“I Heard Him Say...”:
Jurors’ Ability to Determine the Value of Hearsay Testimony in a Criminal Murder Trial

By

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A thesis submitted in conformity with the requirements
for the degree of Master of Arts,
Department of Psychology,
University of Toronto

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Abstract

In order to examine the veracity of the court's concerns regarding the potential overvaluation of hearsay testimony, the ability of jurors to a) recognize hearsay testimony during a trial. b) realize the potential unreliability of this evidence. and c) apply appropriate weight to such testimony when deciding a verdict, were investigated. Mock jurors (N = 135) read one of six versions of a trial that included either pro-prosecution or pro-defense hearsay evidence, which was presented alone. with disregarding instructions. or with a complete cross-examination of the hearsay witness. Also included were conditions in which (1) the evidence was presented as nonhearsay (first-hand) and (2) no hearsay was presented. Results indicated that jurors were quite capable of performing each of the cognitive tasks above. Eighty-seven percent of jurors correctly identified the hearsay evidence. and this evidence was used significantly less than and rated significantly less strong and credible than identical direct testimony. This pattern was especially predominant when either disregarding instructions or a cross-examination were utilized. The ability of a complete cross-examination of the hearsay witness to make jurors' impressions of the evidence more accurate is discussed. as is the potential lack of justification for present hearsay laws.
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INTRODUCTION

Hearsay evidence can generally be defined as 'second-hand' information, occurring when someone other than the original witness testifies in court towards the truth of a particular out-of-court matter. "Joe told me that Bob did it" is an example of a hearsay declaration of the simplest terms. Unless falling under one of the exceptions or exemptions to the hearsay rule, both Canadian and American courts have ruled such testimony inadmissible in trial proceedings (Cox. 1999: Graham. 1996). The premise underlying these laws is that they ensure only the most reliable evidence enters the courtroom. However, one can easily envision situations in which much valuable evidence could be suppressed simply because the original declarant is not available to testify.

The crucial limitation of hearsay evidence, according to legal scholars, is that it cannot be subjected to a complete and proper cross-examination procedure. Moreover, because the original witness to the event is not available to testify, the jury is unable to utilize the full gamut of cues normally available to it when assessing a direct eyewitness. In particular, the original witness' perceptions, memory, and sincerity cannot be directly questioned (since the hearsay witness cannot have decisive answers to these questions), and the danger therefore exists that the out-of-court event could have been inaccurately recalled, or purposely distorted (Park, 1987). It is because of this inherent unreliability of all hearsay evidence that such testimony has been banned from criminal trials.

It should be noted, however, that this situation becomes a definitive legal problem only if it is also true that without these additional informational cues, jurors are unable to determine the appropriate weight to be given to the hearsay testimony when making a verdict decision. Conversely, if jurors are capable of appropriately managing hearsay testimony, the legal
community’s concerns may be misapplied. If this is the case, allowing jurors access to hearsay testimony, even with its admitted weaknesses, should not create the concurrent risk that such testimony would overly bias their decisions.

This issue becomes highly relevant when one realizes that hearsay testimony may often provide valuable information to a jury, which cannot be obtained by any other means. Consider, for instance, a murder trial in which the accused is claiming mistaken identity, and multiple individuals are each willing to testify towards the fact that they overheard a conversation in which another man previously threatened the deceased. Such testimony would normally fall under the rules of hearsay and would be deemed inadmissible evidence despite the ability of each hearsay witness to corroborate the others’ claims. It is true that this testimony cannot be proven accurate beyond a reasonable doubt, and therefore the potential for the jury to overly rely on such testimony is raised. However, if such testimony is in fact true, yet is deemed inadmissible, it becomes likely that the jury will mistakenly convict the accused.

Furthermore, there are strong theoretical arguments in favour of allowing jurors exposure to hearsay testimony. Pennington and Hastie (1986) propose, in their story model of juror decision making, that jurors attempt to combine all of the trial testimony into one coherent, sequentially ordered narrative and later go back through this narrative when deciding their verdict. Central to this theory is the idea that the jurors’ constructed story determines their verdict decision, and that difficulty in story construction can affect this decision making process (Pennington & Hastie, 1992). Excluding hearsay evidence from the trial process forces jurors into a situation where they must base their decisions on only a selection of the available evidence. By purposely limiting the amount of evidence that jurors are allowed to hear – even evidence that has questionable validity – the courts are, in effect, hampering their ability to create a complete and interconnected narrative of
the evidence presented. Gaps in their constructed stories may weaken what Pennington and Hastie refer to as the story’s ‘coherence’, which could lead to jurors filling in the additional information using inferences or heuristics. At the very least, it seems reasonable to assume that the more information available to a decision-maker, the more accurate their decision is capable of being - that is, as long as the decision-maker is capable of dealing with all of the evidence in an appropriate manner.

The existence of present hearsay laws demonstrates the legal communities’ assumption that jurors are incapable of assigning appropriate weight to hearsay testimony when they are confronted with it in trial proceedings. This assumption is not a universal one, however, as many European countries – France, Germany and Austria, among others – regularly allow hearsay testimony to be heard by the trier of fact in the case. There are, of course, larger differences between the judicial systems of these countries and the traditional North American system of law. The basic premise of these other systems, however, is that by allowing all of the evidence to be presented at trial, the truth will eventually be discovered.

Despite this lack of consensus, both Canadian and American judicial systems have deemed the exclusion of hearsay testimony a lesser risk to the administration of justice than would be created by the inclusion of the same evidence. As such, the admission of inadmissible hearsay evidence into a trial would be considered a contamination of the legal proceedings, requiring immediate curative measures. If such evidence is ever presented to a jury, the judge is required either to instruct the jury to disregard the evidence entirely, or to call a mistrial.

The court’s potentially unfounded assumption regarding a juror’s inability to process second-hand information has spawned surprisingly little experimental research. A literature search conducted by the present author on ‘second-hand information’ in general could not locate a single
published study that has looked into the issue. As such, the validity of the court’s belief regarding a juror’s ability to deal appropriately with hearsay testimony remains largely undetermined.

Nonetheless, the specific cognitive tasks which jurors must show proficiency in, in order to properly manage hearsay evidence can be ascertained: first, jurors must be capable of recognizing evidence as hearsay when they are presented with it; second, after recognizing the evidence as hearsay, jurors must be able to realize its inherent unreliability; and third, after recognizing the unreliability of the testimony, jurors must be capable of giving appropriate weight to such testimony when deciding their verdict. If jurors are able to perform each of these cognitive tasks, it would suggest that the evidentiary rules of hearsay might be unnecessary, or even stifling, for the smooth and fair running of our legal system.

Thus, the present study was designed to assess the extent to which jurors are capable of appropriately processing hearsay evidence, particularly by examining their ability to perform the three processes outlined above. In addition, the possibility that differential effects would be found between pro-prosecution and pro-defense hearsay evidence was examined.

Do Jurors Misuse Hearsay Evidence?

As previously noted, present insights into the potential impact of hearsay testimony on juror decision-making are extremely limited, as only a handful of studies have recently been conducted on the topic. Furthermore, these early studies tended to focus not on jurors’ specific cognitive abilities or deficits, but instead on jurors’ ultimate verdict decisions, to determine whether or not the hearsay evidence was consistently overvalued (Rakos & Landsman, 1991. Landsman & Rakos, 1992). Ultimate verdict decisions alone cannot supply definitive support for or against the notion that jurors will overvalue hearsay evidence. The fact that the final verdict in a particular case did not change with or without the admissibility of a particular piece of evidence does not prove that
such testimony was not misused in arriving at that verdict. Similarly, an altered verdict provides equally little evidence towards such conclusions. Nonetheless, on the whole, the previous work on hearsay evidence suggests that mock jurors' decisions are only minimally influenced by hearsay information. Even this tentative conclusion has been contradicted in some research, however (Schuller, 1995).

