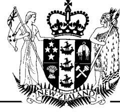

LAW·COMMISSION
TE·AKA·MATUA·O·TE·TURE

Preliminary Paper 37 – Volume 2

JURIES IN CRIMINAL TRIALS
PART TWO

A summary of the research findings

By Warren Young, Neil Cameron
and Yvette Tinsley

November 1999
Wellington, New Zealand

The Law Commission is an independent, publicly funded, central advisory body established by statute to undertake the systematic review, reform and development of the law of New Zealand. Its purpose is to help achieve law that is just, principled, and accessible, and that reflects the heritage and aspirations of the peoples of New Zealand.

The Commissioners are:

The Honourable Justice Baragwanath – President
Judge Margaret Lee
DF Dugdale
Denese Henare ONZM
Timothy Brewer ED
Paul Heath QC

The Executive Manager of the Law Commission is Bala Benjamin
The office of the Law Commission is at 89 The Terrace, Wellington
Postal address: PO Box 2590, Wellington 6001, New Zealand
Document Exchange Number: SP 23534
Telephone: (04) 473–3453, Facsimile: (04) 471–0959
Email: com@lawcom.govt.nz
Internet: www.lawcom.govt.nz

Preliminary Paper/Law Commission, Wellington, 1999
ISSN 0113–2245 ISBN 1–877187–42–9
ISBN full set 1–877187–43–7
This preliminary paper may be cited as: NZLC PP37

Summary of contents

		Page
	Preface	ix
1	The nature and purposes of the study	1
2	Informing and preparing jurors for their role	6
3	The trial process	19
4	The participation of jurors in the trial process	29
5	Jurors' perceptions of judges and counsel	34
6	The decision-making process of the jury	41
7	Understanding and applying the law and the judge's directions	51
8	Jury disagreement and uncertainty	64
9	Jury verdicts and hung juries	68
10	Jurors' experiences and views of the value of the process	73

Contents

		Para	Page
	Preface		ix
1	THE NATURE AND PURPOSES OF THE STUDY	*1.1*	1
	Introduction	*1.1*	1
	The objectives of the study	*1.3*	1
	Methodology	*1.4*	2
	Sample of cases	*1.4*	2
	Data collection	*1.6*	2
	The sample of jurors	*1.7*	2
	The consent of participants	*1.9*	3
	The limits of the study	*1.12*	5
2	INFORMING AND PREPARING JURORS FOR THEIR ROLE	*2.1*	6
	Sources of information and jurors' responses to it	*2.1*	6
	Prior knowledge and experience of jurors	*2.1*	6
	The summons and accompanying information	*2.6*	7
	The information booklet and video	*2.12*	7
	Information for Jurors booklet	*2.13*	8
	The video	*2.16*	*8*
	Instructions and assistance by court staff	*2.19*	8
	The judge's opening instructions	*2.21*	9
	The Crown and defence openings	*2.27*	10
	The Crown opening	*2.28*	10
	The defence opening	*2.29*	10
	Defence failure to open	*2.32*	11
	Jurors' reactions to the Crown and defence openings	*2.34*	11
	The significance of jurors' lack of information	*2.42*	12
	Jurors' lack of familiarity with the process	*2.43*	13
	Being unprepared	*2.44*	13
	Confusion and an inability to absorb proceedings	*2.45*	13
	Misinterpretation of routine courtroom procedures	*2.46*	13
	Selecting the foreperson and the foreperson's role	*2.48*	14
	The selection process	*2.51*	14
	The role of the foreperson	*2.53*	15
	Preparing jurors to process information	*2.55*	15
3	THE TRIAL PROCESS	*3.1*	19
	The form in which evidence was presented	*3.2*	19
	The impact of oral evidence and the limitations of existing measures to supplement oral evidence	*3.3*	19
	Problems of concentration and recall	*3.4*	19
	Note-taking	*3.6*	20
	Written and visual aids	*3.7*	21
	The speed of evidence	*3.10*	23

	The clarity of evidence	*3.13*	24
	The impact of expert and other technical evidence	*3.14*	25
	Individual juror competence in the assessment of evidence	*3.18*	26
	Problems with the absence of hard evidence	*3.20*	27
	The impact of gender and cultural issues in the assessment of evidence	*3.26*	28
4	THE PARTICIPATION OF JURORS IN THE TRIAL PROCESS	*4.1*	29
	Excessive delays	*4.4*	29
	Withholding information	*4.8*	30
	Asking questions and seeking clarification during the trial	*4.11*	31
	Asking questions and having evidence read back during deliberations	*4.19*	32
	Conclusions	*4.22*	32
	Delays	*4.23*	33
	Asking questions during trial	*4.24*	33
	Asking questions during deliberations	*4.25*	33
5	JURORS' PERCEPTIONS OF JUDGES AND COUNSEL	*5.1*	34
	The judge	*5.4*	34
	The overall performance of counsel	*5.7*	35
	Assessing overall performance	*5.8*	35
	Comparisons between counsel	*5.11*	36
	Agreement between judge and jury	*5.13*	36
	Specific features of counsel's performance	*5.14*	36
	Style and presentation	*5.16*	37
	Commitment	*5.17*	37
	The conduct of the case	*5.19*	37
	Achieving rapport with the jury	*5.20*	38
	Professionalism	*5.21*	38
	Legal skills – putting the case and examining witnesses	*5.23*	38
	Confusion, irrelevance and lack of organisation	*5.25*	38
	Extracting the evidence	*5.29*	39
	The perceived impact of counsel's performance	*5.31*	40
6	THE DECISION-MAKING PROCESS OF THE JURY	*6.1*	41
	The structuring of deliberations	*6.1*	41
	The extent to which juries remained focused on the issues	*6.10*	43
	Speculation and use of information about previous convictions	*6.12*	43
	The characteristics of the foreperson	*6.17*	44
	The role of the foreperson	*6.23*	44
	Forepersons with strong facilitation and organisational skills	*6.25*	45
	Forepersons who were "just one of the group"	*6.28*	45
	Other jurors step into the breach	*6.31*	46
	The socio-demographic characteristics of successful forepersons	*6.33*	46

	The emergence of dominant jurors	*6.35*	47
	The need for advice from the court	*6.40*	48
	Methods of resolving disagreement	*6.45*	48
	General discussion	*6.46*	48
	Focusing on minority jurors	*6.47*	49
	Compromising	*6.48*	49
	Eliminating irrelevancies	*6.49*	49
	Asking questions, having evidence read back, and reviewing exhibits	*6.50*	49
	Approaching evidence in a new way	*6.51*	49
	Taking a break	*6.52*	50
	The value of deliberations	*6.53*	50
7	UNDERSTANDING AND APPLYING THE LAW AND THE JUDGE'S DIRECTIONS	*7.1*	51
	Jurors' views of the judge's summing-up	*7.3*	51
	Helpfulness and clarity	*7.3*	51
	The length of the summing-up	*7.6*	52
	Conscientiousness in applying the law	*7.9*	52
	Variable understanding of the law	*7.12*	53
	The ingredients of the offence itself	*7.13*	53
	The meaning of intent	*7.14*	53
	Beyond reasonable doubt	*7.15*	54
	On the balance of probabilities	*7.18*	54
	The wording of the indictment	*7.19*	54
	Multiple and alternative charges	*7.23*	55
	The impact of misunderstandings about the law	*7.25*	55
	Impact of the judge's summary of the facts	7.26	55
	Understanding of and adherence to other standard instructions	*7.30*	56
	Inferences	*7.32*	57
	The direction on lies	*7.33*	57
	The implications of refusal by the accused to answer police questions or give evidence	*7.35*	57
	Direction to make their decision solely on the evidence before the court	*7.41*	59
	Direction to ignore pre-trial and trial publicity	*7.46*	59
	Pre-trial publicity	*7.51*	60
	Publicity during the trial	*7.54*	61
	Conclusion and options for reform	*7.58*	62
	Summaries of the law in writing	*7.59*	62
	Instructions on the law in the form of a flowchart or sequential list of questions	*7.61*	62
	Providing an opportunity for the jury to seek clarification before deliberations	*7.62*	63
8	JURY DISAGREEMENT AND UNCERTAINTY	*8.1*	64
	The pressure to reach a verdict	*8.1*	64
	Pressure from other jurors	*8.4*	64
	The feeling of obligation to reach a verdict	*8.5*	64
	Papadopoulos directions	*8.6*	64
	Time pressure and inadequate facilities	*8.15*	66
	Jurors' confidence in their decisions	*8.16*	66

9	JURY VERDICTS AND HUNG JURIES	*9.1*	68
	Agreements and disagreements between judge and jury	*9.2*	68
	Compromise verdicts	*9.5*	69
	Perverse or questionable verdicts	*9.9*	69
	Hung juries	*9.10*	70
	Majority verdicts	*9.14*	71
10	JURORS' EXPERIENCES AND VIEWS OF THE VALUE OF THE PROCESS	*10.1*	73
	The value of being a juror	*10.2*	73
	A worthwhile and informative experience	*10.2*	73
	A bad experience or a waste of time	*10.5*	73
	A tiring experience	*10.7*	74
	The behaviour of other jurors	*10.10*	74
	Stress, the sources of stress and procedures for counselling	*10.13*	74
	Stress	*10.13*	74
	Sources of stress	*10.15*	75
	The responsibility of being a juror	*10.16*	75
	Feelings of discomfort or intimidation	*10.17*	75
	Evidence creating personal stress	*10.20*	75
	Difficult deliberations	*10.21*	76
	Pressure to reach a verdict	*10.22*	76
	The need for counselling or debriefing	*10.23*	76
	Other services	*10.27*	77
	Facilities for jurors	*10.28*	77
	The jury room	*10.31*	77
	Toilet facilities	*10.35*	78
	Sustenance	*10.36*	78
	Provision for smokers	*10.38*	78
	Impact	*10.39*	78
	The inconvenience of jury service	*10.40*	79
	Employment issues	*10.42*	79
	Disruption to family and social routines	*10.46*	80
	Transport and parking	*10.48*	80
	Conclusion	*10.49*	80

Preface

This is a companion volume to the Law Commission's discussion paper *Juries In Criminal Trials: Part Two.*

The most significant research conducted on jury trials in New Zealand before this project was *Trial by Peers? The Composition of New Zealand Juries*, a report by the then Department of Justice. The aim of that research was to provide baseline data on the composition of New Zealand juries.[1] The survey sample in *Trial by Peers?* consisted of those people summoned for and attending jury service at all District and High Courts throughout New Zealand, in trials starting during the period of 13 September to 8 October 1993. A questionnaire was completed by potential jurors asking them to specify their ethnicity, gender, occupation, employment status and date of birth. Court staff provided information about which people were challenged or stood by.[2] In response to the findings of the initial jury composition survey, further qualitative research was conducted by interviewing a range of judges, court staff, and defence and prosecution counsel.[3]

The Commission first considered juries in criminal trials in 1995 when we published the *Juries: Issues Paper*. The issues paper asked which matters were of primary concern to those who participate in, or work with, the system. In a submission on the issues paper a committee of High Court Judges proposed that research should be undertaken into the New Zealand jury system. The Commission proceeded to explore that option.

In 1997, the Commission agreed to collaborate with the Victoria University of Wellington Faculty of Law (through Victoria Link Limited) in undertaking a research project on jury decision-making. The principal researchers were Warren Young, Neil Cameron and Yvette Tinsley of the Faculty of Law. This volume contains a summary of that research and has been prepared by the principal researchers. The summary has been used to inform the Commission's discussion paper *Juries In Criminal Trials: Part Two*, and will be used in the final report to be published by the Commission in 2000.

The deliberations of juries in individual cases have traditionally been protected from outside scrutiny to prevent interference in the decision-making process and to protect jurors against possible intimidation.[4] The questions to jurors in this research departed, to some extent, from that tradition because they focused

1 Dunstan, Paulin and Atkinson *Trial by Peers? The Composition of New Zealand Juries* (Department of Justice, Wellington, 1995), 20.

2 *Trial by Peers?* above n 1, 41–42.

3 *Trial by Peers?* above n 1, 93–94. Appendix I of *Trial by Peers?* fully explains the methodology of the survey and interview research.

4 The reasons for jury secrecy are discussed in chapter 7 of the discussion paper *Juries in Criminal Trials: Part Two.*

on both individual juror perceptions and the dynamics of the jury decision-making process in individual trials. However, in our view this approach was ethically and legally justified.

The issue of communicating with jurors was considered in *Solicitor-General v Radio New Zealand*.[5] Radio New Zealand had sought to ask jurors about their reaction to the discovery of new evidence after a trial and whether, if this new evidence had been available, their verdict might have been different. Holding them in contempt, the High Court noted that Radio New Zealand's behaviour was likely to injure the administration of justice by removing the protection of confidentiality from jury deliberations and by weakening community confidence in jury verdicts. It also indicated that before any approaches to jurors are made, the matter should be drawn to the attention of the court.

There is, however, nothing in the *Radio New Zealand* case which precluded the type of juror interview used in this research. There is nothing in this summary of findings which could enable any individual trial or juror to be identified. No subsequent publication using the results of the research will identify any individual trial or juror. Each presiding judge consented to the inclusion of each trial within the sample. The researchers carefully explained to each responding juror the purposes for which the information was sought and the protections which were in place to ensure that the nature of individual jury deliberations would not be publicised.

A number of other procedures were established to ensure that the methodology was appropriate and to minimise the risk that any information about an identifiable case would get into the public domain:

- An Advisory Committee was established, with representation from the judiciary and other agencies funding the research. It oversaw the research and had the right to veto any methodology or questioning that had the potential to jeopardise the anonymity of the jury deliberation process.
- The researchers collecting the data identified the trials, and the districts in which they occurred, by code numbers and that list of codes has been kept separate from the raw data during the period of analysis and writing up, and will be destroyed at the conclusion of the research.
- No interviewing data recorded the names and addresses of any individual juror, so it is not possible for any person other than the interviewer to identify the juror to whom an interview form relates.
- The data has been analysed and written up in such a manner that no individual trial can be identified.
- The raw data is being kept secure.

Given that the anonymity of jurors and of trials was scrupulously protected, in our view the interests of justice were not jeopardised and will ultimately be enhanced.

This project has been fully supported by the Courts Consultative Committee and funded jointly by the New Zealand Law Foundation, the Ministry of Justice, the Department for Courts and the Legal Services Board. The Commission and the principal researchers are extremely grateful for that support, without which the research would not have been possible.

[5] [1993] 10 CRNZ 641.

In addition, thanks are due to many other people who provided extensive co-operation and assistance. Particular mention should be made of the support of the then Chief Justice Sir Thomas Eichelbaum and the Chief District Court Judge Ron Young, who gave permission for the research to be carried out; the judges who presided over the trials used in this study, and who gave permission for their trials to be used and agreed to be interviewed; the many jurors who gave their time in lengthy interviews; the counsel and court staff who were unfailingly helpful; and the interviewers Justine Cornwall, Vicki Culling and Venezia Kingi, who did a superb job of collecting the data upon which this report is based.

1
The nature and purposes of the study

INTRODUCTION

1.1 DESPITE THE FACT THAT THE JURY is now used in less than one per cent of all criminal cases, it is still commonly regarded as the cornerstone of the criminal justice system. It is also an institution which has commonly prompted strong and polarised views. While this has fostered a considerable literature on the jury, remarkably little effort has been expended in finding out how juries actually work and whether they really do serve the functions or suffer from the failings which supporters and opponents of the institution allege. Equally, although law reform bodies have frequently discussed the right to trial by jury, little consideration has been given to ways of improving the jury trial process itself.

1.2 Traditionally, the scope of jury research has been limited by legal restrictions which have meant that researchers have not been able to observe jury deliberations at first hand and have been greatly restricted in what they can ask jurors afterwards. As a result, although there is a considerable body of overseas research literature, it has had severe limitations. There is a small amount of research which has been able to tap the attitudes and behaviour of actual jurors, but it has principally been confined to the United States, and its applicability to New Zealand is open to question. The legal culture, the politics of criminal trials, the attitudes and behaviour of judges and counsel, and the procedural rules all differ so significantly that comparisons between the two jurisdictions are fraught with difficulty.

THE OBJECTIVES OF THE STUDY

1.3 The research which is the subject of this report was designed to address this gap in the literature by conducting empirical research on jury decision-making which could be used to inform the Law Commission's consideration of the jury system and the need for reform. More specifically, the objectives of the research were:

- to examine the extent to which, and the way in which, jurors individually and collectively assimilate and interpret the evidence and identify the issues in the case;
- to identify the problems which jurors experience during the trial process;
- to assess the extent to which jurors individually and collectively understand and apply the law, and to investigate how their perception of the "law" modifies and influences their approach to the "facts";
- to explore the processes used by the jury to reach a decision, including their strategies for resolving disagreement and uncertainty;
- to identify the impact and effects of pre-trial and trial publicity on the

attitudes and responses of each individual juror to the case he or she is dealing with; and
- to describe jurors' reactions to, and concerns about, their experience as a juror.

METHODOLOGY

Sample of cases

1.4 Over a period of nine months during 1998, we took a sample of 48 jury trials from a number of urban and provincial courts throughout New Zealand. The breakdown of the sample was as follows:
- There were 18 High Court trials and 30 District Court trials.
- The trials ranged in duration from half a day to five weeks and three days.
- The trials covered offences ranging from murder to attempted burglary.

1.5 Two points about the nature of the sample should be noted. First, so far as practicable, we included all the "high profile" jury trials that occurred in the sample period, so as to maximise the collection of information on the impact of publicity upon jurors. Secondly, we deliberately selected a significant number of lengthy fraud trials, and other potentially complex cases, so that we could better identify the particular difficulties confronted by jurors in such cases.

Data collection

1.6 Data were collected by four complementary methods:
- We provided written questionnaires to all potential jurors upon their arrival at court at the beginning of a week in which a trial selected for our sample was scheduled to commence. These asked jurors whether they knew anything about two or three of the cases scheduled for that week (including the case selected for the sample) and, if so, the source of that knowledge.
- In order to identify the legal and factual issues in the trial, we observed the initial stages of the trial, obtained a copy of the notes of evidence, observed the closing addresses of counsel, and observed and tape-recorded the summing-up.
- After a jury retired to consider its verdict, we interviewed the judge about his or her view of the case, the performance of counsel and what his or her own verdict would have been.
- Subject to their consent, jurors in each trial were then interviewed as soon as possible after the conclusion of the trial in which they had been involved. The interviews were semi-structured and addressed a wide variety of issues, ranging from the adequacy and clarity of pre-trial information and jurors' reactions to the trial process through to their understanding of the law, their decision-making process, the nature of and basis for their verdict, and the impact of pre-trial and trial publicity.

THE SAMPLE OF JURORS

1.7 From a potential interview sample of 575 jurors, we interviewed 312 jurors, or an average of 6.5 jurors (54.3 per cent) per trial. Our experience suggests that five or six interviews per trial were sufficient to provide an accurate and consistent picture of the deliberation process. Overall, therefore, we can be

confident that the information we obtained provided a fairly reliable picture of the decision-making processes employed in most trials.

1.8 Since we did not record the socio-demographic characteristics of the jurors who were not interviewed, we cannot be certain that the characteristics of our sample were similar to those of the jurors as a whole or that their views and concerns were representative. However, there are two reasons why it appears unlikely that their responses are unrepresentative. First, we compared the characteristics of the jurors in the trials where we interviewed eight or more jurors with the characteristics of jurors in the trials where we interviewed five or less jurors, and found no significant differences between the two groups. Secondly, we compared the characteristics of our sample with the characteristics of jurors nationally reported by the Department of Justice in 1995.[6] Where comparative information was available, our sample had a slightly greater proportion of women than the national sample, and a greater proportion of people in employment. This may suggest some biasing effect resulting from our response rate (although the figures relate to different time periods), but in other respects our sample did not differ significantly from the national figures provided. Overall, therefore, we are of the view that there was unlikely to be any biasing factor resulting from the socio-demographic characteristics of the jurors we interviewed.

THE CONSENT OF PARTICIPANTS

1.9 The employment, socio-economic status, and educational qualifications of the jurors interviewed were as follows:

TABLE 1.1 AGE OF RESPONDENTS

	Number	Percentage
20–29	65	20.8
30–39	77	24.7
40–49	80	25.6
50–59	65	20.8
60 and over	23	7.4
No response	2	0.6
Total	**312**	**100.0**

TABLE 1.2 GENDER OF RESPONDENTS

	Number	Percentage
Male	127	40.7
Female	184	59.0
Unknown	1	0.3
Total	**312**	**100.0**

6 *Trial by Peers?* above n 1.

Table 1.3 Ethnicity of respondents

	Number	Percentage
Mäori	33	10.6
Päkehä	243	77.9
Other European	17	5.5
Pacific Islander	4	1.3
Other	14	4.5
No response	1	0.3
Total	**312**	**100.0**

Table 1.4 Employment status

	Number	Percentage
Employed	252	80.8
Unemployed	17	5.5
Student	8	2.6
Beneficiary	10	3.2
Home Duties	11	3.5
Retired	14	4.5
Total	**312**	**100.0**

Table 1.5 Socio-economic status

	Number	Percentage
Higher professional	32	10.3
Managerial	100	32.1
Clerical	58	18.6
Trades	62	19.9
Semi-skilled	21	6.7
Unskilled	12	3.8
Student	19	6.1
Unknown	8	2.6
Total	**312**	**100.0**

Table 1.6 Educational qualifications

	Number	Percentage
No tertiary qualification	134	42.9
Polytechnic/trade qualification	107	34.3
Undergraduate qualification	37	11.9
Postgraduate qualification	33	10.6
Unknown	1	0.3
Total	**312**	**100.0**

1.10 The selection of any trial for the research was dependent upon the consent of the presiding judge, who was usually contacted some days before the trial for this purpose. Prosecuting counsel were always advised of the selection of a trial for the research in advance as well, and in a couple of cases where sensitive issues were likely to arise during the trial, both their consent and the consent of defence counsel to the inclusion of the trial were also sought.

1.11 Interviews with jurors were also conditional upon their informed consent, which was sought at each stage of the process. In particular, it was emphasised to jurors that their participation was entirely voluntary, that their responses would be anonymous and that findings would be published in a form which would not enable any particular trial or juror to be identified.

THE LIMITS OF THE STUDY

1.12 There are a number of potential limitations inherent in the methodology we employed. In the first place, our data are primarily derived from the responses of jurors during interview. As a result, we are primarily reliant on self-reports by jurors on their levels of comprehension, behaviour and decision-making processes. These perceptions, of course, may not have been accurate. Nevertheless, we were able to make some assessment of the extent to which these distortions in perceptions existed. We were able to compare the responses of individual jurors with the collective accounts of the actual deliberations of the jury and the types of issues discussed. We were thus able to identify the problems which were common to a substantial number of individual jurors in the sample, and to assess the impact of those problems upon both the collective decision-making processes of the jury and the outcome.

1.13 Secondly, it was possible that jurors deliberately underplayed the influence of certain factors on their behaviour because they were aware that it was contrary to the directions of the judge. Again, we were often able to draw inferences from other responses and findings about the extent to which this was likely to be the case.

1.14 Thirdly, there was sometimes a problem with the passage of time between the trial and an interview. In such cases, the memories of jurors inevitably dimmed, so that they were often able only to provide vague information about issues such as the key legal elements of the offence. It was in these cases impossible to assess whether this resulted from a lack of comprehension at the time of the trial or a difficulty in recall.

1.15 Fourthly, it is possible that the jurors who agreed to be interviewed did so for reasons which may have biased their responses and made them unrepresentative of the jurors as a whole. We cannot assess the extent to which this occurred or the possible impact it had.

1.16 Finally, it is possible that knowledge that the research was taking place may occasionally have influenced the behaviour of jurors themselves. In some cases, where the fieldworker was the only person in court observing the opening and closing stages of the trial, it was impossible to hide from the jury the fact that their trial was part of the research. The impact of this upon their behaviour is unknown, although no juror mentioned it during interview.

2
Informing and preparing jurors for their role

SOURCES OF INFORMATION AND JURORS' RESPONSES TO IT

Prior knowledge and experience of jurors

2.1 MOST OF THE JURORS INTERVIEWED had no previous experience of jury service. However, 20 per cent of respondents had served on a jury previously and a further 17 per cent had been summoned. In addition, 24 per cent had some other contact with or experience of criminal trials in general, a small proportion had legal qualifications or experience, and a slightly larger group (20 people – six per cent) had previous convictions. Although the remaining 39 per cent of jurors reported no significant prior experience of the trial process, only four per cent said that they had no prior knowledge of the system at all.

2.2 The picture changes if we look at the prior experience of juries rather than jurors. Of the 48 cases, 33 (69 per cent) had one or more jurors in the interview sample who had previously sat on a jury. In all but two trials, at least one juror who had at least been summoned for jury service appeared among those interviewed. Furthermore, in the smaller centres it was not at all uncommon to find two or three jurors on a jury who had served previously – often on a number of occasions.

