

Effects of Gender and Culture on Jury Perception of Provocation Defence In Intimate Partner
Violence

Introduction 2889/2250

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Abstract

How people attribute blame in incidents of intimate partner violence (IPV) is an important research question, with legal Defences involving the use of provocation being successful in reducing the severity of sentences in Australian courts. We conducted a mock jury study that examines how manipulating the gender and culture of perpetrators and victims effects the application of the Provocation Defence (PD). Previous research has indicated that tenants of identity, such as gender and race, might be relevant to how people are judged. However, research into the relationship between gender of actors and the PD was inconclusive. The aims of this project are; 1) Investigate how the culture and gender of perpetrators and victims of domestic's violence affect the acceptance/ rejection of the PD, and 2) Investigate how the application of the PD interacts with attitudes toward gender and culture. The strength and direction of relationships between PD measures and gender and culture manipulations are analyzed using Kruskal-Wallis test. Measures of attitude, which might be considered covariates, are also examined for relationship direction and strength. Additionally, measures of attitude towards culture, the Multiculturalism Color-Blind Scale (MCBS) and Race-Related Attitudes and Multiculturalism Scale (RRAMS), are compared. The results were non-significant across the board with the exception of measures of construct validity on the MCBS and RRAMS. However there was a pattern to the responses on the PD measure which reflects some of the trends described by the literature on juror perception of behaviour and blame attribution.

Declaration

This thesis contains no material which has been accepted for the award of any other degree or diploma in any University, and, to the best of my knowledge, this thesis contains no material previously published except where due reference is made. I give permission for the digital version of this thesis to be made available on the web, via the University of Adelaide's digital thesis repository, the Library Search and through web search engines, unless permission has been granted by the School to restrict access for a period of time.

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Effects of Gender and Culture on Jury Perception of Provocation Defence In Intimate Partner Violence

Introduction 2889/2250

The decisions made by juries have significant effects on people's lives; however, jury deliberations are secret, so they cannot be asked about why they have reached a particular decision (Bell, 2018). This means it is important to conduct research to understand the factors that affect the judgements people make under the circumstances of a jury trial. Mock jury studies are also a very interesting lens through which to study how different attitudes affect how we perceive behaviour and make decisions. There is much concern within both legal and psychological literature that juror decisions are influenced by extra-legal factors, that is factors such as attributes of the defendant, victim and witnesses or media coverage, which are not relevant to the legal matters at hand (McKimmie, Masters, Masser, Schuller, & Terry, 2013) (Poli, 2004). Of these extra-legal factors, the gender and ethnicity of the parties involved are identity categories that we as a society are particularly uncomfortable with jurors using to make judgements because of prejudice associated with racism and sexism (McKimmie, Antrobus, & Baguley, 2014). The legal system relies on the triers of fact being rational and objective in their decisions and perceptions (McKimmie, Antrobus, & Baguley, 2014), however psychology has a rich literature on the various ways in which people's perceptions of events is effected by their attitudes. Wittenbrink, Gist, & Hilton, (1997) studied the effect of racial stereotypic knowledge in the construal of causality in a mock trial. They found that the influence of this effect impacts the encoding of trial evidence rather than biasing responses at the output stage. Poli (2004) found that the race of the victim impacted juror perceptions of victim responsibility and sentencing

recommendations in a simulated attempted rape trial. McKimmie, Masters, Masser, Schuller, & Terry (2013) found that mock jurors spent more time looking at female defendants compared to male defendants, were less able to recall facts about the case, and paid less attention to the strength of the evidence against female defendants. They suggest that this difference is due to stereotype incongruence; female defendants do not fit cultural expectations of criminal behaviour, which influenced what people paid attention to when observing the case. A meta-analysis by Mitchell, Haw, Pfeifer, and Meissner (2005) found a small but significant effect of racial bias in jury decision making while Devine & Caughlin (2014) found an effect of defendant gender in the meta-analysis of individual characteristics and guilt judgements. Findings like this have dire implications for the assumptions of rationality in decision making upon which the justice system relies (McKimmie, Antrobus, & Baguley, 2014), as it demonstrates the way in which internal biases can influence decision-making.

The Provocation Defence (PD)

The PD is a defence to murder. It reduces a charge from murder to manslaughter. Essentially, the defendant argues that the victim's behaviour produced such an emotional response; they lost control and cannot be held responsible for killing this person (Korbelis, 2016).

