Mitigated homicide and expert testimony: Effects of five factors of psychological stress

Thomas J. Clucas

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MITIGATED HOMICIDE AND EXPERT TESTIMONY:
EFFECTS OF FIVE FACTORS OF PSYCHOLOGICAL STRESS

By

Thomas J. Clucas

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Approved by:

[Signatures]
Chairman, Board of Examiners

[Signatures]
Dean, Graduate School

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Mitigated Homicide and Expert Testimony: Effects of Five Factors of Psychological Stress (117 pp.)

In previous jury outcome research, psychologists have studied such factors as juror and defendant characteristics, factors of evidence such as the validity of eyewitness testimony, and legal procedural rules. The present study was an attempt to differentiate the impact of various factors of psychological stress on the mitigation of homicide. The factors were empirically derived in pilot work completed previous to this study. An important aspect of this research was the presentation of the stress factors by an expert witness.

This study employed a 2X2X5 factorial design. Male and female subjects were presented with written case materials that varied by Type of Crime and Type of Expert Testimony. The Type of Crime was either a homicide involving a husband and wife or a homicide involving two friends in a bar. The Type of Expert Testimony was one of the following: A) Traumatic Childhood, B) Mental Illness, C) Recent Stress, D) Substance Abuse, and E) Antisocial Personality (comparison group). Subjects were randomly assigned to each of the conditions and rated the mitigating effects of the variables on both dichotomous (verdict) and continuous (Likert scales) measures.

Results were interpreted to support previous research that indicates that students are generally lenient as jurors and that expert witnesses are believable and influential in jury trials. The results also confirmed research which suggests that dichotomous and continuous measures do not reflect a single judgmental process. There were mixed results for the Type of Expert Testimony and no Sex differences. Suggestions for future research were offered as well as a caution about the possible limitations of the generalizability of the results.
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INTRODUCTION

The psychology of law has burgeoned in both interest and published work during recent years (Monahan and Loftus, 1982). The American Psychology-Law Society is at record membership levels, an American Board of Forensic Psychology has been created, and the American Psychological Association has formed Psychology and Law as its forty-first division. Publications of articles on psychology and law have appeared in such mainline journals as Psychological Bulletin and Psychological Review. Other journals such as Journal of Personality and Social Psychology have devoted entire issues to legal topics. The increased interest and activity of psychologists in the legal area is made evident by these organizational and publication developments.

A recent attempt to review and synthesize the findings of psychological research is that of Mohahan and Loftus (1982). Their review breaks the area of psychology and law into three functional domains. In the first domain of substantive law psychologists are addressing the validity of assumptions about behavior which is a basis for law. Examples of questions under study in this area include whether punishment can have a detering or rehabilitating effect on offenders (Blumstein, Cohen, and Nagin, 1978), or whether the competence doctrines for children and
psychologically disabled are valid (Whitehorn 1980 and Applebaum 1981). Another domain of study concerns the actual operation of the legal system. This second domain is focused on ways in which the law actually disposes of individual cases. Questions such as what factors constitute sentencing or parole decisions are a part of this domain. Decision making in insanity cases has also been addressed (Pasewark, Pantle, and Steadman 1979). Monahan and Loftus' third domain is that of the legal process. More specifically this process domain is the study of factors which affect outcome in jury trials. Many variables have been studied as they relate to jury trials and include such elements as juror and defendant characteristics, factors of evidence such as the validity of eyewitness testimony, and legal procedural rules. (For complete reviews jury research see Guerbasi, Zuckerman, and Reis, 1977; Saks and Hastie 1978; and Nemeth 1981).

One aspect of jury research which has received little attention is factors which are related to diminished responsibility or mitigation in criminal trials. The purpose of this research will be to begin exploratory research into factors which influence juror's decisions in assigning levels of criminality in a homicide case.
Criminal law generally assumes that people are able to choose how to behave, and the law holds them responsible for their conduct. There are, however, instances where criminal law accepts the determinist accounts of behavior and on these occasions holds external forces to be responsible for a person's behavior. Between these two extremes of full responsibility and nonresponsibility is conduct in which the individual is strongly influenced by external forces, yet retains some choice in how to respond. In this latter condition a person is said to have diminished responsibility or partial responsibility (Creach, 1982). The external forces which compose the remainder of a person's responsibility are called mitigating factors.

The literal definition of mitigate is to lessen, soften, or make less severe. In a court of law, circumstances about an individual or crime are often introduced as mitigating factors. When the circumstances are considered mitigating, the law considers a person only partially responsible for his conduct. Sentencing for these people is also mitigated or reduced. The intent of the law is to make the punishment fit the level of criminality, not the level of the crime.
Despite some recent public concern about supposed leniency in criminal sentencing, the general trend is toward more individualized sentencing rather than less (Bonnie and Slobogin, 1980). Structured sentencing is continually being refined in an effort to calibrate the responsibility of criminal defendants. Even though we witness the growing use of mitigation in criminal sentencing, it is often criticized for its subjectivity and inconsistency. Thus far, no consistent pattern of evidentiary factors can be found to distinguish between successful and unsuccessful claims of diminished responsibility (Arenella, 1977).

Development of the Diminished Responsibility Defense

Diminished responsibility has not been accepted as a general principle for all of criminal law. The concept developed in homicide cases to permit the jury to convict mentally ill, but legally sane defendants of second degree murder (Arenella, 1977). The practical implications were that individuals convicted of second degree murder could not be considered for the death penalty and they received lesser sentences. To facilitate understanding, a basic description of legal defenses will first be offered. These defenses are part of what is termed an affirmative defense. The affirmative defense is utilized in cases in which the
defendant admits to an act but seeks an acquittal due to circumstances of the crime.

A. Mens Rea

The "mens rea" of an act is the state of mind accompanying the act. Statutes often require proof of mental elements related to specific intent crimes. While these "mens rea" elements differ by states and jurisdictions they usually include premeditating and deliberating, entertaining malice, or possessing an intent to kill. Defendants are allowed to offer evidence in trials to show that they lacked the mens rea required by law and are therefore not responsible for their acts. An example of this would be a case where the defense argues that the defendant lacked the mens rea of deliberation because of intoxication.

B. Actus Reus

The "actus reus" requirement of a crime considers whether or not the defendant acted voluntarily. In these cases, a person usually asserts that the behavior was due to automatism or unconsciousness. Such experiences as an epileptic seizure, a concussion, a somnambulistic fugue state, or dissociative episode are offered as proof of the lack of voluntary action.
C. Insanity Defense

In general the insanity defense is offered to prove that a person lacked the mens rea or actus reus requirement of an offense because of mental illness. Laws governing the defense vary by state. The distinction between the insanity defense and other automatism or unconsciousness defenses is not always clear. The insanity defense ordinarily leads to civil commitment when successful, while the other defenses may lead to outright acquittal (Fox, 1963).

A problem with the insanity defense is that a person may be mentally ill but still meet the mens rea or actus reus requirements of a crime. In other words, the defendant is still legally sane. Consider the following Goedecke case as an example.

Like many other eighteen-year-olds, Raymond Goedecke was not getting along very well with his father. Raymond wanted to leave home and strike out on his own but his father, who was also his employer, would not permit it. Raymond's resentment of his father's domination fueled many conflicts between them until finally the two stopped talking to each other.

This common story of a father and a son's failure to communicate took a bizarre twist when Raymond resolved the conflict by killing his entire family. He carefully planned his father's murder by establishing an alibi that he was asleep at a church camp on the night of the killing. After secretly leaving the camp and driving to his home, he took off his shoes and entered the house. Picking up an iron bar in the garage, he went
into his parents' bedroom and struck both his mother and father repeatedly. He continued to his brother's and sister's bedroom and beat them to death. After washing the blood off his clothes and opening the drawers to make it look as if someone had ransacked the house, he returned to the church camp. The next day, he returned to his parents' home with a friend and feigned surprise at finding the bodies.

At the trial for first-degree murder defense psychiatrists testified that Goedecke did not realize what he was doing on the evening of the murders because of a dissociative reaction. Prosecution psychiatrists agreed that he was mentally ill but concluded that mental disability did not interfere with his capacity to formulate the intent to kill or to understand that what he was doing was wrong. The jury found Goedecke guilty of first-degree murder of his father but insane when he killed the rest of his family. On appeal, the California Supreme Court reduced Goedecke's conviction for the killing of his father to murder in the second degree (Arenella, 1977).

In this case, both sides agree that Ray Goedecke is mentally ill. However, the jury decides that he does not cross the line of legal insanity until after killing his father. The Supreme Court's reduction of the conviction for first-degree murder to second-degree murder changes the application of the law. Ray Goedecke's mental illness became a mitigating factor which reduced his responsibility for the crime and he was given a reduced sentence. This is different from the previous working of the law in which the result would have been either "not guilty by reason of insanity" or "sane and guilty".
A similar case, in which an unsuccessful insanity plea resulted in mitigation was People v. Wolff.

In his confession to the police, Wolff admitted he had decided to kill his mother so that he could take girls to his house and rape them. He carefully planned the killing, including the selection and concealment of the murder weapon, days before the homicide. Wolff consummated his plan by striking his mother from behind with an ax. After a terrible struggle, she crawled to another room where Wolff caught her and choked her to death. He then turned himself in to the police.

The jury rejected Wolff's insanity defense despite the uniform consensus of all the expert witnesses that he was schizophrenic and legally insane at the time of the killing. On appeal, the court reaffirmed its adherence to the M'Naughton test and refused to overturn the jury's finding of sanity (Arenella, 1977).

Wolff was initially convicted of first-degree murder. The jury rejected Wolff's insanity defense despite the fact that all the expert witnesses agreed that he was schizophrenic. The problem was that the facts clearly indicated that Wolff formed specific intent to kill, devised a plan, and had ample opportunity to think about his action. The expert testimony did not dispute the fact that Wolff had the capacity to premeditate and had deliberated before killing. Wolff fit the mens rea requirement of the law even though he was mentally ill.
The California Supreme Court reduced Wolff's conviction to second-degree murder because of his mental illness. The argument was offered that Wolff's mental illness robbed him of the capacity to evaluate the seriousness of his action in a meaningful manner. The Supreme Court's argument changed the mens rea inquiry from assessing whether the defendant had entertained the specific intent to why and how he had entertained it. By doing so, the California Supreme Court again laid the foundation for using the diminished responsibility defense. Wolff's mental illness mitigated his conviction from first to second-degree murder and subsequently reduced his sentence. The above cases are used to illustrate the difficulty of our legal system in separating the "bad" from "mad" criminal defendants. The cases also illustrate how the concepts of diminished responsibility and mitigating factors were accepted as part of the legal process concerning homicide. Since these initial cases, however, the diminished responsibility attributed to mitigating mental abnormality has been unchained from the mens rea requirements (Bonnie and Slobogin, 1980). In 1976 the United States Supreme Court made a decision upholding the use of capital punishment, and now all persons convicted of a capital murder may present evidence in mitigation. Any convicted murderer is now constitutionally entitled to a separate sentencing proceeding where the mitigating
evidence is presented. These separate proceedings facilitate the trend for more individualized sentencing mentioned earlier in this work.

In addition to the sentencing proceedings for murder, many states have enacted legislation in regard to mitigating factors. For example, nearly every state reenacting capital punishment has specified what constitutes mitigating circumstances and has included two responsibility formulations derived from the Model Penal Code. The formulations are whether or not the defendant's capacity to "appreciate the criminality...of his conduct or conform his conduct to the requirements of the law was significantly impaired and whether he was suffering from extreme mental or emotional disturbance" at the time of the offense.