2.3 With the exception of those who had served previously or who had been called but challenged, the majority of jurors interviewed expressed considerable ignorance about the system and the nature of the job. Many jurors were surprised, even shocked, by the pressures and responsibilities involved in jury service. Most jurors described their sources of knowledge as consisting of firstly the media, films and novels; secondly, friends with experience or knowledge of the criminal justice system; and thirdly, simply general knowledge. This information was rarely specific and in only a very few cases did jurors say that they had received any clear prior information on what to do and what would happen.

2.4 From the data it is difficult to assess the significance of jurors' prior knowledge, or of jurors' assessments of their knowledge, as helpful or not. While most of the jurors who ventured an opinion on the value of their prior knowledge described it as helpful, this group was nevertheless very much the minority. Over 60 per cent of jurors either did not respond to this question or indicated that their prior knowledge was unhelpful.

2.5 Although not common, there were a number of cases in the sample in which one or more of the jurors saw lack of emotional preparation for the nature of

their task as a real problem; they were simply unprepared for the responsibility of being asked to judge another person's life. Indeed, in one case a juror's reaction to the nature of the task, and unwillingness to undertake it, seems to have at least contributed to a hung jury. This may indicate a need for emotional as well as factual preparation.

The summons and accompanying information

2.6 The first contact which most jurors have with the system is the receipt of a jury summons with accompanying information about the nature of jury service.

2.7 In all districts, information accompanying the summons deals with basic questions about the nature of the jury, what a jury does, how jurors are chosen at the court, sitting hours, and the fact that jurors get paid for attendance. In most but not all districts jurors are warned in a number of languages that they need to be able to understand English in order to serve. Beyond that, there are two distinct models for the amount of background information given on the nature and rules of jury service. In some districts jurors are simply told the size of the jury, that the jury hears the evidence and reaches a verdict with guidance on the law from the judge, and that they hear cases involving a criminal charge. In a few districts, however, considerably more background information is given.

2.8 Districts also vary considerably in the amount of information that they give jurors about practical matters such as payment and parking. Material from the different districts also varies considerably in tone, with some districts relying much more on the summons format and on instructions to jurors, and others using a more informal and appreciative style.

2.9 Most of the jurors in our sample (82 per cent of those who replied) said that the information contained in the summons was helpful. A few specifically commented that it was very useful. However, of the main sources of pre-trial information, the summons was the one that they were least enthusiastic about.

2.10 It is unclear how far this lack of enthusiasm is due to deficiencies in the information given, problems in the way it is delivered, the fact that jurors do not read it properly, or simple lack of recall. While a few jurors commented adversely on the tone of the summons, which was seen as demanding and abrupt, most simply accepted it for what it was and there is nothing to indicate that the way in which the information was delivered affected the willingness of jurors to read or absorb it.

2.11 Many jurors clearly saw the summons as just a summons and not part of an informational process. It is unclear how much can or should be done to improve either the content or impact of its informational component. It would certainly be desirable to standardise the information that different centres send out. In addition, more information about such things as the likelihood of delays, early and late sittings, and the lack of facilities for meals, etc, might enable jurors to be better prepared for the mechanics of jury service.

The information booklet and video

2.12 On arrival at court, jurors assemble in the jury assembly area (in courts where there is one) where the booklet *Information for Jurors* is supposed to

be available. The booklet is supplemented by a short video. Jurors do not get personal copies of the booklet.

Information for Jurors booklet

2.13 A significant number of jurors had either never seen the booklet or had not read it. Of the jurors who were asked if they found the booklet helpful, 50 per cent offered no opinion and just under half of these (that is, 23 per cent of all respondents) said specifically that they had not read it. It may well be that many of the others had also either not seen the booklet or only glanced at it briefly.

2.14 Reasons for not seeing or reading the booklet varied. While some jurors did not read it because they had been on juries before and felt they had all the information they needed, most did not read it either because there were not enough copies to go round or because they did not see it at all. In addition, in a few cases jurors said that they did not read it because there was too much else going on at the time, or they just could not be bothered.

2.15 Those jurors who had read the booklet and had an opinion on it generally commented very favourably, with 63 per cent describing it as very helpful and only seven per cent as not helpful.

The video

2.16 Two versions of the video were in use at the time of our survey. Unfortunately our responses do not enable us to differentiate between them. In two of the court centres in our sample, the video was never shown. In a few other cases jurors did not see the video, because they arrived late, because there were other things going on in the jury assembly area at the time or because space constraints meant they could not see the monitor. As a result, 22 per cent of our respondents said that they had not seen it. Overall, 72 per cent found it helpful or somewhat helpful and only four per cent found it not helpful.

2.17 Ninety-five per cent of the jurors who actually saw the video responded favourably to it, albeit not quite as enthusiastically as they did to the booklet. However, as with the booklet, it is evident that arrangements for viewing it were often far from satisfactory, with even one or two recently built court buildings suffering from design problems in this regard.

2.18 Clearly both the booklet and the video were well regarded by those jurors who saw them. However, the way in which this information was delivered meant that a significant number of jurors did not have access to it. At the very least, copies of *Information for Jurors* should be made available to jurors individually, and additional copies should be placed in the jury room for later reference.

Instructions and assistance by court staff

2.19 Most of the jurors interviewed recalled receiving some instructions and assistance from court staff, with 62 per cent of those who responded finding the information they received very helpful and 29 per cent somewhat helpful. Only 11 jurors described it as not helpful, and only one as very unhelpful.

2.20 From the few adverse comments that jurors made on their contacts with court staff, the main concern seemed to be with the timeliness and content of

information rather than with attitude or manner. Much of the concern was produced by a perceived lack of information on delays. While it is clear that in a few cases jurors were kept in the dark unnecessarily, in most cases there is probably little the staff can do, either because jurors are not able to be given specific information about the reasons for the delays or because it is impossible to predict their likely duration.

The judge's opening instructions

2.21 Once the jury has selected the foreperson (see para 2.48ff), the judge commences the trial proper with some brief opening instructions. This usually lasts for between 10 and 15 minutes, and generally covers a range of matters from basic housekeeping issues to, in some cases, a reasonably detailed discussion of what the specific case is about. Much of the information given at this stage, especially on housekeeping matters and in relation to the jury's role and function, is essentially repeating information in the booklet and the video.

2.22 In most cases, the opening instructions cover the basic mechanical details relating to the trial (for example, likely duration, sitting times, the order of events, and personnel), outline a number of fundamental jury "rules" (for example, the role of the judge and jury, confidentiality, sticking to the evidence, and keeping an open mind), explain the burden and standard of proof, and note any special features of the trial (for example, that screens are to be used). Beyond that, judges vary considerably in what they cover. In particular, there is little consistency in the extent to which advice is given on such things as note-taking, access to the judge's notes of evidence, and asking questions, and in the extent to which judges rehearse the charges and provide a preliminary explanation of the issues they raise.

2.23 Two-thirds of our respondents described the judge's opening comments as very helpful; a quarter said that they were somewhat helpful; eight per cent could not remember them; and only two per cent expressed any negative comment. Only a handful of jurors indicated that they would have liked the judge to cover more material or suggested that they found the comments confusing or superfluous.

2.24 Jurors responded best to judges who used their opening to put them at ease, who addressed them directly and at least with the appearance of spontaneity, and who made it clear that both the court and the court staff were concerned about, and wanted to be responsive to, their needs during the trial. Judges were usually seen as doing this well.

2.25 The few critical comments we recorded related either to judges' perceived failure to provide an initial outline of the case or to parts of the opening which were seen as confusing or misleading. Thus, a number of jurors wanted rather more information on the case they were to hear, and in particular, would have liked some sort of legal framework which they could have used to organise the evidence as it emerged. Indeed, where judges did give the jury even a minimal description of the legal structure of the case, jurors were appreciative of this and found it very helpful. The only other critical comments came from a few jurors who had wrongly interpreted the judge's opening instructions as saying that they would be getting a copy of the judge's notes, and from some other jurors who complained that they had not been told about asking questions during the trial.

2.26 In general, it would seem to be desirable to try and ensure more comprehensive and consistent opening instructions from the judge, especially in relation to issues (such as note-taking, access to the judge's notes, and asking questions) which are of immediate relevance to the trial and which jurors may not have focused on in the earlier material provided in the booklet and video. Where possible, it would certainly help many jurors to have an initial outline from the judge of at least the legal structure of the case (see para 2.58).

The Crown and defence openings

2.27 The judge's opening instructions may introduce the jury to the details of the case they are to hear. The bulk of this task, however, usually falls to Crown counsel in the formal opening of the prosecution case.

The Crown opening

2.28 Usually the Crown's opening address sets the scene, both legally and in terms of the factual narrative, by providing a detailed explanation of the charge or charges, and summarising the evidence of the witnesses whom the Crown proposes to call, the exhibits that will be introduced, and the arguments that will be made. Crown counsel also invariably repeat the judge's description of the burden and standard of proof, and sometimes also cover the jury's role as trier of fact, how they should approach the evidence, and the need to use their common sense and experience to assess the credibility of witnesses. Prosecutors endeavour to present the basic case information in an even-handed and dispassionate way, while at the same time making clear the Crown's view of the facts. In most of the cases in our sample, the prosecutor also supplied the jury with copies of the indictment and occasionally with lists of exhibits and lists of witnesses keyed to the relevant charges. In a couple of cases, the prosecutor also outlined the likely defence case.

The defence opening

2.29 Some trial judges permit the defence to make a brief opening statement immediately following the Crown opening. In our sample, this occurred in three of the 48 cases, all cases where the facts were undisputed and the issue concerned the inferences to be drawn from those facts – in one case whether the accused was insane, and in the other two whether drugs were possessed for sale or supply.

2.30 Although jurors were not specifically asked whether it would have been useful to have a defence opening at the commencement of the trial, in five cases a number of jurors indicated that this could have assisted them considerably. Comments in these cases emphasised the confusion caused by jurors' lack of knowledge of what the defence was likely to say, difficulties in assessing the Crown evidence when they were unsure what they were looking for, and the general waste of time involved in listening to evidence that the defence was ultimately not going to dispute. In two other cases, although no jurors commented on the fact, it is likely that a concise defence opening early in the case could have alleviated some of the problems faced by the jury, and helped them to focus on the matters really at issue. Nevertheless, the problems in these cases were probably not the result simply of the absence of an early opening statement from the defence. In some at least, there was also a failure by the Crown to make the actual issues clear.

2.31 Generally, the defence opened at the conclusion of the Crown case. In a few cases, this consisted simply of general statements about the role and task of the jury and the burden of proof. Most counsel, however, went further and provided a brief explanation of the applicable law and an outline of the evidence that was to be called and its relationship to the Crown case. Moreover, the defence was much more likely than the prosecution to include comments on the need of the jury to keep an open mind, judge the facts dispassionately, and avoid reading anything into the fact that the accused had not made a statement to the police or was not going to testify at the trial.

Defence failure to open

2.32 In ten cases, the defence did not make an opening statement. In three cases, counsel then proceeded to call evidence, but in seven cases no defence witnesses were called and the case proceeded directly to the closing addresses. Although one of these cases was described by the judge as offering little or no prospect of acquittal, it was not clear that this was so in the general run of such cases. Nevertheless, seven of the ten cases resulted in conviction, two resulted in conviction on well over half the charges, and one resulted in a hung jury.

2.33 In three of the ten cases, the jury commented adversely both on the lack of any formal statement of the defence case and on the failure to call witnesses. Two rather different sorts of reaction emerged. On the one hand, in the absence of a clearly articulated defence case, some jurors felt that they were less able to reach a decision. In one case this may have produced, or at least contributed to, a hung jury. In some cases it may instead have resulted in acquittal or compromise verdicts based on concerns about the burden of proof. At the least, it probably unduly prolonged jury deliberations in a number of cases. On the other hand, some jurors responded to the absence of a clearly articulated defence case by assuming that the accused was guilty and that counsel's efforts were simply window dressing which they need not take too seriously. In either event, the response was unpredictable.

Jurors' reactions to the Crown and defence openings

2.34 In 31 of the 48 trials, at least one juror said they could not recall either the Crown opening or the defence opening or both. Although it occurs earlier in the trial, jurors were more likely to recall the Crown opening than the defence. In three cases, jurors attributed their lack of recall to the confusion and shock of finding themselves on a jury, but in most cases it seems that the opening addresses simply did not stick in some jurors' minds. It is unclear whether this is due to lack of impact at the time, or whether it has more to do with the lapse of time between the opening addresses and interview and/or the increasing irrelevance of the opening addresses as the trial progressed. In a few cases, jurors certainly commented on the lack of impact of particular counsel, but this was not common and was probably not the explanation in most cases.

2.35 Eighty-seven per cent of the jurors who expressed a view responded positively to the Crown opening, and there were no cases in which all the jurors who expressed a view agreed in describing the Crown opening as poor. Indeed, in only 13 trials did any of the jurors make any negative comments.

2.36 In commenting positively on the Crown opening, most jurors described counsel as making the case clear, explaining the law, and outlining where the case was

going. Some also commented favourably on the perceived fairness and impartiality of Crown counsel in setting out the case for them. Negative comments came from a few jurors in a small number of cases who found the Crown's opening simplistic, insubstantial or unduly negative.

2.37 The fact that jurors were generally appreciative of the Crown opening, and found it useful and informative, gives no real indication of its likely effectiveness in informing and guiding the jury's deliberations. A small number of jurors certainly commented that they found the Crown opening convincing, either because of its style and content or because it was the first complete discussion of the case they had heard. But jurors also generally recognised that this was only part of the story and that the impact of the opening statement was likely to be only temporary.

2.38 In contrast to the Crown opening, jurors tended to react more negatively to the opening statements from the defence. Of those jurors who expressed a view, only 66 per cent were positive. In four trials all the jurors who expressed a view commented negatively, and in 17 of the 38 trials in which there was a defence opening at least one juror commented negatively. Even when jurors were positive about defence counsel's opening, they tended to be rather less enthusiastic than they were about the Crown's. There were only four cases in which jurors could be described as having been enthusiastic about the defence opening, and this generally related more to the style of the opening than to the substance.

2.39 Furthermore, when jurors expressed adverse reactions to the defence opening, these reactions tended to be more adverse than their negative reactions to the Crown. They were more likely to evaluate counsel in personal terms, for example, according to whether they thought they would want to be represented by that lawyer themselves. Jurors were also more inclined to see defence counsel as not believing in their own case or not being really interested in it (see further chapter 5). They were also perhaps a little more likely to focus on the physical characteristics and mannerisms of defence counsel than those of the Crown counsel. As with the Crown opening, only a few jurors actually said that they found the defence opening convincing or that it had an impact on their thinking.

2.40 In only a couple of cases did jurors say that the defence opening had made them think differently about the Crown case. Conversely, while jurors in a number of cases saw the defence opening as adding little to their understanding of the case, in only one trial did they suggest that it was actively confusing.

2.41 Overall, then, jurors generally appreciated the Crown opening and found it to be a useful introduction to the case. While they were less appreciative of the defence opening, it was generally well received also. In a significant minority of cases, however, either the opening statements between them failed to set up the issues clearly for jurors, or the lack of a defence opening left jurors without what they regarded as an adequate grasp of the case.

THE SIGNIFICANCE OF JURORS' LACK OF INFORMATION

2.42 The material discussed so far has suggested a number of problems with specific sources of information and with the ways in which some of that information is delivered to the jury. There are, however, a number of more general points

about the information that jurors do and do not receive which transcend the problems with individual sources:

- In spite of the information they receive, many jurors still have difficulty adapting to the unfamiliar process of the trial and to the nature of their task as jurors.
- The information which jurors receive relating to both the selection and the role of the foreperson is problematic and inadequate.
- While jurors currently receive a considerable amount of information and assistance intended to familiarise them with the trial process and their role, they receive considerably less material specifically designed to prepare them for their central task: the assimilation, processing, and reconciliation of complex legal and factual information.

Jurors' lack of familiarity with the process

2.43 In the early stages of the process, jurors were exposed to a considerable amount of basic information. Although a significant proportion of jurors missed some of this information, most described what they did receive as helpful or very helpful, and only a quarter of the jurors interviewed said that they wanted more information. Nevertheless, even when they absorbed the information they were given, a significant number of jurors were still hampered in their task by their basic lack of familiarity with the process. This took a number of forms.

Being unprepared

2.44 A number of jurors were clearly surprised at the trial process and at aspects of the task of being a juror. A few jurors expressed that surprise in terms of feelings of inadequacy. Others noted specifically that they were unprepared for the responsibility involved in reaching a decision and for the effect that this could have on the parties. In a few cases, this seems to have caused real distress and may have affected the outcome of at least one trial. A number of jurors also expressed surprise at the boredom and slowness of the trial process. They had not been prepared for the delays, the repetition, or the ponderous manner in which evidence was given and recorded, and some found it hard to adapt.

Confusion and an inability to absorb proceedings

2.45 A significant number of jurors took an appreciable time to get over their surprise and shock at being on a jury and to focus on the opening stages of the trial. Both the judge's opening comments and the Crown opening went unheard by some jurors and were largely unattended to by others. In 20 of the 48 cases, one or more jurors commented on their failure to absorb material during the early part of the trial due to this settling-in process. On the other hand, it should be stressed that these feelings of shock and confusion, although reported by a significant number of jurors, were still confined to the minority. Most jurors did not express any problems of this sort, and indeed, a few commented on the clarity and transparency of the process.

Misinterpretation of routine courtroom procedures

2.46 As a result of their inexperience, a number of jurors became confused and misinterpreted routine courtroom procedures. In most cases this was trivial, although some jurors found their misinterpretation embarrassing. In other cases

it was more serious. In one case, for example, a juror commented that neither he nor a number of other jurors took adequate notes on some of the evidence, because they did not understand how the evidence was going to be given or that each witness would appear just once. He was expecting evidence to be given in a "story" format with key witnesses recalled to add to the story as it unfolded.

2.47 Most of the matters mentioned here are fairly minor and are unlikely to have a significant effect on the overall operation of the jury. Furthermore, they are difficult to deal with in advance. Providing jurors with rather more opportunity and encouragement to seek clarification, especially from court staff, may be the most that can be done.

Selecting the foreperson and the foreperson's role

2.48 Once the jury is empanelled, the judge instructs the jury to retire to select a foreperson. This is the first time that the jury has met as a group.

2.49 In three of the ten jury districts in our study, jurors received brief information on this process in the material accompanying the summons. This process is also covered in the booklet and the video, and the judge generally repeats it when instructing the jury to retire. However, it simply tells jurors that any one of them can be selected and that the task is to chair the deliberations and act as spokesperson. Judges sometimes add that in selecting a foreperson, jurors might like to consider those with prior experience of sitting on a jury or of chairing meetings. However, in only 12 of the trials in our sample did any member of the jury recollect receiving instructions of this sort from the judge. In a further 15 trials, at least one jury member recollected receiving some advice to this effect from the court attendant.

2.50 There was considerable disagreement amongst jurors over whether they had received information on the selection of the foreperson and the source they had received it from. Thus, while 75 per cent of the jurors who responded said that they had received no advice on either the role of the foreperson or how they might go about selecting one, in 54 per cent of the trials at least one juror recalled getting advice. Of the 25 per cent who said that they had received advice, most nominated either the judge or the court attendant or both as the source of this information, with only a few referring to either the booklet or the video.

The selection process

2.51 On average, the juries in our sample took four minutes to select the foreperson. Few actually discussed it, and in only a few cases did more than one candidate emerge. In nine of the 48 trials, jurors commented adversely on the process, emphasising both the time pressures they faced and their lack of information. Jurors in these trials wanted more time to discuss the decision, get to know each other, and make a rational choice. Some also wanted information on what the job involved and what qualities they should be looking for. However, in only two trials did jurors specifically attribute the deficiencies they perceived in the foreperson to either the way the selection process was managed or a lack of guidance on how to go about it.

2.52 It is difficult to avoid the conclusion that for many juries, with only a hazy idea of what the task involves and what prior experience is likely to be relevant to it, and under considerable pressure from the court and the court staff to make a

rapid decision, virtually any indication of interest in the job or of some relevant skill is sufficient to seal the nomination. Not surprisingly, selection relied very heavily on people volunteering for the task: in 31 of the 48 cases in our sample, at least one juror described the foreperson as having volunteered for the job. In a number of other cases the foreperson, while not described as volunteering, clearly played a dominant part in the selection process and was evidently not averse to being selected. Nevertheless, numerous other reasons for selecting a particular foreperson were given by jurors, even in those trials where the foreperson clearly volunteered. While some of the reasons given could be seen as having some rational connection to the task (for example, previous experience as a juror or on committees, occupation and educational background), many were unrelated to any valid measure of suitability (for example, appearance, being seated at the head of the table, speaking first, having a surname beginning with "A", and being male on a predominantly female jury).

The role of the foreperson

2.53 Jurors received limited or no guidance on what the task of foreperson involves. At the most, they were told that the foreperson acts as spokesperson for the jury in court, delivers the verdict, presides over the deliberations, and should ensure that every member of the jury gets the chance to have their say. Judges and court staff typically described the task to jurors in terms of chairing a meeting. From our data, this advice may be misleading; as discussed in chapter 6, running an effective jury deliberation often requires more than just good chairing.

2.54 There were a number of trials in which the foreperson was largely ineffective, producing errors in deliberations or unduly prolonging them (see chapter 6). In some cases at least, this was either because the foreperson had no real understanding of the role they should play or because they discovered that their previous experience, either on another jury or in committee work, did not in fact assist them in doing the job. Indeed, a number of jurors commented on the lottery element in the selection process, which was exacerbated by the lack of clear prior knowledge of what the role involved. This suggests that the process for selecting forepersons needs to be reviewed:

- Currently juries receive minimal information on how they should go about selecting a foreperson and on the qualities that are needed for the task. More information can and should be supplied on both these questions.
- The process is rushed and takes place before jurors have had any opportunity either to get to grips with the task they face or to get acquainted with one another. More time needs to be made available to those juries who want it, and consideration should be given to postponing the selection of a foreperson until later in the trial. (This would require an amendment to the Juries Act 1981.)
- The advice which judges and court staff currently give on the role of the foreperson is inadequate, if not positively misleading. Consideration should be given both to providing formal guidance and/or training to forepersons once selected, and to providing jurors in general with some understanding of what an effective deliberation process should involve.

Preparing jurors to process information

2.55 Little guidance is given to assist jurors in the assimilation, processing and reconciliation of the complex legal and factual information with which they

are about to be confronted. Indeed, generally it is only in the Crown opening that they get detailed material on the legal issues and their first, partial, view of the factual evidence of which they will be expected to make sense. Furthermore, this material is presented to them within a particular framework which may fit only very imperfectly with the way in which they actually process information.

2.56 Most of the preliminary information supplied to jurors, and the standard instructions given at the start of the trial, reinforce the traditional view of jurors as recipients of information who only form a judgement on the material with which they are presented at the deliberation stage. Thus jurors are told of the importance of keeping an open mind throughout the trial and of not making up their minds until after the judge's summing-up at the conclusion of all the evidence. It is only at that point that jurors should or can attempt to construct an overall picture of the case. The structure of the criminal trial reinforces this notion; opening statements, whether by the judge or counsel, rarely provide a comprehensive picture of the stories that are to be told by the evidence and, as will be discussed more fully in chapter 3, evidence is often called in an order which owes more to chance or to the needs of parties than it does to the inner logic of the story that counsel is trying to tell. Even if witnesses are called to recount the story in a logical sequence, this sequence cannot be delivered in narrative form and is interrupted and confused by the process of questioning and cross-examination.

2.57 It is clear, however, that jurors do not in fact process information in this way. Instead, they actively process the evidence as it emerges, evaluating it and attempting to fit it into an evolving story which makes sense to them. In deciding what aspects of the evidence to commit to memory or to make notes on, jurors are engaged in an interpretative process which belies the instructions that they are given at the commencement of the trial. While this does not mean that jurors approach the case with closed minds or with a preconceived view of how the case is likely to develop, it does suggest that the initial frame which jurors adopt in order to construct their "story" is important. It is this frame which enables jurors to select from and interpret the evidence as it begins to emerge. Although jurors are willing to change the story as new elements are introduced, this is inevitably based on their understanding of the earlier evidence, which in turn is the result of the process of filtering and interpretation that has already taken place dictated by their earlier frame. What this suggests is that jurors' ability to absorb, make sense of, and evaluate evidence may be considerably enhanced by concerted efforts to provide them with a more coherent factual framework in the early stages of the trial and with a clear outline of the legal structure into which the facts must be fitted.

2.58 There are a number of ways in which jurors could be better prepared for the task of processing and evaluating the evidence:

- *The indictment.* Most juries receive copies of the indictment during the Crown opening, either individually or as a body. Others may get a copy after the summing-up. Jurors generally find the indictment very useful, especially in setting up the issues and providing them with a focus. Copies of the indictment should be provided to jurors as a matter of routine at the commencement of the trial.