The PD existence implies that in certain situations, violent behaviour is excused by emotional state. It suggests that the behaviour of the victim was so deplorable that the violence committed against them was justified. The PD has a certain victim-blaming logic inherent within it, making it quite interesting to study and quite controversial mostly due to its association with homophobic attacks (DE PASQUALE, 2002). This has led to its abolishment or amendment in a

number of jurisdictions around the world; however, it still exists in Australia. It has been used successfully relatively recently in the context of intimate partner violence (IPV). In *R v Ramage* (2004), it was successfully used to reduce the charge of a man who had killed his wife from murder to manslaughter. In *R v Laracy* (2008), it was cited as a reason for the crown accepting a guilty plea to the manslaughter of a woman who had initially been charged with the murder of her boyfriend.

The PD has four interconnected elements which juries are asked to think about when making their decision in a trial. First, was there provocative conduct. Then how serious was that provocative conduct, they are explicitly asked to consider factors such as gender and race of the actors when considering the circumstances which feed into this severity. They are also asked if the accused lost self-control. And then, finally, to consider whether the provocation, in these circumstances, could cause a reasonable person to lose self-control. The PD asks jurors to put themselves into the shoes of the defendant in the first three elements of the defence. This is a subject test because it emphasises the subjective experience of the defendant (DE PASQUALE, 2002). The juror cannot know what the defendant was actually thinking and so must rely on their own experiences and expectations of how people would behave. The cue to think about the gender and culture of the defendant and victim might also activate stereotypes that might influence how the behaviour of members of certain groups is perceived (Wittenbrink, Gist, & Hilton, 1997). Even the 'objective' test of asking if a reasonable person would respond in this way relies on socially constructed perceptions of normal/reasonable behaviour, which as De Pasquale (2002) points out are culturally bound and this boundedness can be utilised to produce narratives which support or undermine the behaviour of actors in a case.

The PD defence allows us to examine both how we perceive behaviour and how we attribute blame. The elements of the PD measures perception of behaviour while acceptance/rejection measures blame attribution. Acceptance of the PD suggests that the victim's behaviour provoked the defendant to such an extent that they were no longer responsible for their actions, while rejection of the defence implies that the defendant is solely responsible for their actions. Blame attributions are important in the justice system as it is the institution that makes decisions about responsibility in our society, and thus it is important to understand what factors affect how people make blame attributions. Witte, Schroeder and Lohr (2006) studied blame attribution in incidences of IPV and found that participants assigned more responsibility for the victim when they were verbally aggressive before the assault, and that violence severity only influenced blame attributions for the perpetrator when another mitigating factor was also present, such as victim aggression or nonviolent perpetrator expectancies. Korbilis (2016) supports this link between cultural expectations of behaviour and blame attributions in her finding that acceptance of traditional social roles was related to acceptance of the PD in IPV scenarios.

Gender, IPV and the PD.

Intimate Partner Violence (IPV) is an important social problem in Australia. A 2014 report on the National Homicide Monitoring Program found that approximately one woman a week was killed by her intimate partner (Bryant & Bricknell, 2017). Although this rate has reduced over time, the intimate partner homicide rate remains the most prevalent type of homicide in Australia at 0.33 per 100,000 for women and 0.14 per 100,000 for men in the 2017-18 period (Bricknell, 2020). These statistics are possibly an under-estimate of the problem as it is

widely held that incidence of IPV goes unreported (Voce & Boxall, 2018.). There is a body of research which suggests that IPV as a widespread and pervasive problem which has disproportionately effected women, is embedded in cultural norms which justify, excuse and minimize violence (MacDowell, 2013).

There is some evidence of a gender difference in the expectations of emotional behaviour wherein males are allowed to lose control of emotions such as anger more than women (Hess, Thibault, Adams Jr, & Kleck, 2010). Wasarhaley, Lynch, & Golding (2015) also found that mock jurors' decisions about the credibility, sympathy and verdict on an incident of IPV between lesbian couples could be affected by gender stereotypes when manipulating the masculine or feminine presentation of the victim and defendant. The danger of the PD in matters of IPV is in the underlying logic which invites the weight of the court to sit behind the defendant and condemn the victim (Heard, 2007), when such victim-blaming logic has been found to be detrimental to the criminal justices systems attempts to deal with IPV (Signal & Taylor, 2008). Meyer (2011) examined the experiences of 29 women who had sort help from South Queensland police after an incident of IPV and found that the often encountered victim-blaming attitudes a stereotyping despite an existing policy environment that promotes victim protection and offender accountability. This highlights the need to closely examine how the PD is used and the gendered and cultural norms it supports (DE PASQUALE, 2002).