Montana Law

Apart from capital punishment, other states have enacted legislation concerning mitigation and the grading of offenses. Montana's homicide laws will be considered as an example of offense-grading legislation. In Montana, a person commits the offense of criminal homicide if he purposely, knowingly, or negligently causes the death of another human being. Then, depending on the circumstances of the case, a person may be convicted of criminal homicide at one of three levels: deliberate homicide, mitigated
deliberate homicide, or negligent homicide. The Montana Code defines these levels of homicide as follows:

Criminal homicide constitutes deliberate homicide if it is committed purposely or knowingly, or it is committed while the offender is engaged in or is an accomplice in the commission of, or an attempt to commit, or flight after or attempting to commit robbery, sexual intercourse without consent, arson, burglary, kidnapping, felonious escape, or any other felony which involves the use of physical force or violence against any individual.

Criminal homicide is mitigated deliberate homicide when a homicide which would otherwise be deliberate homicide is committed under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse as shall be determined from the viewpoint of a reasonable person in the actor's situation.

Criminal homicide constitutes negligent homicide when it is committed negligently. In Montana, negligently is defined as when a person consciously disregards a risk that the result will occur or that the circumstances exist.

(Montana Code Annotated, 1973, 94-5-102.)

Thus, Montana law provides an example of how diminished responsibility has been removed from the mens rea requirements of homicide. The mens rea for deliberate homicide is that the act be committed purposely or knowingly. Under mitigated homicide, the mens rea is still in effect— the person acts knowingly or purposely. The difference is that mitigated homicide is also accompanied by extreme mental or emotional stress.
Diminished Responsibility and Expert Psychological Testimony

Jurisdictions which allow for only a complete insanity defense without mitigation struggle with how to use expert testimony. This is especially true in those places which adhere to the M'Naughton test of responsibility. Under the M'Naughton test, the expert may testify only as to whether the defendant has a mental disease and whether it prevented him from knowing the nature and quality of his act or that the act was wrong. Many courts, therefore are not receptive to any testimony which explains the dynamics of a defendant's behavior.

Even in jurisdictions where the insanity rulings are more liberal than M'Naughton, there is often an encouragement of psychiatric labelling. Many courtroom battles have focused on whether or not the defendant suffered from a demonstrable disease (Lewin, 1975). One expert may argue for the existence of a mental disease, while another may dispute the diagnosis. The arguments are sometimes semantic because both sides have observed the same symptoms but disagree as to a diagnostic label. The issue is left to a jury, yet there is little guidance for them in knowing which expert to believe. Nor is it usually clear in these cases for a jury to determine if the criminal act was product of the disease process.
When a jurisdiction adopts a diminished responsibility doctrine, a shift from the focus of disease labeling to dynamic explanations of human behavior occurs. Instead of the court now asking if the defendant is mentally ill, the expert psychologist can offer a broader range of information to the jury. The witness may be asked to describe the defendant's capacity to organize thought processes, sort out real from unreal stimuli, hold clear and logical thoughts, and do similar tasks that may be an important element of the crime. The expert testimony can attempt to explain why a person acted the way they did, not whether they had the state of mind required by the mens rea at the time of the crime. The following case is an example of how testimony may be offered in an explanatory fashion.

Nicholas Gorshen was a longshoreman working at a San Francisco wharf. On the day of the crime, he reported to work intoxicated and his foreman, Joseph O'Leary, told him to go home. After Gorshen refused to leave the wharf, the two men struggled and O'Leary knocked Gorshen to the ground, ending the fight. Gorshen announced to everyone on the docks that he was going to go home, get his gun, and come back to kill O'Leary. After receiving some medical assistance at a hospital, Gorshen went home, cleaned and loaded his gun, and returned to the docks. Police officers at the scene stopped Gorshen and searched him for weapons. After an unsuccessful search, Gorshen was released. He immediately pulled out his gun and fired once at O'Leary with the police at his elbow.

One could hardly construct a better case of first-degree murder. The objective facts and Gorshen's declaration of his intent provided ample proof of premeditation and deliberation.
with malice aforethought. Yet, Dr. Bernard Diamond, a nationally prominent forensic psychiatrist, testified that Gorshen's mental abnormality robbed him of his capacity to premeditate or entertain malice.

Dr. Diamond told the court that Gorshen had been suffering from chronic paranoid schizophrenia for twenty years prior to the shooting. During this period, Gorshen went into brief trances in which he heard voices and experienced visions. In some of these visions he saw devils in disguise committing abnormal sexual acts. His sexual hallucinations increased in frequency during the year before the homicide as he come to believe that he was losing sexual powers. Dr. Diamond explained that as these fears of impotency grew, Gorshen's work took on an exaggerated importance as a tangible proof of his virility.

When O'Leary ordered Gorshen to leave work, Gorshen saw the order as an attack on his manhood. According to Dr. Diamond, Gorshen was then confronted with two stark choices— the loss of his sanity or "as an alternative to total disintegration... (the development of) an obsessive murderous rage...". He stated that "an individual in this state will do anything to avoid the threatened insanity, and it's this element which lends strength to his compulsive behavior...". The defendant had told Dr. Diamond that at the time of the shooting "I forgot about God's laws and human's laws and everything else. The only thing was to get that guy...." The trial judge found the defendant guilty of second-degree murder (Arenella, 1977).

In this case, expert testimony did not deny that Gorshen consciously entertained the intent to kill. Instead, Dr. Diamond offered an explanation as to how Gorshen's conscious planning of the killing was the product of disease process which negated or diminished Gorshen's volitional controls. While there may be objections to the
expanded use of testimony in the Gorshen trial, it does provide a good example of how laws which allow partial responsibility do change the type of testimony which may be offered.

Thus far only mitigating defenses involving the possibility of a mental disorder have been considered. The Montana law for mitigated homicide also includes a basically sane individual who is under extreme stress. In these cases, an expert may be asked to render an opinion as to the impact of both long-term and recent life stresses, and how these are related to personality during a crime.

In general, a distinction needs to be drawn between cumulative effects of stress from a simple reliance on past events as mitigating. Often times the courts will allow the cumulative effect of a series of events when it is triggered by some final event in which the fatal act was an immediate response. In those cases where an individual has suffered from a number of stressful events in the past, but there is no final triggering event, then mitigation may not be accepted. Psychologists will most likely be called on to testify how the past life events and current stresses interact to result in criminal behavior. The testimony becomes similar to the dynamic explanations of behavior offered for mitigation involving mental disorder.
For example, in Commonwealth vs. Carroll, a husband unsuccessfully invoked the heat of passion argument (Del Tosto 1980). A successful defense would have resulted in voluntary manslaughter, which is the Pennsylvania equivalent to mitigated homicide in Montana.

Following a lengthy argument with his nagging, apparently sadistic wife, and after she had fallen asleep, the defendant shot her twice in the head with a gun which had earlier been placed near the bed at the victim's request. The defendant's psychiatric expert testified that the defendant was for a number of years passively going along with a situation which he was not controlling and he was not making any decisions, and finally a decision was forced on him. His wife issued an ultimatum that if he went and gave this training course she would leave him. He was so dependent upon her he didn't want her to leave. He couldn't make up his mind what to do. He was trapped.... Rage, desperation, and panic produced an impulsive automatic reflex type of homicide, as opposed to an intentional premeditated type homicide.

Other evidence involved the wife's abuse of their young children. The defense of voluntary manslaughter was not sustained because the jury rejected the expert testimony as showing how the cumulative stress was related to the crime. The fact that Mr. Carroll shot his wife long after an argument and after she had fallen asleep negated the argument that his behavior was caused by the stresses. There was a lack of a final event that resulted in an immediate response often necessary for reduced
homicide charges.

Commonwealth v. Whitfield is another case in which cumulative stress was not allowed as part of a defense (Del Tosto, 1980). In this case, Whitfield stabbed her mother's common law husband in the throat one hour after an argument over a minor matter. The court found that the argument was not sufficient provocation for a heat of passion defense; which would have mitigated the charge in Pennsylvania. In addition, the court found that the evidence that the victim had sexually abused the defendant during adolescence was not sufficient to reduce the charge because the abuse occurred seven years before the homicide. Again, no clear link between the abuse and final provoking incident was provided to the court.

For comparison, a successful cumulative stress argument was offered in Commonwealth v. McCusker (Del Tosto, 1980). During this trial, expert testimony was offered regarding the defendant's knowledge that his wife was intimately involved with his step-brother and might be carrying his child. This knowledge was the cumulative stressor and the final provoking event was the wife's threat to leave Mr. McCusker moments prior to the homicide. In this case the immediacy of McCusker's actions gave more credence to the effects of cumulative stress.
In Montana, the statutory law does not explicitly state that stress must be accompanied by a final provoking event or directly related to the crime for mitigation. Yet these issues often become important aspects of the criminal proceedings in the court's attempt to define extreme emotional stress. Therefore it becomes important for an expert witness to testify as to the relevance of past and current stresses in relation to the crime. Del Tosto (1980) cites three important factors in relating cumulative stress to a criminal act. They are as follows: (1) whether the defendant actually acted in the heat of passion, (2) whether the provocation directly led to the killing, and (3) whether insufficient cooling time had elapsed, preventing the defendant from using his reasoning powers and capacity to reflect. These factors constitute an important consideration for the expert witness testifying as to the effects of stress in a case involving a legally sane individual.

The above examples illustrate possible information that experts can offer, yet exactly what testimony is allowed into court varies with jurisdiction and judge. The actual law of evidence on admissibility of expert testimony seems relatively clear, although there is little uniformity in its application in state courts (Miller, Lower, Bleechmore, 1978). McCormick (1972) has stated the law of
admissibility as follows:

An observer is qualified to testify because he has firsthand knowledge of the situation or transaction at issue. The expert has something different to contribute. This is a power to draw inferences from the facts which a jury would not be competent to draw. To warrant the use of expert testimony, then, two elements are required. First, the subject of the inference must be so distinctively related to some science, profession, business or occupation as to be beyond the ken of the average layman. Some courts emphasize that the judge has discretion in administering this aspect of the rule, and other courts will admit expert opinion would still aid their understanding of the fact issue. This latter approach emphasizes the true function of expert testimony. Second, the witness must have sufficient skill, knowledge, or experience in that field or calling as to make it appear that his opinion or inference will probably aid the trier in his search for truth. The knowledge may in some fields be derived from reading alone, in some from practice alone, or as is more commonly the case, from both.

Psychologists cannot solve the court's basic dilemma in deciding who is guilty and if so, at what level of responsibility. However, the training required of a PhD. Psychologist renders such as a candidate for expert witness status. The psychological expert can assist fact finders (judges and jurors) by reconstructing and interpreting clinical aspects of past events by assessing present psychological functioning (Hoffman, 1981). The U.S. Supreme Court has given legitimacy to this form of testimony in the 1979 decision of Addington v. Texas. The
court stated that cases involving a question of psychological disorder must be decided not so much on the basis of observable facts, but on facts which must be interpreted by expert psychiatrists and psychologists (as quoted in Monahan and Loftus, 1982). Thus in a mitigated homicide a qualified expert may be allowed to testify as to facts and the meaning of the facts in that particular case.

Bonnie and Slobogin (1980) have termed what the expert psychologist can offer the court in testimony as "informed speculation". They define informed speculation as the formation of opinions based upon training and experience beyond that of the layman. It lies between established scientific fact and mere guessing. Since cases involving mitigation are based upon laws which often require subjective inquiry, i.e., stress as a mitigating factor, then psychologists are a logical choice to aid in the inquiry. Explanatory formulations can be offered to a court as clinically reasonable possibilities which may not occur to a judge or jury. Expert testimony can also offer information that helps make sense of information that appears random or insignificant.

As an example of the utility of informed speculation, the case of Mr. Z will be considered as discussed by Bonnie and Slobogin, 1980. Mr. Z was a twenty-three-year-old artist who had committed six attempted rapes over six
years. He remembered his crimes in detail and reported that before each one he felt a powerful impulse. Victims were randomly chosen and he always became scared and horrified at what he was doing. Because of these feelings he never actually raped his victims and on two occasions apologized after the assault.

