape victims to the dispositions of rape cases (e.g., Clark and Lewis, 1977).

Special rules which applied only to the trial of rape cases were among the matters singled out for further attention. These rules mainly concerned corroboration requirements and the questioning of victims about their past sexual behavior. Special corroboration requirements or instructions in rape trials were clearly based on the notion that women were likely to bring false charges of rape against men. Unlike other trials, the decision as to whether or not to convict on the basis of a sole adult witness' testimony was often not left to the judge or jury.¹⁸

(continued)

and aggression aroused by the threat of deporal may be 'displaced', directed against a more socially acceptable target--the rapist. An additional reason for the man's condemnation of rape may be found in the threat to his status from a decrease in the 'value' of his sexual 'possession' which would result from forcible violation" (1952:72-73).

¹⁸ Until 1974, for example, New York law required corroboration of penetration, identification of the accused, and coercion or lack of consent (Connell and Wilson, 1974:137). The effect of this kind of requirement can be illustrated with reference to Brownmiller's comments on rape convictions in New York City. "The sheer impossibility of providing total corroboration is best demonstrated by the sad history of New York City's conviction rate under the state's old corroboration statute. In 1971 there were 2,415 'founded' rape complaints in New York and the police managed to make 1,085 arrests. However, only 100 cases were ever presented to the grand jury, and these resulted in 34 indictments and only 18 convictions. Justice under the state's corroboration statute was an unbelievable revolving door" (Brownmiller, 1975:372 -- emphasis mine).

Although rape laws have been reformed in several U.S. states and in Canada with respect to corroboration requirements, the results of these reforms cannot be taken for granted.¹⁹ If jurors persist in holding the attitudes which underlie the formulation of these special rules, then it is only to be expected that juries will continue to demand corroborative evidence to support the rape victim's testimony.

In recent years, rape trial rules concerning questioning about victims' previous sexual behavior have also been a primary target for criticism and reform. Concern with these rules has been the basis for the experimental manipulation in this dissertation research, and I have therefore devoted the next section to the theoretical statements and empirical studies which have dealt with questions about victims' sexual histories.

Courtroom questioning of rape victims concerning their sexuality.

In the U.S. in the early 1970's, Griffin (1971), LeGrand (1973), and Burgess and Holmström (1973) published articles which decried the ordeal to which victims were subjected in rape trials. Each of these authors

¹⁹ Until April 26, 1976, judges in Canada were bound to instruct rape trial juries that it was not safe to find the accused guilty in the absence of corroborative evidence for the complainant's testimony but that they were entitled to find the accused guilty if they were satisfied beyond a reasonable doubt that her evidence was true (former S142, Criminal Code). This special instruction never had to be given in other trials except where the critical testimony was that of a child or an accomplice in the crime.

Perhaps ironically, the only empirical study on the effects of this special jury charge found differences in the unexpected direction. The L.S.E. study found a tendency for the jury to convict more often when the judge instructed the jury of a need for evidence to corroborate the victim's testimony. They hypothesized that this was due to the fact that such an instruction was always accompanied by the judge specifically mentioning all the evidence which might be considered corroborative (L.S.E. Jury Project, 1973:220).

saw the demeaning questioning of victims about details of their past sexual experiences as clearly showing that even the courts accepted "the double standard". LeGrand stated that "...rape laws regard the nonmarital sexual activity of men as irrelevant to the rapist's veracity, yet the nonmarital sexual activity of the woman condemns her" (1973:938).

Griffin argued that acceptance of this double standard meant that a woman who had had sexual intercourse out of wedlock could not be raped (1971:29). She suggested that jurors, upon hearing that a victim had not been chaste or had not "behaved", would consider the woman defiled and undeserving of protection.

Mathiasen suggested that the use of questions about rape victims' past sexual behavior was a major reason for the low conviction rate for forcible rape (1974:37). According to Mathiasen,

"A jury cannot make an enlightened judgment as to the legal guilt of the defendant when it is presented with evidence about the victim which offends their traditional stereotypic beliefs of how a woman should behave. The result of a lenient attitude toward the use of the evidence of the victim's character is that the jury punishes the victim for her past sexual and social behavior" (Mathiasen, 1974:37).

Information about the kinds of questions which rape victims were asked in court led to the views that the woman herself was on trial and that she was subject to an ordeal often as bad or worse than the rape. These views were communicated not only in the feminist literature but also in legalistic and criminological journals.²⁰ Moreover, they became popular themes in the mass media, particularly in magazine articles and television dramas.

²⁰ Articles which have tended to justify the status quo regarding rape laws and the way the offence has been handled in court have been few in number. Among them are articles by Herman (1977) and Levy (1977).

Two articles which dealt with questioning of rape victims about previous sexual activity appeared in Chitty's Law Journal in Canada in 1975. In the first of these articles, Brooks outlined the controversy surrounding questions of the woman's previous sexual experience (1975:5-6). Arguments favoring such questions suggested that the responses they evoked had meaning for the victim's credibility or her willingness to have consented to the accused. The first argument suggested that previous sexual relationships outside of marriage indicated immorality and that one could, in turn, infer an absence of scruples about lying in the witness box. The second argument favoring questions about previous sexual behavior was that "if a woman has consented to intercourse in the past then she is the kind of person who consents to intercourse and therefore she probably consented on the occasion in question" (Brooks, 1975:6).²¹

On the other hand, Brooks suggested that today few judges and other people take the first argument seriously. Regarding the second argument, Brooks pointed out that he and others working on the Law Reform Commission of Canada's Evidence Project reached the conclusion--albeit with "some misgivings"--that questions about previous sexual behavior should be prohibited in all cases. He said, "In effect, we argued that the assumption of a personality trait unique to some women predisposing them to consensual intercourse, and which could be inferred from instances of prior intercourse, was invalid" (Brooks, 1975:6).

²¹ Brooks also stated, "If the issue was whether or not a male had consented to intercourse with a woman whom he knew only briefly, not many people would seriously think that introducing evidence of his prior sexual activity was relevant. We concluded that a different assumption about women is both empirically and normatively wrong" (1975:6).

The second article appearing in Chitty's Law Journal in 1975 which dealt with courtroom questioning of rape victims was written by a judge of the Supreme Court of Ontario who has presided over many rape trials. The article urged other judges to use their discretion in a way that would prevent character assassination and abuse of rape victims.

The Honourable Mr. Justice Haines began by stating:

"Most judges, lawyers and those experienced in the trial of rape cases would tell a female member of their household if she were raped that it would be much better not to complain about it because to the victim the trauma of a rape trial can be often more serious than the original assault" (Haines, 1975:57).

In addition, Haines gave examples of questions which he suggested were typical of those used by defence lawyers seeking to increase their client's chances of acquittal by demeaning the victim.²² "The range of these questions", he wrote, "is only limited by the ingenuity of counsel and the interference of the judge" (Haines, 1975:57).

The discretionary power of judges was at the centre of reforms which took effect in Canada, April 26, 1976, insofar as those reforms concerned courtroom questioning of rape victims. On that date, it became

²² These sample questions were as follows: "

1. Were you on the pill?
 2. Have you ever had an illegitimate child?
 3. Have you ever had an abortion?
 4. Have you ever been treated for a venereal disease?
 5. How old were you when you first had sexual intercourse?
 6. With how many men have you had sexual intercourse?
 7. Have you had sexual intercourse with X, with Y, etc.?
 8. Do you have sexual problems?
 9. Do you smoke marijuana? Do you take drugs?
 10. Are you married to the man with whom you are living?"
- (Haines, 1975:57)

necessary for defence lawyers to submit to judges any questions on a victim's past sexual conduct before they were uttered in court. The judge was then required to decide in camera whether such questions would be allowed to be asked in front of the jury.

Brooks had stated in 1975, however, that such reforms would not change the present law (1975:5). Both Brooks and Haines had commented that judges already had discretion to exclude irrelevant evidence. Moreover, Brooks (1975) and Haines (1975) had both recognized that judges had seemed reluctant to prohibit questioning of rape victims on their sexual histories.

To date, there have not been any studies in Canada to show whether the 1976 reforms have had a significant impact on the courts.²³ There has, in fact, been very little empirical evidence anywhere which has dealt directly with the relative effects of allowing or not allowing questioning of rape victim's on previous sexual experiences.

Two exceptions were experimental studies carried out in Toronto by Doob, Brooks and Kirshenbaum (1973) and Bowman and Haller (1975). These were studies which attempted to compare the effects on juries of different evidence relating to the victim's past sexual behavior. Doob, Brooks and Kirshenbaum presented vignettes of a rape case to an accidental sample of 177 people waiting for airplanes at the Toronto International Airport. The rape victims in the vignettes differed with respect to their

²³ Brooks hypothesized that "...since judges appear reluctant to exercise their responsibility to prohibit irrelevant questioning with respect to this matter, Mr. Lang's proposals will probably have some effect. Judges will perhaps be more critical in appraising the probative value of questions designed to elicit evidence of the victim's character" (1975:5).

characterization as an unmarried woman, a recent divorcée or a prostitute. Half of the subjects were asked to state whether or not they felt the accused was guilty of rape. In this instance, there were no significant differences attributable to the different victim characterizations. The other half of the subjects were told that the defendant had been convicted, and they were then asked to state whether they felt that justice had been done in convicting him. This time differences pertaining to the victim's character emerged. Both males and females felt more strongly that justice had not been done when the man was convicted of raping a prostitute than when the victim was described as an unmarried woman or a divorcée.

The second relevant experimental study that I was aware of between planning and carrying out my dissertation research was a project undertaken by two Osgoode Hall Law School students. Bowman and Haller (1975) had presented written statements of evidence introduced in a rape case to an accidental sample consisting of college night school students, insurance company employees, and neighbors. Their 48 subjects also saw a brief videotaped segment of a mock trial cross-examination. Bowman and Haller's experimental manipulation involved providing half the subjects with written evidence concerning the victim's previous sexual behavior. These subjects were informed that the victim had been taking birth control pills for three years, that "she occasionally allowed men to take her home (but not for the purposes of intercourse)", and that she had occasionally had sexual intercourse with her boyfriend (Bowman and Haller, 1975:25-26). According to Bowman and Haller, their results showed that the subjects who were given the evidence of previous sexual behavior "...were more inclined towards saying that the accused was probably not guilty..." (30).

These pieces of research by Doob, Brooks and Kirshenbaum (1973) and Bowman and Haller (1975) interested me because they had tried to investigate an aspect of rape trials that I had also planned to study. Their research made me even more determined to try to achieve as much realism in the experiment which I was about to undertake. The use of brief written materials for the experimental manipulation, selection of subjects who were not independently chosen, lack of a trial-like setting, and absence of jury deliberations were some of the shortcomings of the Toronto studies which I hoped to avoid. However, a full description of the procedures used for my dissertation research has been reserved for the next chapter.

The task which has been addressed immediately below has been to discuss in social learning theory terms the possible relationships between (1) certain attitudes, (2) evidence concerning the victim's sexual history, and (3) jurors' decisions.

Return to Social Learning Theory

Juror attitudes, victim's sexuality and social learning theory.

In recent years the books and articles concerning rape have generally been infused by a concern with social inequality between men and women. I would, therefore, suggest that individuals' tendencies to agree or disagree with statements about equality between men and women may be related to decisions they would reach in rape trials. In social learning theory terms, individuals have previously learned by means of reinforcement, modeling and so forth, to show approval or disapproval for notions about equality between men and women, and this prior learning may be significant in rape trial situations.

Learning traditional sex-role attitudes may be associated with seeing the defendant's story as more credible than that of the rape victim if--and it is usually the case in rape trials--the stories are directly contradictory on important matters. If females are generally viewed as somewhat inferior to males, then their recounting of events may also be viewed as less reliable than that of males. From the point of view of social learning theory, this may simply be a matter of generalization if one has previously been reinforced for responding more favorably to what men have said.

In addition, or perhaps alternatively, modeling may be involved wherein a person may have seen others reinforced for responding more favorably to the words spoken by men, and the person may therefore respond in a similar manner in the new situation.

Another point is that adherence to traditional sex-role attitudes is likely to include support for the notion that men are naturally more aggressive than women.²⁴ The prior learning of these views would also be more likely to be associated with not guilty verdicts in rape trials. If a person has learned to respond favorably to males who behave aggressively toward women in sexual matters, then that person is likely to respond with less disapproval for the defendant's behavior.

If the rape victim had engaged in activities immediately prior to the offence which were contrary to traditional sex-role norms (for

²⁴ Maccoby (1974) says that one sex difference which has been fairly well established is that males are more aggressive than females.

example, drinking alone in a bar or hitchhiking), then these may be behaviors which those who hold to traditional norms have learned to sanction negatively. One way of showing disapproval for the woman's behavior would be to find the defendant not guilty.

A major concern in this research and the basis for the experimental manipulations has been the possible effect on jurors of evidence about the victim's past sexual behavior. It has been thought that when a victim could be shown to have engaged in sexual relations outside of marriage or with several different men, then the defendant would be more likely to be acquitted of the charge of rape. The reasoning has been that such a victim would be seen as a less credible witness, more likely to have actually consented to the act of intercourse, and/or that less harm would have been inflicted.

In social learning theory terms, one might suggest that evidence of pre- or extramarital sexual experiences would be discriminative stimuli for expressions of disapproval of the woman's behavior. That is, jurors may previously have been reinforced for showing disapproval when presented with instances of pre- or extramarital sexual activities on the part of women, and evidence of this kind of activity by the rape victim may serve as a cue for expressions of disapproval in the present situation. The result of this is that one would expect an association between evidence of rape victims engaging in pre- or extramarital sexual activity and verdicts of not guilty for rape defendants.

People who hold less traditional views of sex roles, however, may not be influenced by evidence of nonmarital sexual involvement on the part of the victim. Clearly, those who have been reinforced for expressing

approval of women breaking with traditional roles are also people least likely to show disapproval of women engaging in nonmarital sexual relations, particularly premarital sexual relations.

Stereotypes of rape, rape victims, and rapists may also influence jurors' decisions in rape trials. From a social learning perspective, these stereotypes may be considered responses which have been learned through reinforcement. People may express agreement or disagreement with statements about the "typical" behavior of rape victims or rapists. They may, for example, agree that women often falsely accuse innocent men of rape because they have in the past been reinforced for agreeing with statements like this.

In turn, stereotypes of rape victims may be associated with the verdicts given in rape trials. Jurors may generalize from previously reinforced negative views of rape victims. They may, therefore, disagree with the rape victim's stated lack of consent to sexual intercourse in the situation brought out in the trial. In this vein, Brownmiller has commented that "[Juries] are composed of citizens who believe the many myths about rape, and they judge the female according to these cherished myths" (1975:373).

We know that traditional sex-role attitudes, disapproval of nonmarital sexual relations, and rape-victim stereotypes are not, however, distributed evenly in society. The resurgence of concern with equality between men and women has seemed strongest among relatively young, middle-class, college-educated people (see, for example, Reisman, 1978). Moreover, it would appear to have affected many more women than men if one but considers the national women's organizations, the enrolment in women's studies

programs in universities, establishment of women's centres, and so forth.

More social approval for egalitarian sex-role views and less disapproval of a rape victim's previous nonmarital sexual relationships are, therefore, expected among young, middle-class, college-educated people--especially women--than among people with different characteristics. If sex-role attitudes significantly affect jurors' decisions in rape trials, we may extend the reasoning above to expect more verdicts of guilty from young, middle-class, college-educated people--particularly women. In addition, where the facts of a given case are the same except for the presentation of different evidence concerning the victim's previous sexual behavior, then one may expect less variation in decisions from one case to the next among people who hold more egalitarian views of sex roles.

Qualification: social learning theory and other variables in rape trials. Sex-role attitudes and evidence concerning victims' previous sexual experiences have been selected as the main focus for this research because they are at the centre of controversies about rape laws and rape trials. It would certainly be naive, however, to suggest that these variables determine the verdicts in all rape trials.

A complete analysis of decision-making in rape trials would have to include many other variables as well. Surely, people have learned to respond differently to different amounts of evidence. They have also very likely learned other attitudes such as punitiveness toward offenders which may affect their decisions in a given case. Matters such as reasonable doubt and possible sentences are among still other issues which could be dealt with in an analysis of rape trials. Moreover, there are the jury deliberations to be considered.

These kinds of variables have been given less attention or have not been given attention at all in this dissertation for various reasons. These reasons involve (1) judgments about the importance of the other variables relative to the seeming importance of jurors' sex-role attitudes and evidence concerning the victims' previous sexual behavior and/or (2) time and expense considerations.

In the first instance, I decided to control the facts of the rape case in this research other than selected evidence about the victim's previous sexual behavior. I deliberately chose not to look at the possible effects on jurors of there being differences in the number of offenders, location of the offence, injuries sustained by the victim, and so forth. Factors such as these undoubtedly affect jurors' decisions, but they are not the kinds of things that lead directly to suggestions for changes in rape laws or trial procedures.²⁵

The second kind of thing which I chose not to investigate concerned the personalities and behavior of people involved in the trial (except insofar as the defence lawyer and victim were involved in the presentation of different information about the victim's sexual history).

I recognize that in real rape trials the personalities and behavior of lawyers and judges and the dress and demeanor of the victim and defendant

²⁵ Studies in the U.S. (Amir, 1971), Israel (Sebba and Cahan, 1975), and Canada (Clark and Lewis, 1977) have found that certain aspects of rape cases differentiated among the cases in terms of their proceeding through the criminal justice system. These aspects of cases included the following: use of alcohol, number of offenders, presence of weapons, location of the offence, victim-offender acquaintance, resistance to the attack, injuries to the victim, verbal threats, additional sexual acts, victim's marital status, amount of time before reporting to police, and age of the victim and offender.

may affect the jury verdicts. I have chosen not to focus on these but, instead, to control for them by holding them constant in the presentations of a rape case to jurors. I have done this mainly because these aspects of the trial, like the facts of cases, are bound to vary from trial to trial; and they seem relatively difficult to change or bring under control.

What about the question of reasonable doubt, understanding the judge's instructions, and regard for the possible sentence that the defendant might receive? I felt that jurors would have had different social learning experiences relating, for example, to views of reasonable doubt and that stricter views of reasonable doubt might be associated with not guilty verdicts. Similarly, people who had learned negative attitudes toward lengthy prison sentences might be more likely to acquit the defendant. When I planned this research, I therefore intended to look for information about previous and situational learning relating to these matters. This intention was secondary, however, to finding out about the importance of sex-role attitudes and evidence of previous sexual behavior.

Another consideration which I took into account in designing the study was the idea that jurors might have learned certain attitudes which would conflict with sex-role or rape attitudes they also held. In particular, I was concerned with attitudes about punishing law violators.

Feminism has in the past been aligned with liberal movements as opposed to law-and-order ones. Part of the liberal tradition has, however, been the safeguarding of individual liberties and the championing of individuals involved in conflicts with states or lesser bodies representative of authority. It has also been part of liberalism to support prisoners' rights and prison reform movements and to be nonpunitive in outlook toward law violators.

It therefore seemed that a person who not only espoused equality between men and women but also was disposed to be nonpunitive toward offenders would probably experience a dilemma when faced with deciding whether a defendant in a rape trial were guilty.²⁶ Applying social learning theory terms, one might say that previous learning of agreement with nonpunitive statements might be associated with responses of not guilty in trial situations. A learned tendency to agree with expressions of nontraditional sex roles might, on the other hand, be associated with seeing rape victims as more credible and, therefore, rendering verdicts of guilt in rape trials. Decisions of guilty and not guilty in these situations would represent competing responses, and I did not have any basis from which to suggest that one response rather than the other would be emitted.

Last, but far from least, a full social learning theory analysis of rape trial decision-making would require that a great deal of attention be paid to the jury deliberations. Social learning theory would lead one to expect that jurors' final decisions in rape trials are not simply a

²⁶ The following statements by Brownmiller illustrate this dilemma:

"The shock to liberals in 1971 when the women's movement first began to discuss rape was profound. I remember the looks of incredulity and the charge, 'Why you're on the side of the prosecution', as if that per se was evidence of racism and reaction. But liberals are nothing if not elastic in their ability to absorb new ideas. Two years later the director of the New York Civil Liberties Union expressed his confusion over whom to root for now that the right of a woman not to be raped had been perceived by him as a political issue. 'It's a little bit like cowboy-and-Indian movies', he admitted" (1975:254).

function of previously learned attitudes or the presentation of certain evidence in court. One would want to consider the social learning processes which come into play during the course of the jury deliberations. The frequency with which particular verbal statements occur may, for example, very well depend upon social reinforcement for such behavior. Jurors may change their decisions of guilty or not guilty if there is more social approval expressed by the group as a whole or by certain jurors for one verdict rather than the other. The jury deliberations would also provide an opportunity to find out what aspects of the case are given the most attention by jurors. This may shed light on whether certain facts serve as discriminative stimuli or cues for one verdict rather than the other.

The initial plan of this dissertation research included analysis of the videotape recordings of the jury deliberations. Due mainly to time and money constraints, unfortunately, a detailed analysis of the deliberations has not been made. Information from the videotapes which has been available for the dissertation has mainly dealt with attention paid by jurors to the victim's testimony about her previous sexual experiences.

Expectations. Consideration altogether of social learning theory, recent literature on rape, and some previous empirical studies, has allowed me to reach several conclusions about possible associations amongst variables in rape trial decision-making. Statements of these possible relations have been listed immediately below:

1. Males will more often find rape defendants not guilty than females.

2. People with less egalitarian views of appropriate sex-role behavior will more often find rape defendants not guilty.
 - a) People holding more egalitarian sex-role attitudes will more likely be young, middle-class, college-educated and female.
 - (1) Young, middle-class, college-educated women will be less likely than others to make decisions of not guilty in rape trials.
 - (2) For people who hold more egalitarian views of sex roles but who also are disposed to be less punitive toward offenders, the expected association between more egalitarian views and more guilty verdicts may not be found.
 - b) People who espouse certain traditional stereotypes of rape, rape victims and rapists will be more likely to find rape trial defendants not guilty.
3. When evidence of the victim's previous sexual behavior reveals that the woman has engaged in sexual relations outside of marriage, then jurors will be more inclined to see the rape defendant as not guilty.
 - a) People who hold more egalitarian views of sex-role behavior will be less likely to be influenced by evidence concerning nonmarital sexual activity on the part of the victim.
 - b) Young, middle-class, college-educated women will be less likely to be influenced by evidence concerning nonmarital sexual activity on the part of the victim.

These were the expectations which provided main points of focus for the empirical study undertaken for this dissertation. The research procedures which are described in the next section show the ways in which I sought empirical data bearing on these hypothesized relationships.