Landsman and Rakos (1992) were the first to investigate the topic by examining the effects of inculpatory (pro-prosecution) hearsay on jurors' verdict decisions. In particular, the effect of a hearsay eyewitness was compared to the same information conveyed by a direct eyewitness in the trial of a man accused of stealing a wallet from a restaurant coat rack. The level of detail given in both the hearsay and direct witness' testimony was varied, as was the presence of a counsel objection and judicial instruction to disregard the hearsay testimony. No significant differences occurred between the verdicts given in the hearsay conditions and a control condition where no hearsay was given, leading to the tentative conclusion that hearsay testimony did not erroneously affect mock jurors' decisions. To confuse the issue, however, there were also no significant differences between the hearsay conditions and the direct eyewitness conditions. Though these findings replicated a previous finding by the same researchers (Rakos & Landsman, 1991), it was acknowledged that one explanation for the results was the possibility that the experimental manipulation was not strong enough to render significant differences between conditions.

In another study (Miene, Park & Borgida, 1992) participants were presented with one of four inculpatory evidentiary conditions: 1) circumstantial evidence only, 2) circumstantial evidence plus hearsay testimony, 3) circumstantial evidence plus eyewitness testimony, and 4) a condition involving all three forms of testimony. All participants in the hearsay conditions also received judicial instructions warning them about the use of hearsay testimony, and the problems that it
poses. Results indicated that participants who heard the hearsay were less likely to render a guilty verdict than those who heard the eyewitness testimony. Participants also considered the hearsay testimony as less important, less influential, and less reliable than the eyewitness testimony, though it cannot be determined from the design whether it was the inherent nature of the participants to be skeptical of the hearsay testimony, or whether the judicial instructions created this awareness.

Similarly, Kovera, Park, and Penrod (1992) compared the effects of identical direct and hearsay eyewitness testimony, and obtained results supporting the notion that participants may be more skeptical of hearsay testimony than eyewitness testimony. Moreover, with a number of previous studies finding that mock jurors are relatively ineffective at accurately determining the validity of direct eyewitness testimony (Fox & Walters, 1986; Lindsay et al., 1986; Wells et al., 1981), the researchers put forth the possibility that jurors are in fact more capable of attributing appropriate weight to hearsay evidence than direct evidence, due to this inherent skepticism.

Further supporting the idea that jurors seem to be inherently skeptical of hearsay testimony, Paglia and Schuller (1998) found that mock jurors gave significantly more guilty verdicts when exposed to inculpatory direct testimony than when given the same testimony heard through a hearsay witness. This effect was found regardless of the presence of judicial instructions to limit the use of, or disregard, the hearsay. Moreover, the strength of the prosecution's case was considered to be significantly stronger when the direct eyewitness presented the evidence. There was some evidence to suggest, however, that evaluations of other admissible evidence presented by the hearsay witness were negatively affected. Lastly, Pickel (1995) asked subjects to rate how fair they felt it would be for six different types of evidence to be given to a jury to use when determining its verdict (E.g., hearsay, prior conviction, illegal wire tap). Of the six pieces of
evidence, hearsay was given the lowest rating, suggesting that people are quite cognizant of the potentially low validity of hearsay testimony.

These results have been contradicted by those of Schuller (1995), which suggest that jurors may not be able to completely ignore inadmissible hearsay evidence. Unlike the previous studies however, this study focused on exculpatory (pro-defense) hearsay. As well, an expert witness as opposed to a non-expert gave the hearsay testimony. The testimony was modeled after an actual Canadian case in which a woman was accused of murdering her abusive husband and claimed self-defense. The expert witness had previously interviewed the defendant and the hearsay evidence given was based on what the defendant had told him during these interviews. Because the defendant did not testify herself this testimony became hearsay, as it was uncorroborated by any direct testimony at trial. Under these conditions, the hearsay was found to have some effect on mock jurors’ verdict decisions. Participants who received the hearsay rendered similar verdicts and case evaluations as those who received the information as admissible evidence. As well, participants’ judgments were more favourable to the defendant in the hearsay condition than in the direct condition. Unfortunately, because of the lack of additional research in the area, definitive conclusions regarding these discrepant results cannot be made. It is possible that the fact that the witness was an expert lent more credibility to his testimony and counteracted the mock jurors’ natural skepticism of the hearsay. Conversely, the fact that this study used pro-defense evidence rather than pro-prosecution evidence could be the reason for the disparate conclusions.

Taking the present body of literature as a whole, it seems that inculpatory hearsay, at least, plays only a minimal role in jurors’ verdict decisions. Furthermore, jurors do appear to be somewhat skeptical of this type of hearsay evidence when exposed to it in mock trial settings, suggesting that they are capable of performing the second of the necessary cognitive tasks:
realizing the inherent unreliability of hearsay testimony. Only one study has been performed in which the type of hearsay admitted at trial was varied (Schuller, 1995), and therefore generalizations beyond inculpatory hearsay evidence from a non-expert remain premature. There is some evidence, however, suggesting that jurors may have greater difficulty attributing appropriate weight to other types of hearsay evidence.

**Potential Remedies**

The courts remain convinced that admitting hearsay as evidence in a trial would create the potential for the misuse of such evidence. Other than calling a complete mistrial, however, the only option available to a judge when hearsay testimony is presented to a jury is to instruct them to disregard the particular testimony entirely. This judicial instruction usually involves pointing out the testimony in question, explaining the reason for its fallibility to the jurors, and finally giving an instruction to completely disregard the evidence on the basis of these fallibilities. The efficacy of these judicial instructions has been brought into question in the past. It has been argued that lay jurors may not possess the cognitive capabilities necessary to completely ignore evidence that has previously been presented to them at trial.

Numerous studies have found that even when instructed to ignore the evidence presented to them, jurors seem to have a difficult time keeping this evidence from altering their decisions when determining a verdict. This effect has been identified in numerous contexts: when the evidence in question is a prior criminal record (Hans & Doob, 1976; Tanford & Cox, 1988), a coerced confession (Kassin & Wrightsman, 1981), pretrial publicity (Kramer, Kerr & Carroll, 1990), and illegally obtained evidence (Sue, Smith & Caldwell, 1973). Some support has also been found for the notion that judicial instructions to disregard evidence may actually create a "boomerang effect" whereby the instructions enhance the prejudicial effects of the evidence, presumably because the
instructions single out the particular evidence in the jurors' minds (Tanford & Cox, 1987). This follows directly from Wegner, Schneider, Carter, White (1987) work on thought suppression. in which subjects who are instructed not to think about a certain object (for example, a white bear) actually consider the particular object to a greater extent than if no such instruction had been given. Other researchers have argued that instructing jurors not to use a particular piece of evidence restricts their decision-making freedom, which could backfire by arousing reactance (Wolf & Montgomery, 1977).

Similar effects have been found regarding the specific judicial instruction to disregard hearsay evidence. Landsman and Rakos (1992) varied the presence of judicial instructions to ignore hearsay evidence in a trial transcript and found the instructions to have no effect on the number of guilty verdicts obtained. Paglia and Schuller (1995) attempted to determine if the type or timing of the judicial instructions would have any effect on the decision-making processes of mock jurors. Instructions were either disregarding or limiting in nature, and were presented either at the beginning or end of the trial, or at the time that the hearsay evidence was presented. No significant differences were noted between any of the conditions, providing further evidence that judicial instructions do not seem to make much of a difference.