During the interviews Mr. Z was not overtly psychotic. The most noticeable features were feelings of hopelessness, suicide, and self-hate. His feelings of self-hate were reported to exist as long as Mr. Z could remember and he had little to offer others. Corroboration from friends and his journals indicated social isolation, neglect of work and long periods of depression.

The relevant family history revealed a father who was extremely demanding and perfectionistic. He sometimes overreacted to minor problems and would choke his son by holding him up in the air by his neck. Mr. Z reported being terrified by these rages and recounted nightmares of his father's face exploding after he transgressed.

Family history also indicated an extremely strained sexual relationship between his parents. Mr. Z's mother was repulsed by sex and rarely agreed to intercourse with his father. When she did submit to sexual advances she would call him "pig", "bastard", and other names. Mr. Z
witnessed many of these scenes from an adjacent room and was severely upset by his parents' actions.

The Forensic Psychiatry Clinic at the University of Virginia concluded that Mr. Z was chronically depressed through adolescence and developed abnormally low self-esteem. They cited his father's harsh treatment and mother's neglect as the major causes and added the following to their observations:

One of the characteristics of chronic depression in young adults is the unconscious desire to create situations and experiences which will perpetuate one's depression and masochistically confirm the low self-image that is inextricably bound up with such a depression.... Many of Z's acts in the past years can be seen as subliminal attempts at denigrating his worth as an individual; this urge toward self-degradation was aimed at symbolically repeating the debasement Z was subjected to at the hands of his parents, most significantly his father.

These observations were then applied to the attempted rapes as follows:

Given Z's psychosexual development, the result of Z's drive toward self-degradation was his preoccupation with sexual aggression. Seeing his parents virtually do battle each time they had intercourse led Z, on an unconscious level, to equate sex with violence and degradation. The attempted rapes can be seen as an impulsive acting out of an unconscious desire to prove himself a "bad" person (Bonnie and Slobogin, 1980).

The level of analysis offered begins with observed facts.
and symptoms, leads to an explanation of the symptoms, and is followed with a hypothesis of how they may be related to the crime. Formulations of this nature are scientifically unverifiable, but are based on psychodynamic theory. However, the value of the testimony for organizing information and offering a plausible explanation of the behavior should be apparent. The explanation would not be intuitively obvious to the layman, yet could offer information to better assess culpability. Bonnie and Slobogin argue "that to the extent that the law is interested in the psychological antecedents of a defendant's criminal behavior, it must give him reasonable opportunity to offer an explanation."

The second aspect of the law of admissibility is that the person must have sufficient skill, knowledge, or experience in that field. Problems may arise when a psychologist is asked to testify on an issue for which he or she is not necessarily qualified. Psychology is a broad discipline with diverse specialties even at the doctoral level. Criticism has been leveled against the use of experts who may be competent as therapists, but not as forensic psychologists. Bonnie and Slobogin (1980) stated their objections as thus,

Many clinicians have no business in the courtroom. Their training in clinical methods of inquiry and treatment encourages them to err
in the direction of diagnosing illness, invites many of them to speculate wildly about unconscious determinants of behavior, and frequently discourages systematic theoretical inquiry. Many clinicians are not sensitive to the limitations of their own disciplines; if they are not researchers, they focus on what they think they know rather than what they do not know. More important, many clinicians are entirely untrained in, and insensitive to, the purposes and limitations of the legal process.

These are serious allegations and the authors suggest that guidelines should be adopted to help judges evaluate the qualifications and techniques of prospective expert witnesses. Although specific guidelines were not recommended by Bonnie and Slobogin, the primary qualifications were stated as appropriate forensic training and experience. They suggest that the qualified expert should have an understanding of the difference between clinical and legal significance, and the relevant substantive law on the issue to which testimony is offered. They further suggest that the expert should not offer testimony on a person's mental condition unless a personal, thorough, evaluation has been conducted and targeted at the precise questions to which the expert will testify.

The forensic expert who is qualified to testify in most criminal cases would also be appropriate in cases involving mitigated homicide. The psychologist can testify in such cases when his or her knowledge and experience
allow him to either come to a conclusion which the lay person cannot, or to aid the lay person in making sense of the information. Many cases of mitigated homicide do not require the testimony of an expert. The facts surrounding a crime may be sufficiently clear for either a charge or verdict of mitigated deliberate homicide. However, defense attorneys may choose to call an expert as a tactical maneuver in the trial. Expert witnesses can bring information into a courtroom about a defendant which would be considered hearsay if offered from lay persons. Whether or not the testimony is allowed into court is again left to the discretion of the judge. The expert must take care not to overstep the boundaries of his or her testimony. A plausible explanation of the criminal behavior may be offered, but determining how exculpatory or mitigating the circumstances should be the province of judge and jury. The expert witness should be cautioned to not simply act as a mouthpiece for prosecution or defense, but should strive to integrate the information about a defendant with maximum objectivity.
Relevant Research

As stated earlier in this paper, the defining characteristic of mitigated deliberate homicide in Montana is extreme mental or emotional stress. Legally, what constitutes stress shall be determined by a reasonable person in the actor's situation. The use of stress as mitigating opens the court to a considerable amount of subjectivity and ambiguity. A question may be posed about the legitimacy of stress to mitigate criminal responsibility and punishment. Is this a valid application of the way in which psychologists understand stress to affect the lives of people?

Before answering this question it is important to define what is meant by stress. The difficulty, however, is that even a cursory review of the research literature reveals that stress has been defined in many ways. The behavioral phenomena to which stress refers range wide. There are many life-stresses such as loss of a limb, ill-health, poverty, and intense periods of danger such as combat, natural disasters, and criminal assaults. Various social-psychological conditions such as interpersonal conflict, failure, and rejection also fall under the rubric of stress. These phenomena differ widely both in the situations which give rise to them and in the responses which they elicit.
McGrath (1970) stated that stress occurs when there is substantial imbalance between the environmental demand and the response capabilities of the organism. So in addition to behavioral phenomena, a person's capabilities must be considered in understanding the nature of stress. Appley and Trumball (1967) point out that (1) individual differences in reactions to situations are great, (2) that social context is of major importance in understanding stress reactions, and (3) that stress is best understood as an interaction of individual and situation. While agreeing with these basic criteria, Sells (1970) would add that stress occurs under two conditions. The first is when an individual is called to respond to a situation in which he has no adequate response available. The unavailability of the response may be due to a number of reasons such as physical or mental inadequacy, lack of training, or opportunity to prepare. The second condition is that the consequences of failing to respond adequately are important to the person. In this condition, he defines personal involvement as the importance of consequences to the individual.

Another important qualification in defining stress in Lazarus' (1966) concept of cognitive appraisal and psychological stress. In this view, the environmental demand creates stress when the person anticipates that he
will not be able to cope adequately. Stress exists then not in an imbalance between objective demand and response capability, but in perceived demand and perceived response capability.

Other researchers have noted that the stressfulness of an event is inferred from the responses to the event. A stressor, therefore, is "that which produces stress" (Selye, 1976), or "a class of stimuli which are more likely to produce disturbance in most individuals" (Basowitz, Persky, Karchin, and Grinker, 1955). The problem with this definition is its circularity. Kahn and Quinn (1970) support this circular definition by regarding the response of an individual. That is, a stressful event produces a disturbed response in most or many individuals.

To summarize, stress is the result of a wide range of varying events. Stressful reactions occur when there is disparity between the demands and response capabilities or perceived demands and capabilities of the person. Generally the consequences of the event must be important to the organism. The stressful event has been defined as that which produces disturbance in many or most people, recognizing that there is individual and situational differences.
The problem with the concept of stress in the legal sense is the application to the individual criminal act. Even though psychologists can determine that certain events are stressful to most, the stressfulness is not inherent to an event. A person's behavior will always be an interaction of personality and circumstance. The subjective distress caused by an objective stressor varies with the individual. It thus becomes impossible to say that event B has a certain mitigating power of B. A certain amount of subjectivity and inconsistency in application of the law will exist when the law is based on concepts that bear wide individual differences.

Research has produced some evidence to support the contention that as life stress increases criminal behavior also increases. In one study, prisoners experienced an increase in the frequency of life change events prior to incarceration (Masuda, Cutler, Hein, and Holmes, 1978). Prisoners in this study were 176 males sampled from McNeil Island, a federal prison and the state prison of Washington at Walla Walla. All subjects were administered the Schedule of Recent Experience (SRE), a self report measure which asks subjects to rate life events five years prior to and after imprisonment. Although the conclusions are based on retrospective self-report data, the study does begin to throw light on the relationship between criminal behavior
and stress.

In a study designed to assess the accuracy of mental health evaluations for predicting dangerousness it was discovered that incidence of stress events was significantly associated with dangerous behavior (Levinson and Ramsay, 1979). This study involved 99 clients who were in contact with the Emergency Mental Health Service (EMHS) in a large metropolitan area in the Southeast. The clients were chosen after coming to the attention of EMHS following peculiar or disruptive behavior which was suspected to be the result of mental disorder. Dangerousness was measured by both threats and actions to harm self or others. Stress was measured with the SRE used in the Masuda et al. study. Results of the study indicated that 65% of the subjects exhibited dangerous behavior under high stress, while 31% exhibited dangerous behavior under low stress.

For both of the above studies, an association between SRE scores and criminal or dangerous behavior does not necessarily indicate a causal relationship. Stressful events as defined by the studies could be the result of earlier behavior of the subjects rather than a cause of their present behavior. Although these studies do not prove that increased stress leads to increased violence, they do support the intuitive belief that this is the case.
The problem is whether to consider the events as mitigating, aggravating, or neutral. It could be argued that because stressful events may contribute to criminal behavior that they are mitigating. Yet if they increase a person's dangerousness to society perhaps no consideration should be given to circumstances. Distinctions may need to be drawn between the various types of offenders. The laws concerning diminished responsibility may need to consider the difference between the antisocial individual, mentally unstable, and basically normal individual who is under extreme stress. While the courts can gain information from experts, these distinctions may prove too difficult to draw for a uniform application of law. Despite this difficulty, the intent of the law to gauge responsibility and sentence accordingly is likely to remain intact.

Perhaps the most important point to this discussion from a scientific viewpoint is not whether stress should or should not be considered mitigating. What is most important is the range of freedom which such terminology allows a jury. Brooks and Doob (1975) remind us that through legal history the jury has been described as serving one of two functions. The first function has been to ensure the accuracy of fact finding and to apply these facts to the law as given by the judge. Conversely the jury can be seen as an institution which has the right to
construe or ignore a relevant rule of law so that the application is in accord with the notions of justice and fairness in the prevailing community. The use of extreme or emotional stress as the code governing diminished responsibility allows jurors to construe the law according to what seems most fair in a given case.

In criminal cases, a jury is very likely to consider the whole situation surrounding a crime in coming to a "just" although not always strictly legal decision. As specific examples, Kalven and Zeisel (1966) found that a jury was less likely to convict or would convict of a lesser offense when there was some degree of victim precipitation. A number of cases were also cited by Kalven and Zeisel where the jury seemed to acquit the defendant because he had suffered enough, even though he might be technically guilty. Finally, in some cases, the jury appears to consider whether or not the state deserves to win. If the police used unfair methods of obtaining evidence or singled out one person for prosecution where many appear equally guilty of a crime, the jury is less likely to convict. It appears then, that the jury injects into the legal process notions of fairness that are shared by the average person.
Jury research would support the notion that non-legal factors influence decisions made by jurors. In a review of judges written reports of over 3,500 actual criminal cases, Kalven and Zeisel (1966) found that juries and judges disagreed on verdicts in about 20% of the cases. In most of those disagreements, the jury was more lenient than the judge. When queried, judges stated that the reasons for disagreement included defendant and victim characteristics, type of crime, and the jury's evaluation of that crime.