The description of the research procedures is followed by four chapters which present the findings in this study. Chapter III is

concerned with the overall picture of decisions in the case and jury-by-jury differences.

Chapter IV deals chiefly with verdicts in relation to social background characteristics and with relationships between social background characteristics and sex-role attitudes.

In Chapter V consideration is given to the associations of both sex-role attitudes and social background characteristics, with the decisions reached in the mock jury situation. Decisions are also examined in this chapter in relation to punitiveness attitudes and rape stereotypes.

The last chapter in the presentation of the findings is Chapter VI. It focuses on differences in verdicts when jurors are given different kinds and amounts of information concerning the victim's previous sexual behavior.

Chapter VII is the concluding chapter of the dissertation. It seeks to summarize points discussed in other chapters and to bring these points to bear on questions relating to rape law reform and the kinds of further research needed on rape. Moreover, it includes reflections on the usefulness of social learning theory in sociological analysis of phenomena.

Chapter II

THE RESEARCH DESIGN AND MEASUREMENT OF VARIABLES

The main purpose of this empirical study has been to investigate the effects of social characteristics of jurors (e.g., sex, age, education), sex-role attitudes, and information about the victim's past sexual behavior upon jurors' individual verdicts in a rape trial situation. The worth of a study such as this one depends on the importance of the questions it addresses. Equally important to its worth, however, are the ways in which subjects are selected, the quality of the trial presentation, and the kinds of measuring instruments used. These latter concerns provide the subject matter for the present chapter of the dissertation.

The sample. Ninety-five Ottawa area residents participated as jurors in this study. There were 51 women and 44 men. They ranged in age from 17 to 68 years with a median age of 32 years.

In choosing subjects I wanted to improve upon earlier studies which had relied on college students. I knew that the generalizability of the results of the study would be improved if I could involve people who were similar to those actually selected to serve on juries in rape trials. Although I did not achieve a random sample of such people, I was able to secure the participation of many people who had served on juries or jury panels. The resulting sample was much more heterogeneous with respect to age and other background characteristics than had generally been the case in experimental studies reported in the literature on rape.

Sixty-eight of the participants came as a result of efforts to contact people whose names had appeared on jury panel lists for the Judicial

District of Ottawa-Carleton. These lists are compiled by the local sheriff's office. People named on them are required to come to the courthouse on three consecutive Mondays, and it is from among these groups that juries are chosen for trials in the Ottawa courtrooms.

In selecting jurors for trials, Canadian lawyers do not engage in the kind of questioning of potential jurors which occurs in the United States. Instead of soliciting information directly from potential jurors, Canadian lawyers generally make their decisions given the appearance of the potential jurors and the information on the jury panel lists which, in addition to the person's name, includes only the person's address and occupation.

I began my selection of subjects for the experiment using 225 names from two jury panel lists. The names were originally listed in alphabetical order so I simply made index cards for all the names. I separated male and female names, shuffled the cards, and then set about trying to contact people. I was able to reach 146 of the jury panel members by telephone. Forty-two percent of these people (61) agreed to come to the University for the four-hour experiment and followed through with their decision. An additional ten percent (14) agreed to come but later cancelled (7) or did not appear at the designated time (7). Three percent (5 jury panel members) stated that it would be somewhat difficult for them to come but volunteered that I should call them back if it became necessary. The remaining forty-five percent (66) of the people initially contacted by telephone refused to participate in the study. The main reasons for refusals centered around the time required. In addition, as the juries filled up, it was difficult to offer more than a couple of alternative evenings between which potential subjects might choose.

I mailed letters to 54 jury panel members for whom I was unable to obtain telephone numbers. Only 13% of these people (7) agreed to participate in the study. Two letters were returned with no forwarding address.¹ I also received one refusal by mail from a man who expressed interest in the study but had moved to another province.

The remaining 27 people who participated in the study either volunteered or were contacted indirectly through others. Eight of the substitutes for jury panel members were university residence students contacted through student counsellors in the residence when jury panel members found it impossible to attend at the last minute. Seven other substitutes were obtained through contacts with their fellow office workers. Four more substitutes were obtained as the result of a request made to members of one jury. Three others were husbands who volunteered when their wives received letters from me. One woman was the wife of a jury panel member who was himself too busy to attend. Two others volunteered as a result of knowledge that a jury panel member whom they knew had been contacted. Finally, two others were students who responded to a sign posted at the University just prior to the last administration of the experiment.²

¹ Including the two returned letters, I was unable to contact 27 of the 225 people whose names were on the jury panel lists. Reasons for not contacting these people were as follows: never at home when phoned (15); not called because the number was long distance (3); moved out of Ottawa (8); and deceased (1).

² Whenever potential subjects were known to each other, I tried to arrange for them to be on different juries and explained the importance of their refraining from discussing the case with each other until both had had an opportunity to view it and make his or her own decision.

Thirty-six of the subjects had previously served on actual juries, and several of them had served on juries more than once. None, however, had been a juror in a rape trial. Six had been jurors for cases involving assault or other crimes against persons. Twenty-nine had been jurors for cases involving property offences or victimless crimes such as drug offences, and one experienced juror did not state the nature of the case which he or she had heard.

Six places were initially reserved on each jury for women and six for men. When potential jurors were contacted, they were made aware of the available dates and allowed to select the one which was most convenient for them. Three of the juries had equal numbers of men and women (6:6 on Juries Four and Eight, 5:5 on Jury Two). In two other sessions the number of male jurors exceeded the number of female jurors by one (5:4 on Juries Five and Seven). The remaining juries had an excess of female members (5:6 on Jury One, 4:7 on Jury Three, 5:7 on Jury Six, and 3:6 on Jury Nine).³

Procedure. There were three different versions of the rape case, and each version was shown to three different juries. The administration of the experiment, however, followed the same pattern for all nine juries.

When first contacted, potential subjects were asked to participate as jurors in a study being carried out in the Jurisprudence Centre, Department of Law, Carleton University, and funded by the Criminal Law Reform Fund Committee in the federal Department of Justice. Potential

³ In one instance the number of male to female jurors during the viewing of the trial was 5:7, but a woman juror left prior to deliberations due to illness. This jury and one other jury had seven female jurors at the beginning because of an administrative error, in the first case, and because, in the second case, one woman juror came on the wrong evening.

subjects were informed that the main purpose of the study was to look at whether recent changes in the courtroom handling of certain cases would affect the trial outcomes. They were also told that the results of the study would be reported directly to the Department of Justice and the Law Reform Commission of Canada.

People were informed that the work would involve watching a film of a criminal trial,⁴ deliberating the case with other jurors, and filling out some questionnaires. They were told, in addition, that about four hours of their time would be required and that there would be \$12.00 pay (comparable to one day's pay to real jurors in Ontario).

The small groups laboratory used for the experiment was a room with carpeting and comfortable, upholstered chairs. There was a one-way mirror on one wall, but most of this was covered by drawn drapes. In addition, four microphones were visible on low tables arranged in a U-shape, and there was a color television monitor in one corner of the room.

As the jurors arrived, I greeted them in the corridor outside the small groups laboratory. I explained that we would like to record the deliberations with their permission, and each juror signed a form authorizing the videotape recording of the deliberations.

⁴ Only two jurors asked about the nature of the case. In one instance I stated that it was a rape trial. This person was one of the jurors who agreed to participate but later failed to appear for the experiment. In the second instance I told the juror that there were different cases and that I did not know which one would be presented on the evening that he planned to come.

When all the jurors had arrived, I introduced a male research assistant and a female research assistant, and I gave a brief introduction outlining the way the experiment would proceed. I also repeated what each juror had been told by telephone about the reason for the study, funding from the Department of Justice, and reporting the results to the Law Reform Commission of Canada as well as the Department of Justice. In addition, jurors were specifically asked not to discuss the case among themselves during the breaks and not to take notes during the trial presentations because these are rules observed in real courtrooms.

Then people were asked to fill out a brief personal information sheet and an attitude questionnaire (see Appendix A). This was followed by the first half of the trial presentation which took about forty minutes and consisted mainly of the victim's testimony. A break was held after this, and people were offered refreshments in a lounge area.

The second half of the trial, consisting mainly of the defendant's testimony, was then viewed. At the end of the videotape presentation, jurors were asked whether they felt the accused was guilty or not guilty, and in addition were asked to state their certainty about their decisions.

The exhibits in the case (a breadknife, jacket and button) were placed on the tables during the jury's absence for a second break.

When the jurors returned to the room, they were asked to select a foreman and try to reach a unanimous verdict.

After a period of about 45 minutes, or after the jury had agreed upon a verdict, a postquestionnaire was administered (see Appendix A). This questionnaire was followed by further explanation of the purpose of the experiment and a discussion period.

The trial presentation. The case presented to the participants in this experiment was an edited and somewhat modified version of a rape case tried in the Supreme Court of Ontario in Toronto in 1972.⁵ The case of Regina vs. Baker was selected for several reasons. It had involved only one defendant and one victim. It included directly contradictory testimony: the victim stated that the accused had picked up a knife and threatened her with it, and the defendant denied these things. Thirdly, the case seemed to be ambiguous. Thus, the Appeal Court judges disagreed with certain rulings and statements made by the judge; they stated that it was not clear that the jury would have convicted the defendant if the judge's actions had been different. The Appeal Court judges ordered a new trial for the defendant.⁶

The original trial transcript was lengthy, and it was necessary to edit it substantially. I tried to keep the amounts of questioning focusing on different aspects of the case in proportions similar to those in the real case, but I minimized the role of the judge and made changes to reflect the rulings of the appeal court.

The edited version of the trial initially appeared to be too favorable to the defendant. As a result, I modified the case with respect to the ages of the defendant and victim and the victim's occupation. I also introduced testimony concerning slight scratches on the victim's neck which she claimed were made by the defendant.

⁵ The script was based mainly on Regina vs Baker (10C.C.C(2d) 1973 at p.135) with a few questions taken from Regina vs St. Pierre (7C.C.C.(2d) 1972 at p.307). The transcripts for these trials were obtained from the Osgoode Hall Law School library at York University.

⁶ From the lawyer for the accused, I learned that the Crown had decided not to proceed to trial with the case a second time.

The videotape recording of the mock trial was made in a Supreme Court of Ontario courtroom in Ottawa.⁷ Two color cameras recorded the events of the trial from locations within the jury box at a height consistent with jurors' eye level. The cameras were positioned in this manner in order to achieve a recording of the courtroom proceedings from the vantage point afforded to jurors. In addition, efforts were made to avoid the use of special lighting effects and extreme close-up shots of the trial participants.

The victim and defendant were played by drama students at the University of Ottawa. Both were selected through auditions, and both had considerable acting experience. In addition, approximately 100 hours were spent rehearsing for the mock trial.

Three Ottawa lawyers played the judge and lawyer roles. All of these lawyers had previously been involved in the trial of actual rape cases. In fact, the lawyer for the Crown and the defence lawyer had faced each other in court in the trial of a real rape case a few weeks prior to the recording of the mock trial.

A County Court judge provided a brief introduction to the trial. He stated, in part, that it was hoped that the results of the study would be useful to judges in the determination of how to proceed with rape trials in the future. The subjects from the jury panel lists were able to

⁷ Camera equipment is normally barred from courtrooms at all times in Ontario. However, an appeal was made to the Chief Justice of the Supreme Court of Ontario, and he granted special permission for this videotape recording to be made in the Fall of 1976.

recognize the judge as being the same one who had previously addressed them when they appeared at the courthouse for jury duty.

The courtroom recording initially amounted to more than four hours of videotape. I spent approximately one month planning for the editing of these original tapes. After the final editing work and addition of narration by an experienced narrator, the production was eighty minutes in duration. It consisted mainly of the examination-in-chief and cross-examination of both the victim and the defendant.

The testimony given by the victim and the defendant revealed that they had met in a pub in Toronto. "Nancy Lawrence" had gone there in the company of two other young women. The pub was crowded, and "Ralph Campbell" beckoned to the three women to join him at his otherwise empty table. Nancy Lawrence remained with the accused after her two friends left, and he later asked to walk her home.

When they reached her apartment, Miss Lawrence admitted the defendant into the apartment to use the bathroom. At this point, however, the events recounted by the victim and the defendant began to differ.

The prosecution concluded that

"...the accused forced his attention on Miss Lawrence, and he became more demanding, and Miss Lawrence requested the accused to leave the premises.

Finally, the accused went into the kitchen and brought out a knife. The accused grabbed the victim's jacket, scratching her neck and tearing off a button. Under threats of violence the victim was forced into the bedroom to undress; and, acting under an induced fear of bodily harm, Nancy Lawrence was required to have sexual intercourse with the accused."

The defence counsel, on the other hand, argued that Miss Lawrence was a willing participant in sexual foreplay and that she voluntarily had sexual intercourse with the accused. Moreover, the defence counsel concluded that

"...as a result of fear of discovery by her roommate or boyfriend or by feelings of guilt, together with the accused's insistence on remaining, and a subsequent quarrel, she has laid the charge of rape and that she invented the story of threatening with a knife and the button torn from her jacket."

A check on jurors' feelings about the realism of the trial presentation showed that 86% (82) of them rated it as realistic, 5% (5) were undecided, and 8% (8) felt it to be unrealistic.

Eighty-nine percent (32) of the 36 subjects in the study who had served as jurors in the real trials rated the videotape presentation as realistic. One experienced juror was undecided about the realism of the presentation. Only three jurors with experience rated the videotapes as unrealistic.⁸

Different versions of the case. One of the main questions dealt with in this study concerned the controversial matter of victims' sexual histories being brought out in rape trials. In order to look at the possible effects of this kind of questioning, I made three copies of the mock rape trial which were identical except for this kind of questioning and the answers given by the victim.

⁸ The Ottawa Police Force has used the videotapes (the version without questioning on the victim's sexual history) to give trainees information about the detail required of victims when they testify in court.

The first of the three versions of the trial differed from the others insofar as the woman answered certain questions about sexual behavior in an affirmative manner. In this trial version she stated that she was taking birth control pills, that she had engaged in sexual relations with her boyfriend, and that she had had sexual intercourse with another man at an earlier time. Other testimony unique to this version of the trial concerned meeting men in pubs and men coming to the apartment she shared. This version of the trial was called the affirmative answer condition. The second version of the trial was termed the negative answer condition. In this case the woman stated that she had not taken birth control pills and had not engaged in sexual relations with her boyfriend. She also directly stated that she had "never picked up someone and brought them back to the apartment". The third version of the trial differed from the others in that questions about birth control pills, the woman's relationship with her boyfriend, and visits to pubs were not asked by the defence counsel.

The trial version without questions about birth control pills, and so forth, was presented to the first jury. The version with negative responses to the sexual history questions was presented to the second jury. The version with affirmative answers was presented to the third jury. The presentation of the different versions was repeated in this order for the remaining six juries.⁹

⁹ Jurors presented with different versions of the trial differed in the following ways with respect to sex-ratio, mean age and education. In the affirmative answer condition, there were 12 males and 20 females with a mean age of 36 years. The percentages classified in the high school or less, some college, and college graduate education categories were 32%, 43% and 25% respectively. There were 16 males and 15 females who saw the (continued on next page)

In order for the reader to better understand differences in the three versions of the rape trial, the following is a transcript of those portions of the first and second versions of the trial which dealt with the woman's past sexual behavior. None of these questions was included in the third version.

	<u>Version 1: Affirmative Answers</u>	<u>Version 2: Negative Answers</u>
Defence:	Did you have a boyfriend at that time?	(same)
Victim:	Yes.	(same)
Defence:	Was it a steady boyfriend?	(same)
Victim:	It depends on how you describe steady. I was going out with someone.	(same)
Defence:	Did you consider yourself bound to that particular relationship--like we used to call it, going steady?	(same)
Victim:	It was nothing we had discussed between us.	(same)
Defence:	You felt free to go out with anyone you chose?	(same)
Victim:	As I say, it was nothing we had discussed.	(same)
Defence:	Did you feel free to go out with anyone you chose?	(same)
Victim:	Yes, I guess so.	(same)

negative answer version of the trial, and their mean age was also 36 years. The percentages in the different education categories were 31% high school or less, 26% some college, and 42% college graduates. In the questions omitted version of the trial, there were 16 males and 16 females with a mean age of 33. The distribution of these jurors among the education categories was 28% high school or less, 28% some college, and 43% college graduates.

LATER

Defence: Now, you'd been at the Gold Lion pub. Had you ever been picked up in a pub by men before?

Have you ever been picked up by men in pubs before?

Victim: I have never been picked up with the intention of going home to bed with someone.

No, I never have.

Defence: Well, have you ever taken any men home to your apartment?

Have you ever taken any men home to your apartment?

Victim: Yes, people have come back to the apartment.

Well, it's not like you say. My roommate and I have had people over to the apartment; but I've never picked up someone and brought them back to the apartment.

Defence: And at the present time, are you on birth control pills?

Are you presently on birth control pills?

Victim: Yes, I am.

No.

Defence:

Have you ever been on birth control pills?

Victim:

No.

Defence: You're not married, are you?

You're not married?

Victim: No, I'm not.

That's right.

Defence: How long have you been on birth control pills?

Victim: About one and half years now.

Defence: And is there any particular reason for your taking them?

Victim: I have a boyfriend.

Defence: And have you had sexual intercourse with your boyfriend?

Were you having sexual relations with this boyfriend of yours?

Victim: Yes, I have.

No.

Defence: Have you had sexual intercourse with anyone else?

Victim: (pause)

Defence: ...not a difficult question, Are you refusing to answer the question?

Victim: Yes, I am.

Judge: Witness, I'm going to have to order you to answer those questions. It may be unpleasant, but we are here in a trial and the jury have to hear all of the evidence; and I'm going to ask you to answer. Would you repeat the question, Mr. Ryan?

Defence: Miss Lawrence, other than your boyfriend, have you had intercourse with any other men?

Victim: Yes.

Defence: How many?

Victim: One other.

Defence:	I think you told us earlier that your boyfriend was out of town at the time all of this took place?	And your boyfriend was out of town at the time that this alleged rape took place? Is that correct?
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Victim:	Yes, that's right.	(same)
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Defence:	When was the last time you had seen your boyfriend?	(same)
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Victim:	June.	(same)
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Defence:	June?	(same)
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Victim:	June, about June 15th.	About June 15th.
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Defence:	And this was July, the end of July--July the 28th. Is that correct?	And this was the end of July--July 28th?
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Victim:	Yes.	(same)
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Defence: (to judge). My Lord, I don't (same)
believe I have any further
questions of this witness

Operationalization of variables. Jurors' decisions were measured both before and after the deliberation period. The question put to them was "What do you feel that the verdict should be in this case?" and the response alternatives were "guilty" and "not guilty". In addition, jurors were asked to indicate whether they were very certain, fairly certain, undecided, fairly uncertain, or very uncertain about their decisions.

Data on social background characteristics were obtained from a brief personal information sheet. This first questionnaire provided information on sex, age, language spoken at home, marital status and education. Jurors were also asked to give their own occupations, their fathers' occupations and their spouses' occupations if they were married. The data obtained about occupations were used to assign a measure of socioeconomic status based on the revised Blishen scale (Blishen and McRoberts, 1976).

Sex-role attitudes were measured by responses to seventeen statements which were included in a second questionnaire administered prior to the presentation of the rape case. Jurors were asked to give their opinions about each of the statements in this questionnaire, and response options were "strongly agree", "mildly agree", "undecided", "mildly disagree" and "strongly disagree". The statements which comprised the measure of sex-role attitudes have been presented below:¹⁰

¹⁰ The alpha coefficient of reliability for these items was .88. Cronbach (1970:161) suggests that this coefficient of reliability approximates the average of all split-half measures of reliability which could be computed. In addition, it should be noted that all items on this scale except items 5, 12 and 15 were derived from Kirkpatrick (1936) and/or Spence, Helmreich and Stapp (1973).

1. Dirty jokes sound no worse coming from women than from men. (Strongly Agree=5 to Strongly Disagree=1)
2. It is just as important for a woman to have a job outside the home as it is for a man. (5-1)
3. Women should worry less about their rights these days and more about becoming good wives and mothers. (1-5)
4. There are many jobs in which men should be given preference over women in being promoted. (1-5)
5. Realistically speaking, men can handle the duties of business executives better than women can. (1-5)
6. In marriage ceremonies, brides should not promise to obey husbands. (5-1)
7. It is silly for a married woman not to take her husband's name. (1-5)
8. In general, men are likely to make better Prime Ministers than women. (1-5)
9. In dating relationships, the man should take the initiative. (1-5)
10. In general, the father should have greater authority than the mother in the bringing up of children. (1-5)
11. It is foolish to appoint women to police forces with the same duties as men. (1-5)
12. Men are more rational than women. (1-5)
13. Swearing and obscenity are more repulsive in the speech of a woman than of a man. (1-5)
14. Under modern economic conditions with women being active outside the home, men should share equally in household tasks such as washing dishes, doing laundry and cleaning floors. (5-1)
15. It is natural for men to be more assertive than women. (1-5)
16. Women should be given equal opportunity with men for apprenticeship in the various trades. (5-1)
17. The modern girl is entitled to the same freedom from regulation and control that is given to the modern boy. (5-1)

Male jurors' scores on this measure of sex-role attitudes ranged from a low of 38 to a high of 85 with a mean of 61.0 and standard deviation of 12.6. The female jurors, on the other hand, had scores ranging from 42 to 85 with a mean of 68.0 and a standard deviation of 12.1.

Another set of attitude statements which has been dealt with in this dissertation concerns punitiveness toward law violators. In this instance, there were nineteen items with which jurors were asked to agree or disagree. These items and the manner of scoring responses have been presented immediately below:¹¹

1. Attempts to reform prisoners without punishment are doomed to fail. (Strongly Agree=1 to Strongly Disagree=5)
2. An employer has a right to know whether any of his employees has a criminal record. (1-5)
3. More criminals should be allowed to serve their sentences by going to jail only on weekends. (5-1)
4. We must have capital punishment for some crimes. (1-5)
5. Strict enforcement of all laws is a good idea. (1-5)
6. In general, prisons make men worse than they were. (1-5)
7. A criminal should be punished first and then reformed. (1-5)
8. Our laws give too much protection to criminals. (1-5)
9. People found guilty of possession of marihuana should not be sent to jail. (5-1)
10. It is better for us to be easy on certain criminals. (5-1)
11. Persons who are guilty of murdering policemen should be executed. (1-5)
12. If judges gave harsher sentences, there would be fewer crimes committed. (1-5)
13. Capital punishment is justified for premeditated murder. (1-5)
14. Prison life is too easy these days. (1-5)
15. A prisoner's confession should be admitted in court no matter how it was obtained. (1-5)
16. Capital punishment is morally wrong. (5-1)
17. Criminals convicted of three separate serious offences should never be released. (1-5)

¹¹

The reliability for this scale as measured by the alpha coefficient was .89. All of the items on this scale were newly constructed with the exception of items 8 and 17 which were derived from Comrey and Newmeyer's (1965) measure of radicalism-conservatism.