- *A written summary of the charges.* Even where they are given a copy at the start of the case, the indictment on its own is often not of much assistance to

jurors. In at least two of our trials, jurors also received a brief written summary of the applicable law from the judge before the Crown opening. This was seen by the jurors in those trials as extremely useful. In another trial, the jury asked the judge for a copy of the law relating to the defence of insanity and found this, together with a list of witnesses which they had also requested, to be very useful in dealing with the evidence. It is difficult to see why juries in all cases should not be supplied with a plain English summary of the legal elements of the charges at the commencement of the trial.

- *Summarising the key issues.* In most cases, the indictment plus an explanation of the relevant law should enable juries to identify the key issues in the particular case. Where this is not so, further explanation may be necessary. In one case, for example, the jury received a copy of the indictment and were clearly directed on the relevant law but seemed to have largely failed to focus on the key issue in the case, which was whether the accused had acted with dishonest intention. A clear written statement of this issue at the beginning of the case may have helped to avoid this confusion.

- *Agreeing on and outlining the facts.* Jurors sometimes found it difficult to process the factual information they were receiving because they lacked a coherent framework for doing so. Indeed, the lack of a clear factual narrative at the outset, and especially of one which pinpointed the areas in dispute by including the defence "story", was in some cases an important part of the difficulties jurors faced.

  While this clearly raises wider disclosure issues, it is worth considering whether it might be desirable for either the Court or counsel to provide more of an agreed factual framework for the jury at the start of the case. It was clear to us that in many of the trials in our sample, it would have been possible not only to clearly identify the basic issues in a non-partisan way in advance, but also to provide a general indication of what the basic factual arguments were to be. While it may have been difficult or unwise to disclose the details of the defence at such an early stage, the basic outline would not have been problematic.

  The development of pre-trial conferences or status hearings in the indictable jurisdiction could provide the basis for presenting juries with clear, agreed preliminary outlines of the cases they are to hear.

- *An early defence opening.* Jurors were highly appreciative of the early defence opening in the three cases in which it occurred, and would clearly have benefited from one in other cases. Solely from the point of view of enhancing the jury's understanding of the case and its ability to process subsequent evidence, there would be considerable benefit in routinely allowing the defence to make such a statement. This would, however, require an amendment to section 367 of the Crimes Act 1961.

- *Explaining legal terms.* In addition to a plain English explanation of the charges, juries should sometimes also receive more detailed explanations of the meaning of key terms. In a number of trials, juries clearly had difficulty with concepts and terms which were fundamental to the charge or to their job but which remained largely unexplained, presumably because judges and counsel saw them as ordinary notions which the jury should interpret in line with common understandings in society. On the other hand, many jurors saw the

notions in question, such as "reasonable doubt", "intent" and "negligence", as involving legal concepts and having some special meaning which they were expected to apply.

- *Witness lists and details.* In a number of trials, the jury received lists of the witnesses who were to be called by the Crown. In at least one other trial, they asked for a list and were given it. However, there were also trials in which the absence of such a list caused the jury considerable difficulties and at least extended the duration of deliberations.

  It would seem to be elementary that, in cases involving multiple charges and/or accused persons, lists of witnesses with their relevance indicated should be given to the jury. Indeed, it is difficult to see why one should not be given to the jury in every case.

- *Flowcharts, diagrams and other aids.* Where the location and visual evidence is important juries generally receive maps and photographs which they find very useful. Such material is less forthcoming where, for example, relationships and chronology are significant. In two cases in our sample, jurors commented that if counsel had supplied them with a flowchart showing the alleged chronology at the start of the evidence, it would have made the task much easier. However, except in multiple fraud cases, this seems to be rare. Again, it would seem to be elementary that wherever a visual aid could assist the jury, counsel should be encouraged to provide it.

3
The trial process

3.1 THE RESEARCH IDENTIFIED FOUR BROAD TYPES OF PROBLEMS which jurors experienced in assimilating and assessing the evidence presented during the trial:

- The form in which evidence was presented frequently affected juror comprehension, recall and assessment of the evidence.
- In a significant number of trials, some individual jurors appeared to lack the competence to engage in a proper assessment of the evidence they heard.
- A number of jurors experienced difficulty in assessing credibility. In particular, when confronted by an absence of "hard evidence" to prove guilt, some jurors were reluctant to assess credibility or draw inferences from indirect or circumstantial evidence.
- There were occasionally gender and cultural issues which affected the individual assessment of evidence, although these were almost invariably overcome by the collective deliberation process.

THE FORM IN WHICH EVIDENCE WAS PRESENTED

3.2 The problems which individual jurors confronted in comprehending and absorbing evidence during the trial were generally attributable not so much to any personal incapacity as to the way in which evidence was presented to them. There were four particular difficulties in this regard: the impact of oral evidence, the speed of evidence, the clarity of evidence, and the problems posed by expert and other technical evidence.

The impact of oral evidence and the limitations of existing measures to supplement oral evidence

3.3 Few jurors have experience in assimilating a large quantity of factual information delivered orally. The emphasis upon oral evidence in the trial process arguably does not fit with modern forms of communication and learning, and undoubtedly impairs juror comprehension of the testimony they receive.

Problems of concentration and recall

3.4 In the first place, a number of jurors experienced difficulties in maintaining concentration, especially during long trials: in 11 of the 48 trials at least one juror, and sometimes up to a half of those interviewed for a particular trial, volunteered that they or other jurors experienced difficulty in concentrating. These difficulties were exacerbated when the oral evidence was boring or presented in a boring fashion, was confusing or repetitive, or involved lengthy technical evidence.

3.5 A second reported consequence of the fact that testimony was in oral form was that jurors had difficulty in recalling the details of it during deliberations. Such

difficulties were reported to have occurred in 21 trials, and were particularly acute where the evidence was confused or contradictory, or where the sequence of events was unclear. They were also particularly likely to arise where there was more than one complainant and a number of charges: jurors reported that they got the stories between complainants mixed up; that they mistook names, dates or times; and that they sometimes had difficulty in recollecting what evidence related to which charges. The fact that jurors had significant difficulty in recalling evidence or in agreeing about what testimony had been given was reflected in the fact that they requested that evidence be read back to them in 16 trials.

Note-taking

3.6 Jurors generally attempted to mitigate concentration or recall problems by taking notes with the pens and paper routinely provided to them for the purpose: in 41 trials at least 50 per cent of our respondents took notes, and in aggregate, 234 out of 312 (75 per cent) did so. Of those who took notes, 83 per cent used them during deliberations, and 94 per cent of these found them useful as a memory aid to keep track of and to recall the key points of witnesses, times and dates, and the sequence of events. Juries also collectively used their notes to piece together the evidence or to resolve disagreements about what had been said. However, notwithstanding the prevalence of note-taking and its reported usefulness, there were a number of factors which reduced its effectiveness in mitigating problems of concentration and recall:

- The advice which jurors received on whether they should take notes, and the extent to which they should do so, was variable and generally inadequate. Beyond discouraging jurors from writing verbatim accounts, judges and court attendants usually gave virtually no guidance about the sort of information which they should note down. Jurors frequently criticised this lack of guidance. Many interpreted the comment that they should be careful to listen to and observe witnesses as meaning that they should avoid taking notes as far as possible; they frequently reported that this "didn't prove to be true" and that they regretted not having taken more notes. They also often noted that they or other jurors in their case were handicapped by their lack of experience in note-taking and did not know how to go about the task.
- Partly as a consequence of the lack of guidance on note-taking, the amount of notes taken by jurors varied enormously. Not surprisingly, jurors with sparse or no notes tended to defer to those who had taken extensive notes when the evidence needed to be clarified, or disagreements about what was said needed to be resolved. Indeed, they were often grateful that others had a record of evidence upon which they could rely. Nevertheless, their reliance upon the notes of others not only reduced their ability to participate meaningfully in the discussions, but also allowed other jurors the opportunity to dominate and to impose their own version of events and structure upon the deliberations. Thus the reliance upon note-taking as the primary means of addressing the limitations of oral testimony undoubtedly contributed to uneven participation in jury deliberations, and may have led to the version of events favoured by one juror, on the basis of their own selective recording of the evidence, being used as the basis for decision-making.
- The potential danger which the jury confronted in relying upon the notes of one or two jurors was illustrated by the fact that the notes which some jurors

discussed turned out to be an inaccurate record. Because of this, juries not infrequently found that there were discrepancies in their notes and that they could not agree about what particular witnesses had said.

- Juries were rarely specifically told that they would not be receiving a written copy of the judge's notes. Indeed, many assumed that since the judge and counsel were receiving copies of the judge's notes as they were being transcribed by the stenographer, they would also receive a copy at the commencement of deliberations. As a result, some jurors took no notes at all and some took fewer notes than they would otherwise have done.

Written and visual aids

3.7 Jurors received a wide range of written and visual material as an aid to oral evidence. This material fell into four categories:

(1) In 13 cases, the jury received a copy of the accused's written statement to the police, a transcript of the videotaped interview with the police or a copy of the police officer's notebook recording the accused's oral answers to questions put to him or her by the police officer. Jurors invariably found such material to be useful, especially when the accused had not given evidence. They often made extensive use of such material during deliberations, particularly as a means of working out the sequence of events, resolving ambiguities or conflicts in the evidence, or identifying contradictions in the accused's story. Nevertheless, three juries did express some reservations about their access to and use of such statements: in two cases they felt that the emphasis placed upon the accused's statement in the jury room was one-sided and that, without the complainant's initial statement to the police or a transcript of her evidence, they weighed up and analysed the accused's story and the sequence of events put forward by him in much more detail than they were able to do in relation to the complainant; and in the third case they simply decided that the accused was a "compulsive liar" and that the video transcripts were not sworn evidence and were unreliable.

(2) Exhibits comprising physical evidence were entered into evidence in 32 trials. Jurors generally appreciated having such exhibits; they particularly found copies of documents relating to financial transactions in fraud trials an extremely valuable – indeed, a virtually indispensable – aid to their understanding of the case. Nevertheless, there were a number of factors relating to physical exhibits which reduced their effectiveness as an aid to decision-making:

(a) Apart from fraud trials (where copies of documents of financial transactions were always provided to the jury either at the outset of the trial or when evidence relating to those documents was being given), jurors did not usually receive the exhibits, and thus did not get the opportunity to look at them at close range, until they retired to deliberate. Some jurors noted that as a result, the exhibits did not assist them in following or comprehending the evidence at the time it was being presented.

(b) Sometimes physical evidence in the jury room prompted jurors to become detectives and to reach unsubstantiated conclusions during

deliberations. In one case, for example, they tried to discern whether the handwriting on two cheques which the accused denied writing belonged to her.

(c) Items used for the purposes of assault (such as guns and knives) sometimes proved to have mere curiosity value which, if anything, distracted jurors from their deliberations: they tended simply to play with them rather than to refer to them in deliberations or to draw any significant conclusions from them.

(d) The relevance of exhibits was not always made clear to jurors, as a result of which they had difficulty in fitting them with the rest of the evidence.

(e) Finally, documents relating to financial transactions were not always adequately organised or related clearly enough to the charges. For example, sometimes volumes of exhibits were arranged according to the nature of the exhibits rather than according to the particular counts in the indictment. As a result, jurors sometimes found they had to sort out for themselves which exhibits related to particular counts.

Overall, access to exhibits relating to physical evidence generally proved useful. However, they were sometimes unnecessary or even counter-productive, and in those cases where they were essential to proper comprehension of the evidence, they were not always presented at the right time or to best effect.

(3) Visual representations of physical evidence or the scene of the crime (including photographs, floor plans and maps) were the most common supplement to oral evidence, being used in 33 trials. In 29 of these, an overwhelming majority of jurors found the visual representations helpful. Sometimes they simply served as a visual reminder of things or helped them to visualise the scene, which aided their recall. Just as frequently, visual aids such as photographs and maps were actively used during deliberations to resolve ambiguities in the evidence or to assess the credibility of particular witnesses. Moreover, in four cases one or more jurors criticised the fact that visual aids of this sort were not provided and said that they needed more assistance to put things into visual perspective.

Notwithstanding the use to which visual representations such as photographs were put, jurors were again frequently critical of the time at which or the way in which these aids were provided. First, as with exhibits of physical evidence, there were at least three cases in which they were not provided with the photographs, plans or maps until deliberations, which significantly reduced the effectiveness of such aids in enabling them to follow and assess the evidence. Secondly, photographs and maps were sometimes presented in an inadequate form, without any indication of their scale or direction.

(4) Other written or visual aids (such as flowcharts, diagrams, schedules of documents, overhead projectors and whiteboards) were employed in 11 trials. Such aids were not always used to best effect. For example, some jurors could not see the whiteboard or the overhead projector because the material on it was too small. Nevertheless, despite such defects in presentation, jurors generally found written or visual aids of this sort a significant help in mitigating the problematic effects of oral testimony.

3.8 In summary, while both note-taking and a variety of exhibits, photographs and other visual representations were extensively used, there were a number of obvious problems with, and criticisms of, their use, which militated against their effectiveness in alleviating problems of comprehension and recall of oral testimony. Moreover, most testimony was still given in oral form without the assistance of written or visual aids. Much could be done to improve the comprehensibility and recall of evidence without undermining the fundamental structure within which evidence is currently provided. Most jurors would clearly have appreciated more consistent guidance on note-taking, the provision of exhibits (especially copies of all written documentation) at the time at which they were entered as evidence, and the systematic use of written summaries and chronologies, whiteboards, overhead projectors and other visual aids to bring the evidence together into a coherent form. It seems likely that the use of such devices would do much to alleviate the problems of concentration and recall reported by jurors.

3.9 In addition, two other options for reform to address the difficulties of oral testimony were mentioned in a number of trials:

(1) Although we did not specifically ask the question, 30 jurors in 17 different trials volunteered the view that the judge's notes in full should have been made available to them.

(2) Jurors occasionally expressed puzzlement that they did not receive the statements of crucial witnesses in writing, especially when they had access to written statements provided by the accused. It is arguable that an increase in the use of written evidence would affect the trial little in terms of spontaneity and the assessment of reliability. Indeed, even when the evidence of witnesses is contentious and needs to be tested through cross-examination, it may be that substantial portions of the evidence which involve factual detail could be much more effectively introduced in written form and read by the jury before the appearance of the witness.

The speed of evidence

3.10 The difficulty which jurors experienced in absorbing oral evidence was exacerbated by the fact that, in the vast majority of trials, the traditional system of verbatim recording in court by a stenographer was employed, thus requiring witnesses to talk at typing speed or to pause for the stenographer to catch up. Almost all of the jurors who commented on this were critical of the system of recording evidence, and variously described it as "cumbersome", "ponderous", "a bit laboured", "absolutely shocking", "pathetic", "a wee bit unnerving", and "inefficient".

3.11 Jurors also identified a number of more specific difficulties with the speed of delivery of evidence which affected either the quality of the evidence itself or their own ability to assimilate it:

- Jurors repeatedly commented on the fact that the frequent pauses in the evidence, which were required to enable the stenographer to catch up, broke the continuity in the evidence and gave it a disjointed flavour, so that jurors were inclined to become distracted, bored or inattentive.
- More importantly, jurors often felt that the manner in which evidence was delivered had a marked adverse effect on the quality of the evidence, either by interrupting the witness's train of thought, so that they lost track of what

they were saying, or by allowing witnesses time to gather their thoughts, reducing the likelihood of a spontaneous and unguarded response.

- A few jurors also found that the process of recording itself, and the fact that they were anticipating the next pause in the evidence, broke their concentration.

3.12 Overall, therefore, a significant number of jurors found that the transcription of evidence seriously impeded the trial process and their own ability to concentrate on and assimilate the evidence.

The clarity of evidence

3.13 A substantial number of individual jurors reported that they experienced difficulty in disentangling and making sense of the evidence because of either the nature of the evidence itself or the confusing and unsatisfactory way in which it was presented to them. A number of reasons for this difficulty emerged:

(1) Some cases were difficult to comprehend simply because the evidence itself was vague, muddled, confusing and contradictory.

(2) Many jurors found the evidence unsatisfactory because of the way in which prosecution or defence counsel conducted their case. For example, the questioning by counsel (especially defence counsel) was often described as "poor", "difficult to follow", "confusing" and "fumbling", as a result of which jurors found it difficult to determine where lines of questioning were going or what they were trying to achieve. In fact, one or other counsel was criticised on this sort of ground in 17 trials. Jurors often coped with the confusion engendered by poor questioning by attaching little weight to the evidence elicited.

(3) As suggested above (para 2.57), jurors from the outset of the trial are generally constructing versions of the incident, or "stories", to make sense of the evidence which they are hearing. They are constantly searching for a narrative or "frame" which fits with their experience of the world; and they are selectively assimilating and interpreting evidence, as the trial proceeds, to fit within the "frame" they have created. The difficulties which jurors confronted in that process were two-fold. First, evidence was frequently given in a manner and sequence which was inconsistent with, or impeded, the formation of a story or narrative: evidence in relation to a particular stage of the narrative or a particular issue in dispute was not all dealt with at the same time. Secondly, even though jurors were willing to change the story they had constructed in the light of evidence presented by the defence, their new "story" was inevitably based on a partial recollection of the earlier evidence, which was determined by the process of filtering and compartmentalisation dictated by their earlier frame.

There are a number of possible options for addressing these problems, some of which we have already discussed:

(a) More systematic attempts to provide jurors with both a legal and a factual frame at the beginning of the trial, within which they can place evidence: namely through defence pleadings to identify the issues in dispute; through regular opening addresses by the defence at the commencement of the trial; or through an informal agreement between

counsel on the issues which the judge can present to the jury in his or her opening instructions.

(b) Calling defence witnesses before the prosecution has concluded its case, where the nature of the evidence warrants it – for example, where expert witnesses for each party are giving evidence on the same issue and there would be benefits in hearing their evidence together.

(c) The provision of more evidence in written form before cross-examination of any witnesses, so that jurors can take into account more than one narrative when they are constructing their factual "frame" and listening to cross-examination.

(d) The provision of a copy of the judge's notes, so that jurors have a complete record as a basis for refreshing their memory.

(4) Jurors routinely encountered problems in assessing evidence in multiple-charge trials. In particular, they found it difficult to identify what evidence related to which charges. This problem arose in at least 11 trials involving multiple counts. Although this may have been in part attributable to the personal limitations of individual jurors, and their inability to analyse and differentiate complex information about a range of similar events, it was at least as much a consequence of the way in which the case was conducted: too many charges were brought; insufficient effort was made to distinguish the various charges for the jury; or the presentation of the evidence did not link it explicitly enough to the charge to which it related. These difficulties could have been alleviated both by the severance of counts into two or more trials, when large numbers of complainants were involved, and by more strenuous efforts on the part of the prosecution to link evidence to particular counts, both in the course of oral testimony and through the greater use of written schedules and summaries.

The impact of expert and other technical evidence

3.14 Expert evidence of some sort was introduced in 19 trials. In 13 of these, none of the jurors said that they had any difficulty with the technical nature of the evidence. They were particularly appreciative of technical or specialised evidence (such as medical or psychiatric evidence) which was presented to them in simple language, free of jargon and unduly technical detail.

3.15 In a minority of trials, however, expert evidence and other highly specialised evidence did pose problems for jurors. It was not always easy to assess whether these problems were attributable to defects in the nature or presentation of the evidence or to the jurors' inability to comprehend and absorb it. Nevertheless, our own assessment of the evidence in trials where jurors reported problems suggests that their problems were frequently caused, or at least exacerbated, by the unduly complicated and sometimes ponderous way in which the evidence was delivered. Indeed, this applied to five of the six trials involving expert evidence where problems arose. A number of experts presented their evidence in dry technical language, without adequate explanation of jargon or the use of clear diagrams or other visual aids. Thus jurors struggled to concentrate upon and take in the evidence, and sometimes failed to follow the explanations that were provided. However, it has to be said that such problems in comprehending and absorbing expert evidence

were, with two exceptions, reported by only two or three jurors at most in each trial; the problems were not critical to their overall understanding of the case; and the expert evidence was ultimately clarified either by testimony from other experts or by other jurors during deliberations.

3.16 In some cases, where difficulties experienced by jurors were attributable to the inherent complexity of the case rather than deficiencies in the presentation of the evidence, their difficulties might have been ameliorated or overcome if the nature of the transactions or procedures to which the evidence related had been explained to them in a factual way before the evidence itself was presented.

3.17 It is possible that juries may be unduly influenced by expert evidence which they do not have the background to evaluate properly. In one case, the expert's qualifications seemed to have impressed, and perhaps blinded, the jury and led at least some of them to accept his evidence uncritically. In all other cases, the jurors were clearly willing to weigh up expert evidence and decide for themselves what weight to attach to it. They sometimes spoke in highly complimentary terms of the way in which an expert had presented his or her evidence, but still rejected some or all of the expert's conclusions. Conversely, they sometimes criticised the expert's manner but still found the evidence convincing. There were also some cases where the jury concluded that the expert evidence simply lacked credibility and they accordingly rejected it.

INDIVIDUAL JUROR COMPETENCE IN THE ASSESSMENT OF EVIDENCE

3.18 It was difficult to ascertain from our interviews with jurors the extent to which they lacked the competence to engage in a proper assessment of the evidence. Nevertheless, it appeared that in at least 14 trials there were some individual jurors who lacked the capacity to comprehend the evidence. The reasons for their incapacity fell into three categories:

(1) Eight jurors in seven different trials for whom English was a second language either said themselves that they had failed, or were reported by others to have failed, to comprehend the evidence fully because they did not understand some of what was being said. In some instances, this drastically reduced their ability to follow the evidence and participate effectively in deliberations.

(2) There were five trials in which one or more individual jurors were reported by others to have suffered from intellectual or other limitations which impeded their grasp of the evidence, even in relatively straightforward cases.

(3) There were five trials involving the presentation of technical evidence, sometimes of a highly specialised nature, which individual jurors did not have the knowledge or experience to cope with. Of these five cases, three were fraud trials involving multiple counts, two of which lasted for three weeks or more. In these cases, the transactions and procedures which were the subject of the charges were frequently beyond the common knowledge and experience of most of the jury. Moreover, the evidence was often inherently tedious and necessarily presented in a monotonous way, which led to difficulties in concentration. It was also supported by large quantities of written documents with detailed figures, which juries did not have the time to make sense of during the trial, and often found difficult to relate to the evidence during deliberations.

Limitations in the ability of jurors to understand the evidence at least contributed to perverse or compromise verdicts in two cases, and a hung jury in a third.

3.19 Although these findings suggest that fraud trials pose a particular problem, three additional points should be noted: not all of the fraud cases in the sample were lengthy or complicated, even when they involved multiple counts; of the five fraud cases which did involve relatively complex evidence, two seemed to pose no difficulty for the jury; and not all of the cases involving inherently complex issues which jurors found difficult to comprehend were fraud cases. Thus, while our data lend some support to the view that at least some individual jurors (and occasionally the jury collectively) lacked the competence to grapple with complex technical evidence, fraud was not the defining characteristic of such cases. Any reform to remove from juries cases which they are likely to have difficulty in dealing with would therefore need to be based on criteria other than mere offence category or number of counts.

PROBLEMS WITH THE ABSENCE OF HARD EVIDENCE

3.20 Juries were routinely instructed at the commencement of the trial, and often again during the closing addresses of counsel and the judge's summing-up, that they should focus on the demeanour of witnesses in order to assess their credibility. In practice, most jurors showed no reluctance to assess credibility. Only nine (18.7 per cent) of the verdicts were based primarily upon independent evidence which did not require any real evaluation of the credibility or reliability of the testimony of the parties directly involved; 17 (35.4 per cent) were based partly upon credibility and partly upon the support lent by independent circumstantial or other "hard" evidence; and 14 (29.2 per cent) were essentially based on an assessment of the credibility of the accused or witnesses alone.

3.21 Jurors generally assessed the credibility of the evidence carefully from both the content of the evidence and the way in which the witness acted in the witness box. Witnesses who seemed to be frank, forthright and genuine, and who gave consistent evidence, were believed and were generally relied upon. In contrast, witnesses who contradicted themselves, were defensive or evasive, or became annoyed with cross-examining counsel, were generally regarded with suspicion and as a result frequently disbelieved.

3.22 Nevertheless, the fact that witnesses contradicted themselves or were proved to be telling lies did not necessarily mean that their evidence as a whole was rejected. In determining whether they should be believed or disbelieved, jurors in the main were prepared to look at all of the surrounding evidence, including any reasons there might be for their lies or contradictions. In some cases, they recognised that a witness was fudging the evidence, either because they were acting in self-preservation or because they were covering for someone else. Because the consequent lies and contradictions were explicable in these terms, they accepted other aspects of the testimony where it was consistent with other surrounding evidence.

3.23 In a minority of trials, however, individual jurors, and in some instances the jury as a whole, clearly found the assessment of credibility problematic. In this respect, there were two quite different sorts of difficulties. First, in two of the trials where the verdict was essentially based on credibility alone, and in one trial where it was based partly on credibility, it appears that some jurors were unduly influenced by discrepancies in the complainant's testimony, which led

them to reject the prosecution case without regard for independent evidence about the nature of, or reasons for, the accused's actions. Secondly, jurors were frequently frustrated when they did not get definitive evidence – especially what they described as "hard evidence" – to enable them to assess the versions of events presented by the witnesses for prosecution and defence. In some of these cases, even when they were satisfied that a complainant was telling the truth, and said that they were sure of the guilt of the accused, they often looked for tangible evidence to verify their view and felt that, in the absence of that, the charge could not be "proved".