Data from other research has supported the observations that extra-evidential factors contribute to mock juror's verdicts. The research has considered a wide variety of potential factors which may influence jurors. Besides the defendant and victim characteristics of jurors, judges instructions regarding pretrial publicity and inadmissible evidence, number and severity of decision alternatives, jurors conceptions guilt and the size of jury and decision rule (Gerbasi et al., 1977). Portions of this research most relevant to this proposed study will be considered.

A study which considered the definitions of guilt as related to the insanity definitions was conducted by Simon (1967). He compared juries assignments of guilt in an incest case when given the M'Naghten, Durham, or no rules to define legal insanity. The M'Naghten rule, older and
more widely used, states that if the defendant could not
distinguish right from wrong at the time of the crime, he
should be found not guilty by reason of insanity. The
Durham rule considered more psychologically advanced states
that the defendant is not guilty if the crime is a product
of a mental disturbance regardless of the ability to tell
right from wrong at the time of the crime. Results of the
investigation were that M'Naghten juries were more likely
to vote guilty than either the Durham or uninstructed
juries. Simon concluded that the Durham rule was more
similar to the public's understanding of insanity because
the uninstructed and Durham juries gave similar responses.

Another study which considered guilt and insanity was
that of McGlynn and Drielinger (1981). They varied sanity
and incriminating evidence to determine the imposition of
punishment and guilt ratings in either a sanity hearing or
criminal trial. In their study, mock jurors read sample
reports of an expert psychologist indicating high, medium,
or low levels of insanity. Subjects were also given
evidential information which was either high or low for
incrimination. The major finding of the study was a
difference in ratings between the sanity hearing and
criminal trial. In the sanity hearing the level of sanity
judgement corresponded to the level of sanity in the expert
reports, regardless of incriminating information. This
result lends evidence as to the effectiveness of the manipulation of sanity value. In the criminal trial condition however, the less incriminating version of the facts resulted in a increased rating of insanity. McGlynn and Drielinger concluded that jurors were either unwilling or unable to disregard incriminating evidence when asked to make sanity judgements during a criminal case, even though the legal instructions required them to make such a distinction.

Other recent research concerned with sanity and guilt compared the judgements of college students and actual former jurors (Hinkle, Smeltzer, Allen, and King, 1983). In their study, subjects were presented a brief written account of a murder case, an explanation of the insanity defense, and testimony from two types of expert witness (psychologist or psychiatrist), and two types of testimony (only clinical interview or objective psychometric data). The expert witnesses also stated that the defendant was either sane or insane based on their evaluations. Results indicated that both students and former jurors were influenced by the experts determination of sanity. Thus when the expert concluded the defendant was sane, all subjects were more likely to return a sane verdict and when the expert concluded the defendant was insane the subjects were more likely to return an insane verdict. All
interactions were consistent with this main effect except one. Those former jurors which heard the psychologist presenting only objective data were more likely to rate the defendant as sane regardless of the expert's conclusion. Students perception of insanity was not influenced by the psychologist x objective testimony condition.

The other major result of the study was that students were more lenient than former jurors, that is the students gave more insane, less guilty ratings. The authors concluded that research using only college students as jurors may lack generalizability to other populations. However, it is encouraging that patterns of response were for the most part similar between jurors and students. The possibility that former jurors experience in the courtroom may have made them more conservative than other non-students was not addressed.

In actual trials, it has been observed that when only two extreme choices are allowed by juries (e.g. first degree murder vs. not guilty), then the jury will more likely choose the more lenient choice (Vidmar, 1972). This observation was experimentally tested by Vidmar. In his study, undergraduates were asked to reach verdicts for a defendant being tried for robbery and murder. There were seven decision alternatives in the study: 1) first degree murder or not guilty; 2) second degree murder or not
guilty, 3) manslaughter or not guilty, 4) first degree murder, second degree murder or not guilty; 5) first degree murder, manslaughter or not guilty; 6) second degree murder, manslaughter or not guilty; 7) first degree murder, second degree murder, manslaughter or not guilty. Each degree of guilt was assigned a mandatory sentence. No effects due to sex of subjects or order of testimony presentation was found. However, there was support for the original hypothesis in that the condition which compared the most and least severe guilt conditions resulted in the highest number of not guilty verdicts.

In a similar study, Kaplan and Simon (1972) presented student jurors with a case involving a death in a car accident. Jurors were asked to assign a verdict in one-of-four conditions: 1) first degree murder or not guilty; 2) second degree murder or not guilty; 3) manslaughter or not guilty; 4) a choice of any 4 verdicts. Strength of evidence and race were also included in the design. Results indicated that stronger evidence resulted in more guilty verdicts. No differences were reported for race at a .05 level. The first choice between first degree murder and not guilty produced the most number of not guilty verdicts and the four choice conditions produced the least. The number of not guilty choices in the other two choices fell between these extremes. The studies of Vidmar
(1972) and Kaplan and Simon (1972) indicate that trial outcomes can be influenced by the verdict choices given to the juries.

In a study involving alcohol intoxication, Sobell and Sobell (1975) hypothesized that an individual's conception of intoxication would be related to a decision regarding punishment for a crime in which the defendant was intoxicated. Results of their study indicated that subjects assigned more severe penalties for premeditated and recidivistic crimes and less severe penalties for unplanned crimes. When the defendant was portrayed as an alcoholic the subjects were divided between assignment of more or less severe punishment. An unexpected result of this study was that even when subjects believed that the defendant was not in control of his drinking nor responsible for his behavior, they did not assign less severe penalties. Instead, this group of subjects assigned more severe penalties than other groups. Sobell and Sobell attempt to explain their results by hypothesizing that subjects were assigning punishment as a protective measure rather than adjusting punishment to the level of responsibility. That is, more punishment was assigned to those viewed as more dangerous, not those viewed as more responsible for his actions.
In a study of judges actual sentencing, Hagan (1975) found that severity of crime was the best predictor for amount of sentence. Judges in this study were identified as two types: those strongly favoring law and order and those less concerned about law and order. Judges of the strong law and order variety sentenced primarily on the definitions of offense seriousness. Those judges less concerned with law and order were more influenced by defendant characteristics such as race, prior record, and number of charges against the offender. The latter group of judges were also found to provide more lenient treatment to minority offenders. It was hypothesized that judges not as concerned with law and order allowed the backgrounds of the defendants to mitigate their sentences. These results disagreed with previous research which suggests that minorities were given more harsh penalties (Southern Regional Council, 1969 and Wolfgang and Riedel, 1973, as referenced by Hagan, 1975). The generalizability of Hagan's results are unclear, however, as the study was conducted in Canada and the minority offenders were Indian and Metis (the latter being half Indian and half Caucasian).

Harrel (1981) is another Canadian researcher who considered offense seriousness as a predictor of sentencing severity. He examined 628 presentence reports filed from
1970 to 1975 in Edmonton, Alberta. His findings indicated that there was an interaction between alcohol consumption and offense seriousness. For the least serious crimes, alcohol consumption resulted in less severe sentences. However, as the seriousness of the crime increased, the mitigating effect of alcohol was reversed. Consumption of alcohol in serious crimes resulted in more severe sentences. Remorse of the offender was also an important variable in Harrel's study. He found that remorsefulness resulted in more lenient treatment for offenders with few alcohol related convictions. However, those with an extensive prior history of alcohol convictions (in this case 3 or more) were assigned more severe penalties.

Research regarding the influence of the sex of the jurors is mixed. Some of the studies have shown that males are more punitive. In a study involving various role play situations, Kerr, Nerenz, and Herrick (1976) found males as more likely to convict. Simon (1967) reported that males were more conviction prone in a housebreaking case. Males were also found to be more punitive in cases of homosexuality or resisting arrest (Steffenmeier, 1977).

Other studies have shown females to be more conviction prone. Griffit and Jackson (1973) reported that females were more punitive in a negligent automobile homicide case. Mistretta (1977) found females to be more punitive on a
number of crimes using multidimensional scaling. In a purse-snatching case, Austin, Walster, and Utne (1976) reported that females were more punitive. One consistent finding is that females are more conviction prone in cases of rape (Rumsey and Rumsey, 1977; Miller and Hewitt, 1978; Davis, Kerr, Atkin, Holt, and Meek, 1975) and more punitive (Scroggs, 1976; Howitt, 1974). Consistent with these studies is a finding by Simon (1967) that females were more punitive in a case of incest.

Some studies have obtained no sex differences. In homicide cases, Vidmar (1972) and Nemeth, Endicott, and Wachtler (1976) found no sex differences. Steffensmeier (1977) found no sex differences for cases of homicide, child beating, embezzlement, public drunkeness, and shoplifting.

In general, cases that have shown the most clear sex differences are those which have involved women as victims. In these cases, women were more punitive and conviction prone. The other studies have shown mixed results with regard to sex differences and are more difficult to interpret.

In summary, the above studies present information regarding factors that influence determinations of guilt and sentencing. Yet little work has been done which
specifically assesses the relative mitigating effects of expert testimony as related to various points of law. Perhaps this is due to the relative newness of partial responsibility in our legal system or to the complexity of the topic. The effects of various types of testimony on jurors making decisions regarding levels of responsibility is a logical place to begin research. A study designed to assess what factors people consider mitigating could be a start to understanding the pattern of evidentiary factors which distinguish between successful and unsuccessful claims of diminished responsibility. Information in this area could eventually be used to aid legislators, judges, and attorneys, in their attempts to form, interpret and execute the law.

In preparation for this research, a pilot study was conducted to explore possible mitigating factors of homicide. Montana law governing homicide was chosen because of its use of extreme mental or emotional stress to constitute mitigated homicide. It was believed that this construct was sufficiently psychological to involve expert witnesses in many cases. Subjects were 171 student volunteers, approximately half male, half female, from introductory psychology classes at the University of Montana. A list of 22 potentially mitigating circumstances was generated from the literature on diminished
responsibility (Appendix A). Each subject was asked to rate potential mitigating circumstances on a one to seven Likert-type scale. The ratings were then factor-analyzed to produce factors of mitigation (Appendix B). Individual correlations of .45 were used as the significant cut-off values. The results of the factor analysis were very clean. Each individual variable correlated with only one factor above the .45 cutoff. Furthermore, each variable correlated with at least one factor above the same .45 cutoff. Thus each variable was included in one and only one factor. The results of the study yielded five factors. The first four factors were labelled as such: 1) Traumatic Childhood, 2) Mental Illness, 3) Recent Stress and 4) Substance Abuse. Only two variables, lack of sleep and overdependence on spouse, loaded on the fifth factor. Since the correlation of these variables did not make intuitive sense, the fifth factor was considered difficult to interpret and was not named. Since no conclusions can be drawn from this study regarding the relative mitigating values of the above factors further research is warranted. The present investigation will be an attempt to isolate and measure reactions of subject jurors when faced with information from one of the above factors in a homicide case.
Past jury research has been criticized for failing to obtain verdict data (Kerr 1978). Among reasons for this failure are the difficulties with analysis of dichotomous data and the greater sensitivity of multivalued scales. It has often been assumed that verdicts, sentences, ratings of guilt-innocence, and so forth all reflected a single underlying disposition. However, when testing a severity-criterion hypothesis of penalty assignment, Kerr (1978) found a contradiction between dichotomous and continuous measures. For example, increasing the penalty for a crime lowered the probability of conviction (dichotomous measure), but did not effect ratings of guilt (continuous measure). Thus, it can be misleading to assume that verdicts and assigned level of guilt are a single judgmental process. The present investigation will include both dichotomous and continuous measures to allow measurement of more than one decision making dimension.