18. The big prisons that exist today should be abolished. (5-1)

19. More prisoners should be allowed to leave prison on weekend passes. (5-1)

With respect to the punitiveness measure, the ranges of scores were 32 to 90 for males and 34 to 90 for females. The mean scores were 56.9 and 56.4 for males and females respectively; and scores for both sexes yielded a standard deviation of 14.7.

Jurors were also asked to state their opinions about seven statements on the attitude questionnaire which were thought to pertain to rape.¹² These items were as follows:

1. In cases of rape, the society in general is more to blame than individual victims.
2. It is unbecoming for young women to hitchhike.
3. The responsibility for rape rests more with the individual offender than with the society in general.
4. Most girls are 'easy' these days.
5. When a woman reports a rape to them, the police should question whether she seduced the accused man.
6. In sexual matters, a woman may mean 'yes' even though she is saying 'no'.
7. When a married woman is raped, her husband rightly feels that something belonging to him has been spoiled.

In instances where jurors failed to give an opinion concerning the statement presented to them, the middle value response was assigned to them. In other words, they were treated as if they had responded that they were undecided about whether they agreed or disagreed with the given statement. Forty-three items were scored for each of the 95 jurors, and there were only 15 instances when statements did not evoke responses.

¹² The responses for each of the items on rape was correlated strongly with the total for all items, but the alpha coefficient of reliability for the items when they were treated as forming a scale was .58. Although this weak reliability can probably be attributed to the small number of items, I have dealt with these rape items on an individual basis rather than conclude that they could be used altogether as a reliable and valid measure of rape attitudes.

Data analysis. A cautious approach has been followed in the presentation of the results of this study. Tabular analysis has been the principal vehicle used in investigating the data.

The sample was the outcome of unknown self-selection processes, and it has been treated as an accidental sample. Given its nonrandom nature, statistical tests of significance have not been considered appropriate for the main presentation of the findings. I have, instead, relied heavily on the use of simple percentages and Yule's Q .¹³

The verdicts in the study have, generally, been dealt with as nominal level data. This is the case not only for the guilty--not guilty dichotomy but also for the certainty of decision variable which ranges from "guilty, very certain" to "not guilty, very certain" in ten steps.

A number of transformations of the data have been made with respect to certain social background characteristics of the jurors. Thus, jurors were divided into two age categories with those at or below the median age of 32 forming the younger group. When the educational backgrounds of jurors were considered, a decision was made to group the jurors as follows: high school or less, some college or university, and college or university graduates. In addition, jurors were divided into two socioeconomic status groups based on their scores on the revised Blisshen scale.

Agreement or disagreement with sex-role and punitiveness statements were scored from one to five. Each individual's scores on these

¹³ Yule's Q is a measure of the degree of association between two nominal level variables in a 2x2 table. Its value varies between plus and minus one, although its sign may be ignored when one is dealing with nominal variables (Loether and McTavish, 1976:202). Specific ways of interpreting Q values have been given by Davis (1971:49).

statements were then summed to yield a total for sex-role and punitiveness items. The distribution of the 95 jurors' total scores on each set of items was then examined and divided at the median score. In the case of sex-role attitude scores, those jurors whose scores were found to be at the median (66) and above were subsequently referred to as giving more egalitarian responses than the other jurors. For punitiveness scores, those whose total scores were at the median (54) and below were regarded as more punitive than the others. These newly formed dichotomies of sex-role and punitiveness attitudes were then used in the tabular analysis of the data.

The number of subjects in this study and the use of tabular analysis has led to certain difficulties. It has been difficult, for example, to examine the relationship between two given variables while controlling for the effects of more than one other variable. Thus the tabular analysis has sometimes been supplemented with reference to results of log linear regression analysis and other procedures.

Chapter III

A TENDENCY TOWARD ACQUITTAL: AN OVERVIEW OF THE VERDICTS

The objective to be achieved in this short chapter is to present a general overview of jurors' decisions in the case. This is done by stating the verdicts given by jurors as individuals and on a jury-by-jury basis. These results are then discussed with reference to existing literature on decision-making in rape trials.

Findings: Jurors' decisions and their certainty. The participants in this study tended more often to give verdicts of not guilty rather than guilty. Prior to the period of deliberation, 70% (66) of the jurors stated that the defendant was not guilty. Following the deliberations, 74% (70) of the jurors found the man not guilty.¹

Three of the juries came to unanimous agreement on not guilty verdicts.² Of the remaining six juries, the majorities in four of them favored not guilty verdicts, and the majorities in the other two favored guilty verdicts. The following table shows the distribution of decisions on a jury-by-jury basis:

¹ The total number of jurors involved in the study was 95. However, one juror did not state a decision prior to the deliberations, and a second juror became ill and left before deliberating the case and making a second decision.

² In the two instances where there was unanimous agreement upon viewing the trial presentation, the jurors proceeded to discuss the case for approximately 30 minutes prior to finding that they were all in agreement.

Table 1

DECISIONS GIVEN IN EACH JURY

<u>Jury Session</u>	<u>Decisions and Time of Decisions</u>			
	<u>Before Deliberation</u>		<u>After Deliberation</u>	
	<u>Guilty</u>	<u>Not Guilty</u>	<u>Guilty</u>	<u>Not Guilty</u>
First	5	6	7	4
Second	4	6	2	8
Third	6	5	5	6
Fourth*	3	8	1	11
Fifth	-	9	-	9
Sixth**	-	12	-	11
Seventh	1	8	-	9
Eighth	4	8	4	8
Ninth	5	4	5	4
Total	28	66	24	70

* In the fourth jury, one juror did not make a decision prior to deliberation.

** In the sixth jury, one juror left before the deliberation period due to illness.

Although the total number of people giving guilty verdicts was 28 prior to the deliberation period and 24 afterwards, a total of eight jurors changed their decisions with respect to conviction or acquittal. Two members of the first jury changed their decisions from not guilty to guilty. In the six other instances of changes in the decisions, jurors at first stated that the accused man was guilty and later found him not guilty.

The following table shows that the deliberation period seemed to increase certainty about the initial decisions among those jurors who had at first found the defendant to be not guilty.

Table 2

CERTAINTY ABOUT DECISIONS

<u>Decision and Certainty</u>	<u>Time of Decision</u>	
	<u>Before Deliberation</u>	<u>After Deliberation</u>
Guilty, very certain	7% (7)	8% (8)
Guilty, fairly certain	18% (17)	16% (15)
Guilty, undecided	4% (4)	1% (1)
Guilty, fairly uncertain	-	-
Guilty, very uncertain	-	1% (1)
Not Guilty, very uncertain	3% (3)	
Not Guilty, fairly uncertain	10% (9)	5% (5)
Not Guilty, undecided	12% (11)	7% (7)
Not Guilty, fairly certain	36% (34)	38% (36)
Not Guilty, very certain	10% (9)	22% (21)
Total	100% 94	100% 94

Immediately after viewing the trial, 27 jurors stated that they were uncertain about their decisions or undecided about how much certainty to place in their decisions. After the deliberations, however, the number of jurors in the uncertain and undecided categories decreased to 14. The decision category which had the greatest gain was that of not guilty and very certain.³

Discussion: The tendency toward acquittal. These initial results in the study show a tendency for the jurors to view the defendant as not guilty of the crime of rape. Moreover, the deliberation period served to enhance jurors' certainty about decisions to acquit the accused.

³ Although it is used in violation of assumptions about the nature of the sample and level of measurement of the decision data, a t-test for correlated samples suggests a statistically significant shift in decisions toward certainty about acquitting the defendant. The mean value for certainty of decision was 6.55 prior to deliberations and 7.12 afterward ($t = 2.79$, 92 d.f., $p < .006$, two-tailed).

These findings are in line with other research which has contradicted the eighteenth century view of Hale that rape is a charge "'easily to be made and hard to be proved, and harder to be defended'" (quoted in LeGrand, 1973:919).

In a major study of jury decision-making in the United States, Kalven and Zeisel stated that jury decisions in trials for crimes such as murder, assault and rape "show a bootlegging of the tort concepts of contributory negligence and assumption of risk into the criminal law" (1966:243). With respect to rape in particular, Kalven and Zeisel suggested that juries did not limit themselves to the legally recognized issue of consent at the moment of intercourse. They added that the jury in a rape trial "...closely, and often harshly, scrutinizes the female complainant and is moved to be lenient with the defendant whenever there are suggestions of contributory behavior on her part" (249).

In the analysis of the 106 rape cases included in their survey, Kalven and Zeisel divided the cases into two types: aggravated rape (64 cases) and "simple" rape (42 cases). Aggravated rapes were defined as those "in which there is evidence of extrinsic violence or in which there are several assailants involved, or in which the defendant and the victim are complete strangers at the time of the event" (1966:252). A case of "simple" rape, on the other hand, was defined as one where none of the aggravating circumstances was found to be present.

The rape case used in this dissertation research probably would have been classified as "simple" by Kalven and Zeisel. There was discrepant testimony but no concrete evidence about whether the defendant had

picked up and used a knife; there was only one assailant; and the victim and defendant had made each other's acquaintance earlier in the evening.

In "simple" rape cases, Kalven and Zeisel found that the defendants were usually acquitted by juries. Moreover, they found considerable disagreement between the jury verdicts and the decisions that the trial judges felt the cases merited. The juries decided that the defendant was guilty of the major charge of rape in only three of the 42 cases.⁴ Judges, on the other hand, stated that they would have convicted the defendants of rape in 22 of the 42 cases. When convictions for lesser offences were considered as well as convictions for rape, the juries convicted in 12 and the judges stated that they would have convicted in 26 of the 42 cases (Kalven and Zeisel, 1966:252-254).

There was less disagreement on the verdicts in the aggravated cases, and juries convicted the defendants in 46 of the 64 cases. However, Kalven and Zeisel cited judges' comments about certain trials in support of their statement that "There are cases in which the situation is clearly aggravated by extrinsic violence, but the jury is still lenient to the defendant" (1966:251). They suggested that these cases illustrated the way that juries have carried to "a cruel extreme" the "rewriting" of the law of rape to take account of the assumption of risk and contributory negligence on the part of the victim (Kalven and Zeisel, 1966:251).

In Canada, the court statistics of 1968 to 1972, inclusive, show that only 35% to 55% of the rape cases which reached the trial stage

⁴ In two cases the juries were hung; and juries found the defendants not guilty of rape in the 37 remaining cases.

resulted in convictions (Nelson, 1977:59). These rates are lower than those for assault or other crimes against the person. They reflect a reluctance on the part of jurors to convict defendants in rape trials.

In this study I am, however, concerned with examining more closely the outcomes of rape trials. In light of the literature and theoretical points of view discussed in Chapter I, I want next to look at the possible associations between background characteristics of jurors, certain attitudes they may hold, and their decisions.

Chapter IV

SOCIAL BACKGROUND CHARACTERISTICS OF JURORS IN RELATION
TO VERDICTS AND SEX-ROLE ATTITUDES

This chapter presents and discusses certain empirical findings in light of some of the expectations and theoretical notions set forth earlier. The first concern is to investigate possible relationships between decisions and the social background characteristics of the jurors. The second main emphasis is upon the associations between sex-role attitudes and the social background characteristics of the jurors.

Decisions in Relation to Social Background Characteristics

The theoretical notions which underlie this research suggest that verdicts rendered in any trial are the result of past and situational conditioning of individuals. It has also been suggested that social background characteristics set parameters for the learning of certain responses rather than others. One would, therefore, expect that associations may be found between social background characteristics and the decisions given by jurors.

I have made two statements of expectation which can be dealt with at this time. First, I expected that males would more often decide the case in favour of the defendant. The second expectation was that young, middle-class, college-educated women would be more likely than other people to find the defendant guilty.

Findings: Background Variables and Decisions.

The social background factors that were examined for possible association with jurors' decisions were sex, age, education and socio-economic status. When each of these characteristics was considered individually in relation to the verdicts, sex was the only characteristic which appeared to be important. A majority of jurors of both sexes acquitted the accused, but higher proportions of men decided in his favour (see Tables 3 and 4).

Table 3

PREDELIBERATION DECISIONS IN RELATION TO SEX OF JURORS*

	<u>Male</u>	<u>Female</u>
Guilty	21% (9)	38% (19)
Not Guilty	79% (34)	63% (32)
Total	100% (43)	101% (51)

* Yule's Q = .38

Table 4

POSTDELIBERATION DECISIONS IN RELATION TO SEX OF JURORS*

	<u>Male</u>	<u>Female</u>
Guilty	14% (6)	36% (18)
Not Guilty	86% (38)	64% (32)
Total	100% (44)	100% (50)

* Yule's Q = .56

The next step in analyzing these sex differences was to see whether they were to be found (1) among the younger jurors as well as among those who were older, (2) among jurors with varying educational backgrounds, and (3) among jurors of different socioeconomic status.

When age was introduced into the picture, I found that the sex difference in verdicts was greater among the younger age group both before and after the deliberation period. Among the men and women 33 years of age and older, there was, in fact, very little difference in the proportions giving not guilty verdicts (see Table 5).

Table 5

PERCENTAGES OF NOT GUILTY VERDICTS IN RELATION TO SEX AND AGE

<u>Decision</u>	<u>32 Years of Age and Under</u>		<u>33 Years of Age and Over</u>	
	<u>Males (N=23)</u>	<u>Females (N=26)</u>	<u>Males (N=20, 21)</u>	<u>Females (N=25, 24)</u>
Before Deliberation	87% (20)	54% (14)	70% (14)	72% (18)
After Deliberation	91% (21)	58% (15)	81% (17)	71% (17)

Twenty-eight jurors gave guilty verdicts prior to the deliberations. Of these people, 43% (12) were women under 33 years of age. With respect to decisions made after a period of deliberation, 46% (11) of the 24 guilty verdicts came from women under 33 years of age. It is clear that women under 33 were more likely to reach decisions unfavourable to the accused than people in any other age and sex category. It is also true, however, that the chance of obtaining a guilty verdict from a woman under 33 was about equal to the chance of obtaining a not guilty verdict.

When I looked at the educational backgrounds of the jurors, I found that less than one-third of them (29) had never attended college or university, and over one-third (35) had received baccalaureate or more advanced degrees. Thus, the proportion of people with some amount of postsecondary education was high, and the education categories which were used reflected this fact.

College graduates comprised the only education category for which there appeared to be a significant difference between males and females in terms of the decisions they reached (see Table 6). Almost all of the 23 male college graduates gave not guilty verdicts whereas less than half of the 12 female college graduates gave verdicts of not guilty. Although the number of female college graduates is only 12, the proportion of these jurors who gave not guilty verdicts is much smaller than that in any other education and sex category.

Table 6

PERCENTAGES OF NOT GUILTY VERDICTS IN RELATION TO SEX AND EDUCATION

<u>Decision</u>	<u>H.S. or Less</u>		<u>Some College</u>		<u>College Graduate</u>	
	<u>Males</u> <u>N=8</u>	<u>Females</u> <u>N=21,20</u>	<u>Males</u> <u>N=12,13</u>	<u>Females</u> <u>N=18</u>	<u>Males</u> <u>N=23</u>	<u>Females</u> <u>N=12</u>
Before	75%	76%	67%	61%	87%	42%
Deliberation	(6)	(16)	(8)	(11)	(20)	(5)
After	88%	75%	77%	72%	91%	33%
Deliberation	(7)	(15)	(10)	(13)	(21)	(4)

In considering the differences in decisions in relation to different background characteristics of jurors, attention was lastly given to whether males and females of different socioeconomic status would decide the case differently. In this instance, there was no discernible

interaction between the two background variables. That is, males tended more often than females to give not guilty verdicts regardless of socioeconomic status (see (Table 7)).

Table 7

PERCENTAGES OF NOT GUILTY VERDICTS IN RELATION
TO SEX AND SOCIOECONOMIC STATUS*

<u>Decision</u>	<u>Blishen Index Score of 60 or More**</u>		<u>Blishen Index Score Below 60**</u>	
	<u>Males N=29</u>	<u>Females N=24, 23</u>	<u>Males N=14, 15</u>	<u>Females N=27</u>
Before Deliberation	79% (23)	58% (14)	79% (11)	67% (18)
After Deliberation	83% (24)	61% (14)	93% (14)	67% (18)

* Among jurors in the higher socioeconomic status category, the relationship between sex and decision as measured by Yule's Q was .46 prior to the deliberation period and .51 afterward with males being more likely to give not guilty verdicts. A similar association appeared to exist among jurors in the other sex category as well, but a Q value was not calculated because of small cell frequencies.

** See Blishen and McRoberts (1976).

Discussion: The Sex Effect on Verdicts and
Interaction with Age and Education

Examining the decision data in light of different background characteristics, this study has revealed sex to have been the most important background variable.¹ It has not, however, been the case that all

¹ The homogeneity of the sample with respect to socioeconomic status and education as well as the use of only two or three levels of these variables may be thought to obscure differences that might otherwise be obtained. As an alternative to the use of dichotomies and trichotomies, I have therefore also calculated Pearson correlation coefficients using the ten certainty of decision categories and the information about education and sex as if they were interval level data. The fact that the correlation coefficients show no significant relationships between the verdicts and the other variables suggests that the failure to find such relationships here is at least not due to dividing the jurors into only two or three groups with respect to education and sex.

women were equally likely to give fewer not guilty verdicts than men.

The main sex effect found in this study has been strikingly similar to that found in the study by Davis, et al., which was mentioned earlier. Whereas Davis, et al., 1975, reported that before and after the deliberations 82% and 89% of the males found the defendant not guilty respectively, the results of the present investigation have shown that 79% and 86% of the males found the defendant not guilty. On the other hand, the proportions of females finding the defendant not guilty in the Davis, et al., experiment were 69% and 81% before and after deliberations. These figures can be compared to 63% and 64% in the present study.

The second experimental study in the literature which presented subjects with a rape situation and subsequently reported a sex effect in the making of decisions was that of Feldman-Summers and Lindner (1976). As previously noted, majorities of both males and females in that study chose to say that the accused was guilty although the proportion of females rendering guilty verdicts was higher than the proportion of males doing so.

The discrepancy in findings between the Feldman-Summers and Lindner research and the other two studies may be the result of the different methods used in presenting the rape situations. The Feldman-Summers and Lindner (1976) research used a written paragraph describing the situation. However, the study by Davis, et al., (1975) and the present research utilized electronic recordings of edited versions of actual trial transcripts. The study by Davis and his colleagues employed

a 45-minute audiotape recording while the present investigation involved 80-minute videotape recordings.

Having examined the data for possible interaction effects of sex with other social background characteristics, the present study has gone beyond previous ones to suggest that the greater tendency to find rape trial defendants guilty of the offence is not equally distributed among all women. Considerable dissimilarity between younger men and women but little difference between those in the older group has been found with respect to decisions. Dissimilarity between decisions given by college graduate men and women was also noticeable while sex differences in the other education categories were not apparent.

The number of subjects involved in this research has meant that these findings concerning interaction of, first, sex with age and, secondly, sex with education should be treated with caution. These findings are, therefore, offered as tentative indications of the way in which certain social background characteristics may have come into play with respect to social learning experiences which have significance for rape trial verdicts.

Given these words of caution, the expectation that younger, middle-class, and college-educated women would be more likely than other people to find the rape defendant guilty cannot be said to be confirmed. However, the evidence from this study has seemed at least to point toward young and college-educated women as more likely to find the defendant guilty.²

² It should be noted, though, that far from insignificant proportions of even these women (33% to 58%) decided the case in favour of the defendant.

educational attainment and employment experience to be the most important predictors of sex-role attitudes among the women surveyed. College-educated and working women were more likely than others to espouse egalitarian viewpoints.

Further results of the study by Mason, et al., indicated that women's sex-role attitudes had changed in the direction of greater egalitarianism, but the rate of change at least between 1970 and 1974 had been about the same for women in all educational and socioeconomic strata (Mason, et al., 1976:585).⁴

The fact that many previous studies of sex-role attitudes among college and high school students (see, for example, studies mentioned by Osmond and Martin, 1975) as well as the present study found significant sex differences while Albrecht, et al., did not find such differences suggests that a great deal of work remains to be done to identify correlates of sex-role attitudes. First, however, it may be necessary for the concept of sex-role attitude to be refined and better measuring instruments devised. Osmond and Martin (1975) have suggested certain ways of proceeding.

⁴ Mason, et al., used their change data to question the notion that the women's movement has caused women to adopt more egalitarian sex-role attitudes. With respect to the influence of the movement on women's sex-role attitudes, Mason, et al., have made some interesting observations. First, they have suggested that among college-educated women (a necessary restriction of the population when they made comparisons with the 1964 survey) there was a decline in support for traditional sex roles between 1964 and 1970 although this was before the feminist movement's public rise (1976:585-586). This led them to conclude that changes in attitudes may be useful in explaining the rise of the women's movement instead of the notion that the women's movement has had a unique influence on changes in women's sex-role attitudes. Secondly, Mason, et al., have suggested, however, that the women's movement may have made women's views of their place in the labour market and their roles in the home more consistent with each other (1976:594).

but only 35% (16) of the older jurors expressed agreement with more egalitarian sex-role views.

Table 8

SEX-ROLE ATTITUDES IN RELATION TO SEX AND AGE

	<u>32 Years & Under</u>		<u>33 Years & Over</u>	
	<u>Males</u>	<u>Females</u>	<u>Males</u>	<u>Females</u>
Less Egalitarian	52% (12)	19% (5)	76% (16)	56% (14)
More Egalitarian	48% (11)	81% (21)	24% (5)	44% (11)
Total	100% (23)	100% (26)	100% (21)	100% (25)

Looking next at both sex and education, a linear relationship was apparent with the tendency to hold more egalitarian sex-role attitudes increasing with increasing amounts of education (see Table 9). These trends were evident among both male and female jurors although a sex effect also clearly existed. The percentage of women at each educational level who held more egalitarian views was much greater than the percentage of men with such views.

Table 9

SEX-ROLE ATTITUDES IN RELATION TO SEX AND EDUCATION

	<u>H.S. or Less</u>		<u>Some College</u>		<u>College Graduate</u>	
	<u>Males</u>	<u>Females</u>	<u>Males</u>	<u>Females</u>	<u>Males</u>	<u>Females</u>
Less Egalitarian	100% (8)	67% (14)	62% (8)	22% (4)	52% (12)	8% (1)
More Egalitarian	0% (0)	33% (7)	38% (5)	78% (14)	48% (11)	92% (11)
Total	100% (8)	100% (21)	100% (13)	100% (18)	100% (23)	100% (12)

Considering sex and social class in relation to sex-role attitudes, females in both social class categories used in this study were more likely than their male counterparts to state agreement with more egalitarian views of sex roles (see Table 10). However, it was also clear that there were differences between the social class categories. Sixty-two percent (33) of the jurors in the higher social class category but only 36% (15) of those in the lower category expressed more egalitarian sex-role attitudes.