Judicial instructions could be ineffective for several reasons. First, jurors may not follow the orders of the judge to disregard hearsay testimony. Conversely, jurors may tend to naturally disregard hearsay testimony, regardless of formal instructions, which would render the instructions unnecessary. Offering support for the latter theory, Pickel (1995) investigated whether supplying the legal basis for excluding hearsay would further aid mock jurors in reasoning through the orders. Participants received an instruction to disregard hearsay evidence with or without a legal explanation of the basis for such exclusion. Consistent with the previous research in the area, no
significant differences were found between conditions. Interestingly, however, when mock jurors were presented with prior conviction evidence rather than hearsay evidence, the legal explanation did cause the jurors to follow the instructions more carefully. Pickel hypothesized that the legal explanation was necessary when the evidence presented was prior conviction evidence because without the explanation the jurors did not understand why such evidence was weak. In contrast, Pickel hypothesized that the jurors had already determined in their own minds, previous to the judicial instructions, that the hearsay evidence was inherently weak. As such, the judicial instructions became unnecessary and ineffectual.

The notion that jurors need to understand why a given piece of evidence is unreliable in order to determine how such evidence should be utilized makes intuitive sense. Furthermore, it suggests that the most effective method of ensuring jurors do not overvalue a given piece of evidence is to allow them the opportunity to come to their own determination of the validity of the evidence. Judicial instructions cannot accomplish this task, as they simply provide orders (and perhaps the legal basis for such orders), which jurors either do or do not follow. They do not, however, attempt to stimulate the jurors’ own assessment of the evidence, which is likely the only way that jurors will be able to decide how to integrate the particular piece of evidence into their narrative story of the trial information (Pennington & Hastie, 1986, 1992; Hastie & Pennington, 1991). It seems plausible, however, that a proper cross-examination by opposing counsel will be capable of accomplishing this impression change.

Cross-examination as a Remedy

As stated earlier, the primary problem with hearsay testimony is that because the original witness to the events being testified to is not the one actually testifying, a full and complete cross-examination of the hearsay witness cannot be performed. In particular, the original witness’
perceptions, memory and sincerity cannot be determined through the cross-examination of a hearsay witness. This supposedly puts opposing counsel at a disadvantage if these issues bear on the validity or reliability of the evidence being presented.

This is not necessarily so, however. The hearsay witness can be submitted to a full and complete cross-examination, as opposing counsel is completely within his or her rights to make clear to the jury that the person on the stand was not present for the events he or she is testifying to. Furthermore, counsel can question the hearsay witness about details that the witness likely will not be able to supply, which one would imagine would weaken the witness' credibility. In this way then, the cross-examination of a hearsay witness may be more successful at keeping jurors from using the evidence than judicial instructions to ignore the evidence. By displaying, step by step, how the hearsay witness' testimony is suspect, the opposing attorney may be able to stimulate the impression formation in the jurors that judicial instructions are simply incapable of.

The argument could be made that this technique relies too heavily on the competence of the attorneys. In light of jurors' inherent skepticism of hearsay testimony, however, successfully cross-examining a hearsay witness may require less skill than would the successful cross-examination of an equivalent direct witness. This point is further exemplified by considering Penrod & Cutler's (1999) concerns regarding counsel's opportunity to properly cross-examine direct eyewitnesses. In particular, they argue that an opposing counsel's lack of presence at the scene of the crime and/or identification proceedings may often limit their knowledge of the correct questions to ask the eyewitness, lessening the likelihood that inaccuracies in the testimony will be discovered. These concerns are not applicable to hearsay witnesses, however, as such 'scene of the crime' evidence will never be reported first-hand. Furthermore, the useful questions for reducing the credibility of a hearsay witness ("were you at the scene of the crime?". "did you see the events yourself?". "how
do you know what you were told was accurate?”, etc.) will always be available to opposing counsel. In fact, it seems unlikely that even the least talented of counsel could not successfully degrade the evidence given by a hearsay witness. As an aside, it must be remembered that the ability of hearsay evidence to be easily downplayed does not suggest that would not be helpful to the jurors trying the case.

Surprisingly, previous studies investigating hearsay testimony have failed to provide a full cross-examination of the hearsay evidence in their trial stimuli. Paglia and Schuller (1998) did have a cross-examination of the witness who gave hearsay testimony, but the cross-examination did not touch on any of the hearsay issues. Presumably because of the general understanding that hearsay cannot be cross-examined, these studies have avoided the process entirely. In light of the fact that a cross-examination is possible, however, these studies may have unintentionally allowed the hearsay evidence to appear stronger than it would be in a real trial situation. Thus, the present study directly tested whether the cross-examination of a hearsay witness would cause the hearsay to be degraded in jurors’ minds to the same extent, if not more so, than judicial instructions to disregard the evidence. More to the point, it is hypothesized that jurors will be fully capable of performing the three necessary cognitive tasks outlined previously when they are privy to a full cross-examination of the hearsay witness.

Inculpatory vs. Exculpatory Hearsay

Schuller (1995) presented mock jurors with exculpatory rather than inculpatory hearsay evidence, and determined that this evidence did affect jurors’ verdict choices. An expert witness, as opposed to a non-expert, was also used in this study, however, making conclusions regarding the conflicting findings hard to interpret.
No study has directly investigated the relationship between inculpatory and exculpatory hearsay testimony. However, a number of studies have been performed using other types of evidence as experimental stimuli. Thompson, Fong and Rosenhan (1981) used inadmissible wire-tap evidence that either corroborated or contradicted the defendant's alibi. The results showed that jurors' verdicts were influenced by pro-defense but not pro-prosecution inadmissible evidence. The authors suggested that this finding may have occurred because most people would rather set a guilty defendant free than convict an innocent one, and therefore evidence of innocence is harder for them to ignore than evidence of guilt.

A somewhat differing hypothesis shall be put forward here. It seems possible that because of the differential burden of proof required of the prosecution and defense in criminal cases, exculpatory hearsay evidence may have a greater effect on jurors' decisions than inculpatory hearsay. The prosecution must prove their case beyond all reasonable doubt, while the defense need only show the existence of reasonable doubt. Considering that it seems that mock jurors are at least somewhat naturally skeptical of hearsay evidence, this kind of testimony may rarely be considered strong enough to remove all reasonable doubt in the jurors' mind. On the other hand, the same testimony for the defense may have enough power to place an inkling of reasonable doubt in the minds of the jurors.

The Present Study

In summary, the present study seeks to examine a number of related phenomena regarding the use of hearsay evidence by mock jurors: First, the results of previous research in which hearsay evidence has had minimal effects on verdict decisions is expected to be replicated. Jurors are expected to be somewhat skeptical of the hearsay evidence without requiring any direction to that effect. More specifically, it is predicted that mock jurors will a) recognize hearsay evidence when
it is presented to them in the course of a trial, b) realize the inherent weaknesses within such evidence, and c) appropriately limit the extent to which such evidence affects their final verdict decisions. Secondly, allowing defense counsel to run a full cross-examination of the hearsay witness during the course of the trial should further increase jurors' ability to perform these tasks, by encouraging the development of their own impressions of the weaknesses of the evidence.

Lastly, it is expected that pro-defense hearsay evidence may have a greater effect on juror verdicts than pro-prosecution hearsay evidence, primarily because of the differential burden of proof required of each side in a criminal trial.
METHOD

Participants

The participants consisted of 135 students recruited through several undergraduate courses at the University of Toronto. Either course credit or $10.00 was awarded for participation in the study.