Another criticism of jury research has been the lack of group deliberation. This criticism is cited as a potential limiting factor in generalizing results. Yet, existing research on group decision-making process (Davis, Kerr, Atkin, Holt, and Meek, 1975) and actual jury outcome (Kalven and Zeisel, 1966) suggests that juries almost always select the verdict favored by a sizeable majority before deliberation (Kerr, 1978). Davis et al. (1975)
derived the following rule from their study: "If the jury has a two-thirds majority or greater for a verdict alternative, the jury will eventually, endorse that verdict, but if there is no such majority initially, the jury will hang" (p. 1440, Kerr, 1978). In conclusion, the above studies suggests that a researcher can make educated probability statements about the outcome of jury deliberation from the knowledge of individual juror behavior. Although the issue of predicting jury outcome from individual juror response is not entirely settled, this study will only consider the data gathered from individual jurors.

Perhaps the most consistent and important criticism leveled against jury research in the recent past has been the dubious generalizability of the findings. The level of complexity inherent to any courtroom trial is difficult to simulate in laboratory settings. Researchers thus far have adopted the obvious strategy of studying only selected features of the trial process. Yet this approach has come under significant attack from recent researchers (Gerbasi et al., 1977; Weiten and Diamond, 1979; and Monahan and Loftus, 1982). Most of the issues and specific criticisms against jury research are similar to criticisms generally leveled against analogue research in social psychology.
Monahan and Loftus (1982) take the position that the relative merits of laboratory vs. field research depends upon the purpose for which the research is undertaken. When an investigator is concerned mainly with predicting the actual behavior of legal decision makers, then the issue external validity weighs more heavily. Here, naturalistic investigations or very natural simulations would be the methods of choice. However, when an investigator's purpose is to test a theory or explore new variables, then concerns with internal validity are important. Controlled laboratory studies are best at maximizing internal validity.

The question is often asked whether unrealistic simulations can ever provide results which are useful to later prediction. Yet, this question in and of itself may be inappropriate. Research may be useful to later understanding if it shows what can occur in natural settings. Ideas can be developed from research which later leads to useful theory or explanation without having any immediate direct generalizability (Mook, 1983). Thus, what may be most important is choosing a design which will best answer the questions of the researcher, not necessarily any immediate practical implications of the results. External validity may often be an important concern for follow-up empirical research.
The present investigation will be designed to consider some new variables in a simulated jury study. Factors will be assembled in such a way that is unlikely in a natural setting. The direct generalizability of the results to other trials will be therefore limited and dependant on further empirical research. The focus will be upon the possible differences that various emphases of psychological stress can have on a person's decisions regarding guilt and responsibility.
METHODOLOGY

Design

This study employed a 2x2x5 factorial design. The three factors investigated were sex of subject, type of crime and type of mitigating testimony. The type of crime consisted of either a homicide involving a husband and wife or a homicide involving two friends in a bar. The type of testimony consisted of one of the following: a) Traumatic Childhood, b) Mental Illness, c) Recent Stress, d) Substance Abuse, and e) Antisocial Personality. The fifth factor of Antisocial Personality was to serve as a control for the mitigating factors. This was a between groups design in which subjects were randomly assigned to one of twenty cells.

Subjects

Subjects were 240 male and female undergraduate volunteers enrolled in an introductory psychology course at the University of Montana. Each subject received experimental credit in return for his/her participation.
**Materials**

Each subject received a booklet containing an introductory paragraph (Appendix C), the legal definition of homicide in Montana (Appendix D), a summary of the crime (Appendix E or F), a written copy of expert testimony (Appendixes G, H, I, J, K, L) and a response questionnaire (Appendix M). The introductory paragraph explained the experimental task. Subjects were told that their reactions would be compared to those of actual jurors in order to increase careful consideration of their responses.

**Procedure**

Subjects were run in small groups. Case material and response questionnaires were combined into booklets. To randomize, booklets were shuffled and handed out to subjects as they took their seats. Separate boxes were kept for males and females to insure an equal number of each sex per cell. Subjects read the trial material and responded individually. When finished, subjects were asked to make a dichotomous judgement between Deliberate Homicide and Mitigated Deliberate Homicide. Subjects were then asked to rate the following on an 11 point Likert-type scale: a) amount of sentence, b) level of responsibility, c) level of stress, d) likelihood of future crime, and e) perception of testimony as real or not. Following these
scales, subjects were asked to describe the most important factors in determining a verdict and sentence. The next question asked subjects to list any additional items of evidence which they felt would have been helpful in making their decisions.

The subjects were then asked to provide basic demographic data, and information regarding previous jury experience. They were also asked whether they or someone close to them had been a victim of a serious violent crime and if so, the nature of the crime and how long ago it occurred. When all subjects were finished they were debriefed as to the procedure and purpose of the study. Subjects were allowed to ask questions during the debriefing. It was then emphasized that students should not discuss the study with anyone because of the possibility of contamination. Before being dismissed, students were asked to sign a statement promising not to discuss the research for one month.

Data Analysis

The first dependent measure was a dichotomous variable involving the verdict choice as either Deliberate or Mitigated Deliberate Homicide. A multivariate chi-square analysis was used to evaluate these results. The remaining continuous measures were analyzed through Analysis of
Variance. Five separate factorial ANOVA procedures were conducted, one for each of the continuous measures. A Newman-Kuels multiple comparison procedure was used to compare the levels within any significant interactions.

Hypotheses

Experimental research in the area of diminished responsibility and expert testimony was so new that predictions were difficult. The proposed investigation was exploratory and therefore the hypotheses were tentative. The tests of significance were non-directional.

Hinkle et al. (1983) found that college students were more lenient in their judgments than former jurors. Vidmar (1972) and Kaplan and Simon (1972) demonstrated that when faced with a dichotomous verdict decision that students were more likely to choose the lenient verdict. Thus it was hypothesized that the combined proportion of Mitigated Deliberate Homicide verdicts would be larger than .50. Further, it was hypothesized that the proportion of Mitigated verdicts for the comparison condition of Antisocial Personality would be lower than the proportions of each of the stress factors.
On the basis of the findings of Harrel (1981) it was predicted that the Substance Abuse condition would result in higher ratings of responsibility and punishment and lower ratings of stress than the other three experimental factors. It was also predicted that the Antisocial Personality condition would result in ratings of responsibility, punishment, and likelihood of another crime and lower ratings of stress than the four experimental factors.

Also expected was that the Domestic Homicide condition would result in lower ratings of responsibility than the Bar Scene crime. The only expected sex difference was that males would be more lenient in the Domestic Crime situation than females. No difference was expected for the Bar Scene crime.
Results

One dichotomous measure and five continuous measures were utilized in this study. Data for the dichotomous measure were analyzed using a chi-square while the continuous measures were analyzed with a 2x2x5 analysis of variance. The dichotomous measure asked subjects to assign a verdict of either Mitigated Deliberate Homicide or Deliberate Homicide. Of the 240 subjects in the study, 162 chose the Mitigated verdict and 78 chose the Deliberate verdict. Thus the Mitigated to Deliberate ratio was slightly greater than 2:1, at a proportion of .675 in favor of the Mitigated verdict. No significant differences for the verdict emerged for Sex ($\chi^2(1)=.08, p>.05$) or Type of Crime ($\chi^2(1)=.30, p>.05$). There was a significant difference for verdict assignment based on Type of Expert Testimony ($\chi^2(4)=12.08, p<.05$). The number of Mitigated vs. Deliberate verdicts chosen by subjects in each of the five Type of Expert Testimony conditions are presented in Figure 1. Individual chi-square tests performed between the Types of Expert Testimony revealed that the Traumatic Childhood condition resulted in significantly more Mitigated in verdicts than the Substance Abuse and Antisocial conditions. The Mental Illness condition also had significantly more Mitigated Verdicts than the
Figure 1: Frequencies of Mitigated and Deliberate Verdicts for Type of Expert Testimony

![Graph showing frequencies of mitigated and deliberate verdicts for different types of expert testimony.](image)

- **Mitigated Verdicts**
  - Traumatic Childhood (N = 48)
  - Mental Illness (N = 48)
  - Current Stress (N = 48)
  - Substance Abuse (N = 48)
  - Antisocial Personality (N = 48)

- **Deliberate Verdicts**

Type of Expert Testimony

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Antisocial Condition.

The first continuous measure combined the number of years of suggested sentencing for both Deliberate and Mitigated verdicts to yield one "relative amount of sentencing" score. A significant main effect for Type of Testimony was obtained on this measure ($F=4.74, \text{df}=4,220, p<.001$) (see Table 1). A Neuman-Keuls pairwise comparisons procedure found that the amount of punishment suggested for the comparison group, Antisocial Personality, was significantly higher than that for the Current Stress and Substance Abuse conditions. The Traumatic Childhood condition was rated similar to the Antisocial Personality group but was significantly higher than both the Current Stress and Substance Abuse conditions. However, no significant differences were obtained between Mental Illness and the other conditions. Scores for the Mental Illness condition fell in the middle as they were lower than the Antisocial and Traumatic Childhood Groups, but higher than the Substance Abuse and Current Stress groups. No main effects for either Sex ($F=1.5, \text{df}=1,220, p=.22$) or Type of Crime (Domestic vs. Bar Scene) ($F=.007, \text{df}=1,220, p=.95$) were obtained on this measure. There were no significant interactions.
Table 1: 2 X 2 X 5 Analysis of Variance

Variable: Relative Amount of Sentencing

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<th>F Ratio</th>
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Mean Ratings

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<tbody>
<tr>
<td>Male</td>
<td>7.18</td>
</tr>
<tr>
<td>Female</td>
<td>7.68</td>
</tr>
<tr>
<td>Domestic</td>
<td>7.45</td>
</tr>
<tr>
<td>Bar</td>
<td>7.42</td>
</tr>
<tr>
<td>Traumatic Childhood</td>
<td>8.23</td>
</tr>
<tr>
<td>Mental Illness</td>
<td>7.73</td>
</tr>
<tr>
<td>Current Stress</td>
<td>6.27</td>
</tr>
<tr>
<td>Substance Abuse</td>
<td>6.50</td>
</tr>
<tr>
<td>Antisocial Personality</td>
<td>8.44</td>
</tr>
</tbody>
</table>
The second continuous measure attempted to assess ratings about the personal vs. situational responsibility for the defendant's actions. No significant main effects or interactions were obtained on this measure (Table 2). The overall mean score for this measure was 4.7 on an 11 point scale. This score is in the direction of a situational attribution for the defendant's responsibility.

The defendant's amount of stress at the time of the crime was assessed by the third continuous measure. There were no significant main effects or interactions for Sex or Type of Expert Testimony on this variable. One significant main effect did emerge for Type of Crime ($F=4.30$, $df=1,220$, $p<.05$) (Table 3). Subjects rated the defendant in the Domestic situation as under more stress than the defendant in the Bar situation ($M=7.38$, 6.88 respectively). The overall mean for this measure was 7.13 on an 11 point scale which suggests the subjects rated the defendants as being under a moderately high level of stress.