The PD asks jurors to think about the victim and the defendant's behaviour when determining who takes responsibility for an incident. The first two elements: was there provocative conduct and how serious was it, focus on the behaviour of the victim while the third, did the defendant lose self-control, highlights the behaviour of the perpetrator. In this way, both beliefs about the perpetrator and the victim play a role in determining how people are judged,

which MacDowell (2013) points out is something that is missing in the literature around IPV and the criminal justice system. In this regard, it is important to measure both positive and negative beliefs about men and women because it is the intersection of these attitudes that underly the perceptions and judgements made by individuals observing an IPV incident.

There is some evidence that attitudes toward gender are associated with different blame attribution in IPV. Pavlou & Knowles (2001) found that provocation by a female victim leads to greater attributions of responsibility in an incident of violence than her male spouse. They also found that this was associated with participant's attitudes towards women, with more conservative attitudes associated with less sympathy with the female victim. Similarly, Korbels (2016) found that traditional attitudes towards social roles were associated with PD acceptance. However, she did not find support for her hypothesis that perpetrator gender and observer gender would have an interaction effect on PD acceptance. Apart from Korbels (2016), this a lack of research that examines how social attitudes are associated with blame attribution and perception of behaviour. So the current study will extend Korbels (2016) both to more carefully examine the way beliefs about men and women in their roles as victim and perpetrator as well as examing another identity category highly pertinent to the PD debate, ethnicity. (DE PASQUALE, 2002).

Ethnicity, Culture, and the PD

The 2016 census reported that the top ten commonly reported ancestries were Australian (34%), some variation of European (English 36%, Irish 11%, Scottish 9%, etc.), Chinese (5.6%), and Indian (4.6%) (Australian Bureau of Statistics, 2017). This reflects that although Australia has a Caucasian European ancestry majority, there is a growing community of people who identify most closely with an Asian cultural group. This is also seen in the country of birth

statistics. While 66% of Australians report of their country of birth as Australia followed by England and New Zealand, the proportion of those born overseas who were born in China and India has increased since 2011 (from 6.0% to 8.3%, and 5.6% to 7.4% respectively) (Australian Bureau of Statistics, 2017). This ethnic and cultural diversity makes it more critical than ever to understand how minority groups are treated in Australian institutions and, apart from Aboriginal and Torres Strait islander peoples, this is an area of the literature that is underdeveloped.

Mitchell, Haw, Pfeifer, & Meissner (2005) found racial bias against minority groups in their meta-analysis of defendant treatment in mock jury research; however, the minority groups were overwhelmingly black in the studies upon which they based their analysis. Poli (2004) examined quantitative and qualitative assessments by mock jurors in an assault case involving white, aboriginal Asian, or middle eastern victims and found different patterns of results for different ethnicities. Asian victims were seen as more responsible while aboriginal defendants were given lesser sentences, and the assault was seen as most serious with middle eastern actors. These findings support the idea that different subcultural groups of Australians might be perceived as having different expectations of behaviour, which exaggerates the gender difference in acceptable behaviour (DE PASQUALE, 2002).

One group for whom different societal expectations around IPV has been a topic of academic interest are so-called Honour cultures. Honour culture generally refers to societies where a family or individual's social image being reliant on compliance with rigid gender hierarchies. A man's reputation is maintained through aggressive policing of their female relatives and spouses while women's loyalty and subservience is valued (Khan, 2016). It often promotes and excuses aggressive hypermasculinity and female dehumanisation. (Lowe, Khan, Thanzami, Barzy, & Karmaliani, 2018). Although honour-based violence has occurred ubiquitously historically, it is

now more commonly associated with Middle Eastern or South Asian families living in patriarchal collectivist cultures in countries of origin and diasporic communities worldwide (Khan, 2016). Lowe, Khan, Thanzami, Barzy, & Karmaliani (2018) examined adherence to honour-based attitudes in Malaysian, Indian Iranian, and Pakistani participants when reading a vignette about a husband who, despite his own marital infidelity, verbally abuses and physically assaults his wife after discovering that she has been unfaithful. They found that both males and females endorsed the view that the wife had injured the husband's honour through her behaviour. The concept of different cultural norms around gender roles has seeped into stereotypes about South East Asians, and discourses have opened up about honour-based violence in western institutions, including the criminal justice system (Mayeda & Vijaykumar, 2016). De Pasquale (2002) articulates the idea that culture can be mobilised in the context of the PD to excuse the violence of men from minority backgrounds towards women. However the white heteronormative mainstream cultural norms are embedded within the element of the PD which asks how a reasonable person would behave. This implies that a persons attitude towards cultural diversity might influence their decisions about defendants of different ethnicities and thus implied different cultural backgrounds.