Table 10

SEX-ROLE ATTITUDES IN RELATION TO SEX AND SOCIAL CLASS

	Blishen Index Score of 60 or More*		Blishen Index Score Below 60*	
	<u>Males</u>	<u>Females</u>	<u>Males</u>	<u>Females</u>
Less Egalitarian	55% (16)	17% (4)	80% (12)	56% (15)
More Egalitarian	45% (13)	83% (20)	20% (3)	44% (12)
Total	100% (29)	100% (24)	100% (15)	100% (27)

* See Blishen and McRoberts (1976).

In summary at this point, the results of this study suggest that sex, age, education and social class may all contribute to variations in responses to sex-role statements. It has been shown here that females were more likely to agree with egalitarian views of sex roles than were their male counterparts in each age, education, and social class category. It has also been shown, however, that each of the following was associated with more egalitarian views of sex roles: being younger, spending more years in school, and being in the higher social class category.

The use of Yule's Q or gamma, its more general form, as a measure of association between sex-role attitudes and the social background characteristics has revealed moderate to substantial degrees of association. The value of Yule's Q was .49 for sex and sex-role attitudes, .56 for age and sex-role attitudes, and .50 for social class and sex-role attitudes. The gamma value for the relationship between education and sex-role attitudes was .47.³

Further analysis is required to sort out the relative importance of these demographic variables for the learning of more egalitarian attitudes about sex roles. By means of a single table (Table 11) showing sex, age and education in relation to sex-role attitudes, it is possible to see that the expectation stated earlier has to some degree been met. College-educated, younger women in this study have clearly shown a strong propensity to hold more egalitarian views of sex roles.

This expectation was based off the notion that recent concern with equal rights for women grew out of the involvement of young college women in the civil rights movement in the United States (Yates, 1975). Moreover, a common observation has been that the women's movement has remained strong on college and university campuses and has attracted the attention and support of more women than men.

³ The following were the Pearson correlation coefficients between the total raw sex-role attitude scores and background characteristics: .28 for sex of jurors, .42 for age (not dichotomized), .38 for education (in six categories as on the questionnaire), and .18 for the raw Blisshen Index Score assigned.

Table 11

SEX-ROLE ATTITUDES IN RELATION TO SEX, AGE, AND EDUCATION (SIMPLE FREQUENCIES)

	Males						Females					
	32 and Under		33 and Over		32 and Under		32 and Under		33 and Over		33 and Over	
	H.S. or Less	Some College	College Grad.	H.S. or Less	Some College	College Grad.	H.S. or Less	Some College	College Grad.	H.S. or Less	Some College	College Grad.
Less Egalitarian	2	6	4	6	2	8	3	1	1	11	3	0
More Egalitarian	0	4	7	0	1	4	3	10	8	4	4	3
Total	2	10	11	6	3	12	6	11	9	15	7	3

Ideally, one would use survey research methods to obtain more subjects and better data for purposes of specifying the relative contributions of background variables to the learning of different sex-role attitudes. In light of wide public attention to the women's movement and the status of women in society, it is surprising not to find a great many research reports on general surveys of sex-role attitudes among more diverse populations than college or high school students.

One exception that I have found to date has been Albrecht, Bahr and Chadwick's (1977) work which was based on a random sample of adult residents of the state of Utah. Albrecht, et al., asked people to respond to lists of personality traits and occupations in terms of their desirability for boys and girls. What they found was that age was the most important variable in explaining variance in stereotyping of personality characteristics. Age combined with attitudes toward the feminist movement were, on the other hand, more important than the other variables they considered in predicting stereotyping of occupational roles. They stated that religious affiliation, sex, education and income "...proved rather disappointing in their predictive power" (Albrecht, et al., 1977:236).

Mason, Czajka and Arber (1976) carried out a secondary analysis of data from five different surveys between 1964 and 1974. Their re-analysis focused on sex-role attitude change among women only. This study, however, obtained some results which are at odds with certain findings in the study by Albrecht and his colleagues.

Findings by Mason, et al., were based on comparisons of individual survey items—each survey contained between two and nine items also used in at least one of the other surveys. Their analysis revealed

educational attainment and employment experience to be the most important predictors of sex-role attitudes among the women surveyed. College-educated and working women were more likely than others to espouse egalitarian viewpoints.

Further results of the study by Mason, et al., indicated that women's sex-role attitudes had changed in the direction of greater egalitarianism, but the rate of change at least between 1970 and 1974 had been about the same for women in all educational and socioeconomic strata (Mason, et al., 1976:585).⁴

The fact that many previous studies of sex-role attitudes among college and high school students (see, for example, studies mentioned by Osmond and Martin, 1975) as well as the present study found significant sex differences while Albrecht, et al., did not find such differences suggests that a great deal of work remains to be done to identify correlates of sex-role attitudes. First, however, it may be necessary for the concept of sex-role attitude to be refined and better measuring instruments devised. Osmond and Martin (1975) have suggested certain ways of proceeding.

⁴ Mason, et al., used their change data to question the notion that the women's movement has caused women to adopt more egalitarian sex-role attitudes. With respect to the influence of the movement on women's sex-role attitudes, Mason, et al., have made some interesting observations. First, they have suggested that among college-educated women (a necessary restriction of the population when they made comparisons with the 1964 survey) there was a decline in support for traditional sex roles between 1964 and 1970 although this was before the feminist movement's public rise (1976:585-586). This led them to conclude that changes in attitudes may be useful in explaining the rise of the women's movement instead of the notion that the women's movement has had a unique influence on changes in women's sex-role attitudes. Secondly, Mason, et al., have suggested, however, that the women's movement may have made women's views of their place in the labour market and their roles in the home more consistent with each other (1976:594).

The point of this study is not, however, to dwell further on the correlates of sex-role attitudes nor on desirable changes in their measurement. The point is instead to relate these attitudes, using a typical measure of them, to decision-making in a rape case. The reader will soon also see that many of the findings in this chapter on social background characteristics have been used to help shape the analysis of sex-role attitudes in relation to decisions.

Chapter V

VERDICTS IN RELATION TO SEX-ROLE ATTITUDES AND RAPE STEREOTYPES

The major emphasis in this chapter is to address the question of whether social inequality between men and women, as reflected in sex-role attitudes, is related to jury decisions in rape trials. The expectation is that people with less egalitarian views of appropriate sex-role behaviour will more often find rape defendants not guilty. In light of the findings in the previous chapter, however, it is necessary to inquire into the part played by social background characteristics in any relationships found between sex-role attitudes and verdicts.

This chapter also deals with the question of whether punitive-ness attitudes toward law violators affects the relationship between sex-role attitudes and the verdicts given in the case. The hypothesis stated earlier in this regard was that there may not be a relationship between sex-role egalitarianism and verdicts among jurors who hold more egalitarian views but who also hold less punitive attitudes toward offenders.

Thirdly, this chapter presents an analysis of verdicts in relation to jurors' responses to statements concerning rape stereotypes. The expectation previously stated was that people who espouse certain traditional stereotypes of rape, rape victims, and rapists will be more likely to find rape trial defendants not guilty.

Sex-Role Attitudes, Background Characteristics and Decisions

Cross-tabulation of the verdicts with sex-role attitudes has revealed a moderate degree of association between them, both before (Yule's $Q=.46$) and after the deliberations (Yule's $Q=.43$). Jurors who stated their agreement with more egalitarian views of male and female roles were less likely than the other jurors to give not guilty verdicts even though majorities of both groups of jurors decided the case in favour of the accused man (see Tables 12 and 13).

Table 12

PREDELIBERATION DECISIONS IN RELATION TO JURORS' SEX-ROLE ATTITUDES

	<u>Less Egalitarian</u>	<u>More Egalitarian</u>
Guilty	20% (9)	40% (19)
Not Guilty	80% (37)	60% (29)
Total	100% (46)	100% (48)

Table 13

POSTDELIBERATION DECISIONS IN RELATION TO JURORS' SEX-ROLE ATTITUDES

	<u>Less Egalitarian</u>	<u>More Egalitarian</u>
Guilty	17% (8)	34% (16)
Not Guilty	83% (39)	66% (31)
Total	100% (47)	100% (47)

The proportions in these tables were fairly similar to those found when sex and decisions were considered (Tables 3 and 4 presented earlier). Thus, if one were to use a single variable to predict jurors' verdicts, then one would do about equally well to choose either sex or sex-role attitudes. As seen previously, however, one's predictions would be improved by taking at least one other variable into account (i.e. sex and age or sex and education).

This anticipated improvement in predictions is one reason for including other variables when examining the decision data in relation to sex-role attitudes, but there are other reasons as well. Already we have seen that sex, age, education and social class were each associated with sex-role attitudes. By taking each of these variables into account when considering the relationship between decisions and sex-role attitudes, we can also move toward greater certainty that these background variables have not led us to false conclusions about the existence of a relationship between decisions and sex-role attitudes.

Background characteristics as control variables. Looking at both sex and sex-role attitudes in relation to decisions, I found that it was only among the female jurors that sex-role attitudes seemed to have an influence. More egalitarian females decided the defendant was guilty more often than less egalitarian female jurors, but more egalitarian males did not decide the case differently from their less egalitarian counterparts (see Tables 14 and 15).

Table 14

PREDELIBERATION DECISIONS IN RELATION TO SEX-ROLE
ATTITUDES AND SEX OF JURORS

	<u>Males</u>		<u>Females</u>	
	<u>Less</u> <u>Egalitarian</u>	<u>More</u> <u>Egalitarian</u>	<u>Less</u> <u>Egalitarian</u>	<u>More</u> <u>Egalitarian</u>
Guilty	19% (5)	25% (4)	21% (4)	47% (15)
Not Guilty	81% (22)	75% (12)	79% (15)	53% (17)
Total	100% (27)	100% (16)	100% (19)	100% (32)

Table 15

POSTDELIBERATION DECISIONS IN RELATION TO SEX-ROLE
ATTITUDES AND SEX OF JURORS

	<u>Males</u>		<u>Females</u>	
	<u>Less</u> <u>Egalitarian</u>	<u>More</u> <u>Egalitarian</u>	<u>Less</u> <u>Egalitarian</u>	<u>More</u> <u>Egalitarian</u>
Guilty	14% (4)	12% (2)	21% (4)	45% (14)
Not Guilty	86% (24)	88% (14)	79% (15)	55% (17)
Total	100% (28)	100% (16)	100% (19)	100% (31)

That male jurors holding different views of appropriate male and female behaviour arrived at essentially the same verdicts was an unexpected finding. Several possible reasons can be offered in retrospect in attempting to come to terms with this unexpected finding.

First, a difference clearly existed between the distributions of male and female scores on the sex-role attitude measure. Although there was considerable overlap between the two, females who were regarded as

more egalitarian tended to have higher scores than the more egalitarian males. More than half (52.3%) of the males had raw scores of 60 or less on the sex-role attitude measure in comparison to slightly less than half (49%) of the females with scores of 70 or less.¹

A second possibility stems from consideration of Scott's theory of hypocrisy which states that "...verbal reports of activities will be more elaborately conditioned than the activities themselves..." (Scott, 1971:117). When this kind of reasoning is applied to the unexpected finding above, the suggestion is that males have received more reinforcement for verbal agreement with egalitarian views of sex roles than for behaviour in conformity with such views.

In this regard, it is possible in the present study to consider jurors' perceptions of the truthfulness of the victim and the accused in relation to sex and sex-role attitudes (Tables 16 and 17). More egalitarian females were more likely to see the victim's story as truthful than were less egalitarian females. However, egalitarianism again did not appear to make any difference among males.

¹ Joesting administered a 15-item questionnaire to 59 people demonstrating in favour of JoAnn Little. (Little had been accused of murdering a jailkeeper who had tried to rape her.) Joesting's conclusions based on her questionnaire were that "Even among the so-called liberals demonstrating in front of a prison for JoAnn Little, sex differences were statistically significant, with women being more liberal about women's roles" (Joesting, 1976:32).

Table 16

PERCEPTIONS OF THE VICTIM'S TESTIMONY IN RELATION
TO SEX AND SEX-ROLE ATTITUDES

	<u>Males</u>		<u>Females</u>	
	<u>Less</u> <u>Egalitarian</u>	<u>More</u> <u>Egalitarian</u>	<u>Less</u> <u>Egalitarian*</u>	<u>More</u> <u>Egalitarian</u>
Very Truthful or Probably Truthful	25% (7)	25% (4)	33% (6)	59% (19)
Undecided	29% (8)	25% (4)	11% (2)	16% (5)
Probably Untruthful or Very Untruthful	46% (13)	50% (8)	56% (10)	25% (8)
Total	100% (28)	100% (16)	100% (18)	100% (32)

* One juror in this category did not answer the question.

Table 17

PERCEPTIONS OF THE DEFENDANT'S TESTIMONY IN RELATION
TO SEX AND SEX-ROLE ATTITUDES

	<u>Males</u>		<u>Females</u>	
	<u>Less</u> <u>Egalitarian</u>	<u>More</u> <u>Egalitarian</u>	<u>Less</u> <u>Egalitarian</u>	<u>More</u> <u>Egalitarian</u>
Very Truthful or Probably Truthful	50% (14)	38% (6)	68% (13)	28% (9)
Undecided	29% (8)	25% (4)	5% (1)	25% (8)
Probably Untruthful or Very Untruthful	21% (6)	38% (6)	26% (5)	47% (15)
Total	100% (28)	100% (16)	99% (19)	100% (32)

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With respect to the truthfulness of the accused, jurors with more egalitarian views of male and female behaviour were less likely than the other jurors to see the defendant as truthful, but this tendency was more pronounced in the case of female jurors.

Comparisons of ratings for the victim with those for the defendant show that the less egalitarian jurors, regardless of whether they were male or female, were more likely to see the man's story as more credible than that of the woman. More egalitarian male jurors were also more likely to see the defendant's account as more truthful than that of the victim. Among the female jurors, though, more egalitarian jurors tended to see the victim's testimony as more truthful than that of the defendant.

An additional way of perhaps accounting for the unexpected interaction of sex and sex-role attitudes simply involves the idea that learning to agree with more egalitarian views of sex roles is distinguishable from learning less traditional responses to rape victims and reports of rape. Although the women's movement has promoted changes both with respect to sex roles and the way that rape is dealt with, it is probable that people have received more social approval for changes in sex-role attitudes. In general, people have fewer opportunities to express attitudes about rape, and rape has been a relatively recent concern among feminists. Changes in rape attitudes would, consequently, be expected to lag behind changes in sex-role attitudes--especially among males who appear to have been less directly affected than women by the feminist movement. More will be said about rape attitudes soon, but attention is directed immediately below to, first, other background characteristics

in relation to verdicts and sex-role attitudes and, secondly, punitiveness attitudes.

When age was taken into account in considering the relationship between sex-role attitudes and verdicts, it was clear that its effect was not nearly like that of sex. Among jurors 33 years of age and over as well as among those who were younger, the people with more traditional sex-role attitudes were more likely to reach not guilty verdicts (Table 18). This is the case even though the majority of persons in both age categories made decisions favourable to the defendant.

Table 18

PERCENTAGES OF NOT GUILTY VERDICTS IN RELATION
TO SEX-ROLE ATTITUDES AND AGE OF JURORS

	<u>32 Years and Under</u>		<u>33 Years and Over</u>	
	<u>Less Egalitarian</u>	<u>More Egalitarian</u>	<u>Less Egalitarian</u>	<u>More Egalitarian</u>
Before Deliberation	82% (14)	62% (20)	79% (23)	56% (9)
After Deliberation	82% (14)	69% (22)	83% (25)	60% (9)

Examination of Yule's Q values for a possible association between age and verdicts among the more egalitarian jurors, has revealed a low degree of association before (Yule's $Q=.13$) and after the deliberations (Yule's $Q=.19$). Among the more egalitarian jurors, those who were in the older group were very slightly less likely than the younger ones to give not guilty verdicts. For the less egalitarian jurors, there was clearly no association between age and verdicts. In brief, if one were to predict decisions on the basis of sex-role attitudes, little or nothing

would be gained by also taking into account the age category into which the juror would fit.²

Considering next the education categories, some differences were discernible in the relationship between sex-role attitudes and decisions (Table 19). Sex-role attitudes were most strongly related to verdicts among college graduates. For jurors with some amount of college or university education who had not finished their degrees, it was also the case that more traditional sex-role attitudes were associated with not guilty verdicts. Among jurors with not more than high school educations, on the other hand, there was a less noticeable association between sex-role attitudes, and it was in the opposite direction (more traditional sex-role views associated with fewer not guilty verdicts). These results suggest that taking account of jurors' educations in addition to their stance regarding appropriate sex-role behaviour would improve one's ability to predict the verdicts they would give.

Table 19

PERCENTAGES OF NOT GUILTY VERDICTS IN RELATION
TO SEX-ROLE ATTITUDES AND EDUCATION

	<u>H.S. or Less</u>		<u>Some College</u>		<u>College Graduates</u>	
	<u>Less</u> <u>Egal-</u> <u>itarian</u>	<u>More</u> <u>Egal-</u> <u>itarian</u>	<u>Less</u> <u>Egal-</u> <u>itarian</u>	<u>More</u> <u>Egal-</u> <u>itarian</u>	<u>Less</u> <u>Egal-</u> <u>itarian</u>	<u>More</u> <u>Egal-</u> <u>itarian</u>
	N=22	N=7,6	N=11,12	N=19	N=13	N=22
Before Deliberation	73%(16)	86%(6)	82% (9)	53%(10)	92%(12)	59%(13)
After Deliberation	77%(17)	83%(5)	83%(10)	68%(13)	92%(12)	59%(13)

² Log-linear multiple regression analysis carried out on the data in this study also showed that, while sex and sex-role attitudes contributed significantly to the explanation of the variance in verdicts, age was not an important additional factor (Watkins, 1978:14).

The last demographic variable to be dealt with in relation to decisions and sex-role attitudes was social class. In both social class categories, the more egalitarian jurors tended to give fewer not guilty verdicts than those who were less egalitarian (Table 20). Two additional observations can, however, be made. The first is that even majorities of jurors with more egalitarian sex-role attitudes made decisions of not guilty. Secondly, the low association which was observed between class and decisions among the more egalitarian jurors before the deliberations (Yule's $Q = .19$) was almost completely absent after the period of deliberation (Yule's $Q = .02$). Overall, social class did not contribute significantly to the ability to predict decisions from knowledge of sex-role attitudes--especially when postdeliberations were the subject of attention.

Table 20

PERCENTAGES OF NOT GUILTY VERDICTS IN RELATION
TO SEX-ROLE ATTITUDES AND SOCIAL CLASS

	Blishen Index Score of 60. and Above*		Blishen Index Score Below 60*	
	Less Egalitarian	More Egalitarian	Less Egalitarian	More Egalitarian
	N-20	N-33,32	N-26,27	N-15
Before Deliberation	90% (18)	58% (19)	73% (19)	67% (10)
After Deliberation	85% (17)	66% (21)	81% (22)	67% (10)

* See Blishen and McRoberts, 1976.

In sum, the findings concerning sex-role attitudes suggest that one should qualify the expectation that people with less egalitarian views of appropriate sex-role behaviour would more often find the rape defendant not guilty. This association held only among the female jurors. Possible

explanations were advanced for the finding that males who differed in sex-role attitudes gave similar percentages of guilty verdicts.

As with introducing sex as a variable, taking account of education in addition to sex-role attitudes appeared to enhance the ability to predict the rape trial decisions. Age and social class, on the other hand, did not contribute to improvement in making such predictions; neither appeared to have an impact on the relationship between sex-role attitudes and verdicts.

Decisions, sex-role attitudes and punitiveness. Given the connection between the women's movement and liberalism mentioned previously, I felt that people who were both more egalitarian and less punitive might experience a dilemma in trying to decide a rape case. On the one hand, they would tend to give at least equal credence to the woman's testimony; but they would, on the other hand, be unwilling to see a man convicted and sentenced to prison:

Understanding this possible dilemma from a social learning theory standpoint required recognition that people are subject to numerous schedules of reinforcement and that people can be conditioned to respond in ways that may prove contradictory in a new setting. Thus, one may have learned to respond more favorably to a rape victim's testimony, but one may also have learned to respond unfavorably to the possibility of imprisoning someone.

Empirical data from this study which can be brought to bear on the matter are found in Tables 21 and 22. In addition to verdicts, sex-role attitudes, and punitiveness attitudes, sex has been included as a variable in these tables because of the earlier finding that the effect of sex-role attitudes was only apparent among female jurors.

Table 21

VERDICTS IN RELATION TO SEX AND PUNITIVENESS AMONG
MORE EGALITARIAN JURORS (SIMPLE FREQUENCIES)

	<u>Male</u>				<u>Female</u>			
	<u>Predelib- eration</u>		<u>Postdelib- eration</u>		<u>Predelib- eration</u>		<u>Postdelib- eration</u>	
	<u>More Puni- tive</u>	<u>Less Puni- tive</u>	<u>More Puni- tive</u>	<u>Less Puni- tive</u>	<u>More Puni- tive</u>	<u>Less Puni- tive</u>	<u>More Puni- tive</u>	<u>Less Puni- tive</u>
Guilty	2	2	1	1	5	10	5	9
Not Guilty	3	9	4	10	10	7	10	7
Total	5	11	5	11	15	17	15	16

Table 22

VERDICTS IN RELATION TO SEX AND PUNITIVENESS AMONG
LESS EGALITARIAN JURORS (SIMPLE FREQUENCIES)

	<u>Male</u>				<u>Female</u>			
	<u>Predelib- eration</u>		<u>Postdelib- eration</u>		<u>Predelib- eration</u>		<u>Postdelib- eration</u>	
	<u>More Puni- tive</u>	<u>Less Puni- tive</u>	<u>More Puni- tive</u>	<u>Less Puni- tive</u>	<u>More Puni- tive</u>	<u>Less Puni- tive</u>	<u>More Puni- tive</u>	<u>Less Puni- tive</u>
Guilty	2	3	2	2	1	3	1	3
Not Guilty	12	10	13	11	13	2	13	2
Total	14	13	15	13	14	5	14	5

What have these tables shown? First, it has only been among the female jurors that punitiveness seems to have had an impact on decisions. Secondly, the less punitive female jurors tended more often to find the accused guilty than did those who were categorized as more punitive. Thirdly, less punitive females were more likely to convict the defendant regardless of their views with respect to sex-role attitudes.