Materials and Design

The stimulus materials consisted of a fictional transcript of a criminal trial. The defendant, a male in his mid-thirties, was accused of murdering his fiancée after she decided to disclose to him an affair which she had had a year prior. Motive for the crime was essentially a jealous rage, culminating in the multiple stabbing of the victim in her own apartment. The defendant was the last person seen with the victim before her death, and at that time the argument regarding the affair had taken place. Fingerprints belonging to the defendant had also been found on the murder weapon (a kitchen knife), though whether or not such prints had been made on a previous occasion was unable to be discounted entirely. In contrast, the defendant claimed to have been at a local bar at the time of the murder, and had happened upon the deceased later in the night when he returned to her apartment to apologize for the earlier dispute.

The format of the trial was as similar to an actual case as possible and included opening and closing statements by each counsel, judicial remarks prior to and at the conclusion of the trial, and examination and cross-examination of multiple witnesses testifying for each side. The trial was presented in text form, and totaled 25-28 pages, depending on condition. It took participants approximately 40 minutes to read the transcript.

Judicial instructions regarding the necessary elements of the crime were outlined to the mock jurors at the conclusion of the trial evidence, as were the basic principles of law that should
be followed, such as the presumption of innocence, the burden of proof, and the definition of reasonable doubt. These instructions were obtained from the manual for model criminal jury instructions of the District Courts of the Eighth Circuit, and are consistent with instructions heard in a real criminal trial.

The basic design of the study was a 2 (type of testimony: exculpatory vs. inculpatory) by 4 (context of testimony: direct testimony, hearsay alone, hearsay with judicial instructions and hearsay with cross examination) fully crossed factorial with one additional control condition.

Control Condition

The control condition was designed to measure the outcome of juror verdicts when the hearsay testimony was completely omitted from the trial transcript. This exemplifies the way in which a trial would be carried out in court today, and therefore serves as a baseline for comparison with the experimental conditions.

Six witnesses – three for the prosecution and three for the defense – testified at trial. The witnesses for the Crown included the police officer first on the scene, a friend of the deceased who witnessed the argument regarding the previous affair, and a forensic expert who provided expert testimony regarding the findings at the crime scene. The defense called the deceased's mother as a character witness, a taxi cab driver who picked the defendant up at the bar he claimed to be in at the time of the murder, and the defendant himself.

Experimental Conditions

In the eight experimental conditions, a seventh witness, a neighbour of the deceased, testified at trial. Her testimony revealed evidence as to the whereabouts of the defendant at the time of the crime, and this evidence was either inculpatory or exculpatory in nature. In the four inculpatory conditions, the defendant was placed on the stairwell of the deceased's apartment
building at the time of the murder. This evidence, if relied on, was expected to be very damaging towards the defendant, and result in increased guilty verdicts. In the four exculpatory conditions, he was instead seen on the stairs of the bar where he had claimed to be that night. When this evidence was heard, it was expected to be more difficult to obtain guilty verdicts. Other than the differing locations of the defendant’s sightings, the neighbour’s testimony was virtually identical in both the inculpatory and exculpatory conditions.

Direct testimony: The neighbour’s evidence was designed either to be hearsay or not hearsay (direct testimony), in accordance with current laws. In the two direct conditions (inculpatory and exculpatory), the neighbour’s testimony was that she, herself, witnessed the defendant in one of the two locations. Since she was able to testify directly to events that she witnessed, this evidence would not be considered hearsay and would be allowed as evidence in a normal trial. This condition was included in order to assess the impact such direct testimony has on juror’s verdicts, and to provide another contextual baseline with which to assess the impact of the hearsay testimony.

Hearsay testimony: In the other six conditions, the neighbour’s testimony was given on behalf of a friend of his who had unfortunately passed away prior to the trial and was therefore unable to testify himself. The evidence was identical to the direct testimony, with the exception that everywhere the neighbour said ‘I’ in the direct testimony, she said ‘Richard’ in the hearsay testimony (For example: “Richard saw…” instead of “I saw…”). Because of the fact that the neighbour had not seen the defendant herself, this testimony falls under the rules of hearsay, and would normally be inadmissible as evidence. This evidence was received under one of three contexts: a) as described above (hearsay alone condition), b) with judicial instructions to disregard
the evidence entirely, or c) with a complete cross-examination of the hearsay witness by opposing counsel.

The cross-examination of the hearsay witness followed the format of the direct eyewitness' cross-examination as much as possible. For instance, in the direct condition, the neighbour was asked how long she had seen the defendant on the stairwell for, whereas in the hearsay condition she was asked how long Richard had seen the defendant. The answers to these questions were the only elements that varied between the two transcripts. For instance, in the direct condition, the neighbour answered "perhaps 5 seconds", while in the hearsay condition she answered, "I don’t know".

PROCEDURE

Participants were run individually or in groups of up to six. Upon arrival, participants were randomly assigned to one of the nine experimental conditions and were told that they would be reading the court transcript of a criminal murder trial. Participants were asked to assume the role of jurors for the duration of the study, and were informed that they would be asked for their verdict in the case, as well as a number of questions regarding the witnesses and the facts of the case. They were informed that their memory was not being tested, and that they would have the opportunity to look back at the transcript if they felt the need, but that the trial would nonetheless require their undivided attention. Upon completion of the questionnaire described below, subjects were debriefed, thanked, and dismissed.

DEPENDENT MEASURES

Verdict Choice and Likelihood of Guilt

At the completion of the trial text, participants were asked to render a verdict: either guilty or not guilty. Two additional questions were asked to attempt to elucidate the reasons for their
verdicts. First, participants were asked to rate their impression of the defendant’s likelihood of

guilt on a 7-point Likert-type scale, anchored with the endpoints “extremely likely” and “extremely

unlikely”. Second, a multiple choice question attempting to narrow down jurors’ reasons for voting

not guilty, if they in fact did, was then asked in the following manner:

If you voted not-guilty, did you do so because:

a) you thought that the defendant was innocent
b) you thought that the defendant was guilty, but didn’t think there was quite enough evidence
c) you weren’t sure whether the defendant was innocent or guilty

Strength of Respective Cases

Seven point likert-type scales, anchored with the endpoints “extremely strong” and “extremely weak” were used to measure the strength of each of the prosecution’s and the defense’s cases.

Strength and Credibility of Hearsay Witness

Participants’ impressions of the strength and credibility of each witness’ testimony were measured using seven-point rating scales. These ratings were obtained in order to directly test jurors’ capacity at performing the second necessary cognitive task: realizing the inherent weakness of the hearsay testimony. In line with previous research, it was expected that these strength and credibility ratings would be lower for the neighbour when she gave hearsay testimony than when she gave direct testimony, and compared to the other witnesses.

Consideration of Hearsay Testimony

A measure of the extent to which each witness’ testimony was considered in making a verdict decision was also taken on seven-point rating scales. This measure directly tested the jurors’ ability at performing the third necessary cognitive task: giving appropriate weight to such testimony when deciding their verdict. This measure has never been directly tested before, but it
stands to reason that jurors should, if skeptical of the hearsay, consider such evidence to a lesser extent than a) identical direct testimony, and b) most other pieces of evidence.

Most and Least Important Evidence

Participants were asked to list the three pieces of evidence that they believed were most important and least important to their ultimate verdicts. It was anticipated that the direct eyewitness testimony would consistently be considered one of the most important pieces of evidence, while the hearsay testimony would not. In contrast, it was hypothesized that the hearsay testimony would more often be identified as one of the least important pieces of evidence.