On the fourth continuous measure subjects were asked to rate the likelihood of the defendant committing a similar crime in the future. No significant differences were reported for Sex ($F=.003$, $df=1,220$, $p=.95$) or Type of Crime ($F=.85$, $df=1,220$, $p=.64$). A significant main effect was again found for Type of Expert Testimony ($F=10.04$, $df=4$, $p=.01$).
Table 2: 2 X 2 X 5 Analysis of Variance

Variable: Focus of Responsibility

<table>
<thead>
<tr>
<th>Source of Variance</th>
<th>Sums of Squares</th>
<th>DF</th>
<th>Mean Square</th>
<th>F Ratio</th>
<th>Probability</th>
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</thead>
<tbody>
<tr>
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<td>7.35</td>
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<td>8.81</td>
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<td>.251</td>
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<td>.800</td>
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<td>.91</td>
<td>.537</td>
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</table>

Mean Ratings

<table>
<thead>
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<th>Experimental Group</th>
<th>Mean</th>
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<tr>
<td>Female</td>
<td>4.52</td>
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<tr>
<td>Domestic</td>
<td>4.50</td>
</tr>
<tr>
<td>Bar</td>
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<td>Mental Illness</td>
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<td>Current Stress</td>
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<td>Substance Abuse</td>
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<tr>
<td>Antisocial Personality</td>
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</table>
Table 3: 2 X 2 X 5 Analysis of Variance

**Variable: Amount of Stress**

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<tr>
<th>Source of Variance</th>
<th>Sums of Square</th>
<th>DF</th>
<th>Mean Square</th>
<th>F Ratio</th>
<th>Probability</th>
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**Mean Ratings**

<table>
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<th>Mean</th>
</tr>
</thead>
<tbody>
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<tr>
<td>Female</td>
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</tr>
<tr>
<td>Domestic</td>
<td>7.38</td>
</tr>
<tr>
<td>Bar</td>
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</tr>
<tr>
<td>Traumatic Childhood</td>
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<td>Mental Illness</td>
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<td>Current Stress</td>
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<td>Substance Abuse</td>
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</tr>
<tr>
<td>Antisocial Personality</td>
<td>6.52</td>
</tr>
</tbody>
</table>
p < .001) (Table 4). The Neuman-Keuls pairwise comparisons procedure found that the subjects rated the defendant under the Antisocial condition as more likely to commit a similar crime in the future than the defendants in any other condition. Defendants in both the Mental Illness and Traumatic Childhood conditions were rated as significantly more likely to commit a similar future crime than those in the Current Stress condition. No other significant results were obtained.

The fifth continuous measure was designed as a manipulation check. Subjects were asked to rate how realistic the expert testimony was in the various conditions. No significant main effects were obtained for any of the three factors (Table 5). The overall mean score was 3.38 on an 11 point scale. These results are in the realistic direction and support the contention that the manipulations were not differentially credible.
Table 4: 2 X 2 X 5 Analysis of Variance

Variable: Likelihood of Future Crime

<table>
<thead>
<tr>
<th>Source of Variance</th>
<th>Sums of Squares</th>
<th>DF</th>
<th>Mean Square</th>
<th>F Ratio</th>
<th>Probability</th>
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<tr>
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<td>.527</td>
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</tr>
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Mean Ratings

<table>
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<th>Experimental Groups</th>
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</tr>
</thead>
<tbody>
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<tr>
<td>Female</td>
<td>5.29</td>
</tr>
<tr>
<td>Domestic</td>
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</tr>
<tr>
<td>Bar</td>
<td>5.45</td>
</tr>
<tr>
<td>Traumatic Childhood</td>
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</tr>
<tr>
<td>Mental Illness</td>
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</tr>
<tr>
<td>Current Stress</td>
<td>3.79</td>
</tr>
<tr>
<td>Substance Abuse</td>
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</tr>
<tr>
<td>Antisocial Personality</td>
<td>6.96</td>
</tr>
</tbody>
</table>
Table 5: 2 × 2 × 5 Analysis of Variance

Variable: Expert Testimony as Realistic

<table>
<thead>
<tr>
<th>Source of Variance</th>
<th>Sums of Squares</th>
<th>DF</th>
<th>Mean Square</th>
<th>F Ratio</th>
<th>Probability</th>
</tr>
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<tbody>
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<td>.56</td>
<td>.538</td>
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<td>4.00</td>
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</tr>
<tr>
<td>Type of Testimony (TT)</td>
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<td>.263</td>
</tr>
<tr>
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Mean Ratings

<table>
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<tr>
<th>Experimental Groups</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
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<td>3.49</td>
</tr>
<tr>
<td>Female</td>
<td>3.27</td>
</tr>
<tr>
<td>Domestic</td>
<td>3.25</td>
</tr>
<tr>
<td>Bar</td>
<td>3.51</td>
</tr>
<tr>
<td>Traumatic Childhood</td>
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<td>Mental Illness</td>
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</tr>
<tr>
<td>Current Stress</td>
<td>3.39</td>
</tr>
<tr>
<td>Substance Abuse</td>
<td>3.95</td>
</tr>
<tr>
<td>Antisocial Personality</td>
<td>2.88</td>
</tr>
</tbody>
</table>
The present study was designed to investigate the possible mitigating effects of various psychological and life event factors in a jury trial. The factors were empirically derived in pilot work previous to this research. The first hypothesis of this study had two components. The first was that the Mitigated Deliberate Homicide Verdicts would be chosen at a higher than .50 proportion. Results from this study support the hypothesis. This finding is consistent with the results of Vidmar (1972) and Kaplan and Simon (1972) which demonstrated that jurors were more likely to choose a lenient verdict when faced with a dichotomous choice.

The second component to the first hypothesis stated that the Antisocial comparison condition would result in a lower proportion of Mitigated to Deliberate verdicts than each of the stress conditions. The results of this study only partially support this component of the hypothesis. The Antisocial condition had significantly fewer Mitigated verdicts than the Traumatic Childhood and Mental Illness conditions. There were also fewer Mitigated verdicts for the Antisocial condition than for the Current Stress and Substance Abuse conditions, but the differences were not statistically significant. An evaluation of the hypothesis
that the Antisocial Condition would result in fewer Mitigated verdicts can also be made by considering predictions about group deliberation. Although only data on individual juror verdicts were collected, research cited in the introduction by Davis et al. (1975) allows some prediction about group deliberated verdicts based on the individual verdict choices. The rule derived by the Davis et al. study was stated by Kerr (p.1440, 1978) as follows: "If the jury has a two-thirds majority or greater for a verdict alternative, the jury will eventually, endorse that verdict, but if there is no such majority initially, the jury will hang". Utilizing this two-thirds rule derived by the Davis et al. study, some predictions about group outcome can be offered. If all subjects in the study are considered, the proportion of Mitigated verdicts is 67.5. This number is borderline to the cut-off, but suggests that the overall effect of testimony toward mitigation was fairly potent. It is hard to predict the outcome of group deliberation for this overall proportion because subjects based their judgments on differing testimonies. The breakdown of groups by various types of expert testimony makes for clearer predictions. Two conditions, the Traumatic Childhood and Mental Illness, had proportions of Mitigated to Deliberate verdicts of .81 and .77 respectively. These proportions are clearly above the Davis .67 cutoff. Thus it is logically probable that these
conditions would have resulted in a Mitigated verdict after group deliberation. The Current Stress and Substance Abuse conditions had proportions of .65 and .63 respectively and the proportion for the Antisocial was .52. Since the proportions for these three conditions fall below the cutoff it does not appear that they would have resulted in Mitigated verdicts after group deliberation. However the proportions for the Current Stress and Substance Abuse conditions are close to the cutoff and would have a higher probability of resulting in a group verdict of Mitigated Homicide than the Antisocial condition. Thus the data on predictions of group verdicts also partially supports the hypothesis that the Antisocial condition would have fewer Mitigated verdicts than the other conditions.

The continuous measures in this study did not distinguish any conditions as differing in amount of personal vs. situational responsibility or in amount of stress. The natural question to ask then is what caused the differences which did emerge? One possible way to consider these results is suggested by the order in which the conditions fell for verdict assignment. The order from most to least number of Mitigating verdicts was Traumatic Childhood, Mental Illness, Current Stress, Substance Abuse and Antisocial. It may be that the defendants in the more mitigating conditions were viewed by subjects as less
responsible for the development of their problems, yet not necessarily less responsible for their actions. If this is the case then subjects may have either felt a little more sorry for the defendant in the Traumatic Childhood or Mental Illness conditions or believed that these people were in some sense victims themselves. Either could explain a greater tendency toward the mitigated verdict. Further research would be needed to substantiate the possibility of these explanations since they were not directly measured in this study.

Another important part of this investigation was the use of an expert witness to present the relevant material from the various factors. As a whole, results from this study can be interpreted to support previous findings that an expert's opinion is accepted by jurors and can play an important part in the perception of trial material. The subjects rated each of the five types of expert testimony as believable with no significant differences between the conditions. Furthermore, in each of the conditions, the expert stated that the defendant was suffering from a considerable amount of psychological stress at the time of the crime. Subject ratings of the defendant's stress level were relatively high across all conditions and there was again no significant difference between these conditions. Since the subject ratings of stress were high across all
the conditions, it seems reasonable to conclude that these ratings were not based on the different testimonies offered by the expert. Rather it is more reasonable to conclude that the subjects' ratings corresponded to the specific statement of the expert that the defendant was suffering from a "considerable amount of psychological stress". This statement was made prior to more specific testimony in the transcripts and was common to all five of the different expert testimonies. However, because the amount of stress stated by the expert was not systematically varied in this study, the above observation must again be interpreted cautiously. It may be that the correspondence was an artifact of the design or due to another factor. However, the studies by McGlynn and Drielinger (1981) and Hinkle et al. (1983) found that juror ratings of sanity corresponded well to the statements made by expert witnesses. Their results lend some credence to the interpretation that the high ratings of stress and lack of variability between groups was due to the influence of the expert's statement about stress.

The expert witness seemed to have a similar impact on subject ratings of defendant responsibility. The overall ratings were weighted in the direction of situational responsibility rather than personal responsibility to account for the defendant's actions. This result runs
counter to the widely supported contention first offered by Jones and Nisbett (1971) that people generally account for the behavior of others in terms of stable personal characteristics, not situational parameters. Thus the situational focus of the expert testimonies seems to have also shifted the attributions of jurors from internal to external explanations for behavior. In most court cases this effect may be countered by testimony of opposing experts or witnesses. However, there are cases in which only one expert is present or in which there is no disagreement between experts on aspects of the case. Regardless of some limits, this finding can be interpreted to support the importance of expert testimony for influencing jurors. Again this interpretation is offered as a cautious but plausible explanation of the data. There was no systematic manipulation of expert focus as related to subject's assignments of responsibility. Further research would be warranted to rule out rival explanations of the data.

The second stated hypothesis of this study consisted of two aspects. The first aspect of the hypothesis predicted that the Substance Abuse condition would result in higher ratings of responsibility and punishment and lower ratings of stress than the other three experimental conditions. The second aspect of the hypothesis was that
the Antisocial Personality condition would result in higher ratings of responsibility, punishment, and likelihood of another crime and lower ratings of stress than the other four conditions. The predictions for responsibility and stress were not supported by the results for either the Substance Abuse or the Antisocial condition. The hypothesis concerning greater punishment for the Substance Abuse condition was also not supported. Results partially supported the predictions that the defendant in the Antisocial condition would be given higher punishment and be perceived as more likely to commit a future crime.

This pattern of results can be best explained from two observations about the data. The first observation comes from the information already presented about the effects of the expert witness. As previously proposed, the subjects' ratings of stress and responsibility seem to have been influenced most by specific statements of the expert that were common to all the conditions. If these specific statements were indeed more influential to the ratings than the general elements of the testimony, then this would account for the lack of difference between conditions. Furthermore, since the ratings for stress and responsibility did not significantly differ between any condition, they cannot account for any differences found on measures of suggested punishment or the likelihood of future
crime.

What does seem plausible is that the amount of sentencing and judgment about likelihood of future crime are related. The Antisocial condition was rated highest for likelihood of future crime, and highest for amount of punishment. The Traumatic Childhood was rated as second highest for punishment and third for likelihood of future crime, while the Mental Illness condition was third and second for these ratings. Although not all the differences between groups resulted in significant effects, the trend does support a relationship between these variables. This observation is consistent with the research of Sobell and Sobell (1975) who hypothesized that the assignment of punishment was a protective measure rather than an adjustment to the level of responsibility. In their study, the alcoholic was assigned more punishment and viewed as not in control of his drinking, or put another way, as more likely to get drunk again. It was on this basis that the more severe punishment ratings for the Substance Abuse condition were hypothesized for the present study. Yet in this study, the defendant was not described as an habitual abuser. The ratings for the likelihood of committing a similar crime in the future were relatively mild for the condition (4.5 on an 11 point scale). Therefore the lack of support for the hypothesis which predicted more
punishment for Substance Abuse over the other stress factors is not surprising.