The concept of colour blindness can be expressed through the idea that race does not and should not matter; it is associated with measures of modern racism and negative attitudes toward diversity initiatives such as affirmative action (Awad & Jackson, 2011) (Ryan, Hunt, Weible, Peterson, & Casas, 2007). It is possible that this assimilationist attitude is associated with more strongly held beliefs about the reasonableness of behaviour being associated with patriarchal white cultural norms; however, there is a gap in the literature in this regard. At the opposite end of the scale in terms of attitudes towards culture is multiculturalism. This might be understood as

an acceptance of differences and acknowledgement of the role diversity plays in shaping our society (Ryan, Hunt, Weible, Peterson, & Casas, 2007). The variation among individuals between these two poles might provide some insight into how people perceive behaviour and make blame attributions in the complex intersection of gender and culture accessed by the PD in situation of IPV.

Aims and Hypotheses

The primary aim is to investigate how the culture and gender of perpetrators and victims of domestic's violence affect the perceptions of behaviour and blame attributions made by mock jurors when asked to examine an incident of IPV through the lens of the PD. This extends previous work by Korbels (2016) on the effect of gender of actors on PD application and tests assumptions made in De Pasquale's (2002) argument about the PD's utility as a culture defence. As such, the first three hypotheses are as follows:

1. There will be a significant effect of gender of actors on PD measure
2. · There will be a significant effect of the culture of actors on PD measure
3. · There will be an interaction effect between gender and culture of actors and PD measures.

The direction of effect have not been specified as this is a relatively novel area of study and the complexity of the relationship between gender and ethnicity evident in the literature make it difficult to draw clear predictions about strength and direction.

The secondary aim is to investigate the relationship between attitudes toward gender and the PD and attitudes toward culture because this might reveal some of the mechanisms behind the effect if there is one to be found. It will also extend the literature on how juror decision making in cases of IPV is related to social attitudes of observers, as this may be the first to

measure attitude towards gender and attitudes towards culture simultaneously. The next two exploratory hypotheses are:

4. There will be a significant relationship between PD application and measures of culture attitudes
5. There will be a significant relationship between PD application and measures of gender attitudes

Finally, this study is one of the first to utilise a new measure of attitude toward culture, The Race Related Attitudes and Multiculturalism Scale (RRAMS), since its publication in May of this year (Haag, et al., 2020). In order to extend the work done by its authors, this study will compare participants' performance on this scale with a more established scale, which purports to measure a similar concept, the Multicultural Colour-Blindness Scale (MCBS). As such, the final hypothesis is:

6. RRAMS and MCBS will have a strong positive relationship.

Method 1266/2250

Ethics approval for the study was granted by the sub-committee of the School of Psychology Human Ethics Committee (approval number 20/47).

Design and Procedure

Participants were randomly assigned to view one of four versions of vignettes describing an occurrence of IPV based on the case summary of *R v Ramage*. As seen in Table 1, the gender and race of the perpetrator and victim were manipulated through the pronouns and names of the defendant and victim in a 2 by 2 between-subjects design.

Table 1 Levels of experimental design

	Cultural Background	
Gender	Male White	Male Asian
	Female White	Female Asian

The participants were asked multiple-choice questions to ensure they had attended to the relevant stimuli of names, gender, and cultural background of both the victim and defendant. The participants were then given a flowchart describing the PD (see Appendix 1) and asked a series of multiple-choice questions to examine their comprehension. Next, they completed the PD questionnaire. Finally, participants completed the Ambivalent Sexism Inventory (ASI), Ambivalence Towards Men Inventory (AMI), Multiculturalism Colour-Blind Scale (MCBS), and Race-Related Attitudes and Multiculturalism Scale (RRAMS) measures. They were thanked for their participation and given the opportunity to nominate their contact details if they were interested in obtaining feedback about the study.