Hearsay Identification

After all other questions had been administered, a definition of hearsay evidence was supplied to the participants. Using this definition as a basis, participants were then asked to give a rating regarding how strong they believe hearsay evidence, in general, would be in comparison to similar direct evidence. These ratings were made on a seven-point scale anchored with the endpoints “much weaker” and “much stronger”, and served as an additional explicit measure of jurors’ opinion regarding the value of hearsay testimony.

Participants were then informed that there may or may not have been hearsay present within the version of the trial they read, depending on the condition they were in. and were asked if they were aware of any hearsay in the trial. If so, they were asked to identify the particular hearsay evidence. This measure directly tests the jurors' ability to perform the first necessary cognitive task: identifying hearsay evidence when it is presented to them. This measure has never been obtained before, but seems integral to understanding how jurors process hearsay evidence.

Following the main hypotheses of the present study, it is expected that mock jurors will be capable of correctly identifying the existence of the hearsay when it is present.
Realism and Fairness of the Trial

On seven-point rating scales, participants rated the extent to which they believed that the trial transcript they just read was both realistic and fair. The realism measure was included to ensure that the mock jurors took their roles seriously. Fairness ratings were obtained to see if the hearsay evidence, being perceived as less credible evidence as compared to direct testimony, caused jurors to devalue the entire trial process.
RESULTS

Overview

The basic design of the study was a $2 \text{(type of testimony)} \times 4 \text{(context of testimony)}$ fully crossed factorial, with an extra control condition. This condition was included in the design to provide baseline measures of participant’s verdicts and ratings when the manipulated testimony was not part of the trial proceedings. Thus, the control condition was not required for analyses directly involving impressions of the neighbour’s testimony. When baseline measures were required to complete the analyses, the strategy subscribed to was to calculate difference scores from the baseline levels and to enter these difference scores into $2 \times 4$ analyses of variance for further scrutiny.

Manipulation Checks

Before testing the effects of the independent variable, a preliminary analysis was conducted to verify that the inclusion of the direct inculpatory testimony in the trial resulted in higher likelihood of guilt ratings than the inclusion of the direct exculpatory testimony. The analysis indicated that the manipulation was effective (inculpotory: $M = 4.47$, exculpatory: $M = 3.33$, $t(28) = -2.07, p < .05$).

Participants’ ratings of the fairness ($M = 4.92$) and realism ($M = 4.98$) of the trial were high. One-way analyses of variance revealed no significant differences between groups on either the fairness, $F(1, 112) = .32, ns$, or the realism ratings $F(1, 112) = .952, ns$. Anecdotal evidence further supported the contention that the trial was taken seriously by participants, who were often quite anxious to find out the true verdict in the case, as well as the true purpose of the study.
Verdicts and Likelihood of Guilt Evaluations

Overall, participants were more likely to vote not-guilty (67%) than guilty (33%), \( \chi^2 (1, N = 135) = 16.36, p = .000 \). An initial chi-square analysis examining the proportion of guilty verdicts per condition revealed no significant differences, \( \chi^2 (8, N = 135) = 8.16, ns \), suggesting that the testimony of the hearsay witness did not effect the verdicts given by the mock jurors. In order to investigate the relationship between the direct testimony condition and the hearsay conditions more closely, the three inculpatory hearsay conditions were collapsed together as were the three exculpatory hearsay conditions. The verdict frequencies of these pooled conditions were then compared to the direct testimony condition, and again, no significant differences were obtained for either inculpatory, \( \chi^2 (1, N = 135) = .40, ns \), or exculpatory \( \chi^2 (1, N = 135) = 2.65, ns \), evidence. These findings support the hypothesis that the hearsay testimony would only minimally affect the overall verdict decisions in the trial.

Somewhat more sensitive than the actual verdicts were the jurors’ ratings of the likelihood of guilt of the defendant. Difference scores from the control group’s rating of likelihood of guilt were calculated for each of the inculpatory and exculpatory conditions, and entered into a 2 (type of testimony) \( \times \) 4 (context of testimony) ANOVA. Table 1 displays the mean likelihood of guilt ratings for each condition. A significant main effect of context was found, \( F (3, 112) = 4.81, p < .003 \). Tukey post-hoc tests revealed that likelihood of guilt ratings in the direct testimony condition (\( M = 3.90 \)) were significantly lower than in the hearsay with judicial instruction condition (\( M = 5.13, p = .004 \)), and approached a significant difference from the hearsay alone condition (\( M = 4.80, p = .06 \)). The hearsay with cross-examination condition (\( M = 4.23 \)) did not differ from any other condition. These findings suggest that jurors utilized the hearsay testimony in a somewhat
different manner from the direct testimony, despite the fact that these differences did not affect final verdicts. No main effect for type of testimony, nor a type x context interaction, was obtained.

To elucidate the relationship more closely, individual cell means were investigated using independent t-tests. To keep things clear, remember that lower ratings of guilt imply a greater reliance on the neighbour's testimony when pro-defense evidence was read but a lesser reliance on this testimony when pro-prosecution testimony was read. With this in mind, a number of interesting patterns emerge. First, independent t-tests determined that the defendant was seen as significantly less likely to be guilty in the direct pro-defense testimony condition than in all three of the pro-defense hearsay conditions, all of which did not differ from each other. This pattern of results did not reverse for pro-prosecution testimony, however, as the jurors, for some reason, were unwilling to rely on the direct testimony in this case. Second, independent t-tests identified significantly lower likelihood of guilt ratings in the cross-examination condition than in either of the other two hearsay conditions when pro-prosecution evidence was read, suggesting that the cross-examination significantly reduced the influence that the neighbour's damaging testimony had on jurors' decisions regarding guilt. Once again, however, the results did not replicate when pro-defense testimony was read, making definitive conclusions difficult. Third, it should be noted that the judicial instructions condition obtained the highest likelihood of guilt ratings, regardless of which type of testimony was heard. Despite the fact that these ratings did not reach significance over the other conditions, these ratings imply that there may have been some kind of reactance to the disregarding instructions, which created higher likelihood of guilt ratings, independent of the actual testimony.
Strength of Prosecution and Defense

As with the likelihood of guilt ratings, difference scores from the control group’s ratings of the strength of the prosecution and defense’s cases were calculated for each condition. Using these difference scores, two 2 (type of testimony: inculpatory, exculpatory) x 4 (context of testimony: direct, hearsay alone, hearsay with judicial instructions, hearsay with cross-examination) ANOVAs were constructed to analyze the strength of the prosecution and defense, respectively. No significant differences were found for the strength of prosecution ANOVA. Similarly, no main effect for type or a type x context of testimony interaction was revealed by the defense ANOVA. but a significant main effect for type of hearsay was found, $F(3, 112) = 3.83, p < .02$. A Tukey post-hoc revealed this to be due to much lower ratings of defense strength in the hearsay with instructions condition ($M = 3.80$) than in all other conditions (direct: $M = 4.50$; hearsay alone: $M = 4.50$; hearsay with cross: $M = 4.46$), each of which received nearly identical ratings. Similar to the likelihood of guilt ratings, the judicial instructions to disregard the hearsay caused lower ratings for the strength of the defense’s case regardless of whether the evidence was inculpatory or exculpatory in nature. suggesting the possibility that the disregarding instructions created a level of reactance in the jurors.