3.24 Judges routinely instructed juries during the summing-up that in assessing the evidence they should apply their common sense and experience of the world. However, this did not usually resolve jurors' problems in assessing credibility. In a couple of cases, the judge's instruction was used by a majority of jurors to persuade the minority that hard evidence was not actually required. In other cases, however, it was interpreted to mean that the judge thought that there was actually little evidence on which the jury could convict.

3.25 In summary, credibility did not pose a problem for most jurors. However, in two cases, undue weight was placed upon a perceived lack of credibility, and in 11 other cases, the absence of other direct "hard evidence" to prove guilt led to a reluctance to assess credibility and to draw inferences from indirect or circumstantial evidence. Judicial directions on the drawing of inferences and the need to apply common sense and life experience generally appeared to make little difference to this.

THE IMPACT OF GENDER AND CULTURAL ISSUES IN THE ASSESSMENT OF EVIDENCE

3.26 There were only four trials in which cultural issues relevant to the assessment of evidence emerged. Jurors in their interviews with us gave no indication that they approached those issues in a mono-cultural or biased way. They were generally conscious of the possibility of cultural differences and tried to take them into account in assessing the evidence. However, some jurors did feel handicapped by their ignorance of the way in which responses to particular situations varied from one culture to another.

3.27 So far as we could discern, there were no systematic gender differences in the understanding or interpretation of the evidence. There were a couple of cases in which individual male jurors expressed strongly sexist views about either their fellow jurors or the nature of the case. Apart from these isolated examples, there were really only four cases in which there was a more general gender split in the approach to the case within the jury, but these were overcome in deliberation.

3.28 In general, therefore, gender and cultural issues arose only infrequently during trials. Where they did so, they did cause some problems for individual jurors' understanding and interpretation of the evidence, but these problems were almost invariably overcome during the deliberation process.

4
The participation of jurors in the trial process

4.1 A significant number of jurors felt unprepared for the experience of being a juror, found court procedures and rules unfamiliar, and were unsure how they could have their queries or concerns addressed. As a result, they felt marginalised during the trial and perceived themselves to be bystanders rather than participants in it. While many simply accepted this as the nature of the process and were unaffected by it, a minority were clearly frustrated by the sense of powerlessness it engendered. This not only affected their sense of satisfaction with the experience of being a juror, but also had the potential to undermine their confidence that justice had been done.

4.2 The most concrete manifestation of this feeling of marginalisation was fairly frequent criticism of the physical amenities and practical services provided for jurors (see chapter 10).

4.3 The perception that they were bystanders rather than participants in the process was also reinforced for some jurors in four other respects:

- a belief that delays, for legal argument or other reasons, were excessive and that adequate and timely information about the reasons for, and likely length of, these delays was not provided;
- a feeling that they were being given an incomplete picture of events because counsel and the judge were withholding important information from them, usually for reasons which they did not understand;
- a perception that it was impermissible or inappropriate to ask for or seek clarification of issues during the trial itself; and
- a perception that responses to their questions during deliberations were unduly formal and inhibiting, which discouraged some from asking questions even though they were uncertain about, or disagreed on, aspects of the law or the evidence.

EXCESSIVE DELAYS

4.4 Most jurors accepted at least some delays as an inevitable part of the trial process. In particular, they recognised that delays for legal argument were necessary from time to time to determine whether evidence was relevant and admissible. However, some found that the delays were frustrating and affected their concentration. Others, while recognising that the legal arguments were none of their business, were still curious and speculated about what was going on.

4.5 More importantly, in 18 trials at least, some jurors were highly critical of the number and length of delays, believing that they were excessive and time-wasting and demonstrated disorganisation. In particular, they felt the delays showed a lack of proper respect to jurors, some of whom were busy, conscious of the value of their time, and anxious to get back to work.

4.6 Other jurors were strongly critical of the fact that they were told neither the reasons for the delays nor how long they might last for. While the reason for a delay often could not be given in detail, it was usually the case that some advice in general terms could have been provided without prejudice to the accused. Similarly, more effort could have been made to keep the jury informed about the likely length of the delay.

4.7 In most instances where the trial was delayed for the purposes of legal argument, the jury were taken out to the jury room so that the legal argument could take place in court in their absence. A small number of jurors felt that this was disrespectful, and would have preferred legal argument to be done in chambers.

WITHHOLDING INFORMATION

4.8 In 16 trials, at least some jurors formed the view that evidence was deliberately being withheld from them. As a result, they felt that the story they were trying to construct on the basis of the evidence was incomplete. Sometimes they saw this as a deliberate tactic of counsel to stop a line of questioning before it elicited answers which might damage their case. On other occasions, they perceived that information which they suspected to be both relevant and known to counsel and the judge was being deliberately withheld from them for reasons which they did not quite understand.

4.9 At least in part, the perception of many jurors that they were not getting the full story arose because they perceived the trial in inquisitorial rather than adversarial terms. That is, they saw the trial process and their role in it as being to uncover the whole truth, including the surrounding circumstances, rather than to assess the versions of events presented by the parties. They were therefore frustrated when they did not get definitive evidence which would enable them to do that. Some of the gaps they perceived were simply background which might have helped to bring the incident to life but would not necessarily have assisted them in determining the relevant facts in relation to it. Other perceived gaps related to information which was simply unknown or could only have been provided by persons who were unavailable or unwilling to act as witnesses. However, in some cases jurors' perceptions that relevant evidence was deliberately being withheld was correct: counsel either avoided a particular line of questioning for tactical reasons or did not introduce evidence because, while relevant, it was inadmissible for other reasons.

4.10 Generally, the fact that there were perceived gaps in the evidence did not matter. Most jurors simply accepted that they had to work with, and confine themselves to, the evidence available to them. Nevertheless, in a small minority of cases it did have a significant impact in three different ways:

- When there was a debate about the admissibility of evidence which led to its exclusion, juries often idly speculated about what that evidence might have been; and a couple of jurors noted that this actually tended to focus the jury's mind on that issue, so that they attached more weight to it than they would have done if the evidence had actually been admitted.
- There were three cases in which the perceived gaps in the evidence led the jury to draw unjustified or speculative conclusions which did influence their deliberations.
- Whether or not jurors were in fact influenced in their deliberations or verdict by perceived gaps in the evidence, that perception nevertheless led some of

them to feel that they were marginalised in the process, and so their experience was frustrating rather than satisfying.

ASKING QUESTIONS AND SEEKING CLARIFICATION DURING THE TRIAL

4.11 Juries are entitled to ask questions during a trial, to clarify issues about which they are uncertain, or to fill gaps in the evidence presented. However, judges in their opening instructions only infrequently mentioned that jurors could do this (see para 2.22), and when they did they focused on the procedure for asking questions during deliberations rather than during the trial itself. The jury booklet does indicate that the jury may ask questions during the trial, but says that such questions are "most unusual" and focuses exclusively on the right to ask questions directed to particular witnesses – rather than, for example, questions seeking clarification from counsel or of the judge's comments.

4.12 A majority of those who responded said that they were not told whether or not they could ask questions. Moreover, a few of those who said that they were told seemed to have got the information wrong: seven said that they were told that they could not ask any questions until deliberations; and three that they could ask questions by putting their hands up.

4.13 Not only did the vast majority of jurors believe that not all relevant information was extracted from witnesses and that ambiguities in their evidence were not always adequately explored (see para 4.8), but as many as 79.2 per cent of jurors said that they wanted to ask one or more questions during the trial.

4.14 When jurors were asked why they had not asked questions, a few indicated that it was because they recognised that their questions were in fact irrelevant or otherwise inadmissible, and a significant number said that their concerns had been addressed by other jurors or by evidence presented later in the trial. Some did not ask questions because they were intimidated by the courtroom environment; did not know what sorts of questions they could ask or how to phrase them; did not know the procedure for asking; or felt the procedure (which required them to write down the question and pass it to the foreperson, who then read it out to the judge) to be too cumbersome. But by far the most common reason for not asking questions (40.9 per cent) was that they thought that this was the lawyers' job and that they were not permitted to ask.

4.15 One reason why judges and court staff discourage jurors from asking questions and expect them to play a passive role in the trial is because of a perception that they would otherwise unduly disrupt the trial by raising irrelevant questions or seeking inadmissible or prejudicial material. We were unable to reach any definitive conclusion about the extent to which the questions jurors wanted to ask were relevant to the issues in the trial.

4.16 In those cases where an assessment of relevance could be made, a number of questions which jurors wanted to ask were essentially irrelevant. On the other hand, it is clear that in many of the cases where jurors wished to ask questions, they would have been significantly assisted by doing so. Counsel did not always ask questions clearly; witnesses often did not give all of the evidence relevant to the case properly or fully; and jurors did sometimes identify relevant issues which had been overlooked or deliberately omitted by counsel. Thus in eight trials, some of the jurors' questions were to clarify evidence already provided,

which would have probably enhanced their comprehension and proper assessment of it; and in seven other trials, the questions they wanted to ask were additional to (rather than merely clarifying) evidence already provided and were at least partly relevant to the issues in dispute. In addition, in five of the six cases where questions were in fact asked, they were clearly relevant to the issues in the case.

4.17 Another reason why jurors are discouraged from asking questions is that the traditional model of adversarial justice holds that a trial should be conducted essentially on the basis of the evidence which prosecution and defence choose to adduce, on the assumption that they are in the best position to determine what information is most relevant to their respective cases. Even the judge is generally required to intervene only to clarify a question put by counsel or an answer given by a witness. It is not the role of either judge or jury to pursue a line of inquiry which counsel, either for tactical reasons or because of incompetence, has not pursued.

4.18 However, as our data make clear (see para 5.25ff), counsel do not always present their cases adequately and jurors do sometimes want to ask questions which have at least the potential to enable a more reliable assessment of the evidence to be made. It is therefore difficult to see how the ideology of adversarial justice, in its pure form, serves the interests of justice. Where other participants in the trial process believe that they require further information which may be available from witnesses in the court, they should arguably be able to seek it.

ASKING QUESTIONS AND HAVING EVIDENCE READ BACK DURING DELIBERATIONS

4.19 After summing-up, the judge advises the jury that if they wish to ask any question during deliberations, or require any portion of the evidence to be read back to them to refresh their memories, the foreperson should give a written note to that effect to the court attendant who will relay the request to the judge. In that event, the court is reconvened, the jury is brought back into the courtroom, and the question is answered or the evidence read in the presence of the accused and counsel.

4.20 Juries asked questions or requested that evidence be read back in 31 trials. A number of jurors expressed surprise at the formality involved in putting questions to the judge. Partly because of this and partly from a fear that they might look foolish, nine juries either sought no clarification of issues about which they were concerned or asked fewer questions than they might otherwise have done.

4.21 The reluctance of many juries to ask questions during deliberations meant that they sometimes deliberated and reached a verdict without resolving their uncertainties about key legal issues in the case.

CONCLUSIONS

4.22 In light of jurors' feelings of marginalisation and their resultant frustration (see para 4.1), it appears that the treatment of jurors, and the role they play, in the trial process needs reconsideration.

Delays

4.23 There is clearly a need to keep jurors better informed about delays. Sometimes, where the trial is interrupted for legal argument in the absence of the jury, the nature of that argument simply cannot be divulged to the jury without prejudice to the trial itself, but even in those instances, more could be done to keep the jury informed of the likely length of the delay, and they could be given a general explanation of the reasons for the delay.

Asking questions during trial

4.24 There is some force to the argument that juries need to be given more opportunity to ask questions about the evidence during a trial. There are three ways in which this might be achieved:

- At the conclusion of each witness's evidence, jurors could be invited to ask the witness questions arising from that evidence. This would require the judge to intervene if the question was for any reason inappropriate. It might also cause difficulties for witnesses if questions were put in an inappropriate or unclear form.
- Jurors could be invited to put their questions to the judge, either orally or in writing, with the judge then having the discretion whether or not to put those questions to the witness.
- Alternatively, jurors could be invited to indicate to counsel issues which they would like further explored, leaving it to counsel to decide whether those issues should be explored, and if so, the form which the questions should take.

Asking questions during deliberations

4.25 Juries do not always have the confidence to bring queries they have during deliberations to the judge's attention. It would seem sensible at the end of the judge's summing-up to allow juries to identify any issues about which individual jurors have concerns and to raise those with the judge before deliberations commence (see also para 7.62). Just as importantly, however, the process by which juries ask questions arguably needs to be made more informal and relaxed. Obviously, questions and answers need to be provided in the presence of counsel, but the present practice of reconvening the court leads a significant number of juries to believe that asking a question will be a nuisance and impose on the judge and counsel, and that they should therefore try to work the matter out for themselves.

5
Jurors' perceptions of judges and counsel

5.1 JURORS WERE ASKED SPECIFIC QUESTIONS about their perception of counsel's performance in opening and closing the case and in examining and cross-examining witnesses, and about the impact which counsel's performance had on their attitudes to the case. In addition, they were asked about the content of the judge's opening and closing instructions and any judicial rulings made during the trial. The impact of the summing-up is discussed in more detail in chapter 7.

5.2 As with their responses in other areas, jurors varied considerably in their reactions to both the judge and counsel. Within each jury views were frequently polarised, and individual jurors often responded differently to counsel at different stages of the trial. This diversity of views was complicated by the fact that in many of our interviews only a minority of the jurors made comments on any one specific aspect. Nevertheless, many of our respondents had a lot to say – especially on the performance of counsel – and a number of common themes emerged which are significant for the discussion of how juries respond to evidence and to the way in which it is presented, and of the likely impact of the performance of the judge and counsel on jury verdicts. At a more mundane level, many of the comments suggest ways in which both judge and counsel can better meet the expectations of jurors and make their task easier and less stressful.

5.3 Jurors were generally very appreciative of the judge and tended to comment specifically on the way in which he or she sought to put them at their ease, meet their needs, and explain the case to them. Counsel, too, generally evoked a positive response, although jurors were much more likely to be critical of them – especially of defence counsel.

THE JUDGE

5.4 In 28 cases, at least one juror commented on the judge's performance. In 18 of these, all comments were overwhelmingly positive. In ten cases, at least one juror noted what was seen as a problem with the judge's handling of the case or with some specific aspect of his or her response to the jury or with their treatment of counsel.

5.5 Not surprisingly judges who made eye contact and who seemed to be friendly, polite and sensitive were rated highly by jurors. In addition, jurors were generally very appreciative of and had confidence in judges who took the trouble to explain evidence which was unduly obscure, asked counsel to rephrase questions where their relevance was unclear, and intervened to cut short unduly long, tedious or irrelevant evidence. Jurors also commented favourably on judges who they regarded as well organised and as dealing with issues concisely and clearly. Such comments were generally made in relation to the summing-up, but jurors were also appreciative of these qualities at earlier stages of the trial.

5.6 On the other hand, in three cases jurors commented unfavourably because the judge seemed grumpy, irritated or dismissive of their questions; one judge was described critically by two jurors as being pro-prosecution and pressuring them for a guilty verdict; and jurors in two cases found the judge's explanation of the law very confused and confusing. Such comments were, however, rare and juries were by no means unanimous in making them.

THE OVERALL PERFORMANCE OF COUNSEL

5.7 From our interviews it was impossible to disentangle jurors' comments on individual counsel. Overall assessments of performance are accordingly based on an overview of jurors' comments about all counsel appearing for either the Crown or the defence in any particular case. In two multiple accused cases, however, it was possible to isolate juror assessments of counsel for two of the accused and these have been counted separately. In one case in which the accused represented himself, jurors' comments about the conduct of the defence have been eliminated. Hence, overall, comments have been recorded on 48 Crown counsel and 49 defence counsel.

Assessing overall performance

5.8 Jurors' reactions to counsel and the way in which the particular case was presented varied considerably – both between jurors and for the same jurors during the course of the trial. Also, different juries reacted in different ways to similar situations. For example, some juries commented adversely on defence tactics which they saw as deliberate attempts to confuse them, while others simply accepted that such tactics were part of the defence job and, if done well, should be praised. Nevertheless, in most trials there was a reasonable level of agreement on the general performance of counsel and on the aspects of it that merited criticism or praise. Of the 97 counsel commented on, only 13 produced clear overall differences of opinion among jurors as to the general merits of their performance.

5.9 In general, jurors reacted more favourably to the Crown than to defence counsel. In over half the cases, Crown counsel was regarded as having performed to a good or excellent level. In contrast, defence counsel was regarded as excellent in only one-third of the cases. Jurors were also more likely to disagree about the defence than about the Crown.

5.10 How far jurors' views are an accurate assessment of counsel's performance is unknown. It may be that jurors' assessments depend partly on the merits of the case being presented, and that the defence case is more likely to be perceived by jurors as weak. It may also be that the way in which the criminal trial is organised, and the reactive position in which many defence counsel are inevitably placed, mean that defence counsel simply runs a much higher risk of being seen as ineffective. Consistent with this, jurors who responded negatively to the defence tended to describe counsel as disorganised, asking the wrong questions, reacting to the Crown case rather than developing a positive case of their own, failing to produce a coherent story, chasing irrelevancies or simply "nit-picking" at the prosecution evidence. Some jurors, albeit only a minority, recognised that the nature of defence counsel's job meant that it was often difficult to avoid being seen in this way. However, defence counsel's perceived inadequacies cannot be fully attributed to the nature of their job. As we will discuss below, defence counsel was also much more likely than the Crown to be

seen as uninterested, lacking commitment, and resigned to losing. In addition, the defence was more likely to be seen as lacking basic legal skills in the presentation of evidence and the cross-examination of witnesses. In other words, while the negative views which a number of jurors held about defence counsel may partly be due to features of the case or the defence situation (which may be beyond the control of counsel), this does not explain all of their reaction by any means.

Comparisons between counsel

5.11 In 16 cases, juries rated the performance of Crown and defence counsel as roughly equal. In half of these cases both counsel were regarded as performing at a high level, and in only a quarter of these cases were the reactions to both predominantly negative. On the other hand, in 17 cases the jury's predominant view was that one party was markedly superior to the other.

5.12 From our data it is impossible know how the "actual" performances of counsel compare, or to assess the impact of these performances, or of jurors' perceptions of them, on the final verdict. Nevertheless, the data do suggest a possible relationship between jurors' perceptions of counsel's performance and their verdict. Of the six cases where the defence was regarded as excellent and the Crown as predominantly poor, two resulted in complete acquittals, one produced a hung jury, one produced an acquittal on grounds of insanity, one produced an acquittal on all but one of a large number of charges, and one resulted in the accused being convicted on two-thirds of the charges. Conversely, of the 11 cases where the Crown was regarded as excellent and the defence as poor, eight resulted in convictions on all charges, one resulted in convictions on the majority of charges, one resulted in convictions on one major charge and two alternative counts, and one resulted in a hung jury. There were no complete acquittals.

Agreement between judge and jury

5.13 Judge and jury agreed in their general assessment of counsel in the majority of cases. However, the reasons given for the assessment were often dissimilar, with jurors being more likely to rate counsel on personal attributes and judges tending to focus more on technical issues. In addition, judges were much more likely than jurors to assess counsel's performance positively, although often the judge's comments suggested simply that counsel who was regarded by the jury negatively was either "competent" or had handled an impossible situation as best they could. The few cases in which the judge commented negatively on counsel but the jury reacted positively were cases in which the judge noted errors of judgement and preparation which went unnoticed by the jury. Where jurors based their assessments more on legal skills (or the lack thereof) than on presentation, the judge was more likely to express similar views.

SPECIFIC FEATURES OF COUNSEL'S PERFORMANCE

5.14 Juror assessments of the performance of counsel generally identified two interrelated sets of criteria. Firstly, a significant number of jurors reacted negatively to counsel whom they saw as presenting poorly in court. This covered such things as appearing to be hesitant, lacking energy or confidence, appearing to be uninterested or unconvinced by the case they were endeavouring to present,

failing to establish eye contact, treating the jury like schoolchildren, or being glib, smart or arrogant. Defence counsel were significantly more likely than prosecutors to be criticised by jurors as lacking in presentational skills.

5.15 Secondly, jurors often criticised counsel for what they perceived to be a lack of basic legal skills. Lawyers were described as disorganised and unprepared, confused and/or confusing, asking repetitive and irrelevant questions, not asking the right questions, failing to identify and address the basic issues, and generally failing to present a coherent and convincing case. In 17 of the cases in our sample, a significant number of jurors commented adversely on the way in which counsel for one or both parties led evidence or cross-examined witnesses. As with matters of presentation, Crown counsel were generally more highly regarded in terms of such skills.

Style and presentation

5.16 Jurors responded positively to counsel who came across as committed to their case; presenting the case and examining witnesses in a vigorous and interesting style (often providing a modicum of drama); seeking to achieve a positive rapport with the jury; and being professional without losing their humanity.

Commitment

5.17 In a number of cases, counsel were seen as unconvinced of their client's innocence, simply going through the motions, resigned to or uncaring about the outcome of the case, or simply appearing to be detached or uninterested. Jurors sometimes identified counsel's apparent lack of interest in the case or in the client as being because it was "just another job" or was a legal aid case, or because they had other, more important, cases to do. Impressions of this sort were generally conveyed to the jury by a lacklustre examination of witnesses, failing to pay attention to proceedings, an apparent lack of preparation, or obvious time-wasting and irrelevancy. Crown counsel were less likely to be perceived in this way but were certainly not immune from it.

5.18 On the other hand, there were a number of cases in which the jury commented favourably on counsel who seemed to be very committed to their case and/or to believe implicitly in the innocence of their client, even where the evidence was strongly against them.

The conduct of the case

5.19 Overall, jurors found the cases that they were involved in very interesting and intriguing. They also tended to find that the byplay between lawyers in the courtroom added interest. As long as counsel were not seen as "badgering" witnesses, vigorous examination, passion and the odd dramatic flourish or a touch of flamboyance kept the jurors' attention engaged and were positive points in favour of the lawyer concerned. Conversely, in a significant number of cases jurors commented strongly on the boredom engendered by counsel. While this was often linked with what they saw as a lack of legal skill, it was also seen as a matter of presentation – lengthy, monotonous and sometimes inaudible addresses, the use of inappropriate and unduly complicated language, a ponderous or largely static mode of delivery, and excessive reliance on notes.

Achieving rapport with the jury

5.20 Jurors also commented on the overall attitude displayed by counsel and the extent to which counsel was able to establish a rapport with them. Thus counsel's performance was to some extent assessed in terms of their success in drawing the jury into the proceedings, whether they "talked down" to or patronised the jury and/or witnesses, and whether they came across as trustworthy, believable people. Establishing eye contact, avoiding "lecturing", not appearing smart or smug, and being courteous to both witnesses and the jury were all part of achieving such a rapport.

Professionalism

5.21 Jurors generally expected counsel to behave in a professional manner. Thus those who engaged in obvious ploys in an attempt to win the sympathy of the jury, or who were seen to be relying too much on emotion or "unprofessional" attacks on witnesses, tended to attract a negative response.

5.22 One attribute of professionalism which was commented on by a number of jurors was fairness. Crown counsel in particular were described as fair and impartial in a number of cases – both in the Crown opening and in the examination of witnesses. On the other hand, although most jurors saw aggressive cross-examination as a legitimate part of the trial, and often clearly enjoyed the drama of it, in a number of cases it was seen as having degenerated into "badgering". While in most cases this was seen as an example of poor cross-examination technique, in a few cases jurors regarded it as essentially unfair and unprofessional. This was more likely to happen where the witness was young or otherwise perceived as vulnerable.

Legal skills – putting the case and examining witnesses

5.23 Jurors' assessments of counsel's legal skills were often at least partly conditioned by their assessment of the strength of the case being presented. However, the weakness of the case was rarely the whole story. Counsel who the jury recognised had little to go on could still be seen as skilful and effective and getting the most out of what the case had to offer.

5.24 In most cases, jurors assessed counsel's skill in terms of two major variables: the clarity with which the case was presented and the witnesses examined; and the extent to which counsel presented or extracted from witnesses what jurors thought was the "full story". Jurors tended to react more positively to Crown counsel on both these elements.

Confusion, irrelevance and lack of organisation

5.25 In 20 of the 48 cases, jurors described at least one of the parties as confusing or poorly organised or as pursuing irrelevant or peripheral lines of questioning. In a lot of cases, the confusion felt by the jury was based on the apparent lack of a clear storyline or logical sequence in the evidence. Although Crown counsel, by virtue of opening the case, had a natural advantage here, they were by no means immune from such criticisms.