In general, the results so far confirm the finding of Kerr (1978), which suggests that dichotomous and continuous measures do not necessarily reflect a single judgmental process. For example, on the dichotomous verdict measure, Traumatic Childhood was treated with the most lenience. Yet, for amount of punishment the Traumatic Childhood condition was second highest to the Antisocial condition. These differences for the Traumatic Childhood condition would not be expected if there was a single judgmental process. For this study it was suggested that judgments for the dichotomous measure (Mitigated vs. Deliberate Homicide) may have been influenced by perceptions about the defendant's own contribution to his stressful situation. On the continuous measure, the perceptions about a person's dangerousness was proposed as an important element to the decision.

A third hypothesis stated for this study was that the Domestic Homicide condition would result in lower ratings of responsibility than the Bar Scene condition. This result did not occur and again may be due to the expert witness' equalizing effect on the ratings of responsibility. One significant result did emerge in comparing the Domestic to Bar Scene homicides. The
defendants in the Domestic Scene were rated as being under more stress than in the Bar Scene. This result contradicts other findings in which there were no significant differences on ratings of stress. An interpretation of this result is difficult to make. It is not clear whether a domestic crime would generally be viewed as more stressful or if the domestic scene as operationalized in this study is more stressful. A manipulation check similar to the one used for the expert testimony could have been an aid to interpretation and should have been included in the data collection. However, the difference was not particularly large ($M = 7.38, 6.88$) and did not appear to significantly influence the results for other measures.

A fourth hypothesis in this study predicted an interaction between Sex and Type of Crime. It was hypothesized that males would be more lenient in the domestic crime situation than females. This prediction was not substantiated by any of the measures. Again this lack of support for the hypothesis is difficult to interpret. Perhaps the focus upon the defendant's problems in this study prevented female subjects from necessarily identifying as much as expected with the female victim in the Domestic condition.
Overall, the results of this research can be viewed as supportive of some previous findings. Strong differences based on the unique elements of the stress conditions did not emerge. Rather, what seemed to influence the results were perceptions about the defendant's responsibility for the development of problems which led to stress and perceptions of future dangerousness. Both of these conclusions are offered only as a plausible explanation of the data. Since this study did not anticipate these explanations, they were not systematically controlled or manipulated and cannot be accepted unequivocally. Both of the above decision making dimensions could provide material for future research.

It is also important to note that the amount of stress was not varied in this study. That is, since the various conditions were perceived as not differing in stress levels then this factor cannot account for significant differences. Future research could address possible effects of different amounts of stress for the different factors. For example, it might be that as perceived stress for a given crime increases, then predictions about future dangerousness may decrease.
Another fruitful area of research suggested by this study concerns various parameters of expert credibility. Because this study used only one expert, nothing can be said about the effects of using opposing expert testimony. It may be that jurors average the information and thus the witnesses cancel each other. Another possibility is that subjects may choose one or the other witness and base their judgments largely on the testimony of one. A question about differences in the credibility between an expert and a lay witness could also be approached. Is the expert necessarily believed if there is discrepancy? If so, for what areas does this hold true? It could also be informative to gather information about this study and suggested research ideas from other populations.

Before concluding, the reader is reminded that this study was designed as exploratory in nature. The various factors were assembled in a way that is unlikely in an actual courtroom. Therefore the direct generalizability of the results to actual juries is uncertain and remains open to empirical validation.
Summary

This study employed a 2 X 2 X 5 factorial design. Male and female subjects were presented with written case materials that varied by Type of Crime and Type of Expert Testimony. The Type of Crime was either a homicide involving a husband and wife or a homicide involving two friends in a bar. The Type of Expert Testimony was one of the following: A) Traumatic Childhood B) Mental Illness, C) Recent Stress, D) Substance Abuse, and E) Antisocial Personality.

Each of the subjects made a dichotomous choice between Deliberate or Mitigated Deliberate Homicide. They then rated the following continuous measures on an 11-point Likert-type scale: A) amount of sentence, B) level of responsibility, C) level of stress, D) likelihood of future crime, and E) perception of testimony as real or not.

Results of this study were interpreted to support previous research that student are more likely to choose a lenient verdict when making a dichotomous choice. Possible reasons for this may be that alternative juries are less likely to convict in general or it may be that students are relatively liberal on social issues or optimistic about human nature. Another contention from this study is that
an expert witness is believable and can influence the perceptions of student jurors. Further research was needed to clearly establish the validity of this second interpretation. The results also confirmed the findings of previous research which suggested that dichotomous and continuous measures may not reflect a single judgmental process. Student juror's verdicts did not entirely coincide with punishment levels. It was hypothesized that verdict choices (dichotomous) may have been influenced by a determination of how responsible a person was for the development of their problems. Students may have felt more sorry for defendants certain conditions or felt they were in some way victims. The assigned punishment (continuous) appears to have been related to predictions about future likelihood of committing a similar crime. No sex differences emerged in the study and the Domestic Crime condition resulted in higher ratings of stress than the Bar Scene condition. Interpretations of these latter two findings were left unspecified. Suggestions for future research were offered as well as a caution about the possible limitations of the generalizability of the results.
References


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Mitigating Factors

Under current Montana law a person charged with deliberate homicide can have the charge reduced to mitigated deliberate homicide if the homicide is committed under the influence of extreme mental or emotional stress. Such a reduced charge would result in a substantially reduced prison sentence. Recent court cases in Montana have used many of the following examples as mitigating circumstances. We would like you to rate each example on a 1 to 7 scale as to how mitigating you believe that circumstance to be.

- Intoxication by alcohol
- Physically abused as a child
- Recently lost job
- Abandoned by parents as a child
- Recently divorced
- Physically ill
- Long-standing mental illness
- Under the influence of drugs
- Raised in poverty
- Emotionally abused by parents
- Raised by multiple sets of foster parents
- Recent death of a loved one
- Threat of divorce by spouse
- Multiple personality
- Recent discovery of spouse unfaithfulness
- Lack of sleep
- Recent mental illness
- Overdependence on spouse
- Blackouts
- Overly strict parents
- Overly strict parents
- Biochemical imbalance in brain
- Mental retardation
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% of variance: 15.4 15.1 12.8 7.3 7.0 .577
Thank you for being here today. To begin this study, you are first going to read the legal definitions concerning homicide in Montana. You will then read information about a homicide committed in Montana and portions of expert testimony offered in the trial. Please read the information carefully. You will be asked to determine a verdict just as you would in a jury trial. In addition you will be asked other questions about the case. Consider these questions carefully as your answers will be compared to verdicts returned by jurors in similar cases.
**Montana Homicide Statute**

Under Current Montana Law a person is charged with criminal homicide if he purposely, knowingly, or negligently causes the death of another human being. The definitions of various levels of criminal homicide are taken from the Montana Code and read as follows:

**Deliberate Homicide:**
(1) Criminal homicide constitutes deliberate homicide if it is committed purposely or knowingly;...

**Mitigated Deliberate Homicide:**
Criminal homicide constitutes mitigated deliberate homicide when a homicide which would otherwise be deliberate homicide is committed under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse.

**Negligent Homicide:**
Criminal homicide constitutes negligent homicide when it is committed negligently. A person acts negligently when he should have been aware of but disregards a risk that the result will occur or that a circumstance exists.
On October 2, 1982, Mark and Sherrie Williams separated after having been married for slightly over 2 years. Approximately 2 weeks later, on October 15, Sherrie reportedly told Mark that she planned to start divorce proceedings. Later that night Mark drove to Sherrie's apartment and says he "only intended to try to talk her out of filing for divorce". A short while after arriving at the apartment, an argument erupted between the couple which led to physical violence. When the police arrived, Sherrie lie bleeding on the floor and Mark was standing over her. A kitchen knife was lying on the floor between them. Sherrie died of stab wounds on her way to the hospital.

**Relevant Testimony**

Lisa Mayland had been a neighbor of the Williams' for the past year and a half. She lived in the apartment directly below the Williams'. She testified that on the night of the crime she had heard an argument between Mark and Sherrie. She told the court that she had first tried to call Sherri Williams but called the police when no one answered. Ms. Mayland also testified that she had heard numerous other arguments coming from the Williams' apartment. She was, however unaware of any previous physical violence. Ms. Mayland testified that she had called the police on this particular night because Sherrie
Williams had told her she was planning to get a divorce but was afraid of how Mark might react. When questioned more about her fears of Mark's behavior she just said that he was always moody and just seemed to "not be himself for the last few months".
On October 2, 1982, Richard Allen and Mark Williams had been playing pool in a downtown bar. That night they had argued and Mark left the bar after the bartender threatened to call the police. Approximately 2 weeks later, on October 15, Mark returned to the bar, saw Richard sitting alone at a table and sat down with him. He reportedly wanted to try to make things up with Richard and continue being friends. However, a short while later, Richard and Mark began arguing again and were soon yelling and pushing each other. When the police arrived, Richard lie bleeding on the floor and Mark was standing over him. A hunting knife was lying on the floor between them. Richard died of stab wounds on his way to the hospital.

Relevant Testimony

James Lee, a bartender working the night of the crime, testified that Richard and Mark were regular customers and played pool there quite often. He told the court that he had seen them argue on other occasions and had threatened to call the police during an argument 2 weeks before the homicide. On the night of the crime he called the police as soon as he noticed the men arguing because he had already warned them.
Jim Cummings, a mutual friend of both Richard and Mark testified as to events prior to the crime. He told the court that Mark had recently separated from his wife and she had threatened divorce. During that time Mark had turned to Richard for support and they had been spending a lot of time together. After the argument on October 2, Mark had told Jim that his friendship with Richard was over. Mr. Cummings stated that Mark would not tell him any details, only that he and Richard had a major blowup. In further testimony, Mr. Cummings told the court that Mark Williams was always moody and that he just seemed to "not be himself for the last few months".
APPENDIX G
The defendant Mark Williams entered a plea of Guilty to Mitigated Deliberate Homicide. The prosecution, however, pressed charges for the more serious charge of Deliberate Homicide to which Mark plead Not Guilty. Because of the plea and nature of the crime, the focal issue became whether or not the defendant suffered from extreme mental or emotional stress. Dr. Nicholas, a psychologist, was called to testify about the nature of stress which may have influenced Mark Williams' actions. His testimony will be considered in more detail because of its relevance to determining mitigation in this trial.

Please state your full name.

Dr. Kevin Lee Nicholas.

Dr. Nicholas, you are a clinical psychologist, is that correct?

That is correct. Would you tell the court about your educational and professional background?

I received by B.A. in psychology from the University of Minnesota in 1963, an M.A. in Clinical Psychology from the University of Washington in 1966, and a PhD. in Clinical Psychology also from the University of Washington in 1968. I completed a year long internship at the Indiana Medical Center in Indianapolis. I have been a practicing psychologist for the past 16 years and have been doing court evaluations for the last 11.

How many such evaluations have you completed?
I'm sorry I don't have an exact record, but I have evaluated numerous people for the court over the last eleven years.

Have you had occasion to evaluate the defendant Mark Williams?

Yes I have.

On how many separate dates did you see the defendant?

I saw him on 5 separate days in a span of 3 weeks.

What did the evaluation involve?

My evaluation is based upon an extensive clinical interview, psychological testing, and reports of the crime and defendant's history sent to me by the court.

What psychological tests were used in your evaluation?

I administered tests which are a standard part of a psychological evaluation. The battery of tests included the Wechsler Adult Intelligence Scale-Revised, the MMPI, the Rorschach Inkblot Test, and a Sentence Completion Test.