Participants

The participants were adult Australian citizens who were eligible for jury duty, according to the South Australian Juries Act (1927). That is, they were not legal professionals, police officers, or governors. Participants were recruited from the community through social media, word of mouth, and an Adelaide University first year psychology student participant pool. A-priori power analysis indicated that 280 participants were needed to achieve 80% power; however, 203 were recruited. Participants were asked demographic questions, including their age, gender, background, and legal training. Participants who reported legal training or did not complete all questions were excluded from the analysis. There were 152 participants with a mean age of 26, ranging from 18 to 74. The sample was 30% male and 69% female and 1 participant identified as other or did not specify. 76% identified as white, 0.6% as black and 20% as Asian background.

Materials

Trial Transcript

Participants were to read a trial transcript (edited for length) based on the judge's summary of *R v Ramage* (2004), a real case of intimate partner violence in which the PD was attempted, heard in the Supreme Court of New South Wales in 2015. While the identities and some of the details had been removed or changed, the case summary attempted to retain as much information as possible to reflect the amount of circumstantial information a real jury might receive in the course of a trial. A copy of the transcript can be viewed in Appendix 2. This study's manipulation involved four versions of the case summary, see Table 1, which differed by gender and implied cultural background. This was achieved by changing the names and gender pronouns present in each text.

Dependent Measures

Participants were introduced to the PD through a questionnaire based on different elements of the Defence, along with some explanation similar to jury instructions. Additionally, participants accessed a flow chart which demonstrates the relationship between the elements and the Defence decision. This questionnaire along with copies of the other dependent measures in this experiment can be accessed through appendix one. The first element of the PD is: was there provocative conduct. It asks participants to report on a Likert scale the extent to which they believe the victim behaved in a way that is likely to provoke a strong reaction in an ordinary person. The second element: how serious was the provocative conduct, yields a measure of how strong a reaction they would expect and explicitly asks them to take into account factors such as culture and gender. The third element: did the accused lose self-control, measures the perception of the accused capacity for self-control in the context of the scenario. While the fourth element,

could the provocative conduct cause a reasonable person to lose self-control, asks participants to consider whether their chosen level of provocation would reduce the responsibility an ordinary person has for their actions. The final question, would you accept the PD, offers only a yes or no in order to reflect real-life jury decisions and provide an insight into how participants thinking on the different elements feeds into their final decision. This questionnaire was developed in previous research by Korbels (2016) but has not been validated. In this study, six multiple-choice questions have been added to assess participants' comprehension of PD.

Ambivalent Sexism Inventory.

The variable of attitudes toward gender was measured as a covariant through the Ambivalent sexism Inventory (ASI) (Glick & Fiske 1996) and Ambivalence toward men Inventory (AMI) (Glick & Fiske 1999). The ASI measures both benevolent and hostile forms of sexism, which are thought to be related to social role performance and expectations. Cronbach's alpha varied between .73 and .92, and it was found to have convergent validity through strong correlations with other measures of sexism. Interestingly hostility subscale scores were correlated with scores on a modern racism measure (Gamst, Liang et al. 2011). While there does not appear to be specific validation of the ASI for the Australian population, it has been used in the Australian context (Glick, Fiske et al., 2000).

Ambivalence Towards Men Inventory

AMI is the sister scale to the ASI, which measures benevolent and hostile attitudes toward men, which may contribute to toxic masculinity (Glick & Fiske 1999). It is important to include a measure of attitudes towards men as it not only the attitudes toward female victims and perpetrators, which might inform their decision making in the provocation space, and this is an area that has been neglected in the literature (MacDowell, 2013). The AMI is correlated with the

ASI, Cronbach's alpha varied between .83 and .87, and convergent validity was established through correlation with other measures of attitudes toward men (Gamst, Liang, et al. 2011). Like the ASI, the study has not been validated explicitly for the Australian context, but cross-cultural validity has been investigated in 16 countries, including Australia (Glick, Lameiras, et al. 2004).

Multiculturalism Color-Blind Scale and Race-Related Attitudes and Multiculturalism Scale.

The variable of attitudes toward culture was also measured as a covariant through the Multiculturalism Color-Blind Scale (MCBS) and the Race-Related Attitudes and Multiculturalism Scale (RRAMS). The MCBS is an 8 item scale that asks participants to rate on a seven-point scale the extent to which they believe adopting each of the items would improve intergroup relations in the U.S (Ryan, Hunt et al., 2007). Its two subscales, multiculturalism (Cronbach's alpha 0.78) and colour-blind (Cronbach's alpha 0.69), assess the extent to which participants endorse colour-blind ideology (i.e., the idea that race does not and should not matter) or Multicultural ideology (the concept that multiple cultural identities should coexist) in race relations (Awad & Jackson 2011). While this scale was developed and validated in America, it was easily adapted for an Australian context, see Appendix 1.