5.26 Although jurors sometimes recognised that confusion and irrelevance were not counsel's fault – and a few even saw them as a valid tactical ploy – this was rare. In most cases, jurors attributed counsel's failure to present a clear, logical and concise case to inexperience, lack of basic skills and preparation, or a lack of interest. While in many of these cases the judge described counsel's performance as competent and the questions asked as valid, or the best possible in the circumstances, in three cases the judge also commented on the confusing and irrelevant nature of counsel's performance. Although in a number of cases the jury commented appreciatively on the way in which the judge intervened to clarify confusing questions, this only occurred in a small number of cases. In general judges were reluctant to intervene. Indeed in one case, the judge commented strongly to our researcher on the emotive nature and lack of relevance of aspects of the Crown evidence but took no action to control it.

5.27 It is likely that in a number of cases the verdict was influenced at least in part by the perceived failure of counsel to clearly identify and address central issues in the case, and to set out their argument in a clear and logical way. In some cases this seems to have been part of a deliberate defence strategy. Even where the verdict was not ultimately conditioned by confusions introduced during the trial, the difficulties experienced by the jury were likely to have unduly prolonged the deliberation process and certainly made the whole experience more stressful for individual jurors.

5.28 This raises three questions:

- Is the deliberate creation of confusion, as a device for obscuring the "real" issues in the case and distracting attention from the Crown case, a legitimate part of defence counsel's function? If not, how should it be controlled?
- More generally, should judges intervene more frequently than they do to establish the relevance of particular lines of questioning, clarify any confusion or ambiguity in questioning, and ensure that evidence is presented in as comprehensible a form as possible?
- To what extent should jurors themselves be encouraged to intervene and ask questions to clarify confusing evidence and establish its relevance? (See para 4.24.)

Extracting the evidence

5.29 Although a few jurors commented approvingly on counsel who asked questions simply designed to extract the facts that they (counsel) wanted extracted, jurors in 29 of the 48 cases criticised one or both counsel for not presenting the "full story". As with other aspects of their performance, defence counsel were most likely to be criticised in this regard. While some jurors accepted that there could be good reasons why the full story could not emerge, most of those who commented attributed it to the fact that counsel was unskilled in examining witnesses, badly prepared, disorganised, or lacking in experience.

5.30 As discussed in more detail below (para 6.10ff), some jurors who felt they had been denied the full story tended to fill the gaps with speculation. Others wasted considerable time and energy arguing about the significance of the perceived gaps. In some cases, the story that the jury wanted fleshed out was undoubtedly

largely irrelevant. In others, an opportunity for the jury to ask questions may well have been beneficial.

THE PERCEIVED IMPACT OF COUNSEL'S PERFORMANCE

5.31 The data noted above (para 5.12) and the variety and strength of views expressed by jurors certainly suggest that, for many of them, counsel's performance is likely to have had at least some impact on decision-making. Not surprisingly, however, when asked specifically about the impact of counsel on their thinking, most jurors denied any major influence, referring instead simply to the general strength of the case presented, to specific pieces of evidence, or to the fact that counsel "made them think" or "raised a doubt".

5.32 Nevertheless, in 14 cases a significant proportion of the jurors indicated that one or both counsel had an important impact on their thinking, over and above the impact of the evidence they called in the case. Sometimes a good or bad performance by counsel simply confirmed their views of the merits of the case. However, in five cases one or more jurors drew clear distinctions between counsel and indicated that they saw this as impacting significantly on their view of the case. Where this happened, their comments tended to stress the importance of both presentation and basic forensic skills.

6
The decision-making process of the jury

THE STRUCTURING OF DELIBERATIONS

6.1 PREVIOUS RESEARCH ON JURY DECISION-MAKING has postulated two basic forms of deliberations:

- *evidence-driven*, which begins by identifying and discussing the evidence and the issues in the case before any vote is taken; and
- *poll-driven* or *verdict-driven,* which begins by taking a poll and then focuses on eliminating the differences of opinion amongst jurors which emerge from that poll.

It has been suggested that evidence-driven deliberations promote more effective decision-making, since they are likely to be less divisive, to keep jurors working together and to produce more thoughtful discussion.

6.2 With the exception of one trial where it was impossible to determine the sequence of events, jurors' deliberations fell into three broad categories:

- In 13 trials, the jury began their deliberations by taking an immediate formal or informal poll.
- In a further 13 trials, the jury began with a brief and fairly cursory discussion of the issues in the case or the applicable law, followed rapidly by a poll.
- In the remaining 21 cases, the jury had a relatively full discussion of the evidence before taking a vote.

6.3 It was very difficult to determine from the interviews how many polls were taken by each jury. In 12 trials, the researchers were simply unable to determine even the approximate number of polls taken. For the remainder, about 40 per cent took only one or two polls. At the other extreme, over 25 per cent involved six or more polls, and in a few trials involving a large number of counts, jurors reported between 40 and 70 polls.

6.4 In the vast majority of cases, votes were taken by a show of hands or on the voices. In a few of these cases, one or more jurors suggested that the vote should be taken by secret ballot, but the rest of the jury rejected the idea. However, in four cases the jury proceeded by way of secret ballot, believing either that jurors who had declared their position publicly at the outset might be reluctant to alter their view or that dissenting jurors might otherwise be put under too much pressure. In one of these cases, the consequence was that a juror never acknowledged to the group at any stage that she was the dissenting juror, did not articulate to the others the basis for her concern, and ended up agreeing to a verdict which was questionable on the evidence.

6.5 Juries which took initial polls often worked tolerably well, but there were two problems associated with them. First, at least some of the juries took early polls

because they had little idea how to go about their deliberations or where to begin. The poll was a substitute for a structured and organised approach to the issues, thus running the risk of entrenching the initial division of opinion within the jury before the facts were clear in everyone's minds and the law fully understood. Secondly, an initial poll, by focusing on the difference of opinion within the jury, often dictated subsequent procedure, which revolved around getting minority jurors to specify the issues which concerned them, so that they could be persuaded to change their minds. Thus deliberations could become a process of attrition rather than a structured assessment of the evidence in the light of the legal elements of the offence.

6.6 Nevertheless, the description of juries which take initial polls as "poll-driven" and those which discuss the evidence first as "evidence-driven" is based on an overly simplistic and false dichotomy. Many juries which took an initial poll did not let themselves be dictated to by that poll and methodically applied the law to the available evidence. In contrast, some juries which did not take an initial poll were in fact disorganised, inefficient and essentially lacking in focus or direction.

6.7 The most important factor in determining the effectiveness of jury decision-making (assessed by reference to both juror perceptions of the way in which they performed and the extent to which their discussions focused on the salient issues and reached a justifiable verdict) was not how they started but rather the extent to which they adopted a systematic structure for assessing the evidence and applying the law. At least 14 juries can be regarded as highly successful in these terms. They used a variety of methods:

- Some based their discussions on their notes of the judge's summing-up on the law, identifying the key legal elements and working through them methodically by reference to the evidence to satisfy themselves that all elements of the offence had been proved.
- In two cases where the judge had provided a written list of questions, they used this to structure discussions and went through the questions in sequence.
- In one case, the jury used the judge's summing up to construct a flowchart of the law on the whiteboard and worked through the diagram, making decisions on each question until they reached their verdict. They also used a summary of the evidence which one juror had written out before the deliberations commenced.
- Other juries structured their deliberations more around the evidence than the law, focusing on the issues in dispute and identifying where the differences in evidence between one witness and another lay. This method also worked well.

6.8 At least six juries systematically discussed the evidence and attempted to identify key issues while the trial was in progress. While this method carries a danger of prejudgment, it is arguable that such a danger only arose where the jury collectively attempted to form a view of the case as a whole while the trial was in progress. Discussions involving just the identification and summation of key pieces of evidence and an initial assessment of the credibility of that evidence did not in themselves lead to prejudgment, and they made the subsequent deliberations much more efficient and more focused.

6.9 At the other extreme, there were a number of trials where deliberations were unstructured, disorganised and inadequately facilitated. As a result, the jury often

floundered: they neither focused on the legal elements of the offence in a systematic fashion nor methodically worked through the evidential issues in dispute.

THE EXTENT TO WHICH JURIES REMAINED FOCUSED ON THE ISSUES

6.10 During most deliberations, individual jurors occasionally mentioned evidence or speculated about possibilities which were of marginal relevance to the key question to be decided. For example, they speculated about why the accused pleaded guilty to lesser charges but not guilty to more serious ones, assuming that this was an indication of guilt; they speculated about the families of both accused and victims; and they made assumptions about the accused's criminal record.

6.11 In most cases, these speculations did not significantly affect the length of deliberation time, and the jury soon returned to the real issues. In a few cases, however, the jury got sidetracked onto irrelevant or tangential issues in a more profound way, and as a result experienced difficulties in focusing on the main issues in the trial and wasted significant amounts of time debating irrelevant issues. In a couple of cases, this led to a perverse verdict or hung jury.

SPECULATION AND USE OF INFORMATION ABOUT PREVIOUS CONVICTIONS

6.12 In 17 of the 48 trials, jurors were actually told whether or not the accused had previous convictions. In seven of these trials, they learned from defence evidence that the accused had no criminal record, but in the other 10, they were told both that the accused did have previous convictions and the nature of those convictions.

6.13 In the remaining 31 trials, one or more individual jurors speculated about whether or not the accused had a criminal record in almost every trial. In a number of cases, their speculations were based upon factors which were indicative of a prior record or previous involvement with the police. In other cases, however, the assumptions which jurors made were much more dubious, and were based on such things as demeanour, lifestyle, marital status and ethnicity.

6.14 In 18 of the 31 trials in which information about previous record was not provided, individual jurors brought their speculations to the attention of other jurors during deliberations. However, jurors typically said that when assumptions about previous record were raised, the jury as a whole noted that they were not really relevant and as a result they did not attach any weight to them or derive any conclusions from them; to the extent to which they were mentioned, they were in the nature of idle speculation.

6.15 By the same token, well over half of those who did not receive information about the accused's previous criminal record said that they would not have wanted it. The reasons given for this view were that it would have been unfair; that the accused was not being tried on his or her previous convictions; that it would have clouded their view of the evidence; and that such information would have prejudiced their decision.

6.16 Some support for the proposition that jurors genuinely thought that information about previous convictions was usually unfair, and that they made a conscious

effort to put it to one side, can be found in their comments in the 10 cases in which they were informed of the accused's previous convictions. In only three of these cases did any of the jurors admit to attaching significant weight to it in reaching their verdict, and even then, only a minority of jurors in each trial did so. In five other cases, the jurors were adamant that the information was simply irrelevant to their decision. More significantly, in the remaining two, the introduction of evidence about the accused's criminal record seems to have been counter-productive and alienated the jury, because it was seen as unfair or a sign of prosecution desperation.

THE CHARACTERISTICS OF THE FOREPERSON

6.17 Of the 39 forepersons interviewed, 28 per cent had served on a jury, a further 15 per cent had been summoned, and five per cent had been called but challenged. Only two of the forepersons had had previous contact with the criminal justice system as an accused, but a further 18 (38 per cent) had had contact with the criminal justice system in some other capacity.

6.18 We recorded the gender of all forepersons in the sample and we also obtained other socio-demographic information in respect of the forepersons whom we interviewed. We were thus able to compare the characteristics of forepersons with those of the sample as a whole. Of course, we only interviewed a little over half of the jurors in the trials we covered, and we cannot be certain that they mirrored the characteristics of the jurors who for one reason or another could not be interviewed. However, as we have noted (para 1.8), there was no significant difference between the characteristics of jurors in trials where only a small proportion were interviewed and those where the vast majority were interviewed. We have no reason to believe, therefore, that the interviewed jurors were in any way unrepresentative of the total population of jurors in our sample of trials.

6.19 In terms of gender, 59 per cent of interviewed jurors were women, compared with only 42 per cent of forepersons, suggesting that men were more likely to put themselves forward or be selected as forepersons.

6.20 The proportions of Mäori, Pacific Islanders and Europeans who acted as foreperson were not substantially different from the proportions in the sample as a whole, so that there was no evidence of ethnic bias in foreperson selection.

6.21 The vast majority of forepersons were aged 30–59. There was a slight tendency for those aged 20–29 to be under-represented, but otherwise the proportions in each age group were as expected.

6.22 The majority (32 people – 82 per cent) were employed , five were self-employed, one was unemployed, and two were beneficiaries. There was also a fairly even split between those with and without tertiary education. Again, in both of these respects forepersons roughly mirrored the characteristics of the sample as a whole.

THE ROLE OF THE FOREPERSON

6.23 Forepersons varied considerably in the way they performed their role, with some proving to be much more successful than others in guiding and facilitating the deliberations. Their success seemed to have a significant impact upon not only the coherence but also the length of the deliberations.

6.24 In essence, success in the role of foreperson rested on the extent to which the foreperson was able to bring some coherent structure to the discussions: some

kept the discussion focused and orderly and performed their role with diligence and skill; others, while making an attempt to "chair" the meeting, did not have the skills to direct the deliberations and saw themselves as simply "one of the group". In the latter cases, other jurors often took over the role of the foreperson by guiding and structuring discussion.

Forepersons with strong facilitation and organisational skills

6.25 Where the foreperson structured deliberations well, there was general satisfaction with their performance. This was all the foreperson had to do in relatively straightforward cases, but in a few cases their leadership skills were tested by obstructive jurors or complex evidence. In these cases, jurors generally felt that the foreperson had led the group well when the evidence was discussed and applied to the law in a focused, orderly and segmented fashion; when everyone was given an opportunity to speak; and when breaks were taken if discussion got heated. Use of the whiteboard and firm insistence on ground rules were also appreciated.

6.26 Forepersons who attempted to structure and guide the discussions were more likely to be successful in their endeavour when they had a likeable personality, leading other jurors to feel that they were "easy to talk to", "had an open style", "maintained a sense of humour", did not antagonise any difficult jury members, and kept discussions "cordial and friendly".

6.27 In structuring the deliberations, forepersons had to strike the right balance between being too directive and too "low-key". In a number of cases, the comments of other jurors suggest that forepersons did not get the balance right and, in their attempts to structure the deliberations, became a little too "dictatorial" – being overtly directive, dominating the discussion too much, or disregarding the wishes of other jurors. This was a particular problem for at least some jurors in four cases in our study, two of which deliberated for two or more days. The problem manifested itself in three ways:

- In two cases, the foreperson was reluctant to approach the judge with questions, even when other members of the jury requested that he or she do so.
- In one case, which was complex and involved over three and a half weeks of evidence, the foreperson, who was described by one of the jurors as "power crazy", attempted to exercise control but in a way which clearly seems to have alienated other jurors, so that her attempts to keep discussions on track failed.
- There was one case in which the foreperson, with the collusion of other jurors, deliberately manipulated events to bring pressure to bear on a dissenting juror. She made it very clear to the dissenting juror that she was not prepared to have a hung jury. She refused to permit a number of issues which the dissenting juror raised to be explored, believing that it might prevent the jury from reaching a verdict, and she adopted a number of other overtly manipulative strategies to get the juror to change her vote.

Forepersons who were "just one of the group"

6.28 When forepersons saw themselves as chairing the meeting and acting as a mediator, but otherwise being "just one of the group", they were not generally effective in their role. Some of these forepersons had the necessary "people" skills for the job, giving everyone a chance to have their say and allowing only

one person to speak at a time. But they lacked leadership skills, and their failure to structure the order in which points were raised, and to organise the way in which evidence was discussed, led to deliberations which were disorganised, lacking direction and, in the perception of other jurors, even "chaotic".

6.29 Where forepersons failed to take responsibility for structuring deliberations, other jurors could become quite frustrated, and this was exacerbated where forepersons were under the illusion that they had performed their role satisfactorily. As with the problems caused when the foreperson became too dominant, disappointment with the foreperson's lack of leadership could result from differing expectations about the function of a foreperson. For example, in one case the foreperson saw herself as a mediator, bringing the jury back on track and ensuring that quiet jurors had their say. By contrast, other jurors saw her as ineffective at controlling discussions, which became "chaotic".

6.30 In these sorts of cases, unless another juror took over, other jurors often became quickly frustrated; the deliberations tended to degenerate into a "free for all" and to go off on tangents or around in circles; they were often unnecessarily prolonged; and, although they generally ended up with a supportable verdict, they did so in a decidedly haphazard and unsatisfactory way.

Other jurors step into the breach

6.31 In a number of cases, the problems posed by ineffective forepersons were overcome, or at least ameliorated, by other jurors who stepped in to assist or displace them. This, however, did not always introduce the necessary structure into the process. Success depended upon both the attributes of the intervening juror and the extent to which other jurors accepted his or her de facto leadership role. It was also likely to be dependent upon the attitudes of the forepersons themselves. In five cases, forepersons seemed to be under the illusion that they had performed their role satisfactorily, leading them to the conclusion that they were in no real need of assistance from other jurors. If other jurors attempted to take over in such cases, confusion and conflicting and contradictory attempts at control were likely to ensue.

6.32 Even if forepersons otherwise had a degree of effectiveness, this could be severely blunted if they found themselves in a minority during deliberations. Where the foreperson was placed in this position, it was difficult to direct the flow of deliberations, because the jury was likely to be firmly focused on why there was dissenting opinion and how they could change that. This put any dissenting juror in a vulnerable position, and was at odds with the facilitation and leadership aspects of the foreperson's role.

The socio-demographic characteristics of successful forepersons

6.33 Significantly, the skills possessed by successful forepersons did not seem to depend on any prior experience as a juror: of the ten forepersons who seemed to be the most effective, only one had previously served on a jury, whereas two of the least effective forepersons had done so.

6.34 We also examined the characteristics of successful forepersons by comparing them on a range of socio-demographic factors with the 16 forepersons who clearly struggled in the role and failed to keep the jury properly focused on the task.

This comparison produced the following findings:

- There was a marked gender difference. Of the ten successful forepersons, eight were male and two were female. In contrast, of the 16 unsuccessful forepersons, six were male and ten were female.
- There were no age differences between successful and unsuccessful forepersons.
- It seems unlikely that the skills of successful forepersons were derived from direct occupational experience. More generally, however, there was a discernible difference in the occupations of each group. Of the ten successful forepersons, nine were in professional or other skilled occupations. In contrast, of the 16 unsuccessful forepersons, three were unemployed or beneficiaries and a further five were in unskilled occupations.
- By the same token, there were differences in the educational qualifications of the two groups: whereas half of the successful group had a university degree, only 20 per cent of the unsuccessful group did so.
- There were no clear ethnic differences.

THE EMERGENCE OF DOMINANT JURORS

6.35 There were inevitably different levels of juror participation in all cases. Generally this could be attributed to the natural blend of different personalities and did not involve undue dominance. In a few cases, however, jurors did dominate to the point where others felt that the eventual verdict was affected. Juror dominance could result in pressure to make a decision (see chapter 8) and in intimidation. Jurors in six cases reported feeling intimidated, and more generally dominant jurors who significantly affected the deliberation process were evident in 20 cases.

6.36 Undue juror dominance generally arose when the foreperson did not properly structure deliberations. Where deliberations were allowed to go ahead in a random and unstructured fashion, juror dominance was uncontrolled and jurors who were naturally reserved could be silenced. Indeed, the vacuum created by an ineffective foreperson could easily be filled by strong personalities who took control of and dominated, rather than facilitated, the deliberation process.

6.37 In four cases, it appears that deliberately intimidatory jurors were given a fairly free rein, refusing to discuss things rationally, making adverse comments about other people's opinions, insulting them personally, and monopolising the process. This caused other jurors to feel intimidated, uncomfortable about expressing their views, and under considerable pressure to reach a decision consistent with the view of the dominant jurors, who were usually in the majority. In other cases, intimidation was not specifically mentioned by jurors but was implied through their responses to some of our other questions.

6.38 Dominant jurors often affected the eventual verdict, because they were the ones who put their point across most forcefully. Where the dominance was at a fairly low level, some jurors felt that there were positive results, because "the more dominant jurors were able to look at things from another angle and explain that to the other jurors", and they often brought things back on track when the jury went off on a tangent.

6.39 However, in a couple of cases juror dominance went much further; they totally overpowered the quieter ones to the point that their decision "was made for them" by "four or five people in the room". Moreover, in some other cases, as we have noted, while dominant jurors did not completely overpower the rest of

the jury, they were nevertheless given a fairly free rein and steered discussions in the direction they pleased. The skills required to control a determined and vocal juror were simply not possessed by most forepersons, and they were given no advice from the court on strategies for dealing with such situations.

THE NEED FOR ADVICE FROM THE COURT

6.40 Our study illustrates that many jurors who end up as forepersons do not arrive at court equipped with the skills required to facilitate, focus and structure discussion, particularly in cases where there is complex or emotive evidence or a difficult juror. Indeed, many of the jurors who volunteered to be the foreperson had little idea about what was expected of them or how to structure deliberations or deal with personality problems.

6.41 The jury should be given more advice about how to structure their decision-making. In particular, a number of jurors said that they would have benefited from guidance on what to do when deliberations became unstructured and heated.

6.42 Similarly, there is a need for greater guidance on the role of foreperson. This should be given before the foreperson is selected, to minimise the chance of choosing someone who lacks the skills for the job. At the moment, the decision is largely random (see para 2.52). If juries were given longer to make their decision and more information about how to go about it, it would give them a chance to assess who they thought was most suited to the job, and reduce later difficulties and tensions caused by differing views as to the role of the foreperson.

6.43 Once the foreperson has been chosen, the court should ensure that they are given support in performing their role and access to information about facilitation techniques, including advice on how to structure discussion if they themselves are in the minority. They should also be given advice about the amount of pressure which can appropriately be exerted on minority jurors for the sake of reaching agreement.

6.44 Even where the foreperson did have good knowledge of group decision-making and facilitation techniques, they would have appreciated validation of their approach from the court, and general advice about the role of the foreperson would also inform other jury members of what to expect.

METHODS OF RESOLVING DISAGREEMENT

6.45 The juries in our study adopted a number of strategies in order to reach agreement on specific issues and on their eventual verdict. More than one of these methods was used in the vast majority of cases.

General discussion

6.46 One of the most common strategies for resolving disagreement was to carry on discussing the issues in a general way. In some cases, new angles on the evidence emerged from continued discussion which served to convince jurors to take a different stance. However, this relied on jurors staying calm and the foreperson facilitating well. Because many juries featured neither of these conditions, the common result of prolonged discussion was instead that juries either went around

in circles or resolved matters through grinding dissenting jurors down or cajoling them to accept the majority view in a battle of wills.

Focusing on minority jurors

6.47 Another common approach was to move from general discussion to a focus on the minority jurors, asking them to articulate why they did not agree with the majority. Where a dissenting juror had overlooked evidence, their presentation of their view sometimes prompted the majority to outline more clearly the basis for their own position, which could prove to be an effective way of resolving disagreement. Sometimes, too, the dissenting juror's statement of their position exposed the fact that they had no rational basis for their view. More often, however, there was a general belief that "if 11 people think one thing then they must be right", and the focus was on changing the minds of dissenting jurors rather than revisiting contentious aspects of the evidence with an open mind. Moreover, the focus on dissenting jurors could lead the majority to adopt dubious practices: one jury were so determined to reach a verdict that they knowingly presented incorrect information to the last dissenting juror, while another prevented the dissenting juror from having a break in order to get her to agree with the majority.

Compromising

6.48 Where juries reached an impasse but were determined to come to a verdict of some kind, compromise was a common method of appeasing both the minority and majority. Indeed, as we will discuss more fully in chapter 9, compromise verdicts occurred in five trials, with jurors indulging in "horse-trading" to produce guilty verdicts on some charges and not guilty verdicts on other charges.

Eliminating irrelevancies

6.49 In six cases where disagreement resulted from the introduction of irrelevant considerations into deliberations, the jury attempted to bring the discussion back to relevant evidence.

Asking questions, having evidence read back, and reviewing exhibits

6.50 In 31 of the 48 cases, the jury approached the judge to ask a question, replay a video or have evidence read back to them. This was almost always useful in clarifying issues and dispelling or confirming doubt. A similar result was achieved by referring to the notes jurors had taken and by refreshing their memories through a review of the exhibits they had taken into the jury room with them.

Approaching evidence in a new way

6.51 As well as reviewing evidence through the judge or by way of their own notes, jurors also attempted to look at the evidence they had from a new angle or use a different structure for their discussions. In some cases this worked well, because a different approach to a question or a piece of evidence relieved the tension and allowed the jurors to see things from a new perspective. Using the whiteboard

to assess the issues and the legal requirements of charges, rather than using open discussion, served to clarify thoughts, refresh memories and bring some structure to deliberations.

Taking a break

6.52 Another method of relieving tension was to take a break or leave a contentious issue until people had calmed down enough to revisit it. Taking a short break worked well, but leaving difficult issues until last could cause problems.

THE VALUE OF DELIBERATIONS

6.53 Seventy jurors (22 per cent) in 26 (54 per cent) cases changed their mind during deliberations from their initial view, and a further 33 (10.5 per cent) in 16 (33 per cent) cases reached a decision after being undecided. For most other jurors, confidence was gained in the decision they had already arrived at through confirmation of their view by other members of the jury.

6.54 The value of deliberations varied from juror to juror, depending in part on whether they had changed their minds during deliberations and how difficult those deliberations had been.