Cognitive Task #1: The Ability to Recognize the Presence of Hearsay Testimony

Initial chi-square analyses were conducted to determine if there were any differences between conditions in jurors’ ability to accurately identify the hearsay testimony. Chi-square analyses determined that participants ability to correctly identify the hearsay testimony when it was presented did not differ as a function of either the type, $\chi^2(1, N = 90) = .385, p > .10$ or the context, $\chi^2(1, N = 90) = 4.04, p > .10$, of the testimony. As such, these conditions were collapsed together for further analyses.
Table 2 displays the percentage of participants who correctly identified the existence, or lack thereof, of the hearsay testimony. As a whole, participants were more likely to claim that there was hearsay testimony within the trial, regardless of whether the hearsay was actually present. This may have occurred because the participants assumed that being asked whether there was hearsay testimony presented implied that it must, in fact, be found somewhere in the trial. Nonetheless, 87% (78 of 90) of the participants who received hearsay testimony in their version of the trial correctly identified the specific piece of evidence when required to. Chi-square analyses revealed the level of identification to significantly differ from conditions where no hearsay was presented $\chi^2 (1, N = 135) = 35.87, p < .000$, as well as from chance $\chi^2 (1, N = 90) = 48.40, p < .000$, suggesting that jurors are highly capable of recognizing the presence of hearsay testimony in the course of an entire trial.

**Cognitive Task #2: The Ability to Realize the Inherent Unreliability of Hearsay Testimony**

When asked to rate how strong they felt hearsay testimony was generally, in relation to similar direct testimony, participants tended to rate the hearsay testimony very low ($M = 2.29$ [$3.5 = \text{same strength as direct}$]). Interestingly, individual t-tests revealed that participants who received hearsay testimony in their version of the trial rated 'hearsay, in general' lower ($M = 2.12$) than participants in the direct condition ($M = 2.73$). $t(118) = 2.63, p = .01$. This implies that reading the hearsay testimony made the jurors even more cognizant of its inherent weaknesses. The control condition fell between these two groups, but did not differ significantly from either one ($M = 2.40$).

A 2 (type of testimony) x 4 (context of testimony) ANOVA was conducted on the strength ratings jurors assigned to the neighbour's testimony. Table 3 presents the mean strength ratings of the hearsay witness by type and context of testimony. In line with previous research suggesting that mock jurors are at least somewhat skeptical of hearsay testimony, a main effect of context was
found. $F(3,112) = 14.13$, $p < .000$. Tukey post-hoc tests determined that participants in the direct testimony condition consistently rated the neighbour's testimony stronger than did participants in all three of the hearsay conditions, regardless of the context. Though not consistently reaching significance, it can be seen that both the instructions and the cross-examination were largely effective at further weakening the jurors' natural impressions of the hearsay testimony. Finally, in partial support of the original hypothesis, the cross-examination was at least as effective as the judicial instructions were in accomplishing this task, and did so without any potentially damaging reactance.

A main effect of type of testimony was also identified, $F(3,112) = 4.10$, $p < .05$. Tukey post-hocs revealed that the pro-defence testimony ($M = 3.53$) was rated as stronger than the pro-prosecution testimony ($M = 2.98$), supporting the hypothesis that jurors would be more willing to accept evidence proving innocence than guilt. No Type x Context interaction was found.

An identical 2 (type of testimony) x 4 (context of testimony) ANOVA was conducted on the credibility ratings of the neighbour's testimony. Table 3 presents the mean credibility ratings by type and context of testimony. As with the strength ratings, a main effect of context was identified, $F(3,112) = 13.07$, $p < .000$, with tukey post-hocs indicating that jurors assigned significantly more credibility to the direct testimony than the hearsay testimony, regardless of the context of the hearsay. Also similar to the strength ratings, a main effect of type of testimony approached significance, $F(1,112) = 3.35$, $p = .07$, but no type x context interaction existed.

A final analysis was performed to determine how the strength and credibility ratings of the twelve participants who were presented with hearsay testimony, but did not accurately identify it as such when required to, would compare with the rest of the participants. If there is a real inherent reaction of skepticism towards second-hand information, then it should not matter whether the
participant realized the testimony was, in fact, hearsay. Figure 1 presents the mean strength and credibility ratings of 1) the direct condition, 2) the participants who accurately identified the hearsay, and 3) the participants who did not accurately identify the hearsay. A one-way ANOVA indicated that the direct condition gave significantly higher strength and credibility ratings than either of the other two groups of participants, which did not differ from each other.

Cognitive Task #3: The Ability to Assign Appropriate Weight to Hearsay Testimony When Deciding a Verdict

As with the strength and credibility ratings, the amount participants reported utilizing the manipulated testimony when deciding their verdict was entered into a 2 (type of testimony) x 4 (context of testimony) ANOVA. As before, main effects for both type, $F(1.112) = 11.52, p = .001$ and valence, $F(3.112) = 18.07, p = .001$ of testimony were found. Table 4 presents, by type and valence of hearsay, the mean amount the neighbour’s testimony was used when participants decided their verdict. As with the strength and credibility ratings, tukey post-hoc tests revealed that the testimony was considered to a much greater extent when direct evidence ($M = 4.63$) was supplied as compared to each of the hearsay conditions (alone: $M = 3.30$; with judicial instructions: $M = 1.87$; with cross-examination: $M = 2.67$). As well, jurors explicitly instructed not to use the testimony reported using it significantly less often than the hearsay alone condition. This does not seem surprising and is likely largely indicative of demand characteristics. Perhaps more informative, however, is the fact that the jurors who received the full cross-examination did not report using the testimony significantly more than the jurors who read the judicial instructions. Keeping in mind that the ratings given by the jurors who received the cross-examination were not subject to any type of demand characteristics, this finding becomes more meaningful. Lastly, individual t-tests revealed that participants who did not recognize the hearsay testimony as such.
nonetheless used this testimony to the same extent as participants who did recognize it, \( t(88) = - .31 \), ns, and to a much lesser extent than the direct testimony was used \( t(40) = 3.50, p = .001 \).

**Residual Effects of Hearsay Testimony**

Paglia and Schuller (1998) suggested that allowing a jury to hear hearsay testimony may also affect the way other admissible evidence is evaluated by the jurors. The present study allowed this suggestion to be evaluated. Two (type of testimony) x four (context of testimony) ANOVAs were performed on the strength, credibility and amount-used scores for each of the other six witnesses in the trial in order to determine whether any of these ratings differed as a function of the inclusion or exclusion of the neighbour's testimony. Of all of these analyses, only one significant effect was identified: a main effect of context was found in the strength of the defendant's own testimony ANOVA. Tukey post-hocs determine that jurors who received judicial instructions to disregard the hearsay testimony rated the defendant's testimony as significantly less strong (\( M = 3.87 \)) than all other conditions (direct: \( M = 4.70 \); hearsay alone: \( M = 4.63 \); hearsay with cross-examination: \( M = 4.77 \)). No other significant effects were obtained for any of the ratings of the other witnesses in the trial, however. Similarly, as previously noted, the participant's ratings of the strength of the prosecution and defense did not differ between these conditions either, contradicting the suggestion by Paglia and Schuller that other admissible evidence may be affected by the admittance of hearsay testimony. The possible reactance effect of the judicial instructions should likewise be noted.
DISCUSSION

The present study assessed juror decision-making processes when either inculpatory or exculpatory hearsay evidence is admitted as part of the trial testimony. Specifically, three cognitive processes were noted which jurors would have to be able to perform if they were to be capable of dealing with hearsay testimony appropriately. Jurors would need to a) recognize hearsay testimony when it was presented in the course of a trial, b) realize the inherent unreliability of such testimony, and c) attribute appropriate weight to such testimony when deciding their eventual verdict in the case. If jurors are capable of performing these three processes, then there would appear to be no reason why hearsay testimony should not be made available to jurors on a more regular basis. This argument becomes even more prudent if one considers it in the context of the jurors' ability to create a complete, interconnected narrative of the events laid out in the trial (see Pennington & Hastie, 1986).