The small number of jurors in the cells of Tables 21 and 22 make the drawing of conclusions hazardous. Nevertheless, a certain amount of speculation about the data in these tables seems warranted.

In the first place, some question about the validity of the punitiveness scale might be raised. This is due to the facts that punitiveness as measured in this study did not make a difference among the male verdicts and that less punitive rather than more punitive females tended to convict the defendant.

There has, however, been evidence to support the use of the punitiveness measure. This has included the face validity of the items and the reasonably good reliability as measured by the alpha coefficient (.89). One should, therefore, also question whether the more punitive jurors did not give more guilty verdicts for other reasons. These reasons include the possibility that previous learning of traditional rape stereotypes was more salient in the mock trial situation than punitiveness toward offenders in general. The results may also have been attributable in great part to the relative importance jurors had learned to attach to certain kinds of evidence in the case--e.g. circumstantial evidence.

Some speculation may also be offered concerning the fact that there was an interaction between sex and punitiveness. Perhaps the female

jurors who were less punitive had received reinforcement for responses in accord with the feminist movement's stance on rape. This kind of learning may simply have had a great deal of importance in the trial situation.

The jurors who were considered to be of special interest because of learning which might lead to opposite verdicts were, of course, jurors categorized as more egalitarian but also less punitive. Eleven male jurors fit the description of more egalitarian and less punitive. All but one of them decided the rape case in favor of the defendant. Of 16 female jurors categorized as more egalitarian and less punitive, however, nine gave verdicts of guilty after the deliberations. Therefore, of the jurors who may have experienced a dilemma stemming from conditioning about sex roles and punitiveness, males and females made different types of decisions. Interpretation and explanation of these results must wait, though, for further research which may shed light on them.

Decisions, Rape Attitudes and Sex of Jurors

This section of the chapter is devoted to an analysis of the verdicts when jurors agreed or disagreed with certain statements related to rape. In order to simplify the presentation, I have limited the decision data to postdeliberation verdicts.

Sex and sex-role attitudes were previously seen to be associated with verdicts and it, therefore, seemed to be a good idea to introduce at least one of these variables into the analysis at this point. Given that sex is obviously more easily known than sex-role attitudes, it has greater

practical significance and has been chosen in preference to sex-role attitudes.

Included in the attitude questionnaire were seven statements to which I thought people with traditional views of rape would respond differently from people who had been influenced by the women's movement. Although these items could possibly be treated as forming an attitude scale, I have chosen to deal with them in a more cautious manner by discussing them individually.³

The first statement to be examined was the following: "In sexual matters, a woman may mean 'yes' even though she is saying 'no'." This item dealt with a woman's consent to sexual intercourse. People who tended to agree with this statement were judged not to have been influenced by feminist views of rape.

Popular myths about rape cited by Brownmiller (1975:311) included the notions that women cannot be raped against their will and that if a woman were raped, she must have asked for it. People who have been reinforced for agreement with notions such as these would also be likely to have learned to agree with the notion that women may invite sexual contact although they verbally object to it.

In the present research, people who disagreed with this consent statement were much more likely to decide that the rape defendant was guilty than were jurors who agreed with it (Table 23).

³ The responses for each of the items correlated strongly with the total for all items, and the alpha coefficient of reliability for all items when they were treated as forming a scale was .58.

Table 23

RESPONSES TO "IN SEXUAL MATTERS, A WOMAN MAY MEAN 'YES' EVEN
THOUGH SHE IS SAYING 'NO'." (SIMPLE FREQUENCIES)

<u>Postdelib- eration Verdict</u>	<u>Males</u>			<u>Females</u>		
	<u>Agree</u>	<u>Unde- cided</u>	<u>Dis- agree</u>	<u>Agree</u>	<u>Unde- cided</u>	<u>Dis- agree</u>
Guilty	1	2	3	6	1	11
Not Guilty	25	9	4	21	3	8
Total	26	11	7	27	4	19

Although the majority of jurors tended to agree with this statement, it was useful in differentiating among those who gave different verdicts. More than half of the female jurors who disagreed with the item found the defendant guilty. For the female jurors who agreed with the item, however, less than one-third gave guilty verdicts.

Among male jurors, the chance of obtaining a guilty verdict from one who agreed with this statement was slight, indeed. The chance improved considerably if he had disagreed with the statement, although only a very small number of the males disagreed with this item.

From the empirical results concerning this item, it would seem that a jury would clearly demand more than the word of the woman alone that she had been forced to have sexual intercourse. That is, it would seem that even if it were proven in a rape trial that a woman had said "no" to sexual intercourse, a jury would be unlikely to respond to this as lack of consent.

Although jurors were about equally divided concerning agreement with a statement about hitchhiking, it was at least useful in differentiating between female jurors' trial decisions (Table 24).

Table 24

RESPONSES TO "IT IS UNBECOMING FOR YOUNG WOMEN TO HITCHHIKE."
(SIMPLE FREQUENCIES)

<u>Postdelib-</u> <u>eration</u> <u>Verdict</u>	<u>Males</u>			<u>Females</u>		
	<u>Agree</u>	<u>Unde-</u> <u>cided</u>	<u>Dis-</u> <u>agree</u>	<u>Agree</u>	<u>Unde-</u> <u>cided</u>	<u>Dis-</u> <u>agree</u>
Guilty	2	0	4	5	1	12
Not Guilty	18	1	19	19	1	12
Total	20	1	23	24	2	24

The probability of obtaining a guilty verdict from a female juror who agreed that "It is unbecoming for young women to hitchhike" was much less than the probability of obtaining such a verdict from one who disagreed with the statement.

It has been suggested that one popular stereotype of rape victims is that of women who "cry rape" and accuse innocent men of raping them (Brownmiller, 1975:228). This stereotype, in turn, has been related to notions of female vindictiveness and/or a presumed inability to differentiate fantasy from reality.

Feminist teachings on rape have tried to show that these views of women and rape victims are false. Anyone who has learned to disagree with these notions would seem more likely to pay attention to the victims' account in a trial and, therefore, more likely to find the defendant guilty of the offence of rape.

In attempting to gather empirical data on this matter, I asked jurors whether they agreed that "When a woman reports a rape to them, the police should question whether she seduced the accused man." The results in relation to decisions have been presented in Table 25.

Table 25

RESPONSES TO "WHEN A WOMAN REPORTS A RAPE TO THEM, THE POLICE SHOULD QUESTION WHETHER SHE SEDUCED THE ACCUSED MAN". (SIMPLE FREQUENCIES)

Postdelib- eration Verdict	Males			Females		
	Agree	Unde- cided	Dis- agree	Agree	Unde- cided	Dis- agree
Guilty	2	0	4	6	1	11
Not Guilty	23	2	13	18	2	12
Total	25	2	17	24	3	23

In this instance, female jurors who took what might be called the feminist stance were again more likely to find the defendant guilty than were those who did not share a feminist perspective. The men who seemed to hold the feminist view were about as likely to find the defendant guilty as were the women who did not indicate such leanings. The 25 males who agreed that police should question a woman about seducing the accused man were least likely of all jurors to find the defendant guilty (except that the two males who were undecided both found the defendant not guilty).

A fourth questionnaire item concerning rape was as follows: "When a married woman is raped, her husband rightly feels that something belonging to him has been spoiled". This item was intended to tap social learning relating to married women as property of their husbands and rape as a property offence.

Clark and Lewis have suggested that under early Anglo-Saxon law, a rapist might in part be punished by having to pay compensation or reparation. "The sum was not paid to the woman herself; it was," according to

Clark and Lewis, "paid to her father or husband because he was the person who was regarded as having been wronged by the act" (1977:115-116).

In this study, most of the jurors chose to disagree with the questionnaire item concerning rape. Most of the jurors indicated that it would not be right for the husband of a rape victim to feel that something belonging to him had been spoiled (Table 26).

Table 26

RESPONSES TO "WHEN A MARRIED WOMAN IS RAPED, HER HUSBAND RIGHTLY FEELS THAT SOMETHING BELONGING TO HIM HAS BEEN SPOILED". (SIMPLE FREQUENCIES)

Postdeliberation Verdicts	<u>Males</u>			<u>Females</u>		
	<u>Agree</u>	<u>Undecided</u>	<u>Disagree</u>	<u>Agree</u>	<u>Undecided</u>	<u>Disagree</u>
Guilty	0	1	5	5	2	11
Not Guilty	11	4	23	10	3	19
Total	11	5	28	15	5	30

Among the female jurors, those who disagreed with the item did not give a significantly higher proportion of guilty verdicts than those who agreed with it. Among the male jurors, agreement or disagreement with this item was more useful in distinguishing between verdicts since none of the males who agreed with this item gave guilty verdicts. However, the chance of obtaining a guilty verdict from a male who was undecided or disagreed with the item was less than that of obtaining such a verdict from a female juror regardless of her response to this questionnaire item.

A fifth questionnaire item relating to rape was this: "Most girls are 'easy' these days". On the basis of pretesting this item, I knew that people who responded to it in the less feminist or more traditional manner also responded to many other items in a similar manner.

here. Most of the qualifications which must be stated, however, apply to all of the findings in the study, and they will be dealt with in the next and final chapter of the dissertation. There is one qualification, though, which should be kept in mind with reference specifically to the failure to find greater differences among the trial versions. The reader is reminded to examine carefully the differences among the trial versions which were presented earlier. It is only these particular variations in previous sexual behavior information which were responsible for the results reported in this chapter.

None of the few males who agreed with the item about modern girls as 'easy' gave guilty verdicts, but a higher proportion of those who were undecided gave guilty verdicts than did those who disagreed. Thus, it was not possible to say for the male jurors that responses which were regarded as less traditional on this item were associated with giving fewer verdicts of not guilty.

Among the female jurors, the findings were more in accord with the expectation of more feminist views being associated with fewer not guilty verdicts. However, the chance of obtaining a guilty verdict from a woman who disagreed with this item was not as great as for women who took the feminist standpoint on the items concerning consent, hitchhiking and police questioning.

The findings with respect to the two remaining rape attitude items were not in line with the previously given expectation. The first of these items was stated in this way: "The responsibility for rape rests more with the individual offender than with the society in general". The second item was as follows: "In cases of rape, the society in general is more to blame than individual victims".

These statements have in common the idea that rape is not simply an offence which involves offenders and victims but one which has its roots in common practices in society. Feminist theorizing about rape has stressed inequality between men and women in society as a fundamental factor contributing to the incidence of rape.

I expected that people who had learned to agree with the feminist views on rape would regard the society as being more to blame for rape than individual offenders or victims. Secondly, I thought that these

people would tend to make fewer decisions favouring the rape trial defendant. The results of the empirical research have, however, led me to see difficulties with this line of reasoning.

In the case of the offender responsibility item, there was a sizable number of female jurors who were undecided (Table 28). The remaining female jurors were almost equally divided between agreeing and disagreeing with the statement. In addition, the fairly slight differences among the proportions of female jurors who gave guilty verdicts although they had responded differently to this item were findings contrary to my hypothesizing.

The results for males concerning the offender responsibility item also failed to support the above argument. None of the males who replied in a manner thought to be consistent with feminist views on rape found the defendant guilty, but some of those who responded differently did find him guilty.

Table 28

RESPONSES TO "THE RESPONSIBILITY FOR RAPE RESTS MORE WITH THE INDIVIDUAL OFFENDER THAN WITH THE SOCIETY IN GENERAL". (SIMPLE FREQUENCIES)

<u>Postdeliberation Verdicts</u>	<u>Males</u>			<u>Females</u>		
	<u>Agree</u>	<u>Undecided</u>	<u>Disagree</u>	<u>Agree</u>	<u>Undecided</u>	<u>Disagree</u>
Guilty	6	0	0	6	5	7
Not Guilty	22	3	13	12	7	13
Total	28	3	13	18	12	20

Although this item was perhaps worthwhile for indicating whether people were prepared to see offenders as subject to societal influences, it contained within itself a kind of paradox. Thus, if one were to blame

society rather than individuals, would it not be difficult to find a defendant in a trial guilty? With this item concerning offender versus societal responsibility, it may well have been the case that jurors who stated their disagreement were not thereby aligning themselves with feminist views.

The results for the item concerning societal versus victim responsibility were also not in line with my initial expectations. The proportions of guilty verdicts from male jurors were all fairly similar regardless of whether the juror had agreed or disagreed with the item or been undecided about it. Among the female jurors, however, a somewhat higher proportion of those who saw the victim as blameworthy found the defendant to be guilty (Table 29).

Table 29

RESPONSES TO "IN CASES OF RAPE, THE SOCIETY IN GENERAL IS MORE TO BLAME THAN INDIVIDUAL VICTIMS". (SIMPLE FREQUENCIES)

Postdeliberation Verdict	Male			Female		
	<u>Agree</u>	<u>Undecided</u>	<u>Disagree</u>	<u>Agree</u>	<u>Undecided</u>	<u>Disagree</u>
Guilty	2	1	3	5	2	11
Not Guilty	17	6	15	12	4	16
Total	19	7	18	17	6	27

Perhaps the difficulty with this item was somewhat the same paradox as for the offender responsibility item. If a juror were to agree that society in general is often at fault, then one may again find it difficult to blame and convict the trial defendant.

Chapter Summary. This has been a lengthy and rather difficult chapter for which a brief summary seems to be in order. The first question which has been addressed in this chapter has been whether an association existed between the learning of more traditional sex-role attitudes and not guilty verdicts among the mock jurors. Given the findings in the previous chapter, however, an investigation also had to be made of the influence which certain social background factors might have had on any relationship between sex-role attitudes and verdicts.

The main empirical finding concerning these matters has been that a relationship between sex-role attitudes and verdicts in the expected direction has been found among women on the mock juries but not among men. A number of possible explanations have been offered for this finding. Additional findings concerning social background characteristics were not as striking; and caution was urged in interpreting them because of the limited sample size.

A second important point in this chapter has been to consider whether the learning of less punitive attitudes toward offenders might affect the hypothesized relationship between sex-role attitudes and verdicts. The number of mock jurors and potential self-selection biases again require caution in interpretation of the results. Nevertheless, it was suggested that, first, punitiveness appeared to have an impact on decisions only among female jurors; secondly, among females with less punitive attitudes there were more guilty verdicts; and, thirdly, punitiveness attitudes did not interact with sex-role attitudes.

The final section of this chapter has been an investigation of jurors' decisions in relation to their responses to seven questionnaire

items meant to tap stereotypes of rape, rape victims and rapists. Results were examined separately for men and women. Several items appeared to have some importance for differentiating among male and/or female jurors who held opposite views on the guilt of the accused. These items concerned opinions about whether a woman may mean "yes" when she is saying "no", whether hitchhiking is unbecoming for young women, and whether police should question a woman reporting a rape as to her possibly having seduced the man. The remaining items relating to stereotypes seemed to be of very little, if any, consequence in distinguishing between jurors who gave different verdicts.

A number of the findings presented in this chapter will be mentioned again in the drawing of overall conclusions. First, however, results will be presented concerning effects of the experimental manipulation of specific aspects of the victim's previous sexual behavior.

Chapter VI

VERDICTS IN RELATION TO KNOWLEDGE ABOUT THE VICTIM'S PAST SEXUAL BEHAVIOR

The focus of this chapter is on the relative effects which different kinds and amounts of sexual history information may have had on the jurors' decisions. The focus is also on whether this evidence may have had a differing impact on jurors who shared certain social background characteristics or attitudes. The expectations set forth earlier concerning these matters were as follows:

When evidence of the victim's previous sexual behavior reveals that the woman has engaged in sexual relations outside of marriage, then jurors will be more inclined to see the rape defendant as not guilty.

People who hold more egalitarian views of sex-role behavior will be less likely to be influenced by evidence concerning nonmarital sexual activity on the part of the victim.

Young, middle-class, college-educated women will be less likely to be influenced by evidence concerning nonmarital sexual activity on the part of the victim.

The rationale for the first expectation was rooted in both practical and theoretical concerns. On the practical side, courtroom questioning of rape victims about their previous sexual behavior has been the target for severe criticism and the subject of numerous law reform efforts. As pointed out earlier, LeGrand (1973:938), Griffin (1971:39), Mathiasen (1974:37), and others have written about the way in which nonmarital sexual behavior is thought to condemn a woman who reports that she has been raped. Questions on sexual character have been seen as a major reason "...for the small number of forcible rape convictions, despite the burgeoning rate of the crime..." (Mathiasen, 1974:37). In addition,

concern has been angrily voiced that questions on previous sexual behavior result in a situation where a rape victim testifying in court is herself placed "on trial" and often must endure a terrible ordeal.

From a theoretical point of view, the argument has been made in this study that jurors have likely received a considerable amount of social reinforcement for expressing disapproval when presented with instances of nonmarital sexual activity by women. It was, therefore, expected that evidence of nonmarital sexual experiences would tend to be discriminative stimuli in a trial situation which would be followed by expressions of disapproval for the woman's behavior and decisions to acquit the defendant of the charge of rape.

For at least the past decade and a half, however, changes have been occurring which have led to a need to consider whether certain categories of people may not have learned strong disapproval for nonmarital--especially premarital--sexual behavior. This line of reasoning resulted in the second and third expectations stated above.

It has been suggested that people who have received social approval for agreement with women breaking with traditional roles would be less likely than others to disapprove of women engaging in premarital sexual relations. In addition, young, college-educated women have been seen as a category of people amongst whom there has been frequent reinforcement for agreement with more egalitarian male and female roles in society. Thus, people holding more egalitarian sex-role views and young, college-educated women were thought to be less likely to express disapproval of a rape victim's premarital sexual behavior.

Rather than merely speculating, though, this study aimed to provide some empirical test of these matters. With all other facts of the case being the same, mock jurors were presented with different kinds and amounts of information about a rape victim's sexual history.

Thirty-two jurors (three juries) saw the trial version where the victim stated during the cross-examination that she had been taking birth control pills for one and one-half years and had had sexual relations with her boyfriend and another man at an earlier time.¹ Thirty-one other jurors (three juries) watched the trial version in which the victim gave negative answers to questions about taking birth control pills, sexual relations with her boyfriend, and so forth. The remaining thirty-two jurors (three juries) were presented with the version of the case which excluded defence counsel questions on the woman's sexual history.

Findings relating to the first expectation. The findings with respect to the three versions of the case were contrary to the stated expectation. In comparison to jurors who heard affirmative answers to the questions about birth control pills and previous sexual conduct, those jurors who heard negative answers were more likely to find the defendant not guilty. The relationship between the two versions and the decisions, as measured by Yule's Q, was low ($Q = .20$) prior to the deliberation period and moderate in strength ($Q = .45$) after the deliberations.

¹ Additional detail on the differences in the trial versions was included above in the chapter on research design.

Table 30

PERCENTAGES OF NOT GUILTY VERDICTS FOR DIFFERENT VERSIONS OF THE TRIAL

	<u>Trial Version</u>		
	Affirmative answers to questions on past sexual behavior <u>N=32, 31*</u>	Negative answers to questions on past sexual behavior <u>N=31</u>	No questions on the victim's past sexual behavior <u>N=32, 31*</u>
Before Deliberation	66% (21)	74% (23)	71% (22)
After Deliberation	68% (21)	81% (25)	75% (24)

* The total number of people involved in the study was 95. However, one juror in the "no question" condition did not give a verdict prior to the deliberations; and a juror in the "affirmative answer" condition became ill and left prior to the deliberation period.

Thus, it seemed that jurors were not more likely to acquit the defendant because they disapproved of the woman's previous sexual behavior. A number of possible ways of accounting for the failure to find the hypothesized association between the trial versions and jurors' decisions had to be considered.

It had already been found that female jurors with more egalitarian sex-role attitudes were more likely to find the defendant guilty. Therefore, the possibility was recognized that a disproportionately large number of more egalitarian female jurors might unknowingly have chosen to participate at times when the trial version with affirmative responses to sexual history questions was presented. Table 31 below shows the differences among the three versions with respect to sex and sex-role attitudes of the jurors.

Table 31

MALE AND FEMALE JURORS WITH DIFFERENT SEX-ROLE
ATTITUDES AS DISTRIBUTED AMONG THE TRIAL VERSIONS

	<u>More Egalitarian</u>		<u>Less Egalitarian</u>		
	<u>Males</u>	<u>Females</u>	<u>Males</u>	<u>Females</u>	<u>Total</u>
<u>Before Deliberation</u>					
Affirmative Answers Version	16%	38%	22%	25%	101% (32)
Negative Answers Version	13%	35%	39%	13%	100% (31)
Sexual History Questions Omitted	23%	30%	26%	23%	99% (31)
<u>After Deliberation</u>					
Affirmative Answers Version	16%	35%	23%	26%	100% (31)
Negative Answers Version	13%	35%	39%	13%	100% (31)
Sexual History Questions Omitted	22%	28%	28%	22%	100% (32)

Nearly the same numbers of more egalitarian female jurors had been subjects in the affirmative and negative answer conditions in the experiment. Thus, the somewhat larger percentage of guilty verdicts among jurors who heard affirmative answers to sexual history questions did not appear to be due to the assignment of larger numbers of more egalitarian female jurors to this experimental condition.

The fact that more egalitarian females were well-represented on each version may still, however, have affected the hypothesized relationship. It seemed plausible that these jurors especially may have guarded against prejudice arising from trial testimony relating to the victim's previous sexual behavior. Such an argument was in line with the finding

that the affirmative and negative answer manipulations did not produce the anticipated differences in verdicts. Nevertheless, the jury deliberations have revealed that this group of jurors was not outspoken against consideration of the experimentally manipulated material on the victim's sexual character.

It may well have happened that the jurors who were exposed to the different experimental manipulations did not differ greatly in the verdicts they favored because of the importance they attached to other aspects of the case. Thus, it may have been that the jurors had learned to associate one or more things such as those that follow with the notion of reasonable doubt and not guilty verdicts: that the victim and accused had met in a pub, that she had allowed him into the apartment, that the victim had not struggled with the accused, a lack of strong corroborative evidence, contradictory testimony from the victim and defendant about threats made with a knife, or the delay in reporting the incident to the police.

It has not been possible to refute the conclusion that other aspects of the rape case exerted considerably greater influence than the sexual character information which was experimentally manipulated. Therefore, the importance of other facts in the case has remained the most likely explanation for the lack of support in this study for an association between greater nonmarital sexual experience of the victim and acquittal of the rape defendant.²

² The significance of the facts listed above as well as others is being pursued in analyses of the videotaped deliberations.