6.55 A small number of jurors found deliberations unhelpful. They saw the deliberation process to be a waste of time, which sometimes added to rather than resolved confusion. Some of these jurors were convinced of the validity of their initial view of the evidence and simply saw the deliberations as a means of expressing their opinion and persuading other jurors to accept their own position. In two cases, however, deliberations were not seen to be helpful because they increased the jurors' confusion and produced a hung jury.

6.56 The vast majority of jurors, however, found deliberations helpful in enabling them to share notes, clarify evidence, hear other perspectives on the case, and have their own views discussed and confirmed or challenged. Over half of these jurors either changed their minds completely during deliberations or made up their minds after initially being undecided. For the rest, while the deliberations did not really shape their view in any way, the process was still found to be useful as a means of confirming or validating their own sometimes tentative initial view. Indeed, even amongst jurors who changed their minds during the course of deliberations, the fact that 11 other people had reached the same decision provided substantial reassurance and validation, and was thus a very important function of deliberations. It increased their confidence in the verdict, and offered a chance for them to share with others the responsibility of making a decision about someone else's life.

6.57 In most cases, therefore, deliberations were a highly significant part of the process. This highlights the importance of providing juries with appropriate guidance on strategies for good decision-making; the deliberation process has a major impact, and it is important that juries get assistance to enable them to do it effectively and efficiently.

7
Understanding and applying the law and the judge's directions

7.1 JURORS GENERALLY RECEIVE AN OUTLINE OF THE LAW during the Crown opening at the commencement of the trial. However, detailed instruction on the law and how it relates to the facts in the case is left to the judge's summing-up at the conclusion of the trial before the jury retires to consider its verdict.

7.2 Usually, the judge begins by canvassing a number of general issues relevant to the jury's deliberations: the role of the jury as fact-finder; the need to reach a verdict solely on the evidence before the Court; the need to reach a decision free from prejudice or sympathy; the value in assessing credibility from the demeanour, appearance and manner of a witness; the drawing of inferences; the burden and standard of proof; and the weight to be placed upon lies or contradictions in the evidence of a witness. The judge then outlines the legal elements of each offence with which the accused is charged and any defences raised by him or her, and, finally, summarises the evidence presented by prosecution and defence.

JURORS' VIEWS OF THE JUDGE'S SUMMING-UP

Helpfulness and clarity

7.3 Respondents were asked how helpful and clear they found the judge's summing-up. Responses were overwhelmingly positive. Over 85 per cent found it clear, and over 80 per cent said it was helpful.

7.4 A few of those who said that they found the judge's instructions helpful or clear nevertheless expressed some criticism of aspects of them. Even when those views are included, however, only a very small minority of jurors were overtly critical. These criticisms fell into six categories :

- A small number simply found the instructions too detailed or too technical and therefore too confusing for them to understand or absorb.
- A few thought that their problems in this regard were exacerbated by a lack of structure in the judge's instructions, although there appeared to be real substance to this criticism in only two cases. In other cases (which were few), the view that the judge's summing-up was poorly organised was confined to one or two jurors, and likely to have resulted from the individual juror's inability to concentrate on or follow the judge's oral presentation. In these cases, there was nothing in the comments of other jurors or in our own observations of the instructions to suggest that the instructions were defective.
- Quite a number of jurors criticised the presentation of the summing-up, saying that it was boring, delivered in a monotonous voice, and conducive to sleep.

This may have been because some judges appeared to be reading their summing-up, in contrast with others who attempted to deliver the summing-up in a more extempore fashion.

- A couple of jurors said that they wanted more direction on decision-making or the judge to provide them with a framework within which they could make a decision.
- Many jurors wanted, and several expected, more direction from the judge on the appropriate verdict, and expressed disappointment that this direction was not given.
- Finally, two jurors suggested that the judge's summary of the facts and the prosecution and defence cases was unnecessary and repetitive.

7.5 Overall, jurors were complimentary of the judge's instructions. To the extent that there were criticisms, they generally derived either from the limitations of the individual juror or from the fact that the instructions were delivered in oral form without written or visual aids.

The length of the summing-up

7.6 The length of the judge's summing-up varied enormously. At one extreme, it lasted for 20 minutes or less in four per cent of trials; at the other extreme, it lasted for more than one hour in over 20 per cent of trials, with half of these being more than 90 minutes.

7.7 Reactions to the length of summing-up were more mixed than reactions to its content. As many as a third of jurors thought the summing-up was too long. But their perceptions in this respect were not closely related to the actual length of the summing-up. For example, all of those jurors interviewed in the trial involving a summing-up of two hours 35 minutes found it to be about right, while half of the jurors interviewed in trials involving summings-up of 40 minutes or less regarded them as too long.

7.8 Clearly trials involving multiple or alternative counts and multiple defendants, or involving a number of alternative defences, require a more lengthy explanation from the judge. Jurors recognised this, with one or two jurors specifically stating that, while the summing-up was long, they recognised that it was necessary. Undoubtedly, therefore, jurors' reactions to the length of the summing-up were influenced by the nature of the case. In addition, they probably varied according to the aptitude of the individual juror, their ability to concentrate upon oral information, and the judge's style of delivery.

CONSCIENTIOUSNESS IN APPLYING THE LAW

7.9 Inevitably, some jurors sometimes allowed emotions of sympathy or prejudice to influence their reaction to the evidence and their decision-making. In 19 of the 48 trials, these emotions were brought to the deliberation process, with one or more jurors reporting that either they or other jurors expressed feelings or views involving sympathy or prejudice. Sometimes jurors found themselves reacting adversely to the abhorrent nature of the alleged conduct or the perceived character of the accused which led to prejudgment. More often, jurors were swayed by sympathy for the accused or his or her family or concern about the impact of a guilty verdict upon the accused.

7.10 However, these feelings only infrequently influenced or dictated the decision-making process of the jury or their eventual verdict. Most jurors were ultimately persuaded or cajoled by other jurors to accept the majority approach, so that their individual views were overridden by the collective process of jury decision-making. There were only six cases in which feelings of sympathy or prejudice seem to have affected the outcome of the trial in some way: three resulted in a hung jury; one in a perverse verdict; and two in a verdict which was justifiable on the evidence but arrived at by dubious reasoning.

7.11 Overall, therefore, jury decision-making was characterised by a very high level of conscientiousness in following the instructions the jurors were given: they endeavoured to understand the law and to apply it to the facts as fairly and as impartially as they could, often methodically working through the elements of the law on the basis of the judge's instructions in order to do so. There was thus little evidence that juries were concerned to temper the rigidities of the law by applying their own "common sense" or by bringing to bear their own brand of justice; rather, they generally endeavoured to follow the judge's instructions even when this led them to a verdict which was against their "gut feeling". With very few exceptions, jurors took their role very seriously, were extremely concerned to ensure that they did the right thing, and as a result often found it stressful and worried about it afterwards.

VARIABLE UNDERSTANDING OF THE LAW

7.12 Despite the fact that jurors generally found the judge's instructions on the law clear and helpful, and conscientiously attempted to apply them, there were widespread misunderstandings about aspects of the law which persisted through to, and significantly influenced, jury deliberations. Indeed, there were only 13 of the 48 trials in which fairly fundamental misunderstandings of the law at the deliberation stage did not emerge.

The ingredients of the offence itself

7.13 In 19 trials, one or more jurors misunderstood significant aspects of the ingredients of the offence itself, although in two of these cases errors in the judge's summing-up contributed to the jury's problems. Some of these problems involved an inadequate understanding of the distinction between murder and manslaughter, the meaning of "wounding" and "supply", what was sufficient to amount to a "lawful excuse" or "lawful, sufficient and proper purpose", the difference between "fraud" and "forgery", the meaning of "failing to account" and so on. Occasionally, the problems were also exacerbated by a lack of clarity in the indictment.

The meaning of intent

7.14 In addition, there were five trials in which juries debated and struggled with the meaning of "intent". They were unsure about the difference between purpose and intent, and sometimes thought that intent implied premeditation. Occasionally they were also unclear about the time at which intent needed to be formed in order to satisfy the ingredients of the offence. Typically, too, the judge's summing-up failed to address this specific issue, as a result of which the jurors debated it and misunderstood what the law required them to decide.

Beyond reasonable doubt

7.15 Jurors were typically told on a number of occasions throughout the trial that the burden of proof was on the prosecution to prove all the ingredients of the offence "beyond reasonable doubt". The judge invariably included this in the summing-up. However, in conformity with appellate court direction, judges did little to elaborate on this or explain what it meant, assuming that "beyond reasonable doubt" was a well understood term which juries would apply in a common sense fashion.

7.16 However, many jurors said that they, and the jury as a whole, were uncertain what "beyond reasonable doubt" meant. They generally thought in terms of percentages, and debated and disagreed with each other about the percentage certainty required for "beyond reasonable doubt", variously interpreting it as 100 per cent, 95 per cent, 75 per cent, and even 50 per cent. Occasionally this produced profound misunderstandings about the standard of proof.

7.17 It cannot be said, however, that this problem produced questionable or perverse verdicts. Individual jurors sometimes agreed to a verdict on the basis of a distorted perception of the standard which they were to apply (and thus made their decision on an incorrect basis), but there is little evidence to suggest that any perverse or questionable verdicts resulted from the application of an incorrect standard by the jury collectively.

On the balance of probabilities

7.18 In four cases where the accused was charged with possession of cannabis or cannabis oil for sale or supply, some members of the jury did not fully understand the implications of the fact that, when the amount of cannabis involved reached the threshold at which sale or supply was presumed, the burden of proof shifted to the accused to prove on the balance of probabilities that the cannabis was not possessed for that purpose. One juror did not know what the balance of probabilities meant; one thought that the standard of proof in relation to the accused was "beyond reasonable doubt"; and one simply indicated that the jury as a whole was a bit confused about the standard of proof. Another juror indicated that several members of the jury did not understand why the onus was reversed and thought it might be because the accused chose to testify.

The wording of the indictment

7.19 Juries were usually provided with copies of the indictment and took that into the jury room with them during deliberations. However, in three cases the wording of the indictment exposed potential difficulties.

7.20 The first difficulty arises when the indictment incorrectly records some detail, such as the time and date of the offence. Juries are not usually told that if they believe that the offence has been proved but that there is a mistake in the material particulars relating to it, they should report this to the judge before bringing in a verdict. As a result, they may not know to draw the perceived mistake to the attention of the judge and there is every possibility that juries sometimes acquit, or even convict, on the basis of a misapprehension about the significance of a perceived mistake.

7.21 Secondly, when the indictment specifies the means by which the offence has been committed, juries may be reluctant to convict on a particular count because

they reach the view that the offence was committed in a slightly different way. This suggests that the increasingly common practice, especially in sexual offence cases, of specifying in the indictment the means by which the offence was committed needs reconsideration. More importantly, it again points to the need for the jury to be advised that they should seek directions from the judge if they believe that there is a mistake.

7.22 Thirdly, where the indictment includes a specified sum of money in respect of a property offence, jurors are rarely told that they are at liberty to bring in a verdict for a lesser sum of money if they believe that the full quantum specified has not been proved. That is scarcely surprising, since it would enhance the potential for confusion and misunderstanding if given on a routine basis. However, it is certainly possible that juries sometimes fail to reach a verdict because of their ignorance of their ability to bring in a lesser verdict on an included charge. Again, this points to the desirability in appropriate cases of a general direction that the jury should report to the judge if it believes that the ingredients of the offence have been proved, but in different terms from those set out in the indictment.

Multiple and alternative charges

7.23 Where there were multiple charges, jurors in three trials were initially confused about what they were required to do. All of these uncertainties were resolved by seeking clarification from the judge, although in one of these cases one juror still remained confused after the trial about the basis upon which the jury had reached its decision.

7.24 In two cases, the jury were also uncertain about the effect of alternative counts. In one of the trials, some jurors were unsure whether they had to unanimously agree on a "not guilty" verdict on the first charge before they were entitled to consider the alternative count. In the second trial, the jury speculated about the meaning of the alternative count in the jury room and, instead of seeking clarification from the judge, decided for themselves what they thought it meant, which was that if the accused was found "guilty" on the first charge, he would automatically be found "guilty" on the alternative count as well.

The impact of misunderstandings about the law

7.25 Since misunderstandings about the law were fairly widespread, they did affect the way in which individual jurors, and sometimes the jury as a whole, approached the decision-making task; they undoubtedly prolonged deliberations and they sometimes led individual jurors to agree to a verdict on an erroneous basis. However, by and large, errors were addressed by the collective deliberations of the jury and did not influence the verdict of the majority of cases. Our assessment is that legal errors resulted in either hung juries or questionable verdicts in only four of the 48 trials, and in two of these, the questionable verdicts were acquittals in respect of only a proportion of a large number of counts.

IMPACT OF THE JUDGE'S SUMMARY OF THE FACTS

7.26 Jurors rarely mentioned the judge's summary of the evidence. Two specifically said that it repeated what they had heard already and was unnecessary, and a few others suggested that it was boring and they did not listen to it. For the most part, when jurors were questioned about the judge's summing-up, they

focused on the directions on the law. Equally, when they indicated how the jury had taken the judge's directions into account during deliberations, they referred to the law and the standard directions but did not mention the evidence. While it is not possible to conclude with confidence that juries were unaffected by the content of the judge's summing-up on the facts, this does nevertheless suggest that the judge's comments in this respect are of only minor importance and that juries are unlikely to be affected by nuances or minor omissions in those comments.

7.27 Overall, of the 312 jurors interviewed, only 92 (30 per cent) thought that the judge communicated his or her view of the appropriate verdict. In only four of the 48 trials did a majority of those interviewed agree that the judge favoured a particular verdict, and in only two of these trials was the judge's perceived preference overtly referred to or taken into account during deliberations.

7.28 To the extent that judges expressed opinions on the facts, those opinions appeared to have little or no impact on individual jurors' views of guilt or innocence. Of those who did believe that the judge communicated a view, it is clear that, with the exception of the four cases mentioned above, there was a strong correlation between their perception of the judge's view and their own initial view, but no correlation at all between their perception and the judge's actual view. In other words, jurors looked for support for their own position in the judge's comments, and sometimes found that support by reading into the judge's remarks interpretations which were not necessarily intended.

7.29 In summary, while it cannot be concluded from the data that the judge's summary of the evidence serves no purpose, it does assume rather less significance than is often imagined. Moreover, there are two dangers with such summaries which need to be borne in mind. The first is that jurors will sometimes – indeed, probably usually – search for signs of the judge's view and as a result misinterpret innocuous or routine comments as lending support to their own assessment of the case. The second is that, where a majority of the jury share the same perception of the judge's preference, they are likely to use this as a lever to persuade dissenting jurors, thus significantly increasing the pressure for them to agree on a verdict notwithstanding their personal view. It is therefore arguable that lengthy or detailed expositions of the evidence relied upon by prosecution and defence are best avoided.

UNDERSTANDING OF AND ADHERENCE TO OTHER STANDARD INSTRUCTIONS

7.30 In addition to their instructions on the law and summary of the evidence, judges provide a number of instructions about the way in which jurors are to approach the evidence. One general point about jurors' reactions to these instructions should be noted: at least some of them did not realise that particular directions were "standard"; they believed that at least some of them were being mentioned because they had special significance in the particular trial; and they therefore drew unwarranted conclusions which had the potential to influence the deliberation process and the outcome.

7.31 Because jurors were not asked specific questions about each of the standard directions, we are unable to say how common this sort of reaction was, or to what extent it impacted on individual and collective decision-making. However, our impression is that jurors commonly expected and looked for indications

from the judge as to his or her assessment of the evidence and view of the appropriate verdict. Given that, it is to be expected that some of the standard directions, given in all cases without regard to the characteristics of the individual case, will have undue weight attached to them.

Inferences

7.32 One of the standard directions which judges give is that juries, in determining the appropriate verdict, may draw inferences – that is, if they find certain facts proved, they may feel justified in drawing a logical inference about the existence of another fact, even though there is no direct proof of it. In the few cases where jurors did refer to the judge's instructions on inferences, they were inclined to read too much into them. They did not understand that they were standard directions and interpreted the comments as a hint from the judge as to the appropriate verdict. Much more frequently, however, jurors made no explicit reference to the instruction on inferences. This is scarcely surprising as the direction on inferences was usually provided in the abstract, without reference to the evidence in the particular case, and it is clear that a substantial number of jurors struggled to grasp the concept and to understand its implications in the particular case. Indeed, some simply did not know what the judge was talking about, or did not know how it related to the trial at all.

The direction on lies

7.33 Where the accused gives evidence, the judge often gives guidance to the jury about any adverse inferences they might draw from that evidence, and routinely does so when the accused contradicts earlier statements or is demonstrated to be telling lies. In particular, they are told that if they reject the evidence altogether, they should put it to one side and proceed as if the evidence has not been given; they should not automatically assume guilt, because the onus is still on the Crown to prove all the elements of the charge.

7.34 Unfortunately, jurors in all trials were not specifically asked whether they understood and applied this direction. However, the question was asked in two trials, and some jurors mentioned their reaction, without prompting, in a third. On the basis of these few responses, it can be very tentatively concluded that the instructions made little or no difference to the way in which jurors evaluated the evidence in the case. They were generally prepared to assess the credibility of witnesses, including the accused, in a pragmatic way, and where they believed that the accused was telling lies and that there was no satisfactory explanation for these lies, they not surprisingly attached considerable weight to this in reaching their verdict. It seems that the standard direction on lying was simply perceived to be counter-intuitive and was therefore disregarded. Juries did not automatically jump to the conclusion that the accused was guilty because he or she told lies to the police or in the witness box, but they found it impossible, and perhaps nonsensical, to proceed as if the evidence had not been given at all.

The implications of refusal by the accused to answer police questions or give evidence

7.35 Where an accused has refused to answer police questions during the investigation or at the time of arrest, judges routinely tell juries that accused persons have no obligation to answer police questions, that the fact that they have not done so

does not necessarily imply guilt, and that the onus is still on the prosecution to prove all the ingredients of the offence beyond reasonable doubt. Where the accused does not give evidence during the trial, a similar instruction is given. For the most part, jurors reported that they understood and absorbed these instructions and took them into account during the assessment of the evidence and the decision-making process.

7.36 In only eight of the 48 trials did the accused essentially refuse to answer police questions. In five of these cases, all of the jurors interviewed said that the refusal did not affect their own thinking about the case. In the other three trials, only four of the interviewed jurors in total said that the refusal made them think that the accused might be guilty; the rest said that they ignored it.

7.37 When jurors were asked about the impact of the failure of the accused to give evidence in court, a similar pattern emerged. There were only 20 trials of the 48 in which no accused gave evidence, and there were a further two in which one accused did not give evidence but others did. Of these 22 trials, virtually all of the jurors interviewed in 14 of them maintained that both individually and collectively they attached no weight to this. The majority of these jurors also recollected the judge's instruction that the accused was not obliged to give evidence and that the onus was still on the Crown to prove all the ingredients of the offence. Moreover, one or two of them said that they entirely agreed with this and that it was a fair approach. A number also said that the accused benefited from the fact that they did not give evidence, since they did not incriminate themselves, and some even suggested that this was a significant factor resulting in acquittal. In these 14 trials, therefore, it seems fairly clear that the jury as a whole did make a conscious effort to apply the judge's direction, although some of them would have taken such an approach anyway.

7.38 In the other eight trials, jurors' reactions to the failure to give evidence were more mixed. In two cases, half the jurors said that it affected their individual thinking to a limited degree. However, they all denied that it had any impact on their deliberations, saying that the failure to give evidence either was not mentioned at all or was mentioned in passing but not given any weight.

7.39 In contrast, in six cases the failure to give evidence not only affected the thinking of a significant number of individual jurors but also played a part in the collective decision-making, with a number of jurors concluding that if he was not guilty he would have got on the stand and said so. In this minority of trials where the failure to give evidence did assume some importance, it appears that the judge's instructions were rarely referred to. Certainly some jurors mentioned that, in the light of the judge's direction, they tried to disregard the fact that the accused had not given evidence, but some of them acknowledged that they found it difficult to do so. Other jurors, however, made no mention of the judge's instructions at all.

7.40 Overall, therefore, it seems clear that the majority of both individual jurors and juries collectively took seriously the judge's directions that they should not use the refusal to answer police questions or failure to give evidence at trial as proof of guilt, and most acted on that basis, at least on a conscious level.

Direction to make their decision solely on the evidence before the court

7.41 Jurors are told in both the jury video and the jury booklet that they must not try to gather their own evidence and must reach their verdict solely on the evidence presented in court. This is generally repeated by judges in their opening instructions and summing-up.

7.42 Individual jurors commonly provided the jury as a whole with background information about issues relating to the case – such as the signs of schizophrenia, financial procedures in the construction industry, the street value of cannabis, and legal procedures for buying and selling property – which they knew from their own occupation or life experience. In a couple of cases, they also reported to the jury adverse information about the character of the accused which they had picked up from local knowledge or media publicity. Apart from this, there were only five cases in which the jury made any external inquiries about factual material. These inquiries included visiting the scene of the crime and bringing into the jury room explanatory brochures about legal and factual issues.

7.43 In none of these cases did the jury make any reference to the judge's instructions not to take into account external information. They may have thought that the instruction did not apply to this sort of investigation; they may not have absorbed the instruction at the time; or they may simply have decided to disregard it. Whatever the reason, the instruction did not have the desired effect in these cases. In the other 43 cases, there was no evidence of external inquiries, but by the same token there was nothing to indicate that the jury was dissuaded from doing so by the judge's instruction.

7.44 Apart from these five cases where the jury obtained additional information about factual issues, jurors not infrequently attempted to obtain additional information on the law, particularly during the trial itself – for example, by looking up definitions of key terminology in the dictionary or taking a legal textbook on fraud into the jury room. The jury gave no indication in any of these cases that they thought their investigations were improper.

7.45 Thus, while the directions not to conduct external inquiries were adhered to in a majority of cases, there was no evidence that the directions themselves made a difference to the actions of juries in this respect. By and large, juries simply did not seem to appreciate the importance, or did not understand the logic, of restricting themselves to the information presented by the parties and the judge.

Direction to ignore pre-trial and trial publicity

7.46 Jurors are often specifically told in the judge's opening instructions, particularly in high-profile cases, that they should ignore any pre-trial publicity or other knowledge about the case of which they may be aware. In the event that there has been publicity during the trial, the judge may also reiterate during the summing-up that they should ignore any media accounts of the case they may have seen or heard.

7.47 As we described in chapter 1, we asked jurors whether they were aware of any pre-trial publicity about the case or publicity during the trial itself, and if so, whether that publicity had had any impact upon their thinking about the case. We were thus able to make some assessment of whether they had followed the judge's explicit or implicit instructions in this respect.

7.48 In order to obtain as much data as possible on the impact of publicity, we selected as many high-profile cases for the sample as possible. It is therefore surprising that, while in 23 (48 per cent) of the 48 trials at least one juror recalled seeing or hearing some pre-trial publicity about the case, the jurors in these trials were very much in the minority; in total, only 58 (19 per cent) of the 312 jurors interviewed said that they recollected any pre-trial publicity; and there were only four cases in which half or more of the jurors did so. In contrast, there was much more widespread awareness of publicity during the trial. While there were only 20 cases (42 per cent) in which one or more jurors saw or heard publicity during the trial, there were in total 106 jurors (34 per cent), including all or most in 15 out of the 20 cases, who did so.

7.49 When we asked those jurors who were aware of pre-trial publicity whether it had any impact on their thinking about the case, only two acknowledged any effect. Similarly, when we asked those jurors who were aware of publicity during the trial about its impact, none of them said that it affected them in any way. However, this is perhaps to be expected. Jurors are aware of the dangers of bias and of the judge's instruction to ignore publicity and to base their decision solely on evidence before the court. They will therefore be reluctant to admit in interview that pre-trial or trial publicity has influenced them. Moreover, they will often be unaware of any biases or preconceptions arising from such publicity or, if they are aware of them, believe that they have successfully put them to one side.

7.50 Nevertheless, there were some indicative data on the impact of media coverage from which at least tentative conclusions can be drawn. We will discuss these data in relation to pre-trial publicity and trial publicity separately.

Pre-trial publicity

7.51 There are three aspects of the research findings which suggest that the impact of pre-trial publicity is in almost all cases minimal. First, despite the emphasis in our sample upon high-profile cases, very few of the jurors who were aware of pre-trial publicity knew anything of the case at all beyond a hazy recollection of the bare essentials of the incident. In fact, only 16 jurors in the whole sample, spread across six trials, admitted to knowledge of any details of the alleged offence or the accused's involvement in it which might have led to any element of bias or pre-judgment.

7.52 Secondly, amongst those 16 jurors, there were only two who admitted that their knowledge did have an initial impact on them, and there was only a handful of others who described what they knew of the case from pre-trial publicity in terms which indicated an element of prejudgment. Moreover, some of these jurors were aware of their preconceptions and purported to make a deliberate effort to put them aside and to make a decision on the evidence alone; and others, when confronted with evidence in the trial which contradicted opinions they had formed as a result of pre-trial publicity, seem to have had no difficulty

in changing those opinions, so that their initial vote on the verdict (even before they had been influenced by collective deliberations) was contrary to their initial prejudgment.