Overall, the results of the present study suggest that jurors are capable of performing all of the above tasks. Almost 90% of the participants who received hearsay testimony in the trial accurately identified it as such, and this testimony was consistently rated as being weaker and less credible than identical evidence from a direct eyewitness. Moreover, 96% of all participants, when explicitly asked how strong they believe hearsay testimony is in comparison to identical direct testimony, rated the hearsay as weaker, thereby supporting the notion that jurors are aware of hearsay testimony's potential unreliability. Similarly, jurors claimed to use the hearsay testimony to a much lesser extent than the direct testimony when deciding their verdict in the case.

Interestingly, the few individuals (12) who did not accurately identify the hearsay evidence within their version of the trial also dealt with the particular testimony in an appropriate manner. These participants rated the strength and credibility of the hearsay witness just as low, and used
that witness’s testimony just as little, as did participants who were aware that the testimony provided was hearsay. Moreover, these ratings differed significantly from those of participants who were presented with direct testimony. This not only reinforces the notion that jurors’ skepticism towards second-hand information is inherent, but it suggests that jurors need not even be able to recognize hearsay testimony as such, in order to deal with it appropriately in the course of a trial. Contrary to the initial contention of this paper, it appears that jurors may be able to recognize the weaknesses of the hearsay evidence even if they are not always able to describe what those weaknesses are.

These findings need be tempered somewhat, however. The fact that jurors claim to use hearsay testimony to a lesser extent than direct testimony does not mean that they, in fact, do. It remains possible that the hearsay testimony may hold more of a grasp on jurors’ cognitions than they are aware of. However, the likelihood of guilt ratings obtained from each participant suggests that this is not the case. At least with regards to the exculpable testimony, it appears that the hearsay testimony altered verdicts very little from the control condition, where the manipulated testimony was excluded entirely. In contrast, when the identical direct testimony was heard, likelihood of guilt ratings were significantly lower than either the control or the hearsay conditions. It appears that similar findings may have been revealed for the exculpatory testimony as well. However, for reasons not completely understood, the jurors were wholly unimpressed with the direct inculpable testimony, causing likelihood of guilt ratings that were even lower than the control condition. This made it difficult to properly analyze the remaining conditions, but at the very least, it should be noted that the ratings in the hearsay and control conditions were not found to differ from each other.
The present study also sought to determine whether a complete cross-examination of the hearsay witness would further aid jurors in identifying the weaknesses of the hearsay testimony. The theory behind this prediction was similar to Pickel’s (1996) notion that jurors would better adhere to the principles of law were they able to form a personal understanding of the reason for such law. This follows directly from attitude research, where researchers have argued that examined beliefs form stronger and more accessible attitudes than unexamined beliefs (Tesser, Martin & Mendolia, 1995), and that these attitudes persist longer than attitudes that form without the personal involvement of the individual (Krosnick, 1988). With regards to hearsay testimony, it was speculated that by allowing jurors to be privy to opposing counsel’s cross-examination, they would be more likely to consider the validity of the evidence for themselves and reason exactly why the hearsay testimony was unreliable. This, in turn, was expected to increase the strength of their attitude towards the hearsay evidence and make it more likely that they would remember the weaknesses of the testimony when it came time to decide a verdict in the case.

Overall, the results of the present study provide inconsistent support for this notion. Though verdicts and likelihood of guilt ratings were not found to differ between the three hearsay conditions, the amount that jurors admitted to using the manipulated hearsay testimony in each condition differed in the predicted manner. Specifically, the hearsay testimony was used to a significantly lesser degree than the direct testimony when either judicial instructions to disregard the testimony or a full cross-examination of the hearsay testimony were incorporated into the trial transcript. In comparison, when the hearsay was allowed in on its own, the level of usage did not differ from the direct condition. Similar findings were found with regards to the strength and credibility ratings of the hearsay witness when the hearsay testimony provided was in favour of the
defendant. Once again, the hearsay testimony was deemed weaker and less credible than the direct eyewitness only when judicial instructions or cross-examination procedures were performed.

In other words, the cross-examination of the hearsay witness provided similar safeguards towards the correct use of the hearsay testimony as did the judicial instructions to disregard the hearsay. It should be noted, however, that the potential for demand characteristics to have affected jurors' ratings of the hearsay witness were likely present in the judicial instruction condition, but not the cross-examination condition. In particular, participants who received the judicial instructions likely had very strong reasons to report minimal usage of the hearsay witness' testimony, since they were directly instructed not to use it at all. This influence was not for participants privy to a complete cross-examination, perhaps supporting the notion that the ratings of the participants in the cross-examination condition were more reliable and accurate.

Furthermore, a complete evaluation of the equitability of the success of these two curative measures need investigate the possibility that they may cause other secondary effects on jurors' decision-making processes. As discussed earlier, numerous studies have investigated the use of judicial instructions, with inconsistent findings being reported regarding their effect on jurors' decision-making. These instructions have commonly been argued to be completely ineffectual (Sue et al., 1973), to make the particular piece of evidence more salient, and therefore, harder to forget (Wegner, 1994), or to create reactance in jurors by limiting their decision-making freedom (Wolf & Montgomery, 1977). The extent to which each of these arguments is true requires further investigation, but it seems particularly evident that there are other potential risks involved with instructing the jury to disregard hearsay testimony.

Conversely, it does not appear that the admittance of hearsay testimony into a trial will have similar deleterious effects on the outcome of the case. The present study suggests that jurors will
not be swayed irrationally by the presence of seemingly strong, inculpatory or exculpatory hearsay testimony. Particularly when a full cross-examination of the hearsay witness is allowed, such testimony is regarded as quite unreliable, and substantially limited in the extent to which it is used to form a verdict decision. Furthermore, contrary to Paglia and Schuller’s (1998) suggestion that hearsay testimony may have residual effects on other pieces of admissible evidence, there was no indication in the present study that the presence of the hearsay testimony had any effect on other testimony given during the trial, as ratings of the strength and credibility of the other six witnesses in the trial did not differ between any of the conditions.

The third hypothesis of the present study dealt with the potential differences in the way that jurors would handle inculpatory, rather than exculpatory, hearsay. Multiple avenues of reasoning each led to the possibility that exculpable hearsay would have more of an effect on jurors’ cognitions than identical inculpatory testimony. Supporting this contention, the only study to date that utilized exculpatory hearsay testimony did report some effect on final verdict decisions in the trial. However, other confounding variables in the design of the study made it impossible to determine whether it was the exculpatory nature of the hearsay that was the true reason for these conflicting results.

In the present study, strength, credibility and amount used ratings were all higher for exculpable testimony than inculpable testimony, adding further support to this theory. It appears that jurors do seem to have an inclination towards believing hearsay testimony that provides evidence of a defendant’s innocence rather than similar testimony providing evidence of guilt. This trend was hypothesized to occur largely because of the differential burden of proof required of each side in a criminal trial, but further analysis suggests that this may not be the case. The same pattern of results was discovered with the direct testimony as well, which suggests that it might just be a
general tendency of jurors to prefer positive information about an accused. It may be that most people would simply rather set a guilty defendant free than convict an innocent one, as Thompson, Fong, and Rosenhan (1981) proposed. Regardless, it does appear that jurors value hearsay testimony that provides evidence of innocence over that of testimony suggesting guilt.