Did your evaluation lead to a conclusion regarding the level of stress suffered by the defendant, Mark Williams, at the time of the alleged crime?

Yes it did.

Could you state your conclusions to the court?

It is my professional opinion that Mark Williams was suffering from a considerable amount of psychological stress.
Dr. Nicholas, are you aware of the statutes regarding homicide in the State of Montana?

Yes I am.

You are aware of the law that states Deliberate Homicide is Mitigated Deliberate Homicide when it is committed under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse?

Yes, I am aware of that law.

You stated that the defendant was suffering from a considerable amount of stress.

That's correct.

In your professional opinion was the defendant suffering from enough mental or emotional stress to constitute mitigated homicide?

(The opposing attorney objected to this question and it was sustained. The judge reminded the jury that the expert witness was there to aid the jury in drawing conclusions about the facts of the case. The determination of the defendant's guilt is a matter for the jury to decide.)

Could you tell the court about the nature of defendant's psychological stress?

(Another objection. This one was overruled.)
Yes, the defendant's stress was a result of his traumatic childhood. As a child Mark was subject to both physical and emotional abuse. According to the SRS records sent by the court, Mark's parents were investigated for physical abuse and neglect when Mark was in grade school. Before completion of the investigation his parents abandoned him by leaving him with a babysitter and not returning. The state subsequently gained custody of Mark and he spent the remainder of his youth and adolescence in 5 separate foster placements. Mark did report that none of these homes was a happy experience. The results of my evaluation indicate that Mark has very low self-regard. He oftens ruminates about losing significant others and is prone to anxiety attacks when his fears surface.

Doctor, in your opinion, how might this have been related to the crime?

During the 2 week time that Mark and Sherrie were separated he was thinking almost only of her. When she called on that day and announced her plans for a divorce, Mark panicked. He went to try and reconcile the marriage and after she refused it was as if all his former feelings of rejection and anger overtook him. His action at the time of the crime could have been a symbolic re-enactment of the rage he felt, but repressed during all his previous abandonments.
Yes, the defendant's stress was a result of his traumatic childhood. As a child Mark was subject to both physical and emotional abuse. According to the SRS records sent by the court, Mark's parents were investigated for physical abuse and neglect when Mark was in grade school. Before completion of the investigation his parents abandoned him by leaving him with a babysitter and not returning. The state subsequently gained custody of Mark and he spent the remainder of his youth and adolescence in 5 separate foster placements. Mark reported that none of these homes was a happy experience. The results of my evaluation indicate that Mark has very low self-regard. He often ruminates about losing significant others and is prone to anxiety attacks when his fears surface.

Doctor, in your opinion, how might this have been related to the crime?

During the 2 week time that Mark and Richard were separated he was constantly of him. After they began to quarrel in the bar, Mark panicked. When it became clear that the friendship was going downhill it was as if all his former feelings of rejection and anger overtook him. His action at the time of the crime could have been a symbolic re-enactment of the rage he felt, but repressed, during previous abandonments.
Yes the defendant's stress was a result of mental illness. My evaluation indicates that under normal circumstances Mark's personality is characterized by self-control, avoidance of criticism and seeking of approval. In structured situations he is likely to be self-controlled, rigid and inhibited. However, when faced with uncertain and unstructured situations, his controls give way to what can best be described as "illogical paranoid ruminations". What this means is that when Mark is not sure where he stands in a situation, then he is likely to misinterpret other's motives and look for evidence that they are trying to do him harm. Another important aspect of my evaluation was Mark's difficulties in expressing anger. He is usually able to control any feelings of anger, but when he loses control, the buildup of angry feelings is likely to explode. This outburst will usually be accompanied by a self righteous and highly rationalized explanation. Under severe stress, Mark is at risk for developing paranoid beliefs and delusions accompanied with self-righteous anger.

Doctor, in your opinion, how might this have been related to the crime?

Mark told me that in the 2 weeks that he was separated from his wife, he began to believe that she was trying to ruin his whole life. He mentally reviewed their entire relationship and came to the conclusion that the whole reason she married him was just to use him and then get rid of him. Just prior to visiting his wife, Mark became convinced that she was one of "Satan's Dark Angels" and she was part of a plan to destroy him. Although no one can be entirely certain, based on my evaluation of Mark's functioning it is possible that he was suffering from a paranoid delusion when the incident occurred.
Yes, the defendant's stress was a result of mental illness. My evaluation indicates that under normal circumstances Mark's personality is characterized by self-control, avoidance of criticism and seeking of approval. In structured situations he is likely to be self-controlled, rigid and inhibited. However, when faced with uncertain and unstructured situations, his controls give way to what can best be described as "illogical paranoid ruminations". What this means is that when Mark is not sure where he stands in a situation then he is likely to misinterpret other's motives and look for evidence that they are trying to do him harm. Another important aspect of my evaluation was Mark's difficulties in expressing anger. He is usually able to control any feelings of anger, but when he loses control, the buildup of angry feelings is likely to explode. This outburst will usually be accompanied by a self-righteous and highly rationalized explanation. Under severe stress Mark is at risk for developing paranoid beliefs and delusions accompanied with self-righteousness.

Doctor, in your opinion, how might this have been related to the crime?

Mark told me that in the 2 weeks that he was separated from Richard he began to believe that he was trying to ruin his whole life. He mentally reviewed their entire relationship and came to the conclusion that the whole reason they had become friends was just so Richard could use him and then get rid of him. Just prior to seeing him in the bar, Mark became convinced that he was one of "Satan's Dark Angels" and he was sent as part of a plan to destroy him. Although no one can be certain, based on my evaluation of Mark's functioning it is possible that he was suffering from a paranoid delusion when the incident occurred.
Yes, the defendant's stress was a result of disturbing current life problems. In addition to his wife's threat of divorce, a number of traumatic events have recently happened to Mark. The first of these was that he had injured his back and neck in a car accident about 4 months prior to the incident. After that Mark was no longer able to work and lost his job as a warehouseman. His doctor told him that it is unlikely that he can return to his job in the near future. Mark was unable to find less physical work and went on unemployment. He hasn't received workman's compensation because his injury was not job related and his medical insurance only partially covered his expenses. So Mark also had medical bills which he was unable to pay. Another major stressful event for Mark was the loss of his mother, who died of cancer about one month prior to the incident. Mark was close to his mother and became quite depressed following her death.

Doctor, in your opinion how might these events have been related to the crime?

Well, the 2 weeks that Mark was separated from his wife, he began to feel desperate. He was unable to work, had bills to pay, and had just lost his mother. Research suggest that as the amount of stress increases in a person's life they are more likely to act violently. When his wife threatened to divorce him, he felt overwhelmed and stated that he just couldn't believe this was happening. It would appear that Mark's actions toward Sherrie were in response to all of the current stress he was experiencing.
Yes, the defendant's stress was a result of disturbing current life problems. In addition to his wife's threat of divorce a number of traumatic events have recently happened to Mark. The first of these was that he had injured his back and neck in a car accident about 4 months prior to the incident. After that, Mark was no longer able to work and he lost his job as a warehouseman. His doctor told him that it is unlikely that he can return to his job in the near future. Mark was unable to find less physical work and went on unemployment. He didn't receive workman's compensation because his injury was not job related and his medical insurance only partially covered his expenses. So Mark also had medical bills which he was unable to pay. Another major stressful event for Mark was the loss of his mother, who died of cancer about one month prior to the incident. Mark was close to his mother and he became quite depressed following her death.

Doctor, in your opinion, how might these events have been related to the crime?

Well, the 2 weeks that Mark was separated from his friend, he began to feel desperate. He was unable to work, had bills to pay, and had just lost his mother. Research suggests that as the amount of stress increases in a person's life they are more likely to act violently. When he couldn't reconcile with his friend he felt overwhelmed and stated that he just couldn't believe this was happening. It would appear that Mark's actions toward Richard were in response to all the current stress he was experiencing.
Yes, the defendant's stress was the result of an altered state due to alcohol and drug abuse. During the 2 week separation, Mark was spending most of his time in bars drinking. He was not taking care of himself and getting very little sleep. As established in the court record, Mark had taken some pills at a friend's house which he thought would give him just a little pick up. Blood test reports from the police record indicated that the pills Mark had taken were in fact amphetamines. Drugs, alcohol, and little sleep all lower defenses and reduce a person's normal level of control. The combination of alcohol and amphetamine can be especially dangerous. In some cases people may have extreme reactions to pharmacological substances which dramatically change their personalities. At any rate, Mark's condition at the time of the crime would have made him vulnerable to losing control.

Doctor, in your opinion how might this have been related to the crime?

Mark had taken the pills with the stated hope that he would be better able to talk. However, the combination of alcohol and amphetamine likely resulted in Mark's being hypersensitive and irritable. In my opinion he had much less control than he normally would have. It is even possible that due to the combination of amphetamine and alcohol that he was in an extremely altered mental state at the time of the incident, although its hard to judge in any one case because individuals have differential responses to pharmacological substances.
Well, even though I stated that the defendant was under considerable stress, this must be considered in light of my entire evaluation. The results of my evaluation indicate that the defendant has poor control over antisocial impulses in general. According to the court record and the history that I collected Mark had a number of problems with school, parents, and authority as an adolescent. Most of his problems seem to have stemmed from a rebellious attitude during that time. As an adult, he has had trouble maintaining continuous work because of frequent disagreements with superiors. My testing results were consistent with Mark's past in that they revealed a pattern that is characteristic of individuals who act impulsively without considering the rights of others. While there may be a veneer of social correctness and some guilt and regret over past events, it is unlikely that these feelings will have much effect on future behavior. In general, I would say that the defendant has a poorly integrated conscience and is quick-tempered by nature.

Doctor, in your opinion, how might this have been related to the crime?

While Mark was under stress, it is my opinion that the crime that he has been charged for could be simply an exaggerated form of his normal behavior. He has had a history of an inability to maintain relationships and he is easily angered. He has used threat to get what he wanted in the past, but in this case his behavior seemed to have escalated beyond that of mere threat.
Appendix M
I, student juror _____, do find the defendant, Mark Williams, guilty of: (circle one)

Deliberate Homicide  Mitigated Deliberate Homicide

The maximum sentence for Deliberate Homicide in Montana is 100 years in prison. The maximum sentence for Mitigated Deliberate Homicide is 40 years in prison. Please indicate the sentence you feel would be most appropriate. (Use the scale corresponding to your verdict.)

Deliberate Homicide

0 10 20 30 40 50 60 70 80 90 100
No time served

Mitigated Homicide

0 4 8 12 16 20 24 28 32 36 40
No time served

Rate the defendant's relative level of responsibility for his action:

0 1 2 3 4 5 6 7 8 9 10
Behavior is a result of situation

Behavior is not a result of situation

How much stress was the defendant under at the time of the crime?

0 1 2 3 4 5 6 7 8 9 10
No stress

Extreme stress
How likely is this person to commit a similar crime in the future?

0___1___2___3___4___5___6___7___8___9___10
Very unlikely                           Very Likely

Rate your agreement to the following statement: The expert testimony was realistic.

0___1___2___3___4___5___6___7___8___9___10
Strongly Agree                    Strongly Disagree

Please describe in your own words the factors that were most important in determining your verdict and punishment.

What additional items of evidence would have been helpful in making your decisions?
Please provide the information asked for below. Everything will be held strictly confidential.

Age____

Sex   M  F   (circle one)

Year in college:  1  2  3  4  Grad   (circle one)

Major:___________

Have you ever served on a jury before?  Yes  No   (circle one)

Have you or has anyone close to you been the victim of a violent crime?  Yes  No   (circle one)

If yes, what was the nature of that crime?

I, __________________ promise not to discuss the nature of this research with anyone for a period of one month.

I, __________________ promise to keep all your material confidential.