7.53 Thirdly, even if an individual juror was inclined to refer to pre-trial publicity or to introduce material derived from it, this did not mean that it had any impact on the eventual verdict. In at least one case where a juror shortly after the Crown opening did mention in the jury room that the case had been on television, he was promptly told by other jurors that they did not want to know about that. In fact, in only one case were we able to detect some evidence that pre-trial publicity may have influenced the deliberations of the jury collectively. In this case, in which there had been a previous trial resulting in a great deal of media publicity, all of the jury knew a number of details of the case and of the accused and his history and referred to this in their deliberations. Even in this case, however, it seems likely that the jury's verdict was based predominantly upon the fact that, like the judge, they found the main prosecution witness highly credible.

Publicity during the trial

7.54 The impact of publicity during the trial upon the thinking and approach of individual jurors was more difficult to determine. Some jurors went out of their way to avoid listening to or reading the media during the trial, sometimes conscious of the judge's instruction that they should make up their minds on the basis of the evidence presented during the trial itself. In contrast, others avidly followed media coverage, keeping newspaper clippings and watching out for any television coverage of the case, no doubt out of natural curiosity to see what was being said about the case in which they were involved. In three cases, other jurors reported that these jurors let the media coverage influence the way in which they approached the case and relied upon media reports of the evidence itself.

7.55 Despite this, there are again two reasons why media coverage during the trial itself probably had limited impact and was unlikely to have affected the final outcome. First, most of the jurors who did see or hear media coverage during the trial said that they put it to one side because it was partial and often inaccurate. They saw the coverage as an illustration of poor media standards, and regarded themselves, perhaps a little smugly, as being much better informed than the media about what the true story was.

7.56 Secondly, in three cases where jurors who followed media coverage closely tried to bring newspaper clippings or other information about media reports into the jury room with them, they were again told bluntly by other jurors that the information was not relevant and not wanted.

7.57 In summary, therefore, jurors were only rarely aware of sufficient details of pre-trial publicity to enable them to form any bias or prejudgment. When they were, for the most part they reported that they consciously made an effort to put that aside and focus upon the evidence alone; and when they did not, other jurors in the process of collective deliberations generally overrode any individual bias or predetermination. While some other jurors were more affected by media coverage during the trial, there is similarly no evidence that any of the collective deliberations of the juries in the sample were ultimately driven or even influenced

by this. It is impossible to know whether this was because the jury took the judge's instructions to heart or because they thought that it was unfair or inappropriate to take media publicity into account in any event.

CONCLUSION AND OPTIONS FOR REFORM

7.58 A small number of judges are now using a variety of written aids as a means of explaining the law to the jury and structuring the decision-making process. These innovations, and other comments made by jurors during interviews, suggest that there are three broad options for reform: summaries of the law in writing; instructions on the law in the form of a flowchart or sequential list of questions; and providing an opportunity for the jury to seek clarification before deliberations.

Summaries of the law in writing

7.59 In six cases, the judge provided the jury with a summary of the law in writing to assist them in following the summing-up. In a couple of cases, this summary simply consisted of the relevant statutory provisions verbatim, but more often it broke down the statutory provisions, and any defences raised, into their constituent parts and presented them in list form. Where the jury received written assistance of this type, they were almost invariably appreciative.

7.60 Jurors were asked more generally whether they would have found a written summary of the law from the judge useful. A majority (62.2 per cent) responded positively. Only 24 per cent said that they would not have found it useful, with a further 13.8 per cent providing no response. Those who would like to have received the summary in writing gave four main reasons for this:

- Some noted that, while they tried to concentrate upon what the judge was saying when he or she was talking about the law, it was difficult to absorb it all, and it would have been good to be able to digest the key elements of it in a more relaxed atmosphere back in the jury room.
- Several jurors noted that, while they thought that they understood the summing-up on the law perfectly, they found that different jurors had slightly different interpretations of what the judge had meant.
- Some jurors noted that, in the absence of a written summary from the judge, jurors had taken their own notes, but the extent to which notes were taken varied from one juror to another. Moreover, some jurors were reluctant to rely upon the notes of others, believing that the notes might be partial or incorrect.
- Finally, a couple of jurors pointed out that, if they had had a written summary of the law, deliberation time would have been reduced: in one case they spent time collectively putting together their notes to work out what the key elements of the offence were; and in the other they had to ask the judge a question to clarify the law, which they believed would have been unnecessary if they had received a written aid.

There is thus a strong case for arguing that written summaries of the law ought to be provided as a matter of course.

Instructions on the law in the form of a flowchart or sequential list of questions

7.61 In two cases in the sample, and in one further trial which we were informed about during the research, judges provided the jury with not only an outline

of the elements of the offence, but also a flowchart with a sequential list of questions derived from the elements of the offence which was designed for use as an aid to decision-making. Juries were not asked to provide answers to each question, but they were told that the questions might prove useful as a basis for systematising their discussions. All of the jurors in these cases said that the written flowcharts were extremely useful in the deliberations and provided them with a series of points to work through. A couple of other jurors who did not receive a written structure of this sort said that they needed one, because they had no framework for their decision-making and did not work through the legal points in the case systematically.

Providing an opportunity for the jury to seek clarification before deliberations

7.62 Even if the judges in our sample had provided written summaries of the law more systematically and had provided flowcharts to structure decision-making, it is clear that some jurors would have been left with some uncertainty about aspects of the law. This is demonstrated by the fact that, in one trial where a written summary and a flowchart were provided, the jury still had to ask a question about the law during deliberations. Where such uncertainties exist, the quality of decision-making during deliberations is likely to be enhanced by providing jurors with an opportunity to seek clarification from the judge, before deliberations begin, about any issues emerging from the trial or the summing-up about which they are uncertain.

8
Jury disagreement and uncertainty

THE PRESSURE TO REACH A VERDICT

8.1 FIVE JURIES IN OUR SAMPLE were unable to reach a decision – one in the High Court and four in the District Court. Three of these trials involved charges of a sexual nature. All five juries had received a Papadopoulos direction.[7] In one other District Court trial, the jury convicted on six charges but was unable to reach a decision on one. No Papadopoulos direction was given in that case.

8.2 Twenty-six per cent of jurors ultimately reached a decision which was the opposite of the one they favoured at the beginning of deliberations. A further 20 per cent entered the jury room undecided and formed their final view in the course of these deliberations (see para 6.56). Many of the jurors in the study felt considerable pressure to reach a unanimous decision.

8.3 There were four main areas of pressure affecting jurors once deliberations began:

- pressure from other jurors to agree to the majority view;
- jurors' own feelings of obligation to reach an agreed verdict;
- Papadopoulos directions; and
- time constraints, poor facilities and late sittings – which exacerbated the pressures from other sources.

Pressure from other jurors

8.4 In 22 of the cases in our study, one or more jurors mentioned that pressure to reach a verdict came from other members of the jury. Those who were on their own or part of a small minority felt the worst pressure, with pressure increasing as other minority jurors changed their minds. Other jurors simply talked of being rushed. Juries sometimes adopted tactics designed to increase the pressure on dissenters who could feel intimidated by this.

The feeling of obligation to reach a verdict

8.5 In addition to the cases in which a Papadopoulos direction was given (see below), jurors in two other cases specifically mentioned their determination to achieve an agreed verdict. Jurors described themselves as having a responsibility to the court and the parties, and commented on the waste of time, money and effort if they failed to agree.

Papadopoulos directions

8.6 Section 374(2) of the Crimes Act 1961 requires that a jury deliberate for at least four hours before it can be discharged after failing to reach a verdict. Juries in our sample, however, routinely deliberated for much longer than that without being called back by the judge or seeking further directions.

8.7 Papadopoulos directions, or a variant of them, were given in nine (19 percent) of the 48 trials. All but one of the trials was in the District Court. Moreover, cases involving charges of indecent assault or rape/sexual violation were overrepresented: of the 11 cases of this sort in our sample, four were subject to a Papadopoulos direction and three of these resulted in a hung jury.

8.8 While some juries concluded that they were unable to agree on a verdict after a fairly brief period of deliberation, most found this very difficult and were reluctant to admit to what some jurors saw as defeat. In some cases this reluctance was intensified by jurors' ignorance of the consequences of their failure to agree. The Papadopoulos direction was, therefore, interpreted by many as a "telling off" – an expression of judicial displeasure which highlighted their failure and produced considerable pressure to go back to the jury room and get a result.

8.9 The giving of Papadopoulos directions and the pressures produced by renewed efforts to reach a verdict affected juries in a number of ways:

- in two cases it produced no detectable impact;
- in two cases it seems to have made matters worse;
- in four cases some jurors indicated that it produced a compromise verdict; and
- in three cases some jurors described it as providing a focus which assisted in reaching a verdict.

8.10 *No effect on deliberations or verdict.* In two of the five trials which resulted in a hung jury, jurors made no comment on the Papadopoulos direction or on their deliberations after it had been delivered. In one of these cases, the minority consisted of a single "rogue" juror and it is likely that nothing could have made an impact anyway. In the other, the jury was split 10:2 in favour of acquittal, with strong positions on the evidence being taken by both sides.

8.11 *Making matters worse.* In two trials matters got rather worse after the jury returned to its deliberations. In one case, involving a "rogue" juror, the dissenter seems to have simply become more truculent. In the second case, the jury, which had agreed on two of the four counts prior to the Papadopoulos direction, deliberated for a further hour and ended up disagreeing on all four.

8.12 *Pressures to compromise.* In all four cases in which the jury reached a decision, jurors mentioned the pressure to compromise, and in at least two of these cases the verdict seems to have actually been a compromise. (See more generally below chapter 9.)

8.13 *Focusing discussion.* Sometimes juries experiencing difficulty in reaching a decision can refocus the discussion and either achieve unanimity or at least identify the areas in dispute (see chapter 6 above). In two of the cases in which the jury subsequently agreed on a verdict, jurors commented on the focusing effect of the direction. In one of these the Papadopoulos direction was accompanied by a redirection on the law.

---

[7] When a jury is having difficulty reaching a verdict, the judge may call the jury back to the court and give them a Papadopoulos direction (named for the case of *R v Papadopoulos* [1997] 1 NZLR 621 (CA), although the contents of the direction are now in accordance with a later case, *R v Accused* [1988] 2 NZLR 46 (CA)). In essence, the direction is an exhortation to come to a verdict. The jury is told that if it is necessary to discharge them a new trial will ordinarily follow; that they have a duty to listen to and weigh dispassionately one another's view, and that an honestly held view can be honestly changed as a result; and that no juror should vote against his or her conscientious view based on the evidence.

8.14 Nevertheless, as currently used, the Papadopoulos direction is a rather crude instrument for assisting the jury in reaching a rational and just decision. It increases the pressure on minority jurors which will sometimes be based on illegitimate considerations. The likely outcome, in cases where it is successful, is to produce a compromise verdict rather than one which is based on the evidence. It does not directly assist jurors to identify their problems and resolve them, so that juries which are genuinely divided in their views of the evidence and unwilling to compromise remain locked in disagreement. Where the judge accompanies the Papadopoulos direction with a restatement of the basic issues in the case, jurors are likely to find this helpful. It would be more helpful, however, for the judge to try and identify with the jury the area of disagreement, so that any extra remarks can be directed to that rather than to the case as a whole.

Time pressure and inadequate facilities

8.15 For juries whose deliberations were lengthy, there was a feeling that time was running short, or that people wanted to come to a decision and go home. Jurors in six of the cases in our study said that this sort of pressure was an important factor in their reaching a verdict. Cramped and unpleasant facilities could contribute to jurors agreeing to a verdict, especially when deliberations ran on for a long time. Such pressures seem to be a significant element in some compromise decisions, and may well mean that some juries deliver their verdicts before all their members have fully considered the case. Although juries should be encouraged to conduct their deliberations in a timely fashion and, where necessary, jurors should be encouraged to make pragmatic decisions in order to reach agreement, it is entirely inappropriate that the catalyst for this should be poor facilities and physical and mental exhaustion.

JURORS' CONFIDENCE IN THEIR DECISIONS

8.16 Jurors were not asked specifically about the verdict and whether they were happy with their decision. However, in 16 of the 43 trials in which there was a verdict, one or more jurors commented on their degree of confidence in it. In ten of these trials, the only jurors who commented expressed their confidence in the verdict; in five, the only comments suggested lack of confidence; and in one trial, some jurors were confident and some were not. Overall, in 37 of the 43 trials, jurors either commented positively on the verdict or, at least, made no comments indicating a lack of confidence.

8.17 In the six cases in which jurors expressed a real lack of confidence in the verdict this was the result of the fact that they felt pressured into a verdict they regarded as wrong; the verdict was the result of a clear compromise which they now regretted; or they were unsure whether they had in fact assessed the evidence correctly.

8.18 *Pressure.* In three trials, one or more jurors attributed their decision, to agree with a verdict that they regarded as wrong, to the pressure produced by being a minority juror.

8.19 *Compromise.* In two cases, jurors who had agreed to an acquittal on one or more of the charges as part of a compromise to achieve a verdict, subsequently expressed a lack of confidence in that decision. In one of these cases, the verdict followed a Papadopoulos direction.

8.20 *Doubting their assessment.* While there were a number of cases in which jurors commented on their own inadequacies, there was one case in which a juror linked this with a concern about the verdict which seemed to go beyond simple nervousness about the responsibilities of the job and amounted to a lack of confidence in the way the evidence had been assessed.

8.21 Cases in which jurors expressed confidence or lack of confidence in their verdict need to be distinguished from a number of other situations in which jurors were happy or unhappy with the verdict:

- In five cases, jurors said that while they believed that their decision was right in law, they did not believe that it was the "correct" outcome for the case.
- In two other cases, jurors indicated that they believed the verdict that they had agreed to was wrong – the accused had been acquitted on charges they still believed he was guilty of – but that the outcome was the "correct" one, and they stood behind it. In a third case, a juror who said that she still believed that the Crown had not proved the case beyond reasonable doubt, nevertheless believed the verdict was correct because "I knew he had done something".
- In eight cases, jurors made comments which, while not demonstrating a lack of confidence in the verdict or even unhappiness with it, indicated that they were seeking reassurance that it was correct.
- In one case, a juror described himself as "not happy" with the decision, although he believed it was correct in law and the proper outcome for the case, because he felt considerable sympathy for the accused who he thought had been failed by the system.

8.22 Overall, few jurors expressed serious doubts about their decisions. While individual jurors may have had doubts about the decision-making process and disliked the pressures and compromises that it involved, they generally felt that they had made the right decision – or at least that they had conscientiously applied the law. Many jurors worried about their decision and its impact and sought some indication from the court or the parties that they had got it right. It may be that the sort of debriefing session noted below (see para 10.23ff) has a role to play in this process, but it is important to stress that anxiety of this sort is not necessarily an indication of uncertainty about the verdict. It is also, perhaps, important to note the obvious: for every juror with doubts about the verdict there were numerous others who expressed no doubts at all. Indeed, in our sample, over half the jurors entered the jury room with a clear view of the case and maintained this view through to verdict.

9
Jury verdicts and hung juries

9.1 THE VERDICTS for the 48 trials were:

TABLE 9.1 VERDICTS

	Number	Percentage
Guilty on all counts	21	43.7
Not guilty on all counts	7	14.6
Not guilty by reason of insanity	1	2.1
Not guilty on principal counts, but guilty on alternative counts	2	4.2
Guilty on some counts and not guilty on other counts	10	20.8
Some accused guilty and others not guilty	1	2.1
Guilty on six counts and no agreement on one count	1	2.1
No agreement on all counts	5	10.4
Total	**48**	**100.0**

Thus 72.9 per cent of trials resulted in a "guilty" verdict on one or more of the counts in the indictment. However, this included 20.8 per cent of trials which resulted in mixed verdicts of "guilty" and "not guilty" and a further 4.2 per cent which resulted in "not guilty" verdicts on principal counts but "guilty" verdicts on alternative counts.

AGREEMENTS AND DISAGREEMENTS BETWEEN JUDGE AND JURY

9.2 Before the jury delivered its verdict, the judge was interviewed about various aspects of the trial and the performance of counsel, and in the course of that interview asked what the verdict would have been if he or she had been sitting alone to hear the case. It is therefore possible to compare the jury's verdict with the judge's assessment of the evidence.

9.3 The judge and jury were essentially agreed on the appropriate verdict in 24 out of the 48 trials. These comprised: 17 verdicts of guilty on all or most counts; six verdicts of not guilty; and one verdict of not guilty by reason of insanity. In a further 11 trials, where there was disagreement between judge and jury as to the appropriate verdict on one or more of the counts in the indictment, the jury's view appeared to be reasonable and supportable on the evidence. In most of these cases, the disagreement simply resulted from differences in the assessment of the credibility of key witnesses, but in one case the jury based its verdict on

features of the evidence, clearly establishing guilt on one of the counts, which the judge overlooked. Moreover, in many of these cases, judges were in fact hesitant about their view (sometimes making a point of stating that they did not think about it during the trial), and asserted that the jury could reasonably take a different view of the facts from that which they expressed to us. Overall, therefore, a verdict which was either fully supported by the judge or supportable on the evidence was given in 35 out of the 48 trials.

9.4 In the remaining 13 trials, five were classified as "compromise" verdicts in multiple count cases; three were classified as either perverse or questionable verdicts; and five involved fully hung juries. We shall discuss each in turn.

Compromise verdicts

9.5 Compromise verdicts accounted for five trials where the jury convicted on some counts but acquitted on other counts, while the judge and researchers would have convicted on all counts. Unlike cases resulting in questionable or perverse verdicts, where the jury more or less unanimously reached a verdict on an erroneous basis, these verdicts stemmed from jury uncertainty or disagreement which resulted in a compromise on some of the charges.

9.6 In a couple of cases this simply amounted to a decision by some jurors, in the face of opposition by others to a "guilty" verdict on the principal counts, to agree to a "not guilty" verdict on those counts and a "guilty" verdict on lesser counts for the sake of reaching agreement. In three cases, however, there was much more explicit "horse-trading": majority jurors who were pressing for "guilty" verdicts on all counts capitulated in the interests of achieving a result, agreeing to "not guilty" verdicts on some counts in exchange for an agreement by the minority jurors to bring in a "guilty" verdict on other counts. All of the jurors in these cases spoke of "doing deals", "plea bargaining", "compromising" and "trade-offs" in reaching a final decision.

9.7 Some jurors felt uneasy about the unprincipled nature of their decision, but most simply saw it as a pragmatic and sensible solution to the problem they confronted: they all thought that the accused was guilty of something; they differed as to the nature and extent of that guilt; and they therefore decided that "guilty" verdicts on some of the charges would dispense justice, albeit perhaps rough justice, and avoid the expense of a retrial. As discussed in chapter 8, some were encouraged in this view when they received a Papadopoulos direction from the judge, which they saw as an indication that there should be some compromise and "give and take" in their deliberations.

9.8 While these cases all involved some questionable verdicts which could not be justified on the evidence, their outcome cannot be regarded as wholly perverse, and in some cases the effect of the compromise "not guilty" verdicts on the eventual sentence may have been negligible.

Perverse or questionable verdicts

9.9 There were three trials which were categorised as resulting in perverse or questionable verdicts:

- In the first case, which involved multiple counts of fraud, the jury concluded that the evidence provided by the complainant lacked credibility. The judge took the same view. However, the jury was equally suspicious of the accused's

testimony and ended up convicting on most counts because of what the accused had admitted to doing, without ever adequately focusing on the crucial issue of dishonest intent. This verdict has to be regarded as questionable, and based on a dubious rationale.

- In the second case, the jury acquitted on all but one count. Again this seems to have been on the basis that they did not believe the complainant's evidence and thought that he knew more than he was saying, as a result of which they simply failed to evaluate the rest of the evidence properly, or to consider the plausibility of the accused's own version of events. In a sense, when confronted by a complainant who appeared to be hiding something, they ended up throwing out the baby with the bathwater. Interestingly, the researchers were told that defence counsel had tried to persuade his client to plead "guilty" because of the absence of a defence, and the prosecutor said that the verdict was a classic illustration of the unpredictability of juries.
- In the third case, the jury in their deliberations discussed irrelevant considerations about the impact of their verdict upon the community, which may well have influenced their eventual "not guilty" verdict. More importantly, they reached that verdict on the basis of a fundamental misunderstanding about the law. Interestingly, the majority of the jury who were in favour of a "not guilty" verdict were convinced that their view of the law was right, and a couple of them said in interview that the three minority jurors were focused on tangential issues, and initially did not focus on what the law required the jury to rule on. It is therefore quite likely that they interpreted the law incorrectly so as to fit with the verdict they wished to reach, and then persuaded the minority to that view.

Hung juries

9.10 With five fully hung juries in 48 trials, the rate of hung juries was a little in excess of 10 per cent, although our sample was deliberately biased in favour of high profile and complex cases in which hung juries are arguably more likely to arise.

9.11 We examined the nature of and reasons for failures by juries in our sample to reach a verdict, the strategies employed by them to try and reach agreement, and the initial and ultimate division of opinion. It became evident that the hung juries fell into two distinct groups.

9.12 In two of the five trials, the failure to reach a verdict was directly attributable to the actions of a single "rogue" juror who refused to consider a "guilty" verdict but made little attempt to participate in deliberations, and was unable or unwilling to articulate any rational argument in favour of a "not guilty" verdict. Even in these two cases, however, it is by no means certain that the jury would have brought in "guilty" verdicts on all charges. Individual jurors had reservations about particular charges – which in one case appeared to be well founded and in the other somewhat spurious – but those reservations were never properly addressed or resolved because each jury realised that the presence of the rogue juror made further deliberations and further polls pointless.

9.13 In the other three trials resulting in a hung jury, however, the minority jurors provided a clearly articulated and reasoned basis for their dissent. In two of these cases the dissent actually appeared to be well founded: in one, the

researchers thought that the view of the majority would have resulted in a questionable, if not a perverse, verdict; and in the other the case was finely balanced and the judge shared the view of the minority. In the third case the dissent resulted from genuine and considered doubts, which resulted in part from a misunderstanding about parts of the evidence which could perhaps have been addressed if the evidence had been put to the minority juror more clearly.

MAJORITY VERDICTS

9.14 In recent years there have been some calls for majority verdicts, similar to those permitted in England and Wales and a number of Australian jurisdictions. The jurors in our sample were not specifically asked whether they favoured the introduction of majority verdicts. However, a number of jurors volunteered their opinion, generally as a result of their own experience on the jury. At least one juror in each of the hung juries in the sample, and at least one juror in another 14 trials, volunteered their belief that majority verdicts should be introduced. In all, 33 jurors took this view. They gave three reasons for this opinion.

9.15 First, a number believed that majority verdicts were required in order to cater for recalcitrant or disgruntled jurors who were not amenable to reason; in other words, to address the problem of "rogue" jurors. Second, some suggested that the provision of majority verdicts would allow juries to reach decisions more quickly and efficiently, by providing a means by which they could resolve difficulties and disagreements without the need for protracted discussions. Third, a number felt that majority verdicts would allow dissenting jurors, who currently feel extreme pressure to compromise their principles to achieve a verdict and who consequently have difficulty in coming to terms with the decision later, to have a mechanism by which they could stick to their principles without affecting the jury's ability to achieve a result.

9.16 This support for majority verdicts was not unanimous. Three jurors (one of whom was in the minority on a hung jury) expressed reservations about the introduction of majority verdicts, believing that it would bring undue pressure to bear on jurors in the minority and would stifle debate of the case. The data suggest that these reservations are well founded, and that the disadvantages of introducing majority verdicts may well outweigh any benefits achieved. There are a number of reasons for this:

- While two of the five fully hung juries in the sample were directly attributable to the actions of a single rogue juror, it is possible that the jury might not have reached agreement on all counts anyway. In two of the other three trials, the differences of opinion were rationally based and the view of the majority, if it had carried the day, would arguably have resulted in a mistaken verdict. Yet in both of those cases, an 11:1 or 10:2 majority verdict would have resulted if it had been available. Thus, while hung juries sometimes result from the prejudice, perversity or irrationality of one or two dissenting jurors, the data suggest that they are just as likely to arise from the carefully considered conclusions of a minority of jurors who avert an unjust or questionable result.
- One likely consequence of the introduction of majority verdicts is that many of those jurors who report that they feel considerable pressure from a number of sources to reach agreement would instead stick to their minority view. This would lead to many more majority verdicts than there are currently

hung juries, which would have the potential to undermine the perceived finality of the jury's verdict and jeopardise public confidence in the system.

- In any case, the introduction of majority verdicts would not wholly eliminate the pressures confronted by jurors. Where there is division of opinion within a jury, it is frequently the case that juries begin their deliberations with four or more dissenters from the majority opinion. Thus, the introduction of majority verdicts would simply change the threshold at which the pressure on minority jurors came into play. While one or two could avoid compromising their principles, the remainder would be under exactly the same pressure as currently exists to change their mind.