A check on the jury deliberations has been carried out to determine whether the jurors were aware of the experimental manipulation. This preliminary investigation has also led to conclusions bearing on the alternative ways for possibly explaining some of the unexpected findings concerning the different trial versions. In general, the deliberations have shown that testimony unique to the particular version of the case was mentioned in each affirmative and negative answer condition, but little time was spent discussing this evidence relative to other matters.

An overview of the jury discussions relating to the experimental material is presented later in this chapter. The next concern at this point is to direct attention to the second and third hypotheses stated at the outset of the chapter.

Findings concerning social background characteristics, attitudes and the different trial versions. It has already been found (Chapter V) that sex-role attitudes seemed to have an effect on verdicts given by female jurors but not on those given by males. This has made it desirable to consider possible version differences among the mock jurors holding to different sex-role views only while, at the same time, trying to take into account the sex of the jurors. In addition, the number of participants in the study and the use of tabular analysis have precluded considering together the five variables mentioned in the second expectation (i.e., trial version, age, socioeconomic status, education and sex). What follows has, therefore, been the result of a brief exploration of the data along lines suggested by the second and third hypotheses without any pretense of rigorously testing them.

The main notion underlying both of the stated expectations was that those mock jurors previously reinforced for holding more egalitarian views of male and female roles would be more likely than others to disregard the evidence about the victim's previous sexual behavior. The specification of young, middle-class, college-educated females was a way of designating those jurors who were expected to hold more egalitarian sex-role views.

The verdicts given by male and female jurors with different sex-roles and assigned to the different experimental conditions have been presented in Table 32. Two main findings have emerged from this table. The first concerns the less egalitarian jurors. Considering each of the experimental conditions separately, not more than two of the less egalitarian male jurors were found to have decided that the accused was guilty. Similarly, not more than two of the less egalitarian females in any of the experimental conditions decided that the accused was guilty. This has been seen as suggesting that the jurors with more traditional views of appropriate behavior for women were not influenced by the different kinds and amounts of sexual history information specific to the experimental manipulation.

The second finding which has emerged from this table concerns the more egalitarian female jurors. Considering the trial versions, this kind of juror was most likely to give a guilty verdict when the victim answered sexual history questions affirmatively, less likely to do so when negative answers were stated, and least likely to do so when sexual history questions were omitted. Thus, it has seemed that the more egalitarian female jurors were influenced to some degree by the experimental conditions.

Table 32

VERDICTS BY TRIAL VERSION, SEX AND SEX-ROLE ATTITUDE

	Males			Females		
	Affirmative Answer Version	Negative Answer Version	Questions Omitted Version	Affirmative Answer Version	Negative Answer Version	Questions Omitted Version
Less Egalitarian Jurors Before Deliberation						
Guilty	14%	17%	25%	12%	25%	29%
Not Guilty	86%	83%	75%	88%	75%	71%
Total	100% (7)	100% (12)	100% (8)*	100% (8)	100% (4)	100% (7)
Less Egalitarian Jurors After Deliberation						
Guilty	14%	8%	22%	12%	25%	29%
Not Guilty	86%	92%	78%	88%	75%	71%
Total	100% (7)	100% (12)	100% (9)	100% (8)	100% (4)	100% (7)
More Egalitarian Jurors Before Deliberation						
Guilty	20%	0%	43%	67%	45%	22%
Not Guilty	80%	100%	57%	33%	55%	78%
Total	100% (5)	100% (4)	100% (7)	100% (12)	100% (11)	100% (9)
More Egalitarian Jurors After Deliberation						
Guilty	20%	0%	14%	64%	36%	33%
Not Guilty	80%	100%	86%	36%	64%	67%
Total	100% (5)	100% (4)	100% (7)	100% (11)*	100% (11)	100% (9)

*One juror in the "Questions omitted" version did not give a verdict prior to the deliberations; and a juror in the "affirmative answer" version left prior to the deliberations and the making of a second decision.

This was an unanticipated finding inasmuch as these jurors were not expected to be swayed by the sexual history information. It was also unexpected that more guilty verdicts would be given in the instance where the woman was seen to have had more premarital sexual experience. The small number of participants involved in the study has, unfortunately, made the interpretation of these results risky. There is, nevertheless, a possible explanation which can be tentatively suggested.

Perhaps women more attuned to the feminist movement have learned to associate the rape victim's ordeal in court with the notion that many guilty men have been wrongly acquitted in rape trials. The more the victim has appeared to suffer in terms of being forced to reveal apparently nonnormative sexual behavior, then perhaps the stronger the association with presumed miscarriages of justice in acquitting guilty rape defendants.

To sum up to this point, the experimental manipulation of sexual character information generally exerted little impact on the verdicts given by the mock jurors. Secondly, the small amount of difference among the three experimental conditions has appeared to have been mainly attributable to the effect the experimental manipulation had on the female jurors who had learned more egalitarian sex-role attitudes. Moreover, it has been found that, among those jurors whose decisions differed between the affirmative and negative answer conditions (i.e., among the more egalitarian female jurors), the difference was not in the direction generally predicted. Instead, more guilty verdicts were forthcoming when more premarital sexual behavior was revealed.

Before drawing conclusions in social learning theory terms and stating necessary qualifications, a presentation follows of those parts of the jury deliberations which dealt with the experimentally manipulated material. Some amount of exploration of the deliberations on this point seems worthwhile inasmuch as none of the findings in this chapter have been in line with the expectations stated at the beginning. Information about the jurors' use of the manipulated material indicates their awareness of it and can perhaps shed light on unexpected results.

Jury discussions concerning the experimentally controlled sexual history information. The first time that negative answers were given by the victim to sexual history questions (Jury Two), six different jurors made reference to the experimental manipulation. In the course of discussion about the defendant's testimony that he had assumed that the woman was taking birth control pills,³ one of the more egalitarian female jurors stated that not having been on the pill would have been a deterrent for the victim (#501, Transcript 2, pp. 24-25). In response, one of the less egalitarian male jurors seemed to suggest that in his opinion whether the victim took the pill was not important (#506, Transcript 2, p. 24).

At another point in the deliberations there was an attempt to focus the discussion on the character and background of the victim and defendant. One of the male jurors (less egalitarian) commented that he thought such evidence "...was meant to be important because of the fact that, first of all, she wasn't on the pill" (#503, Transcript 2, p. 28).

³ This assumption on the part of the defendant was brought out in all versions of the trial by the Crown attorney's question about whether any birth control precautions had been taken. It was not part of the experimental manipulation.

A more egalitarian female juror then expressed some doubt that the victim was not taking birth control pills and added rather incongruously, "...[I]f she was not on the pill, and after the intercourse, then she would at least have gone to the hospital or phoned the police. Otherwise, she would have gotten pregnant because of the rape" (#508, Transcript 2, pp. 28-29).

The juror who had previously spoken about the lack of birth control pills as a deterrent objected to the statement immediately above by saying, "Not necessarily" (#501, Transcript 2, p. 29). Then discussion turned to the fact that the woman had actually gone to the hospital.

A minute or two later, the juror who earlier seemed to suggest that the taking of birth control pills was unimportant brought up the matter of birth control pills again. In the course of trying to persuade another juror to change her mind about the [redacted] of the accused, he said,

There's a possibility that you could put him, you could find him guilty, and he be not guilty. I mean there's a good possibility that he isn't guilty, and we could, you could find yourself, you'd have to live with yourself and say, 'That man could really be guilty.'

This could have gotten out of hand. There could have been a bit of remorse or second thoughts: 'Oh, gee, I'm not taking the pill.' Or there were no precautions taken, and this may be the wrong time of the month. 'Wowie! What am I going to do? I better call my friends.'
(#506, Transcript 2, pp. 30-31).

Still later in the deliberations by this jury, another less egalitarian male juror pointed out that, although the woman said she had not had sexual relations with her boyfriend, she had not been asked "...if she had a relationship with other men" (#504, Transcript 2, p. 38). In reply, a more egalitarian female juror said, "Well, I would then say everyone would vote not guilty" (#502, Transcript 2, p. 38).

After the second presentation of the negative answer version of the trial (Jury Five), there was only one brief exchange concerning the manipulated sexual character information. This took place between a male and female juror both of whom were later categorized as more egalitarian with respect to sex-role attitudes. The male in this instance stated that knowledge of "the state of her relationship" with her boyfriend would help the jury evaluate the victim's character and the testimony in the case (#512, Transcript 5, p. 18). Directly responding to this, though, the female juror said, "I really don't think it matters what her character is at all" (#518, Transcript 5, p. 18).

Following the third and final presentation of the negative answer version of the trial (Jury Eight), at least five male jurors were found to mention information about the sexual history of the victim. After approximately ten minutes of discussion, a less egalitarian male said, "She wasn't on the pill. Now would anyone take a chance?" (#522, Transcript 8, p. 9). The immediate response to this was given by an unidentified juror who said, "Oh, sure they do." And this was followed by a good deal of laughter which seemed to indicate almost total agreement among the jurors.

After twenty-four additional minutes of other discussion, attention was again focused on sexual history information which had been part of the experimental manipulation. At this point, a less egalitarian male began to ask, "Was it proved that she was a virgin before she had..." (#521, Transcript 8, p. 30). He was interrupted, however, by a more egalitarian male who said, "That's nothing to do with it! She doesn't have to prove her innocence" (#520, Transcript 8, p. 30).

Seemingly emphasizing the last point, a less-egalitarian male said, "I understand that she could be a Bloor streetwalker and yet she could be raped" (#525, Transcript 8, p. 30). Moreover, "That's right" was a comment added by one of the remaining more egalitarian male jurors (#527, Transcript 8, p. 30). The discussion then changed to focus on "the kind of prison system" to which a convicted person would be sent and the relative sizes of the victim and defendant in the rape case.

Having considered the juries exposed to the negative answer version of the trial, it appeared that little time was directed during the deliberations to the specific sexual history information included in the experimental manipulation. Each deliberation period had been between thirty-five and forty-five minutes in duration, and not more than one or two minutes had been spent on the experimentally controlled information in any of the juries. This would seem to indicate that other aspects of the case were of much greater importance to the jurors.

It also appeared that more egalitarian female jurors were not consistent or persistent in suggesting that the specific sexual history information included as the experimental manipulation should not be taken into account. On the contrary, remarks were made about not taking this information into consideration by a variety of jurors. Perhaps this should be interpreted as an indication of more general exposure to concerns recently raised about rape trials.

Among the three juries presented with the affirmative answer version of the trial, approximately three minutes were spent discussing the experimental material in two the jury deliberations. But less than a minute was spent on it by the other jury.

In the instance where there was very little discussion of the experimentally introduced affirmative answers, there were no explicit statements at all about whether to consider the facts that the victim had been taking birth control pills, had had sexual relations with her boyfriend, and so forth. One juror (a more egalitarian female) commented, however, that the victim "...had only had sex with one, two other people...so she's not promiscuous" (#432, Transcript 9, p. 9). The only other remarks about the experimental material were made by one of the more egalitarian male jurors who merely affirmed what the above juror had said about the number of people with whom the victim had previously had sexual relations (#427, Transcript 9, p. 9).

In one of the other instances where the affirmative answer version of the trial had been presented, a less egalitarian female juror spoke first about the manipulated information after about ten minutes of deliberation on other matters. This juror remarked, "Well, she was no young, innocent little virgin, was she?" (#420, Transcript 6, p. 8). A second female juror also categorized as less egalitarian expressed agreement and went on to suggest that the defendant "...accepted that as an invitation" (#414, Transcript 6, pp. 8-9).

Something of an objection then appeared to be raised by a more egalitarian male juror who said that "...there are certain times when you can go out with somebody to a bar, and you can walk them home, and you can sit and talk, and you can leave, you know. And maybe that's all she had in mind to begin with, but it may have progressed" (#412, Transcript 6, p. 9). To this observation, a less egalitarian male juror replied that

he did not think that the girl had nothing more in mind because of the length of time her boyfriend had been away (#413, Transcript 6, p. 9).

Discussion very briefly turned to the fact that the victim remained behind with the defendant at a bar after her friends left. Then the two male jurors involved in the previous exchange commented on whether a prostitute could be raped.

This was followed by the more egalitarian male suggesting that they should forget about whether the victim had a boyfriend, whether she had sexual relations with somebody else, how many times she may have had intercourse with anybody, and how long her boyfriend was away (#412, Transcript 6, pp. 9-10). This juror was interrupted by one of the less egalitarian males who suggested that the point was that the victim might have been ready to be "receptive" because of the six-week period that she had been apart from her boyfriend (#413, Transcript 9, p. 10).

The deliberations by this jury turned next to fingerprints, the knife, and the notion that not enough evidence had been presented to prove the defendant guilty. No further comments were made by this group of jurors concerning the experimentally introduced information on the victim's sexual history.

In the remaining jury exposed to the affirmative answer version of the trial, several jurors explicitly objected to consideration of the specific sexual history information included in the manipulation. A first brief exchange occurred after nine minutes of deliberation. A more egalitarian female juror said she objected very much that the victim "... was really put on the spot to confess that she had also slept with other men" (#403, Transcript 3, p. 11).

Two female jurors (one less egalitarian and one more egalitarian) then asked what difference it makes how many times a woman has slept with a man or a man has slept with a woman. The less egalitarian of these two jurors further remarked that "It's supposed to be a free society as far as that part goes" (#405, Transcript 3, p. 11). This juror also continued by stating that she could not understand the defendant's behavior after having sexual intercourse with the victim. Other jurors then joined in discussion on this and other points.

Nearly half an hour later, the discussion returned to the experimentally manipulated information. The following excerpt from Transcript 3 shows what was said:

There's one, another thing I was just thinking about. I just want to know whether it was the Crown or if it was his defence that asked when they were referring to her boyfriend, and she said that he travelled a lot and she hadn't seen him for six weeks or so? (#404, less egalitarian male, p. 35)

Yes, from the fifteenth of June. This is July 28th. (#406, more egalitarian female, p. 35)

Who was it that asked that question? (#404, p. 35)

It was his lawyer ... (#406, p. 35)

...his lawyer that asked the question. (#404, p. 35)

Because once again all this is so important in a rape case. How many times the girl has da-da-da-da, and how many, if she's a virgin, and all this garbage that, to me, has nothing to do with it. It's not what I would do, I wouldn't go out there with that guy either, but... (#405, less egalitarian female, p. 35)

Was it the defence lawyer that asked that question? (#406, p. 35)

Yes. (#405, p. 35)

O.K. If anything, I think that's a compliment. I mean she didn't say she was, she's obviously no tart. She's had one other man. (#406, p. 36)

Well, the thing was they actually had to force it out of her. The judge had to, she wasn't going to answer and the judge told her that she had to. (#411, less egalitarian male, p. 36)

Well, maybe she felt that she had no reason to answer that. (#407, more egalitarian female, p. 36)

And it is irrelevant. Anyway, that he did ask her that question does not make her... (#406, p. 36)

Nobody asked him how many time he had did that. (#405, p. 36)

No, but it has been, he had stated that he had several encounters like this before. (#411, p. 36)

One did get that impression. (#406, p. 36)

And also the fact that he had... (#411, p. 36)

Even that is irrelevant, like it could be consenting... (#406, p. 36)

Yeah, I don't see what that has to do with it at all. (#405, p. 36)

They do bring this out in a rape. They always seem, this is one of the points... (#411, p. 36)

See, they went into her background, they didn't go into his very much. They went into her background. (#407, p. 36)

But this is the unfortunate part in a rape case that the woman always has to... (#411, p. 36)

It's the defendant that's on the defence, eh? (#407, p. 37)

That's it. And so why would she be defending herself to such an extent if she had wanted to be with that man at that time? Why would she be humiliating herself and being allowed to relive, relive a horrible thing like that if it was just for something, a little kick somewhere? I just can't see it. And I didn't like his look, the look about his mouth. I looked at him very carefully... (#405, p. 37)

Having examined aspects of the jury deliberations in the negative answer condition, the suggestion was made above that little time was spent discussing the experimentally introduced information on previous sexual behavior. Furthermore, it was suggested that the more egalitarian female jurors did not stand apart from other jurors in explicitly urging the juries to disregard this specific sexual character information.

The jury deliberations for juries in the affirmative answer condition have tended to support these earlier statements. Not more than three minutes were spent discussing the experimentally controlled material by any of these juries. The deliberations in the affirmative answer condition have, in addition, shown that only in one of the three instances did more egalitarian female jurors voice objections to the use of the experimentally controlled material. Moreover, the other jurors seemed almost equally as likely to voice such objections.

Also somewhat surprising were the different inferences drawn from the same material. While one juror, for example, felt that the victim was not promiscuous because she had engaged in sexual relations with two other persons, another juror exposed to the same evidence saw the victim as "no young, innocent virgin". As another example, more than one juror in the negative answer condition felt that not taking birth control pills was in the victim's "favor" because she would then not have risked having sexual intercourse with the defendant. But at least one other juror thought it would have made her more likely to bring a false charge of rape.

The strongest impression which has emerged from preliminary study of the jury deliberations, however, has been the need to look at the importance of facts in the case other than those which were experimentally

manipulated. Although the experimentally introduced information tended to be discussed, jurors appeared to spend much more time dealing with each of the following matters:

1. Lack of resistance by the victim in terms of not warding off advances, struggling with the accused, or trying to escape from the apartment.
2. The victim's failure to call the police immediately, the fact that she did not cry out to a stranger in the hall as the defendant was leaving her apartment, that she called friends who then telephoned the police, and various inferences that could be drawn from these things.
3. The physical evidence: scratches on the woman's neck, the knife, the fact that fingerprints on the knife were smudged, the slightly torn jacket and the torn button, and the failure of the lawyers to introduce other evidence such as a floor plan of the apartment.
4. Credibility of the victim and accused: possible reasons for the woman to fabricate part or all of her story, logic and consistency in the woman's testimony about where she was sitting at different times, logic and consistency in the man's story with respect to an argument and his crying before leaving the apartment, and possible reasons why the man may have fabricated his story.

Chapter conclusion. This chapter began with three expectations about the possible influence which certain evidence might have on the verdicts given by mock jurors in a rape trial. None of the hypothesized relationships has, however, received empirical support in this research.

Experimental manipulation of specific aspects of the victim's nonmarital sexual behavior did not appear to produce important differences in verdicts among the three conditions. And the small percentage differences which did appear between conditions were not in the expected direction. That is, the mock jurors tended to make more decisions of guilty when the

victim was seen to have engaged in certain premarital sexual behaviors in contrast to when she had not engaged in these behaviors or when evidence about the matter was omitted. These differences appeared, furthermore, to be mainly attributable to the female jurors characterized as holding less traditional views of appropriate sex-role behavior for men and women.

This chapter has also been concerned with the jury deliberations pertaining to the experimentally controlled material in the affirmative and negative answer versions of the trial. At times, jurors of both sexes and both sex-role attitude categories appeared willing to use the manipulated sexual history information while, at other times, they raised some objections to its use. More importantly, however, relatively little time was spent discussing the experimentally controlled information relative to other matters.

From the findings in this chapter, it would seem that--at least for the kind of rape case utilized here--the mock jurors had not been conditioned to respond to premarital sexual behavior of the victim by making more decisions favorable to the defendant. This conclusion stands in sharp contrast to remarks generally made about the important influence exerted by this kind of information on jury verdicts (e.g., LeGrand, 1973; Mathiasen, 1974).

In the experiment conducted here, however, it seems likely that important aspects of previous social learning that came into play may simply not have been tapped.⁴ It was pointed out earlier that perhaps the main difficulty in dealing with human behavior from a social learning

⁴ Some of these can and will be dealt with in studies of the jury deliberations.

theory perspective is the fact that people are subject to innumerable schedules of reinforcement. In a rape trial situation, for example, each juror brings with him or her not only the results of previous conditioning about appropriate female behavior but also views about the kind and amount of evidence necessary to "prove" the guilt of the accused.

Jury trials are a significant and even sacred part of our deeply-rooted legal traditions. One, therefore, expects that people are generally subject to a great deal of conditioning about legal principles which are brought out in such trials. Observational learning as well as social reinforcement are likely conducive to agreement with the notions that it is better to acquit a guilty person than to convict someone who is innocent, that it is undesirable to convict mainly on the basis of circumstantial evidence, and so forth. The words of one juror express these points:

But if you have to assume that he's innocent, and you have to be absolutely positive that they prove that he did it--and this is where I get hung up 'cause I don't think that they've proved that he did it. I think he probably did, but I don't think they proved it (#431, Transcript 9, p. 9).

In rape trials, however, it is not merely that social learning generally about trials and the degree of proof necessary come into force. Rather, this learning probably combines with conditioning about notions on rape and female sexuality to increase the likelihood of acquittals. Also to be taken into account (as will be seen in the next chapter) are certain rules established for special courtroom procedure in rape cases such as rules governing the matter of recent complaint.

With respect to conditioning about notions on rape and female sexuality, the analysis of the deliberations to date shows that the jurors

were often concerned with reasons the woman may have fabricated the rape charge, the risk the woman supposedly accepted upon allowing the man into her apartment, the woman's failure to struggle or escape, the possibility that the woman may have inflicted scratches upon herself, etc. It is necessary, therefore, to remember that the results of this experiment have merely indicated that specific aspects of previous sexual behavior did not appear to affect the verdicts in the case significantly. It has not been shown that sexual character information generally was unimportant.

It should also be pointed out that whether or not to question a rape victim in court about her previous sexual behavior will remain a controversial issue in the near future for reasons other than any effect they may or may not have on jury verdicts. This is the case because of the ways in which these questions are viewed as degrading and humiliating to rape victims.

Differences among the trial versions could, of course, have been more pronounced. One could have decided, as did Smith et al (1976), to depict a rape victim alternately as a "topless-bottomless" dancer, social worker, and Catholic nun. In the present study, however, the decisions about differences to be established among the trial versions were based on a concern with realism and remaining faithful to the case as it was originally tried in court. Accordingly, the affirmative answer version--the one around which the other versions were built--included those sexual history questions and answers actually heard in the case mainly used for this study.

Finally, it is important to discuss the qualifications which must be placed upon attempts to generalize from the research described

here. Most of the qualifications which must be stated, however, apply to all of the findings in the study, and they will be dealt with in the next and final chapter of the dissertation. There is one qualification, though, which should be kept in mind with reference specifically to the failure to find greater differences among the trial versions. The reader is reminded to examine carefully the differences among the trial versions which were presented earlier. It is only these particular variations in previous sexual behavior information which were responsible for the results reported in this chapter.

Chapter VII

CONCLUSION: THE PRESENT STUDY IN PERSPECTIVE

What contributions has this research made with respect to knowledge about jury decision-making in rape trials? What kinds of additional research can be recommended? What can be added to the sociological literature on the utility of social learning theory as a result of efforts to let it guide this research? What practical implications can be drawn? These are the essential questions to be addressed in this final chapter.