Jury research, in general, carries with it certain design weaknesses, and this study is no exception. Though every attempt was made to construct the trial stimulus in a realistic manner, it is duly noted that critics of mock jury designs will take issue with several facets of the paradigm used. First, only university students were used as mock jurors, which is not completely representative of the jury rolls used to obtain prospective jurors. It remains possible that introductory university students' responses to the trial questionnaire are not indicative of how the general population would respond. Second, it could be argued that the situation in a mock trial setting is intrinsically different than that of a real murder trial. Following this line of argument, under the pressure of a real murder trial, people may react differently than they do under the relatively relaxed surroundings of the experimental session. This may be true to some extent, however. ratings of the realism of the trial were generally high, suggesting that jurors believed the contents of the trial transcript to be truthful and accurate. Anecdotal evidence also suggested that participants seemed to genuinely take their role as jurors seriously, as many participants appeared quite interested in the true outcome of the trial.

Lastly, the present study used single jurors instead of actual juries, and did not include a deliberation session before juror verdicts were assessed. Unfortunately, it is far more efficient, in regards to both time and cost, to run subjects individually rather than to conduct juror deliberations and obtain collective verdicts. Nonetheless, it raises a definite issue as to whether the verdicts obtained by these single jurors would be the same as those obtained by full juries after they have
had time for deliberation. Very few studies have investigated the differences between juror and jury verdicts, and the similarity between the two is relatively unknown at this point. McCoy, Nunez & Dammeyer (1999) investigated the effects of jury deliberations on the complexity of the juror's reasoning skills, and determined that group-deliberators were more likely to incorporate judgmental supportive statements than were individual jurors. This is not a surprising finding in light of the well-known processes of groupthink and group polarization. Nonetheless, as a whole, there is no evidence to support the notion that individual juror verdicts differ significantly from post deliberation verdicts. In light of this, it appears that individual verdicts may be a suitable simulation of the way actual juries would behave in a real trial.

There was also an issue that pertained to the present study in particular. Although the control condition was pretested and manipulated until verdicts were balanced 50/50 between guilty and not guilty, the two direct eyewitness conditions were not pretested in order to determine the level of guilt that they would create. It was simply assumed that a direct eyewitness account of the defendant either at the scene of the crime or not at the scene of the crime would significantly raise or lower guilt ratings respectively. This was found to be the case for the direct exculpatory testimony, where likelihood of guilt ratings were significantly lower than that of the control condition, but unfortunately the direct inculpatory testimony did not create a similar increase in the perceived guilt of the defendant. Without the direct testimony having an effect on verdicts, it becomes hard to argue that the identical hearsay testimony could be expected to have any effect whatsoever. It should be noted that the three inculpable hearsay conditions did elicit verdict decisions in the predicted manner, however, conclusions are tenable at best without a proper direct eyewitness condition to act as an upper baseline of guilt. It may be productive for future research.
endeavors to reevaluate this issue under conditions more conducive to devising concrete conclusions.

A number of other issues have been raised by the present study that should be investigated in future research. Are there certain situations that make it more or less likely that jurors will use the hearsay testimony appropriately? Does the relationship of the hearsay witness to the accused have any bearing on the jurors' opinion of the credibility of the witness? Would the strength of the testimony be rated higher if it were given by an expert in the field? These are only a select few questions that need to be delved into before it can be stated with any certainty that hearsay evidence is safe to allow in to criminal trial proceedings. Nonetheless, the evidence gathered to this point seems to suggest fairly strongly that it would not cause any harm to the accuracy of jury verdicts to admit hearsay evidence into the trial. In light of the fact that this issue is in question with regards to judicial instructions to ignore particular testimony, it may prove to be beneficial to simply allow the jury full exposure to all available evidence.
REFERENCES


Table 1

Mean Likelihood of Guilt Ratings as a Function of the Context and Valence of the Testimony

<table>
<thead>
<tr>
<th>Valence</th>
<th>Direct</th>
<th>Hearsay Alone</th>
<th>Instructions</th>
<th>Cross-Examination</th>
<th>Control</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inculpatory</td>
<td>4.40(^{3,4})</td>
<td>5.13(^{4})</td>
<td>5.20(^{4})</td>
<td>3.93(^{2,3})</td>
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</tr>
<tr>
<td>Exculpatory</td>
<td>3.33(^{1,2})</td>
<td>4.47(^{3,4})</td>
<td>5.07(^{4})</td>
<td>4.53(^{3,4})</td>
<td>4.60(^{3,4})</td>
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Note. Ratings with differing subscripts differ from each other at p = .05.
Table 2

Percentage of Participants Who Correctly and Incorrectly Identified the Hearsay Testimony

<table>
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<tr>
<th>Hearsay Claimed to be Identified</th>
<th>Yes</th>
<th>No</th>
<th>Total</th>
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<tr>
<td>Yes (N = 90)</td>
<td>87%</td>
<td>56%</td>
<td>76%</td>
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<tr>
<td>No (N = 45)</td>
<td>13%</td>
<td>44%</td>
<td>24%</td>
</tr>
</tbody>
</table>
### Table 3

**Mean Strength and Credibility Ratings of the Hearsay Witness as a Function of the Context and Valence of the Testimony**

<table>
<thead>
<tr>
<th>Valence</th>
<th>Direct</th>
<th>Hearsay Alone</th>
<th>Instructions</th>
<th>Cross-Examination</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td><strong>Strength Ratings</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inculpatory</td>
<td>5.27&lt;sup&gt;1&lt;/sup&gt;</td>
<td>3.67&lt;sup&gt;3&lt;/sup&gt;</td>
<td>2.67&lt;sup&gt;3,4&lt;/sup&gt;</td>
<td>2.53&lt;sup&gt;4&lt;/sup&gt;</td>
</tr>
<tr>
<td>Exculpatory</td>
<td>4.13&lt;sup&gt;2&lt;/sup&gt;</td>
<td>2.87&lt;sup&gt;3,4&lt;/sup&gt;</td>
<td>2.40&lt;sup&gt;4&lt;/sup&gt;</td>
<td>2.53&lt;sup&gt;4&lt;/sup&gt;</td>
</tr>
<tr>
<td><strong>Credibility Ratings</strong></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Inculpatory</td>
<td>5.00&lt;sup&gt;1&lt;/sup&gt;</td>
<td>3.40&lt;sup&gt;2&lt;/sup&gt;</td>
<td>2.53&lt;sup&gt;3&lt;/sup&gt;</td>
<td>3.07&lt;sup&gt;2,3&lt;/sup&gt;</td>
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<tr>
<td>Exculpatory</td>
<td>4.20&lt;sup&gt;1,2&lt;/sup&gt;</td>
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<td>2.80&lt;sup&gt;2,3&lt;/sup&gt;</td>
<td>2.20&lt;sup&gt;3&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

*Note: Ratings with differing subscripts differ from each other at p = .05.*
Table 4

Mean Ratings of the Amount the Hearsay Testimony was Utilized as a Function of the Context and Valence of the Testimony

<table>
<thead>
<tr>
<th>Valence</th>
<th>Direct</th>
<th>Hearsay Alone</th>
<th>Instructions</th>
<th>Cross-Examination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inculpatory</td>
<td>5.20\textsuperscript{1}</td>
<td>3.60\textsuperscript{2,3}</td>
<td>2.33\textsuperscript{3,4}</td>
<td>3.20\textsuperscript{2,3}</td>
</tr>
<tr>
<td>Exculpatory</td>
<td>4.07\textsuperscript{2}</td>
<td>3.00\textsuperscript{3,3}</td>
<td>1.40\textsuperscript{4}</td>
<td>2.13\textsuperscript{3,4}</td>
</tr>
</tbody>
</table>

\textbf{Note:} Ratings with differing subscripts differ from each other at $p = .05$. 
Figure 1. Mean strength and credibility ratings of participants who received direct (non-hearsay) testimony, participants who correctly identified the hearsay and participants who incorrectly identified the hearsay.