10
Jurors' experiences and views of the value of the process

10.1 Jurors were asked how they felt about their experiences as a juror, and about any inconveniences or problems they or their families experienced as a result of jury service.

THE VALUE OF BEING A JUROR

A worthwhile and informative experience

10.2 Positive comments were made by 82 per cent of jurors. At least one juror in every case described the experience as positive, and in 18 cases (38 per cent) all the jurors interviewed felt that their experience had been worthwhile. As well as seeing positive personal gains, jurors noted a greater understanding of the criminal trial and reported feeling that a "civic duty" had been done.

10.3 Even where the case was serious or complex in nature, some jurors saw the best in their situation. For example, in one murder case, two jurors acknowledged the interest they had maintained throughout the trial and deliberations, even though there had been an initial reluctance to get involved. Others found the experience "harrowing", imposing a heavy responsibility and causing them to feel "sick to their stomachs", but still found it worthwhile. In particular, they felt that they had made a big contribution, had learned more about the process, had a heightened interest in court cases, and had become more self-confident about putting their point of view across.

10.4 Ten jurors, involved in eight cases, said that, whilst they thought the experience had been worthwhile, they did not want to be on a jury again soon. The cases were all serious, and six of the eight involved upsetting evidence or long and difficult deliberation periods.

A bad experience or a waste of time

10.5 Where cases were seen to be trivial or involving essentially private matters, or where the costs of prosecution outweighed the harm caused, some jurors expressed annoyance that their time (and taxpayers' money) had been wasted. Even where the charges were actually quite serious, jurors occasionally decided that the behaviour was too trivial to warrant a trial or defined it as a private matter.

10.6 Hung juries produced adverse reactions in jurors and caused some to doubt the utility of trial by jury. Other trials involving pressured deliberations and the responsibility inherent in some serious cases left some jurors feeling drained and unhappy about their experience and very unwilling to repeat it.

A tiring experience

10.7 Twenty-three per cent of jurors reported feeling tired or exhausted during and after jury service. These jurors were involved in 31 cases (65 per cent). Some jurors directly attributed this to the effort of concentrating on oral evidence for extended periods – often exacerbated by monotonous presentation, a lack of visual or other aids, the absence of regular breaks, and the highly stressful environment of the criminal trial.

10.8 In addition, some jurors were tired because they worried about the case and slept badly throughout the trial. Others were obliged to work before and/or after court and felt the consequences of that, and one or two had served on a jury earlier in the week which they found not only physically draining but also psychologically overwhelming.

10.9 Regular breaks, more extensive use of visual aids, and the reduction of routine oral evidence to written form would help jurors' concentration and assist in alleviating some of the feelings of tiredness.

The behaviour of other jurors

10.10 How jurors felt about each other could have a great impact on their general feelings about the value of the process. Where a jury had worked well as a team, jurors tended to be positive about their experience. Where jurors saw others as stupid, obstructive, insensitive, or not taking the job seriously, they tended to have a more negative view.

10.11 However, different members of the same jury could come away from the experience with totally different views, because their expectations and priorities were so dissimilar.

10.12 It is clear from our interviews that good relationships between jurors can both affect and be affected by how smoothly deliberations run, and that these two things, along with the nature of the case, can markedly affect jurors' views about the value of the process. Steps to foster collegiality among jurors would not only improve jurors' perceptions of the experience but also influence the quality of jury decision-making.

STRESS, THE SOURCES OF STRESS AND PROCEDURES FOR COUNSELLING

Stress

10.13 Stress affected the way in which jurors felt about their experiences and their verdict. In some cases it affected their relationships and daily life – both during and after the trial. It may also have affected their decision-making.

10.14 Jurors' recognition of and response to stress varied. Some were evidently stressed and described themselves as such. Others exhibited the symptoms of stress in their comments. Some experienced stress during the trial. For others, the impact of the trial hit them only after they had left court and their lives had supposedly returned to normal. With some jurors, stress was manifest only in the vehemence of their determination not to serve on a jury again. For others, tension affected

their home lives or their emotional well-being; jurors spoke of not sleeping, "having a good cry", and domestic tension.

Sources of stress

10.15 The most enduring stresses arose from five main sources and often lasted well beyond the delivery of the verdict. These were:

- making an important decision about someone else's life and the implications of reaching the "wrong" verdict;
- feelings of discomfort or intimidation;
- evidence which brought issues in the jurors' own lives to the fore and created personal stress;
- deliberations which were emotionally charged or draining; and
- the pressure to reach a verdict.

The responsibility of being a juror

10.16 As noted in para 7.11, jurors were extremely conscientious and recognised that they were deciding on an important issue in the life of the accused, the victim and their respective families. This could create considerable strain throughout the trial. Some jurors were simply unprepared for the intensity of the pressure of judging the accused, others felt unqualified to do so, and a few felt that they should not be doing it. While some of those who expressed these feelings were able to take comfort from the collegiate decision of the jury, most still felt the responsibility in a very personal way. Two jurors mentioned that the stress produced by the nature of the job was exacerbated by the fact that they were unable to talk to anyone else about it.

Feelings of discomfort or intimidation

10.17 Jurors mentioned their discomfort at contact with the families of the parties in 11 cases. This generally occurred when they were going in and out of court, but some jurors also expressed concern about the likelihood of contact on the street. In two other cases, jurors felt intimidated by counsel staring at them, and a number of jurors also mentioned being stared at by the accused and by the families in court.

10.18 Jurors in four cases spoke of feeling intimidated and scared after the case, and one commented that although the court attendant had warned them after the trial of the accused's violent nature, no assistance was offered in getting home.

10.19 The nature of the evidence also produced discomfort for some jurors, either because experiences in their own lives were brought back to them (see para 10.20) or because they were confronted with unpleasant things, such as photographs of murder victims, sometimes without warning.

Evidence creating personal stress

10.20 In three cases, jurors commented that the evidence in the case brought back elements of their own past experience which they would rather forget. In particular, in one sexual abuse case, four jurors disclosed their own experiences as victims of sexual abuse (one for the first time) in the course of a lengthy and fraught deliberation, which eventually resulted in a hung jury.

Difficult deliberations

10.21 Drawn-out deliberations, coping with irrational or recalcitrant jurors, personality clashes in the juryroom, and deliberations in cases with a high emotional content – for example, sexual abuse cases – produced considerable stress for some jurors.

Pressure to reach a verdict

10.22 Minority jurors or jurors who remained undecided sometimes commented on the stress produced by the pressure – exerted by the court, other jurors and themselves – to reach an agreed verdict. (See chapter 8.)

The need for counselling or debriefing

10.23 At the time of our study, formal counselling arrangements were not in place in all of the court centres. Furthermore, the information jurors receive on counselling is generally delivered in a form which is neither memorable, relevant, nor particularly encouraging. When they first arrive at court, prospective jurors are simply told in the booklet *Information for Jurors* that in "particularly distressing cases" counselling is available on request through the court staff. None of the jurors interviewed said that they had received counselling, and only two mentioned that counselling had been offered. In one case, a juror remembered that it had been mentioned as available at the start of the trial; in another, it was mentioned after the verdict when jurors were getting their things together to leave. Nevertheless, in 16 of the 48 trials, one or more jurors noted the need for counselling, debriefing or some form of support for jurors after the trial. Thirteen of these trials were of a serious and/or complex nature, although some would not be the sort of case in which court staff would usually think counselling might be necessary.

10.24 Both during and after the trial, jurors used their own methods of alleviating stress. These included "retail therapy", talking it through with their partner, laughter and having a cry. But in 16 cases, one or more jurors felt that their own methods of release and debriefing were not adequate, and that they would have appreciated at least the availability of a support service. In a small number of interviews it was clear to us that some jurors were having considerable difficulty in coping with the impact of their experiences.

10.25 As well as noting the need for counselling, some jurors simply wanted some sort of debriefing session in which they could talk about the case and what had happened. There was a feeling that the court should be proactive in offering services rather than waiting for jurors to request help.

10.26 From our responses it is clear that counselling would be useful for a number of jurors in a range of cases. While it is likely that many of those jurors who said that they would have appreciated the offer of help would not have actually taken it up, court staff should routinely offer such support, and make it known both before and after the trial that it is both free and available. In addition, there would seem to be room for the development of some form of debriefing to give jurors a chance to talk about what has happened and achieve some feeling of closure. Current developments in British Columbia, where some judges have adopted a practice of talking to jurors after the verdict, both to obtain feedback on court procedures and jurors' understanding of their directions and to answer any questions jurors might have about the trial process, provide one model for this.

Other services

10.27 As noted above, in a number of cases jurors felt intimidated or upset by their proximity to, or the actions of, the parties and their families or supporters. In most cases this was due to the physical constraints of the court building which, for example, meant the jury had to pass through public areas on entering and leaving the court. In two cases, jurors particularly commented on the impact of this once they had delivered their verdict, and in one of these cases, a juror suggested that the court should have provided jurors with taxis to enable them to avoid the offender's family and friends. Currently this is generally only done when the verdict is delivered late at night or public transport is unavailable. Court staff should be more proactive in ascertaining jurors' concerns about this sort of contact – especially in gang-related and similar cases – and should provide advice and, where necessary, assistance.

FACILITIES FOR JURORS

10.28 When asked to rate the facilities overall, 43 per cent of those who replied rated them as "adequate", 37 per cent as "good" and only 19 per cent as "poor". In 10 of the 47 cases where jurors gave a rating, at least one juror described the facilities as "very poor", and in 16 cases at least two jurors rated them as "poor" or "very poor". Conversely in only one case did all the jurors interviewed describe the facilities as either "good" or "very good".

10.29 Two points should be made about these ratings. First, the "adequate" to "good" ratings may be misleading. Throughout our interviews jurors' actual comments tended to indicate rather greater dissatisfaction than their overall rating of the facilities suggested. Secondly, the ratings do, as some jurors commented, depend on the duration of the trial and deliberations. Facilities which are adequate for a two day trial are not likely to be seen the same way after five weeks.

10.30 Jurors who rated the facilities as adequate or poor were asked for their reasons for that assessment. Their comments covered four broad areas:

- the jury room, including size, temperature, general comfort and access;
- the provision of adequate toilet facilities;
- food and drink; and
- smoking.

The jury room

10.31 In 29 of the 47 cases onwhich we have information, one or more jurors complained that the jury room was cramped, claustrophobic, and/or lacking in natural light. In three cases, jurors complained of extremes of temperature and a lack of air-conditioning. In five cases, adverse comments were made on the layout of the room and inadequate furnishings; for example, a table with 12 chairs did not enable jurors to move around, take "time out", or defuse tension.

10.32 In a number of cases, jurors commented that, as well as being unpleasant, conditions in the jury room affected deliberations. Tempers frayed, people developed headaches, and concentration lapsed. In a few cases, it was suggested that conditions in the jury room contributed to compromise verdicts or increased the pressure on dissenting jurors to change their minds. (See chapter 8.)

10.33 Before court and during lunch and other meal breaks, jurors were usually locked out of the jury room. This exacerbated some jurors' feelings of marginalisation.

Two juries wanted to use the jury room during these periods to review their notes and discuss the evidence. Other jurors simply wanted to have their lunch where they could talk about the case in privacy if they wanted to, and where they wouldn't have to brave the elements, incur any further expense, or risk meeting the parties or their families.

10.34 It is difficult to see the justification for this practice. Locking jurors out is unlikely either to prevent them discussing the case or to affect the chances of factions forming. However, it will increase the risk of jurors talking about the case in public, and it may expose jurors to contact with the parties. In addition it will certainly confirm some jurors' view that their needs and wishes are not rated highly by the system.

Toilet facilities

10.35 Toilet facilities caused embarrassment or inconvenience for jurors in 14 cases, with some jurors expressing very strong views indeed. Jurors commented mainly on the lack of privacy, but criticism also extended to the number of toilets provided (especially for women jurors), broken catches on the doors and a lack of basic hygiene.

Sustenance

10.36 In four cases, jurors made positive comments about the food and drink provided. Adverse comments were made in 25 cases. Although this was often manifested as a low-level annoyance, in cases where jurors were already under pressure or feeling cramped and uncomfortable, it took on more significance. Cupboards were locked, no inquiries were made about special dietary needs, the only drinks available were coffee or tea, the coffee machine was messy or produced tepid coffee, and the biscuits seemed to be rationed. In addition, the jury room often lacked basic equipment such as knives and forks, plates, serviettes, glasses and cold water; and some jurors had to spend most of the time in short breaks queuing for their drinks. Some jurors would have liked a microwave to heat up snacks or their lunch.

10.37 Complaints of this sort were not confined to the jury room. In four cases, jurors noted that, unlike everyone else in the court, there was no water available to them during the trial.

Provision for smokers

10.38 The lack of facilities for smokers was seen to be a major problem by jurors in 18 cases. Furthermore, it was a problem both for smokers and non-smokers: smokers either could not smoke or had to hang out of the window, while non-smokers had to put up with smoke, draughts and irritable fellow-jurors.

Impact

10.39 Taking the ratings and comments as a whole, jurors were at best unenthusiastic about the facilities provided for them and at worst deeply dissatisfied. Facilities in most courts are inadequate. Basic amenities are either not provided or are only provided at a fairly minimal level. This may have a number of consequences. Jurors who are thirsty, hot, tired and embarrassed about going to the toilet are

unlikely to do their best, either in court or during deliberations. In long or difficult trials, in particular, poor facilities can not only distract jurors but also exacerbate conflicts between them and increase the pressures faced by dissenters. Just as significantly, the inadequacy of the facilities is liable to be seen by some as an indication of the justice system's lack of respect and appreciation for them and their role.

THE INCONVENIENCE OF JURY SERVICE

10.40 Jurors were asked whether sitting on a jury had caused them any inconveniences. At least one juror in each of the 47 trials said that it had. In all, 57 per cent of those who responded said that they had suffered inconvenience as a result of serving on a jury. In many cases the inconveniences were minor, but others took on more serious proportions.

10.41 Jurors identified three broad categories of inconvenience:

- employment issues, including loss of money and the pressures of self-employment;
- home and social life, including childcare problems; and
- transport and parking.

Employment issues

10.42 Employment issues were the most common inconveniences experienced by jurors, with at least one juror having some kind of problem with work or their employer in all but eight of the cases in the study. These "problems" varied in seriousness. For those involved in short trials, employers could get "tetchy" about the uncertainty of whether their employee would be on a jury that day. In longer trials employers could be described as "becoming aggro". Some jurors worried about their work during the trial, or were concerned about it building up because they would not or could not be replaced.

10.43 It was also fairly common for jurors to continue working around their attendance at court. For example, one juror worked from 7am to 9am, went to court, and then returned to work from 5pm to 8pm. Another attended court and then worked from 9pm to 2am.

10.44 Some jurors lost pay because their employer would cover only the basic hours worked and not the usual overtime hours. Self-employed jurors or those who worked as temps could also end up considerably out of pocket. Furthermore, in addition to employers refusing to get cover for their employees or pay full wages, there were two instances in our study where jurors complained that their employer not only deducted the money they received for jury service from their wages, but also required them to work off the time lost as a result of serving on the jury.

10.45 There was a feeling that the payment given to jurors was too low, especially in lengthy trials, and that the arrangements were unfair to self-employed jurors. However, no juror in our sample said that they had applied for an increased fee on grounds of hardship; indeed, there was no indication that they even knew that they could. This is scarcely surprising. The only information most jurors receive on this is the statement in *Information for Jurors* that "in exceptional circumstances your fee could be increased".

Disruption to family and social routines

10.46 Jurors in 24 trials said that being a juror had affected their home lives and their families. Childcare was a common problem, sometimes combined with work pressures, and jury service could disrupt family life and cause arguments. The problems increased where jurors were involved in long trials or deliberations. One juror noted the conflict between the hours worked by the court – not starting until 10am and sometimes deliberating until late at night – and the demands of childcare.

10.47 Other jurors spoke of disruption to their social lives. While in short trials these inconveniences tended to be minor and could be planned for, in longer trials they were more serious. Stress levels increased and some jurors felt that their lives had been put on hold.

Transport and parking

10.48 In almost all centres, the information sent to prospective jurors with the summons says that they will receive payment to cover "attendance plus fares by public transport". Jurors in 12 trials complained about the inconvenience and cost incurred in getting to court, especially in centres with poor public transport or where there was little or no provision for parking. Those who came in by car found that the cost of parking was high and thought that they should be reimbursed. Four jurors reported receiving parking tickets.

CONCLUSION

10.49 In general, jurors felt that serving on a jury was a worthwhile experience for them, and one from which they benefited, even if it was simply by learning about what happens during a criminal trial. There was also some pride that they were performing a necessary and important civic duty. However, jurors often felt that they were not valued by the system and that their needs were seen as either secondary or unimportant. In our view, these perceptions were generally well founded. Jurors often appeared as outsiders in a system where even the architecture appeared to be focused on the needs and routines of the official players. They were sometimes obliged to assemble in public areas or in areas that were inadequate to accommodate them. They often met and deliberated in rooms that were cramped and uncomfortable, with poor facilities and only basic refreshment. Where disturbing evidence had been presented during the course of a trial, or where deliberations were protracted and difficult, a significant minority of jurors experienced high levels of stress, which the system did not adequately recognise. For many the very nature of the job made it tiring and stressful, let alone the conditions under which they were expected to perform it. Yet the majority of jurors approached their task conscientiously and most were highly appreciative of the consideration and help they received from judges, court staff and even counsel. It is the institutional arrangements that marginalise jurors, not the actors within those arrangements.

OTHER LAW COMMISSION PUBLICATIONS

Report series

NZLC R1	Imperial Legislation in Force in New Zealand (1987)
NZLC R2	Annual Reports for the years ended 31 March 1986 and 31 March 1987 (1987)
NZLC R3	The Accident Compensation Scheme (Interim Report on Aspects of Funding) (1987)
NZLC R4	Personal Injury: Prevention and Recovery (Report on the Accident Compensation Scheme) (1988)
NZLC R5	Annual Report 1988 (1988)
NZLC R6	Limitation Defences in Civil Proceedings (1988)
NZLC R7	The Structure of the Courts (1989)
NZLC R8	A Personal Property Securities Act for New Zealand (1989)
NZLC R9	Company Law: Reform and Restatement (1989)
NZLC R10	Annual Report 1989 (1989)
NZLC R11	Legislation and its Interpretation: Statutory Publications Bill (1989)
NZLC R12	First Report on Emergencies: Use of the Armed Forces (1990)
NZLC R13	Intellectual Property: The Context for Reform (1990)
NZLC R14	Criminal Procedure: Part One: Disclosure and Committal (1990)
NZLC R15	Annual Report 1990 (1990)
NZLC R16	Company Law Reform: Transition and Revision (1990)
NZLC R17(S)	A New Interpretation Act: To Avoid "Prolixity and Tautology" (1990) (and Summary Version)
NZLC R18	Aspects of Damages: Employment Contracts and the Rule in *Addis v Gramophone Co* (1991)
NZLC R19	Aspects of Damages: The Rules in *Bain v Fothergill* and *Joyner v Weeks* (1991)
NZLC R20	Arbitration (1991)
NZLC R21	Annual Report 1991 (1991)
NZLC R22	Final Report on Emergencies (1991)
NZLC R23	The United Nations Convention on Contracts for the International Sale of Goods: New Zealand's Proposed Acceptance (1992)
NZLC R24	Report for the period I April 1991 to 30 June 1992 (1992)
NZLC R25	Contract Statutes Review (1993)
NZLC R26	Report for the year ended 30 June 1993 (1993)
NZLC R27	The Format of Legislation (1993)
NZLC R28	Aspects of Damages: The Award of Interest on Money Claims (1994)
NZLC R29	A New Property Law Act (1994)
NZLC R30	Community Safety: Mental Health and Criminal Justice Issues (1994)
NZLC R31	Police Questioning (1994)
NZLC R32	Annual Report 1994 (1994)
NZLC R33	Annual Report 1995 (1995)
NZLC R34	A New Zealand Guide to International Law and its Sources (1996)
NZLC R35	Legislation Manual: Structure and Style (1996)
NZLC R36	Annual Report 1996 (1996)
NZLC R37	Crown Liability and Judicial Immunity: A response to *Baigent's* case and *Harvey v Derrick* (1997)
NZLC R38	Succession Law: Homicidal Heirs (1997)

NZLC R39 Succession Law: A Succession (Adjustment) Act (1997)
NZLC R40 Review of the Official Information Act 1982 (1997)
NZLC R41 Succession Law: A Succession (Wills) Act (1997)
NZLC R42 Evidence Law: Witness Anonymity (1997)
NZLC R43 Annual Report 1997 (1997)
NZLC R44 Habeas Corpus: Procedure (1997)
NZLC R45 The Treaty Making Process: Reform and the Role of Parliament (1997)
NZLC R46 Some Insurance Law Problems (1998)
NZLC R47 Apportionment of Civil Liability (1998)
NZLC R48 Annual Report (1998)
NZLC R49 Compensating the Wrongly Convicted (1998)
NZLC R50 Electronic Commerce Part One: A Guide for the Legal and Business Community (1998)
NZLC R51 Dishonestly Procuring Valuable Benefits (1998)
NZLC R52 Cross-Border Insolvency: Should New Zealand adopt the UNCITRAL Model Law on Cross-Border Insolvency? (1999)
NZLC R53 Justice: The Experiences of Mäori Women Te Tikanga o te Ture: Te Mätauranga o ngä Wähine Mäori e pa ana ki tënei (1999)
NZLC R54 Computer Misuse (1999)
NZLC R55 Evidence (1999)
NZLC R56 Annual Report (1999)
NZLC R57 Retirement Villages (1999)

Study Paper series

NZLC SP1 Women's Access to Legal Services (1999)
NZLC SP2 Priority Debts in the Distribution of Insolvent Estates: An Advisory Report to the Ministry of Commerce (1999)

Preliminary Paper series

NZLC PP1 Legislation and its Interpretation: The Acts Interpretation Act 1924 and Related Legislation (discussion paper and questionnaire) (1987)
NZLC PP2 The Accident Compensation Scheme (discussion paper) (1987)
NZLC PP3 The Limitation Act 1950 (discussion paper) (1987)
NZLC PP4 The Structure of the Courts (discussion paper) (1987)
NZLC PP5 Company Law (discussion paper) (1987)
NZLC PP6 Reform of Personal Property Security Law (report by Prof J H Farrar and M A O'Regan) (1988)
NZLC PP7 Arbitration (discussion paper) (1988)
NZLC PP8 Legislation and its Interpretation (discussion and seminar papers) (1988)
NZLC PP9 The Treaty of Waitangi and Mäori Fisheries – Mataitai: Nga Tikanga Mäori me te Tiriti o Waitangi (background paper) (1989)
NZLC PP10 Hearsay Evidence (options paper) (1989)
NZLC PP11 "Unfair" Contracts (discussion paper) (1990)
NZLC PP12 The Prosecution of Offences (issues paper) (1990)
NZLC PP13 Evidence Law: Principles for Reform (discussion paper) (1991)
NZLC PP14 Evidence Law: Codification (discussion paper) (1991)

NZLC PP15 Evidence Law: Hearsay (discussion paper) (1991)

NZLC PP16 The Property Law Act 1952 (discussion paper) (1991)

NZLC PP17 Aspects of Damages: Interest on Debt and Damages (discussion paper) (1991)

NZLC PP18 Evidence Law: Expert Evidence and Opinion Evidence (discussion paper) (1991)

NZLC PP19 Apportionment of Civil Liability (discussion paper) (1992)

NZLC PP20 Tenure and Estates in Land (discussion paper) (1992)

NZLC PP21 Criminal Evidence: Police Questioning (discussion paper) (1992)

NZLC PP22 Evidence Law: Documentary Evidence and Judicial Notice (discussion paper) (1994)

NZLC PP23 Evidence Law: Privilege (discussion paper) (1994)

NZLC PP24 Succession Law: Testamentary Claims (discussion paper) (1996)

NZLC PP25 The Privilege Against Self-Incrimination (discussion paper) (1996)

NZLC PP26 The Evidence of Children and Other Vulnerable Witnesses (discussion paper) (1996)

NZLC PP27 Evidence Law: Character and Credibility (discussion paper) (1997)

NZLC PP28 Criminal Prosecution (discussion paper) (1997)

NZLC PP29 Witness Anonymity (discussion paper) (1997)

NZLC PP30 Repeal of the Contracts Enforcement Act 1956 (discussion paper) (1998)

NZLC PP31 Compensation for Wrongful Conviction or Prosecution (discussion paper) (1998)

NZLC PP32 Juries in Criminal Trials: Part One (discussion paper) (1998)

NZLC PP33 Defaming Politicians: A response to *Lange v Atkinson* (discussion paper) (1998)

NZLC PP34 Retirement Villages (discussion paper) (1998)

NZLC PP35 Shared Ownership of Land (discussion paper) (1999)

NZLC PP36 Coroners: A Review (1999)