Selected Factors and Jurors' Verdicts

In this study of decision-making in a mock rape trial, certain factors have been selected and examined for their possible association with jurors' verdicts. These factors have included several social background characteristics of jurors, sex-role attitudes, and experimentally manipulated information about the victim's previous sexual behavior.

The questions posed at the beginning. Recent criticisms of rape laws, treatment received by rape victims, and the handling of rape cases in courtrooms have almost always pointed to social inequality between men and women as the principal factor contributing to injustices in these matters. It was, therefore, suggested at the beginning of this study that prior learning about appropriate male and female behavior might have a noticeable effect on jurors' decisions in the mock rape trial.

It was felt that jurors who had previously learned to express more approval for traditional male and female roles would be less likely to see the victim's story as credible when it directly contradicted that

of the accused or disapprove of male sexual aggressiveness. In addition, they might be more likely to punish a victim who had engaged in non-normative behavior such as drinking alone in a bar prior to the offence. It was also felt that males would more often decide the case in favor of the accused. The results did not, however, indicate that more egalitarian jurors of both sexes tended more often than their less egalitarian counterparts to find the defendant guilty. It was only among the female subjects that fewer acquittals were forthcoming from those who were less favorable to traditional sex roles.

Other important findings in this research resulted from the experimental manipulation of certain information about the victim's previous sexual behavior. It was hypothesized that, due to past learning, evidence of premarital sexual behavior by the victim would serve as a cue for expressions of disapproval of her behavior and more verdicts favorable to the accused. This did not, however, prove to be the case among participants in the present study.

The different kinds and amounts of sexual history information in the three versions of the trial appeared to have little consequence for the verdicts that were reached. In addition, and contrary to the expectations held, the difference which did exist revealed more convictions in the instance where the victim was seen to have had greater premarital sexual experience. Also surprising was the fact that this difference appeared to be attributable to the jurors (more egalitarian females) who were expected to be least affected by the experimental manipulation.

The jury deliberations were examined for mention of the experimentally controlled material on premarital sexual behavior. A striking

finding here was that the juries spent little time discussing this material relative to other matters in the case.

There has been some degree of support in this study for the idea that previous learning of stereotypes of rape situations and rape victims would be related to jurors' decisions. Agreement with three of the rape attitude items in this study appeared to differentiate among the male and/or female jurors who reached opposite conclusions about the guilt of the accused.

Still other findings in this study concerned the relationship between background characteristics and sex-role attitudes. Females agreed more often than males with less traditional views of sex roles regardless of age, education, or social class category. However, each of the following was also related to holding less traditional views of sex roles: being younger, having more years of formal schooling, and being in the higher social class category.

With respect to social background characteristics and verdicts, it was already mentioned that sex was an important variable. The differences in male and female verdicts were not the same, however, for each age and education category. There was a much greater difference between decisions reached by younger men and women than between those reached by men and women in the older age group. In addition, college graduate women were much more likely than college graduate men to return guilty verdicts while little dissimilarity in verdicts was found between men and women in the other education categories.

An appropriate balance must be struck between, on one hand, recognizing the advances that have been made in this work, and on the other

hand, not overgeneralizing from the results. It is necessary, therefore, to return to the advantages and disadvantages of the study with respect to generalization.

Methodological contributions versus limitations. Several times in previous chapters, caution on generalizing from this study has been urged for various reasons. The reasons put forth have included the size of the sample, possible self-selection bias in the sample, the use of only one rape case, the limited amount of sexual history information which was specifically manipulated, and the nature of the study as a laboratory experiment.

It would have been desirable to have a larger sample and one which would have been entirely representative of persons chosen to serve on actual rape juries. However, a random sample of rape jurors could not have been chosen because there was simply no way to identify the individuals who had served or would be likely to serve on rape juries in Canada. The size of the sample was dictated primarily by time and money constraints. Finally, potential subjects for this study could not have been compelled to participate, and this resulted in the possibility that those jurors who chose to take part may have been different in some important way from those who refused.

For a fair evaluation of the results of this work, though, consideration must be given to the ways in which the selection of jurors in this study represented an improvement over earlier experimental studies concerning rape. Over two-thirds of the participants were people who had previously been summoned by the local sheriff's office for possible jury

service. The sample for this study thus stood in sharp contrast to non-random selection of college students in social science courses--the mainstay of most earlier studies (e.g., Davis, et al., 1975; Feldman-Summers and Lindner, 1976; and Smith, et al., 1976). In general, the mock jurors in the present study were older and had completed their years of formal education; and more than a third had served on real juries. The conclusion to be drawn is that, while probably not fully representative of actual rape jurors, the sample in this study was likely much more representative of rape jurors than previous samples had been.

Caution on generalizing from this study was also suggested due to the presentation of only one rape case. Whether or not the results would have been the same if a variety of different cases had been used is an unanswered question. It does not seem likely, though, that the percentage of not guilty verdicts would have been as high if there had been more than one defendant or concrete evidence of a struggle between the victim and defendant.

Why, then, was the present study restricted to only one rape case and a case which mainly focussed on contradictory testimony from the victim and defendant? The use of a single case was not just a matter of time and money limitations, although these were important considerations. It was also due to the desire to initiate empirical investigation of the effects which different sexual history information might make. In order to achieve this latter objective, it was necessary to control for all of the other facts in the case by holding them constant.

With respect to the matter of not choosing what might have seemed a stronger rape case for the prosecution, the principal concern was

typicalness. Some notion about this matter was gained from The American Jury study. Of the 106 rape trials included in its survey, the majority of cases did not involve evidence of extrinsic violence, more than one assailant, or defendants and victims who were complete strangers at the time of the alleged offence (Kalven and Zeisel, 1966:252). In addition, it was known from The American Jury study, numerous articles on rape, and discussions with lawyers that the major issue in most rape trials has been whether or not the victim gave consent to the act of sexual intercourse with the defendant.

Granting that the case may have been reasonably typical, however, what advantages and disadvantages have followed from presenting the case in a laboratory situation? Here one is asking still more questions about the internal and external validity of the study and justifications for conducting a laboratory experiment.

The main advantage of any experiment in a social setting is the amount of control one can gain over extraneous variables. Campbell (1957) has discussed seven categories of extraneous variables which experimenters in social science seek to control. While most experiments do not succeed in gaining complete control over such variables, they come closer to meeting this goal than studies based on nonexperimental methods.

The experimental part of this dissertation research has, in particular, sought to examine the possible effects of specific information about the victim's previous sexual behavior. It has done this by holding all other facts of a rape case constant while varying in three ways only that testimony which was of special concern.

Control of facts of the case other than those relating to specific aspects of premarital sexual behavior necessitated conducting an

experiment, but there were also ethical and practical reasons for choosing experimental methods. These included the questionable ethicality and legality of interfering in real trials. Researchers involved in The American Jury study had in the early 1950's recorded actual jury deliberations and created something which, according to Kalven and Zeisel (1966: xiv), approached a national scandal. The recordings resulted in "...public censure by the Attorney General of the United States, a special hearing before the Sub-Committee on Internal Security of the Senate Judiciary Committee, the enactment of statutes in some thirty-odd jurisdictions prohibiting jury-tapping, and for a brief, painful moment, widespread editorial and news coverage by the national press" (Kalven and Zeisel, 1966:xv). Since that time, all research involving jury deliberations has been of the laboratory type using simulated trials or "shadow juries".¹

Regardless of the reasons for conducting a laboratory experiment, questions about internal and external validity must still be raised in each case. If, as Campbell has suggested, internal validity stands as "the prior and indispensable condition" (1957:129), then questions about internal validity must be answered first. In terms of the study at hand, these questions concern in large part whether the laboratory situation, assignment of jurors to experimental conditions, measuring instruments, and videotape presentations were such as to yield valid results.

¹ Shadow juries consist of subjects who, for research purposes, are present during an actual trial and deliberate the fate of the accused. At the same time, there is an official jury whose verdict determines the outcome of the trial (McCabe and Purves, 1974).

At many points in the above chapters, considerable effort has been expended to describe these aspects of the study in order for the reader to make an assessment of the findings. Thus, procedures, test instruments, the trial presentation, and differences among jurors in the different experimental conditions have all been dealt with in detail. Jurors' responses concerning realism of the videotapes have also been mentioned.

A special threat to the internal validity of experimental studies derives from demand characteristics as described by Orne (1961). It would appear that demand characteristics have not, however, played an important role in this research undertaking. Judging from the results, the jurors did not perceive the aims of the experiment and acquiesce in such a way as to confirm the hypotheses.

There remains, however, the possibility that the questionnaires administered prior to the presentation of the trial may have affected jurors' verdicts. One way of controlling for this possibility in future work might be to have a larger sample and administer the questionnaires to half the mock jurors at the outset and to the other half at the end of the experiment.

Questions about whether one can extrapolate from the laboratory situation to the real world are not easily dealt with. This is a problem which is by no means unique to the study at hand. Although generalizing to nonlaboratory situations is a goal for experimenters, it is more difficult to achieve than internal validity.² This is due largely to the fact that

² Psychologists conducting experiments have been harshly criticized by Scott (1971:134) for all too readily dispensing with external validity as an objective.

"...the controls required for internal validity often tend to jeopardize representativeness" (Campbell, 1957:116). The more one must, for example, restrict the other facts in a given rape case in order to examine a few special aspects, then the less representative the given case becomes with respect to all rape cases.

Even if one is cautious about generalizing from this study to nonlaboratory situations, the study does have important implications for the real world. In the first place, it provides evidence which calls into question the common sense assumptions about the effects which testimony relating to a rape victim's previous sexual experience has on juries. The study also brings attention to the need for facts to back up arguments. Moreover, it suggests a way of empirically studying certain socio-legal matters in order to help resolve disputes about the consequences of following particular legal procedures. Findings in the study have also suggested the need to consider prior learning with respect to matters besides sex-role views and why sex-role attitudes may make a difference among female jurors but not among male jurors in rape trials.

In at least one way, this study is probably more important as a beginning than as an end. Questions have been raised which might not otherwise have been raised. It is hoped that these questions may eventually lead to further sorting out of the important factors in jury decision-making in rape trials.

It is this researcher's own opinion that this research endeavor rates high marks for internal validity. I am not as confident, however, concerning the representativeness of the study as a basis for extrapolating the results achieved here to rape trials in general. Where extrapolations

are made, they should be accompanied by appropriate qualifications. Notwithstanding the latter points, I do feel that an important matter--one as yet unresolved in Canada--has been addressed, that certain common sense assumptions have been called into question, and that a definite step has been taken along the way to development of methods for studying particular socio-legal issues.

Directions for future research seem clear. It is not enough simply to replicate the present study--even though replication is an important business and can add support to arguments about both the internal and external validity of the present work. What seems most desirable is a study which would not only replicate the present one but would also incorporate different sampling procedures, new variables, or more extreme dimensions of the variables included in this research.³ In that part of the new study which would not be the replication, the researcher might aim for random assignment of subjects to juries, testing for previous learning about matters other than sex-role views and punitiveness, and/or use of other rape cases.

Contributions of this study do not derive merely from the findings explored earlier and research strategy decisions. They also come from the attempt to employ social learning theory. The use of this perspective merits more explicit attention, though, and this is the objective of the discussion immediately following.

³ One variable not taken into account in the present study which might prove important in future work is sex composition of the juries. Two of the three juries which reached unanimous not guilty verdicts had one more male than female juror. On the other hand, the two juries which tended to favor a guilty verdict had an excess of female jurors. This suggests the desirability of increasing the number of juries seeking greater variation in sex composition.

Reflections on the Use of Social Learning Theory

It is my intention at this point to comment on the application of social learning theory in the present study and, more widely, on the controversy raised in sociological literature in recent years about the usefulness of this orientation. The way of proceeding will be, first, to discuss what social learning theory has meant for the present mock jury study. Then attention will be focussed on the broader controversy about the place and potential of social learning theory in sociology. 7.

As mentioned earlier, adoption of social learning theory means following certain assumptions; employing a particular set of terms; and being guided by previously researched principles about reinforcement, punishment, and modeling. As a result, this theoretical perspective generally leads one to ask certain questions as well as to choose certain research strategies and to overlook others.

In the study at hand, jurors' verdicts were assumed to result from previous conditioning and the presentation in the trial of certain evidence or the lack thereof. Thus, the initial questions were as follows: what aspects of previous conditioning and what testimony or evidence affect the decisions arrived at by jurors?

These questions were eventually narrowed to a concern mainly with possible effects of social background characteristics (as "organizers" of previous social reinforcement), conditioning regarding views of appropriate sex-role behavior, and courtroom testimony about the victim's previous sexual behavior.

It is imperative to understand some of the differences in main research questions which arise from following social learning theory as

opposed to other theoretical orientations. Perhaps this can be made clearer by mentioning things with which most social learning theorists would not be concerned. A social learning theorist would not, for example, regard verdicts as the outcome of invisible states of mind or unencumbered, logical reasoning about the case. Nor would verdicts be thought to be attributable to the subjective meanings which jurors might attach to certain evidence or terms such as "rape". In addition, a social learning theorist would be unlikely to consider any group level variables like cohesion among jurors as affecting verdicts.

Social learning theory dictates that one should be concerned with the influence of observable phenomena. This would include the behavior of fellow jurors during the deliberation period on each juror's final verdict. Thus, social approval for expression of a particular view might be seen to have an influence on a juror's final stance regarding the guilt of the defendant. In the present study, however, this line of reasoning was not followed through because of time and expense considerations. Instead, the analysis dealt almost exclusively with social background characteristics, sex-role attitudes, and questioning about the victim's sexual history.

With respect to research procedures, use of social learning theory has also made a difference. The study was basically built around an idea for an experiment. Experiments, as mentioned earlier, have been the preferred research strategy amongst social learning theorists in psychology.

Social learning theorists in sociology, however, have found it difficult if not impossible to limit themselves to concerns which they

could study by means of experiments and direct observation (e.g., Kunkel, 1969; Scott, 1971; and Akers, 1973). This was true in the present study, and, in line with explicit suggestions by Scott (1971) and Ritzer (1975), additional research techniques were employed. These included questionnaires to obtain information about previous social learning.

A number of sociologists have stressed the importance of social learning theory for their discipline because it would lead away from a concern with variables which are not directly observable (Burgess and Bushell, 1969; Scott, 1971; Tarter, 1973; Kunkel and Nagasawa, 1973; Kunkel, 1975; and Ritzer, 1975). They generally point to the advantages of using methods similar to those employed in the natural sciences.

Considerable tension exists, however, between one of the promises held out for social learning theory in sociology and certain realities which face us at present. On the one hand, there is the promise of social learning theory for leading to the use of experiments and direct observation techniques. On the other hand, there is the tendency for social learning theorists in sociology to advocate the use of research methods less rigorous than experiments and direct observation and/or to engage in ex post facto analysis (e.g. Kunkel, 1969; Scott, 1971; Akers, 1973; and Ritzer, 1975).

The use of questionnaire information in the present study as well as results of an experiment reflect the more general controversy about methods appropriate for social learning theory. In particular, questionnaire results concerning previous learning about rape or sex-role attitudes are by no means as good as having directly observed each person's social reinforcement history on these matters. Yet one can easily appreciate the impossibility of obtaining records of such social reinforcement histories.

The present work has served to highlight this tension over methodological issues. Calling attention to this paradoxical matter and recommending that social learning theorists address the issue more fully are important. It seems that this difference in promise and actual practice has not received nearly the attention it deserves.

Of sociologists writing about social learning theory, Scott (1971) seems to be more aware of the difficulty than others. Scott sees tremendous benefits for sociology to be derived from movement away from concern with unobservable mental constructs and toward the concern with observable phenomena which accompanies behavioristic orientations. At the same time, however, he advocates use of questionnaires and interviews as well as experiments. And he, himself, utilizes interviews and ex post facto analysis.

The only other sociologists who seem to address the methodological dilemma raised here do so only briefly and in a rather vague manner. Tarter (1973:157-158) suggests merely that there is a need for "a creative new generation of methodologists" to develop sophisticated techniques of direct observation for behavior which is not easily observed. Ritzer, on the other hand, makes reference to Webb's (1966) call for the use of multiple methods on a given research problem. "Thus", says Ritzer, "a researcher might simultaneously study the same issue using interviews, mail questionnaires, observation, and experiments" (1975:223).

What is at stake here is nothing less than a characteristic which has been held to set social learning theory apart from other theoretical perspectives. The belief that one ought to use rigorous experimental procedures and methods of direct observation stems from the

behaviorist assumption that behavior is determined by observable phenomena in a person's physical and social environment. The kinds of behaviors which sociologists tend to take as their objects of interest, however, appear often to leave no alternative except for them to supplement or supplant experimentation and direct observation with what may at best be called methods of indirect observation. Whenever a sociologist is interested in previous conditioning, for example, then he or she may very well resort to questioning individuals about events in the past.

Let us assume for the moment that Friedrichs is right when he says that the "fundamental strength" of a Skinnerian position "...lies in its combination of the hard, natural scientific proclivities of the scientific 'priest' with the conscious commitment to change of the social scientific 'prophet'" (1974:3). It then follows that the difficulties social learning theorists in sociology experience with respect to using hard, natural science methods necessarily lead to a revised outlook on the fundamental strength of this orientation.

The nature of this revised view remains unclear. There have been too few attempts by sociological researchers to be guided by this orientation to allow for a precise statement about the degree to which they find themselves unable to adhere to natural science methods. At the same time, Lynch (1975) suggests that there is a more general movement in the discipline toward positivistic methods. This also makes it difficult to assess differences between social learning theorists and others in terms of affinity for natural science methodology.

In addition to the problem raised above (i.e., the extent to which social learning theorists in sociology depart from the promised use

of natural science methods), there are two other matters which deserve considerably more attention from advocates of social learning theory in sociology. In the first place, it is not enough to call for the development of sophisticated observation techniques as Tarter does (Tarter, 1973: 157-158). Social learning theorists in sociology have got to discuss the problem of the ethicality of various techniques of observation and experimentation.

As I have worked on this dissertation, I have become increasingly aware of the need to consider the rights of human subjects in experimental research. I have also become acutely aware of the failure of social learning theorists in sociology to discuss the matter. I believe it is without exception that those sociologists who have even attempted to discuss research methods and social learning theory have done so without raising related ethical problems. In other words, the discussions have focussed only on the mechanics of using laboratory and field experiments, methods of direct observation, interviews, and questionnaires.

The second matter which needs more attention from social learning theorists in sociology is the correspondence between verbal reports of events and the events themselves. When social learning theorists use questionnaires and interviews to obtain information about past conditioning or present behavior, they assume a straightforward correspondence between verbal behavior and actual behavior.

Scott appears to be the only social learning theory advocate in sociology who comes close to raising this matter. Yet Scott's concern is rather narrowly focussed on the relationship between adherence to social norms and reports about adherence to norms (Scott, 1971:116-121). This is,

admittedly, a reasonable beginning. However, I would strongly advocate more general concern by social learning theorists in sociology with the nature of the relationship between behavior and verbal reports of it. This would include analysis of work already done by other social scientists as well as a good deal of support for new research on the topic.⁴ The objective would be to determine whether there is evidence to justify assumptions made by social learning theorists who desire to use questionnaires and interviews.

Before turning to practical implications of this study, let me briefly attempt to draw some conclusions from what has been said here about social learning theory. It seems clear that social learning theory is undergoing changes as it is brought into sociology from psychology. These changes are readily apparent when one considers the methods of research used and advocated by social learning theorists in the different disciplines.

Secondly, it seems that social learning theorists in sociology have promoted their framework without taking an objective and critical stance toward it. The failure to consider carefully the shortcomings of this theoretical perspective contribute to the divisive politicizing within sociology (see, for example, Ritzer, 1975). Social learning theorists in sociology may do well in the future to write more objectively about the

⁴ It is unlikely that there is any simple, direct association between behavior and verbal reports made about it. What should be sought, therefore, is knowledge about the conditions and situations which result in varying degrees of accuracy in reporting on behavior. As well, the social learning theorist who uses self-report information should seek to know more about the abilities of different types of people with respect to making accurate reports on events and behavior.

strengths and weaknesses of their orientation in comparison to strengths and weaknesses of others. Special attention should be given to the kinds of problems and settings where there are distinct advantages to the use of one orientation rather than another. For example, social learning theory may prove more useful than other perspectives in the study of behavior in restricted settings but less useful than others where one is concerned with macrolevel social phenomena.

There is a need to keep theory in its place as a tool and a guide. I agree with Singelmann when he says

...I am really not very interested in paradigms beyond their utility in making sense out of the world. They have no right of their own but are bound to the interests of scholars. If we are interested in the world as it is, let us select our constructs according to whether they help us elucidate that world. We do not have to swallow "the whole beast" (1973:508).

Commenting on this remark, Ritzer says Singelmann's emphasis is crucial. "Sociologists tend", he adds, "to forget the real world and focus instead on the perspective within which they work. The point is, however, to understand the world and not defend our vested interests in our own 'pet' paradigms" (Ritzer, 1975:223).

Policy Considerations and Suggestions for Change

This dissertation was never intended merely as an academic exercise. From the beginning I was deeply concerned about the treatment of rape victims by officials involved in the criminal justice system, rape law reforms, and rules governing the handling of rape cases in court. The scope of my concern about these practical issues goes far beyond what I

have been able to study empirically. Thus, it seems appropriate to conclude this chapter and the work as a whole by returning to some of the controversies surrounding rape trials.

Questions on Sexual History and Special Rules of Evidence

The first matter I want to discuss is courtroom questioning of rape victims about past sexual behavior. The main argument for continuing to allow this kind of questioning has been that innocent men may otherwise be convicted of rape. Defence lawyers in rape trials have assumed that their clients could not receive fair trials without the right to cross-examine the female victim or victims about previous sexual conduct. On the other hand, prosecutors and people supportive of the women's movement have generally assumed that such questioning causes juries to turn against rape victims and acquit guilty defendants. Other arguments for ruling out questions about victims' sexual histories have centred around protection of victims' privacy as well as prevention of harassment and humiliation which are thought to lead to low rates of reporting rapes to police.

The results of the present study have shown that, at least for the case dealt with here, jurors' verdicts were not significantly influenced by information about the victim's sexual history. In terms of the above arguments, this study calls into question the common sense assumptions about the effects of rape victims' testimony regarding previous sexual experiences. There is the clear suggestion that this kind of evidence is greatly overshadowed by the importance attached to other facts in the case.

Does this mean that it makes no difference whether rape victims are compelled to testify about their past sexual behavior? Although the

present results make it difficult to accept as factual the untested notions about ways in which this evidence presumably affects jurors' verdicts, there are other important considerations as well. These include the consequences which questioning about past sexual behavior has on the rape victims and their tendency not to report the offence. Results in the present study lead to the suggestion that more attention ought to be directed toward these matters. The arguments which focus on these issues may provide more compelling reasons for prohibiting courtroom question about sexual history of rape victims than arguments over presumed effects on trial outcomes. This would especially seem to be the case if the latter arguments cannot be supported empirically while strong support is found for the former.

Are rape trials without questioning of victims about previous sexual behavior fair trials? In fair trials one would generally expect guilty persons to be convicted and innocent ones to be acquitted. One would also expect the rules governing the handling of a case in court and the selection of jurors to be seen as fair. In addition, one would expect judges and jurors to reach verdicts based on facts presented in the case rather than to have their decisions strongly influenced by prejudices and personal biases.

A good deal of deserved criticism can be directed at the courts for failing to meet requirements of fairness and justice. Consideration of these matters for trials in general is beyond the scope of this dissertation, but I am concerned with evidentiary rules peculiar to rape trials and selection of rape trial jurors.⁵

⁵ Elsewhere, I have argued for rape law reform in Canada which would establish different degrees of sexual assault with accompanying differences in severity of possible sentences. I have also argued against law reform which would still make consent the central issue in nearly every rape trial (Nelson, 1978).

A rule of evidence which allows rape victims to be asked about prior sexual conduct is one which sets rape trials apart from other kinds of criminal trials. There are other rules peculiar to rape trials as well. These include rules of evidence about the matter of recent complaint--that judges must decide whether to allow testimony from a person to whom the victim first said she had been raped and that judges must instruct juries on the need to consider whether the woman made her "complaint" at the first possible opportunity. Other special rules in rape trials have dealt with the supposed need for additional evidence to corroborate the victim's testimony and caution to juries regarding the desirability of corroboration.⁶

Special rules for the handling of rape trials must have clear and generally acceptable justifications if the handling of these cases is to be seen as fair. Examination of the justifications for such rules, however, often leaves them highly suspect. One legal article, for example, presents strong challenges to the following three rationalizations for corroboration requirements and other special rules for rape trials:

(1) the frequency of false rape charges, (2) sympathy which jurors supposedly feel for "the wronged female", and (3) "the imagined difficulty encountered by an innocent man in defending himself from an accusation of rape" (Yale Law Journal, 1972).

As the justifications for these special requirements for rape trials are successfully challenged, there is a trend toward reform and

⁶ It should be noted that a special caution to jurors regarding the desirability of corroborative evidence is required in two other instances. These consist of trials where the critical testimony is that of a child or an accomplice in the crime.

repeal of them. In Canada, we have seen the elimination of a special caution to jurors about the need for corroboration⁷ (though judges are still likely to explain the term "corroboration" and instruct jurors about evidence which might afford corroboration as well as that which cannot be taken as corroborative). Secondly, we have witnessed at least mild reform concerning questioning about rape victims' sexual histories. The defence lawyers must now present such questions to the trial judge in camera, and the judge then decides whether or not to allow them to be asked in open court. With respect to the matter of recent complaint, there has been no change at all.

Is reform of some special rules enough? It may well be the case that there must be a total abolition of all these requirements if rape cases are to be handled at least equitably in comparison to other kinds of criminal cases. Abolition of these rules would make the legal system far less vulnerable to criticism of the following kind recently expressed in Montreal:

The courts, police and hospitals were condemned this week by 'a people's court' as accomplices in rape because 'they perpetuate rape and the humiliation and the victimization' of rape victims (Ottawa Citizen, June 8, 1979:10).

Moreover, abolition of special rules for rape trials would probably not tip the scales of justice in such a way that one need fear that innocent men would be convicted of rape. In this regard, Robin, an American sociologist, has argued that "in effect, the law's focus upon

⁷ As mentioned earlier, judges in Canada were bound until April 26, 1976, to instruct rape juries that it was not safe to find the accused guilty in the absence of corroborative evidence for the complainant's testimony but that they were entitled to find the accused guilty if they were satisfied beyond a reasonable doubt that her evidence was true.

corroboration, consent, and character has established a standard of proof in rape cases that is more stringent than "beyond a reasonable doubt" (1977:136).

The editors of the Yale Law Journal have also argued this point. Although the following statement pertains directly to corroboration rules, implicit in the article is its relevance for all special rules in rape trials:

...the balance between convicting the guilty and safeguarding the rights of the innocent--a balance which our criminal jurisprudence traditionally has struck in favor of protecting the innocent--seems to be set so far in favor of acquittal in rape cases (even in the absence of a formal corroboration rule) that its removal will still leave the innocent well protected (Yale Law Journal, 1972:1388).

Elimination of special rules for rape trials leads to a need to consider the rule of juries and jury selection. Elimination of these rules means greater freedom for jurors in rape trials to consider and evaluate evidence in ways they see as appropriate rather than having their attention specifically drawn by the court to matters of previous sexual behavior, corroboration, and recent complaint.

Juror attitudes and juror selection. Giving rape jurors less formal direction and allowing them greater discretion does not necessarily lead to more just verdicts. Promises and pitfalls of our trial-by-jury system are captured in the following concise statement made by Brooks and Doob:

It would appear, not surprisingly, that the jury injects into the legal process notions of fairness that are shared by the average person. However, they are not able to rise above the prejudices and biases held by the same people (1976:180).

With respect to rape juries in particular the question arises as to the role played by previously learned responses to rape victims and defendants. Recent criticism has challenged typical, everyday responses as being wrong. One can scarcely help but feel that until changes take place in what people in society generally learn about rape, the effects of law reforms and changed courtroom practices will be muted. This is the kind of conclusion to which the following remarks by Chappel lead:

[I]t should be recalled that the attitudes and traditions upon which the system has been functioning when dealing with forcible rape are not unique to police, prosecutors, or judges. Experience with jurors suggests that many of these same attitudes and traditions are shared with society at large. Even if the police and prosecution are able to construct a strong case, convincing a jury that a woman has been raped is an exceptionally difficult task (1976:136).

At present there is a need for more information about rape attitudes since these are very likely sources of prejudice among jurors in rape trials. What views are commonly held about rape, rape situations, rape victims, and rapists? What categories of people hold different views of rape and rape-related phenomena? In what ways are these views contradicted by knowledge we have about typical rape situations and the characteristics and behavior of victims and rapists?

Field (1978) has begun research on rape attitudes and characteristics of people who hold different attitudes. He has developed an extensive list of rape attitude items, but much work remains to be done. A clearer understanding of rape attitudes and their relationship to reality will make it easier to recognize prejudice in these matters.

Once we have this kind of knowledge, we are faced with questions about its use. For example, results of the present research seem to indicate

that, in the long run, including more young women or women with more egalitarian sex-role views as rape jurors would be likely to result in a somewhat higher proportion of guilty verdicts.⁸ Does this mean that defence lawyers should try to prevent certain categories of people from serving on juries while prosecutors try to include them?

This kind of question leads fairly quickly to concerns about jury selection and juror objectivity. With respect to jury selection, recent years have seen attempts by social scientists to exert influence in a number of cases by surveying attitudes held by different types of people in the community. Knowledge derived from research on small groups has also been used to assist with what has been called systematic or scientific jury selection (Wrightsmen, 1978).

In many ways trial lawyers have traditionally relied on intuition or common sense notions about the way different kinds of people might view a given crime, defendant, or victim. In his presidential address to the Society for the Psychological Study of Social Issues, Wrightsmen says, "Textbooks on trial practice implicitly accept an assumption that all jurors are prejudiced in one way or another and that trial attorneys can capitalize on their bias" (1978:12).

Consideration of traditional practices in jury selection together with consideration of recent involvement by social scientists in scientific jury selection cause Wrightsmen to emphasize that goals are crucial--in particular, whether the goal of jury selection is to select a

⁸ It should be emphasized that this effect would be expected in the long run, and no assurance would exist that any given jury would return a guilty verdict even if it were composed only of younger women or women holding more egalitarian sex-role views. The nature of the case in this study also results in a need to be cautious about expected long-term results where many of the cases might be consistently stronger or weaker.

fair and impartial jury. Systematic jury selection results in unrepresentative juries. Therefore, as Wrightsman suggests, "Systematic jury selection may be an example of a case where social scientists and lawyers, in concert, are in conflict with the intent of the law as most people interpret it" (1978:16).

The difficulty goes deeper, however, because traditional practices related to jury selection have not guaranteed representative juries. Bias has been introduced in the designation of persons eligible for jury duty (see, for example, Alker, et al., 1976; L.S.E. Jury Project, 1973). And it is very likely that final jury selection contributes further to unrepresentativeness of jurors.

Rather than arguing about methods of juror selection, perhaps more work should be directed to the question of how to minimize juror bias which is based on misperceptions. That is, can jurors be conditioned to deal with cases more objectively? If not, then what other alternatives exist?

With respect to rape trials, there seem to be at least three ways of reaching more objective verdicts. The first of these would be to try to teach jurors to deal more objectively with rape cases. This would perhaps involve alerting jurors to prejudicial beliefs. It may also mean instructing them about matters of contributory negligence and assumption of risk since these, according to Kalven and Zeisel (1966:251), seem to be the basis for rewriting of the law by rape juries. In addition, changes in the legal definition of rape and elimination of special courtroom rules should contribute to more objective verdicts.

If these kinds of changes cannot produce more objective verdicts, then the alternatives would involve replacing juries entirely. Consideration could be given to allowing impartial judges to decide rape cases. Gaining assurance that such judges would indeed be impartial may, however, be just as difficult as trying to teach jurors to deal more objectively with rape cases.

Another alternative would be to look for technological solutions. This would most likely involve administration of "truth serums" and polygraph tests. These could be administered to both victims and defendants. The degree to which they are reliable and the direction of errors have been fairly well established. Their use might very well result in higher proportions of convictions of guilty persons and acquittal of innocent ones than other methods for determining verdicts.

These alternatives to the use of juries would be highly repugnant to most individuals in our present-day society for reasons which I shall not try to explore here. The repulsiveness of these alternatives, however, causes us to return to the matter of trying to increase the objectivity with which rape trial juries deal with cases.

The need to deal with objectivity in trial decisions is also a conclusion that emerges in other ways. The relationships between certain juror characteristics, attitudes, and verdicts in this dissertation research, for example, are indicative of extraevidential factors which can be shown by social scientists to influence trial outcomes.⁹ All such relationships

⁹ For an extensive review of the research literature on the influence of a variety of extraevidential factors, see Gerbasi, et al., 1977. Their article is appropriately titled "Justice Needs a New Blindfold". One might also want to consult articles such as Blumberg's (1975) on the ways in which role conflicts experienced by lawyers and judges may affect verdicts.

raise questions about the ability of jurors to reach objective decisions.

Knowledge about relationships between verdicts and extra-evidential factors serves to demystify the role of the jury and the ways in which verdicts are reached. While this kind of knowledge is unlikely to surprise social scientists, it is often forgotten that there is a considerable price to be paid for the accompanying demystification. As this knowledge becomes more and more widespread in society, it becomes increasingly difficult for large numbers of people to believe that the courts dispense justice.

With respect to rape trials, I want to go one step beyond merely contributing to demystification. It seems wrong to accept what "is" for what "can be", and it is for this reason that I have tried to touch upon ways for possibly introducing greater objectivity into rape trials. Considerable change has begun in society regarding acceptable statements and beliefs about rape. These have resulted in legal reforms by eroding justifications for traditional rape laws and courtroom practices. As the responses which people in general learn to rape and rape-related phenomena change, then we will also probably see greater objectivity in jury rooms.

Furthermore, one can see changes in responses to rape victims and rapists as attitudes about rape change. Rape crisis centres have pioneered in providing support rather than further humiliation and derogation to rape victims. And, recently, a great deal more interest has been shown in innovative treatment programs for rapists and other sex offenders.¹⁰

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For a survey of recent activities relating to treatment programs for sex offenders, see Brecher (1978).

For many of us these changes take place all too slowly. There is some amount of consolation, however, in the fact that they have at least been continuing steadily for nearly a decade.

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APPENDIX: QUESTIONNAIRES

Before we begin the jury work, some personal history information is needed. In order that the information required may be treated anonymously, please do not write your name on this page.

1. Sex: ☐ male ☐ female.

2. Age: _____

3. What language do you speak at home?

- ☐ English
☐ French
☐ Other (Please specify: _____)

4. What is your marital status?

- ☐ single
☐ married
☐ separated
☐ divorced
☐ widowed

5. Education. Please check one of the following:

- ☐ 8 grades or less
☐ some high school
☐ completed Grade 12 or 13
☐ some college or university
☐ completed college or university (Please specify certificate or degree: _____)

6. What is (or was) your main occupation? _____

(Please be as specific as possible. If you are a salesperson, give type of product sold. If you are a civil servant, please give job classification.)

7. If you are (or were) married, state your spouse's occupation. Please be as specific as possible. _____

8. What is (or was) your father's main occupation? Please be as specific as possible. _____

9. Have you ever served on a jury?

☐ yes ☐ no

10. If you served on a jury before, what kind of charges were involved? _____

CONFIDENTIAL QUESTIONNAIRE

On the following pages, there are some statements with which you may agree or disagree. Please circle the answer which best represents the way that you usually feel.

The statements on these pages concern matters on which many people hold different opinions. This is not a test with "right" and "wrong" answers.

DIRECTIONS

For each statement that follows, please choose the response which best describes your general feeling about it. The responses to choose from are STRONGLY AGREE, MILDLY AGREE, UNDECIDED, MILDLY DISAGREE, and STRONGLY DISAGREE. Please choose one response for each item and draw a circle around SA, MA, U, MD, or SD.

	STRONGLY AGREE	MILDLY AGREE	UNDECIDED	MILDLY DISAGREE	STRONGLY DISAGREE
1. Attempts to reform prisoners without punishment are doomed to fail.	SA	MA	U	MD	SD
2. An employer has a right to know whether any of his employees has a criminal record.	SA	MA	U	MD	SD
3. More criminals should be allowed to serve their sentences by going to jail only on weekends.	SA	MA	U	MD	SD
4. We must have capital punishment for some crimes.	SA	MA	U	MD	SD
5. In cases of rape, the society in general is more to blame than individual victims.	SA	MA	U	MD	SD
6. Strict enforcement of all laws is a good idea.	SA	MA	U	MD	SD
7. In general, prisons make men worse than they were.	SA	MA	U	MD	SD

	STRONGLY AGREE	MILDLY AGREE	UNDECIDED	MILDLY DISAGREE	STRONGLY DISAGREE
8. Dirty jokes sound no worse coming from women than from men.	SA	MA	U	MD	SD
9. It is just as important for a woman to have a job outside the home as it is for a man.	SA	MA	U	MD	SD
10. Sons in a family should be given more encouragement to go to college than daughters.	SA	MA	U	MD	SD
11. Before sentencing a person for robbery, a judge should consider whether the victim provoked the robber.	SA	MA	U	MD	SD
12. Women should worry less about their rights these days and more about becoming good wives and mothers.	SA	MA	U	MD	SD
13. A criminal should be punished first and then reformed.	SA	MA	U	MD	SD
14. There are many jobs in which men should be given preference over women in being promoted.	SA	MA	U	MD	SD
15. It is unbecoming for young women to hitchhike.	SA	MA	U	MD	SD
16. Realistically speaking, men can handle the duties of business executives better than women can.	SA	MA	U	MD	SD

	STRONGLY AGREE	MILDLY AGREE	UNDECIDED	MILDLY DISAGREE	STRONGLY DISAGREE
17. The responsibility for rape rests more with the individual offender than with the society in general.	SA	MA	U	MD	SD
18. Our laws give too much protection to criminals.	SA	MA	U	MD	SD
19. People found guilty of possession of marihuana should not be sent to jail.	SA	MA	U	MD	SD
20. In marriage ceremonies, brides should not promise to obey husbands.	SA	MA	U	MD	SD
21. Most girls are "easy" these days.	SA	MA	U	MD	SD
22. When a woman reports a rape to them, the police should question whether she seduced the accused man.	SA	MA	U	MD	SD
23. It is silly for a married woman not to take her husband's name.	SA	MA	U	MD	SD
24. In general, men are likely to make better Prime Ministers than are women.	SA	MA	U	MD	SD
25. It is better for us to be easy on certain criminals.	SA	MA	U	MD	SD
26. In dating relationships, the man should take the initiative.	SA	MA	U	MD	SD

	STRONGLY AGREE	MILDLY AGREE	UNDECIDED	MILDLY DISAGREE	STRONGLY DISAGREE
27. In general, the father should have greater authority than the mother in the bringing up of children.	SA	MA	U	MD	SD
28. Persons who are guilty of murdering policemen should be executed.	SA	MA	U	MD	SD
29. It is foolish to appoint women to police forces with the same duties as men.	SA	MA	U	MD	SD
30. A man who flaunted his race track winnings in public would be to blame if he were robbed on his way home.	SA	MA	U	MD	SD
31. Rapists are more to blame than their victims.	SA	MA	U	MD	SD
32. If judges gave harsher sentences, there would be fewer crimes committed.	SA	MA	U	MD	SD
33. In sexual matters, a woman may mean "yes" even though she is saying "no."	SA	MA	U	MD	SD
34. Capital punishment is justified for premeditated murder.	SA	MA	U	MD	SD
35. Prison life is too easy these days.	SA	MA	U	MD	SD
36. A mugging is the victim's own fault if the victim has been walking alone late at night in a part of the city that is widely known to be unsafe.	SA	MA	U	MD	SD

	STRONGLY AGREE	MILDLY AGREE	UNDECIDED	MILDLY DISAGREE	STRONGLY DISAGREE
37. A prisoner's confession should be admitted in court no matter how it was obtained.	SA	MA	U	MD	SD
38. Capital punishment is morally wrong.	SA	MA	U	MD	SD
39. Criminals convicted of three separate serious offences should never be released.	SA	MA	U	MD	SD
40. When a married woman is raped, her husband rightly feels that something be- longing to him has been spoiled.	SA	MA	U	MD	SD
41. The big prisons that exist today should be abolished.	SA	MA	U	MD	SD
42. Men are more rational than women.	SA	MA	U	MD	SD
43. Swearing and obscenity are more repulsive in the speech of a woman than of a man.	SA	MA	U	MD	SD
44. Under modern economic conditions with women being active outside the home, men should share equally in household tasks such as washing dishes, doing laundry, and cleaning floors.	SA	MA	U	MD	SD
45. It is natural for men to be more assertive than women.	SA	MA	U	MD	SD
46. More prisoners should be allowed to leave prisons on weekend passes.	SA	MA	U	MD	SD

	STRONGLY AGREE	MILDLY AGREE	UNDECIDED	MILDLY DISAGREE	STRONGLY DISAGREE
47. The husband should not be favored by law over the wife in the disposal of family property or income.	SA	MA	U	MD	SD
48. Women should be given equal opportunity with men for apprenticeship in the various trades.	SA	MA	U	MD	SD
49. Women should take increasing responsibility for leadership in solving the intellectual and social problems of the day.	SA	MA	U	MD	SD
50. The modern girl is entitled to the same freedom from regulation and control that is given to the modern boy.	SA	MA	U	MD	SD

Confidential Questionnaire

1. What do you feel now that the verdict should be in this case?

_____guilty _____not guilty

2. How certain do you feel about your decision of guilty or not guilty? Please circle one of the following numbers:

1	2	3	4	5
very certain	fairly certain	undecided	fairly uncertain	very uncertain

3. How do you feel about the truthfulness of the testimony given by Nancy Lawrence, the victim?

1	2	3	4	5
very truthful	probably truthful	undecided	probably untruthful	very untruthful

4. How do you feel about the truthfulness of the testimony given by Ralph Campbell, the defendant?

1	2	3	4	5
very truthful	probably truthful	undecided	probably untruthful	very untruthful

5. How well do you think that Mr. Stewart, the prosecuting attorney handled this case?

1	2	3	4	5
very well	fairly well	undecided	somewhat poorly	very poorly

6. How well do you think that Mr. Ryan, the defence lawyer, handled this case?

1	2	3	4	5
very well	fairly well	undecided	somewhat poorly	very poorly

7. When should a juror disregard what the judge says if it differs from what his own conscience tells him?

☐ none of the time
☐ when the difference concerns what the law means
☐ when the difference concerns the truth of the facts
☐ both when it concerns the meaning of the law and the truth of the facts

8. Does proof beyond a reasonable doubt mean that a juror should have no doubt at all when he or she decides that a defendant is guilty?

☐ yes ☐ no

9. If you felt the accused was guilty in this case, which of the following would be appropriate punishment(s)? Check one or more of the following:

☐ a fine
☐ probation
☐ imprisonment
☐ death
☐ other, please specify: _____

10. If you checked imprisonment in the above question, how long should he actually be held in prison before being released?

☐ less than 6 months
☐ more than 6 months, but less than 2 years
☐ 2 to 5 years
☐ 6 to 10 years
☐ more than 10 years

11. According to what the trial judge said, which of the following are possible corroborative evidence in this case? Please check one or more of the following:

☐ the knife
☐ the button and jacket
☐ the smudged fingerprints on the knife
☐ the scratches on the victim's neck

12. Have you ever known a person who was raped?

☐ yes ☐ no

13. Roughly speaking, how much time would you say that your jury spent discussing each of the following items? (Please put one checkmark on each line.)

Item possibly discussed	Time spent discussing this item		
	No time at all	Probably less than 5 minutes	Probably 5 minutes or more
(a) beer consumed by the victim or the defendant			
(b) the kissing and embracing			
(c) the knife			
(d) the man's past experiences with other women			
(e) the woman's past experiences with other men			

14. Forgetting for the moment about the particular case that you have just seen, what is your general feeling about the appropriate punishment(s) for a person convicted of rape? Please check one or more of the following:

☐ a fine
☐ probation
☐ imprisonment
☐ death
☐ other, please specify: _____

15. If you checked imprisonment in Question 14, how long should he actually be held in prison before being released?

☐ less than 6 months
☐ more than 6 months, but less than 2 years
☐ 2 to 5 years
☐ 6 to 10 years
☐ more than 10 years

16. How do you feel about the television presentation of this case? Please circle one of the following numbers:

1	2	3	4	5
very	fairly	undecided	fairly	very
realistic	realistic		unrealistic	unrealistic

17. If you experienced difficulty in making a decision of guilty or not guilty, what seemed troublesome about this case?

18. In making your final decision of guilty or not guilty, what part of the case or the jury discussion was most important?

19. If you were in a position of authority, would there be any changes which you would seek to make in the way that the offence of rape is handled in our courts?

END

1	8	1	2	8	1
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FIN