The RRAMS is an 8-item scale that measures Anglo-centric/ Assimilationist attitudes and Inclusive/Pluralistic attitudes (Haag, Santiago et al., 2020). It was developed and validated in Australia, and the authors chose to report McDonald's omega (0.83 and 0.77 respectively) and ordinal alpha (0.85 and 0.79) in place of Cronbach's alpha. While the RRAMS has the advantage of validation in Australia, it has not been independently validated due to its recent development. As such, this study also contains another measure of the same concept so that convergent validity can be obtained.

Results

All statistical analysis was completed using JASP, an open-source statistical program supported by the University of Amsterdam.

Descriptive statistics PD measure by the gender of the defendant

Of the 152 participants, 82 participants read a case summary where the defendant was female, while 70 read one where the defendant was male. As shown in Table 2, the mean score for female defendants in the first element of the PD Defence, provocative conduct, was 2.17 (SD=0.87); for males, the mean was 2.27 (SD=0.93). The seriousness of provocative conduct had a female mean of 2.32 (SD= 0.93) and a male mean of 2.36 (SD= 0.9). The perception that the defendant lost control had a mean of 1.85 (SD=0.8) for females, while males had 1.96 (SD= 0.84). Whether or not a reasonable person might have acted in the same way as the defendant has female defendants given an average score of 3.07 (SD= 1.03) while males received 3.36 (SD= 1.02). Finally, 38% of participants accepted the PD when there was a female defendant, while 62% rejected it. For a male defendant, 26% accepted, while 74% rejected the PD, as shown in table 3. Table 2 also shows a strong positive skew in both cases for the Provocative conduct and loss of control variables. This means that the responses are grouped towards the beginning of the spectrum, translating into strongly agree/disagree responses. The provocative conduct variable is also leptokurtic, especially for the female defendant category. The significance of the Shapiro Wilks statistic ($p < 0.001$) in all cases suggests that the data is not normally distributed. As normality is a key assumption of many statistical tests, non-parametric versions of these tests will need to be reported.

Table 2 Descriptive Statistics for PD measure by Defendant Gender

	provocative conduct		seriousness		lose control		reasonableness	
	Female	Male	Female	Male	Female	Male	Female	Male
Valid	82	70	82	70	82	70	82	70
Missing	0	0	0	0	0	0	0	0
Mean	2.171	2.271	2.317	2.357	1.854	1.957	3.073	3.357
Std. Deviation	0.872	0.797	0.928	0.901	0.803	0.842	1.028	1.022
Skewness	0.916	1.234	0.080	0.076	0.713	0.683	0.060	-0.439
Std. Error of Skewness	0.266	0.287	0.266	0.287	0.266	0.287	0.266	0.287
Kurtosis	0.938	1.867	-0.879	-0.750	0.092	0.052	-0.854	-0.736
Std. Error of Kurtosis	0.526	0.566	0.526	0.566	0.526	0.566	0.526	0.566
Shapiro-Wilk	0.817	0.744	0.874	0.877	0.818	0.831	0.896	0.859
P-value of Shapiro-Wilk	< .001	< .001	< .001	< .001	< .001	< .001	< .001	< .001
Minimum	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Maximum	5.000	5.000	4.000	4.000	4.000	4.000	5.000	5.000

Table 3 Frequency of PD acceptance and rejection by Defendant Gender

Case	gender	apply	PD	Frequency	Percent	Valid	Percent	Cumulative	Percent
Female	Accept			31	37.805		37.805		37.805
				51	62.195		62.195		100.000
	Reject			0	0.000				
				82	100.000				
Male	Accept			18	25.714		25.714		25.714
				52	74.286		74.286		100.000
	Reject			0	0.000				
				70	100.000				

	Provocative conduct		seriousness		lose control		reasonableness	
	honour	non-honour	honour	non-honour	honour	non-honour	honour	non-honour
Mean	2.247	2.190	2.233	2.430	1.877	1.924	3.110	3.291
Std. Deviation	0.954	0.717	0.936	0.887	0.816	0.829	1.035	1.027
Skewness	0.861	1.196	0.349	-0.180	0.865	0.560	0.007	-0.326
Std. Error of Skewness	0.281	0.271	0.281	0.271	0.281	0.271	0.281	0.271
Kurtosis	0.260	2.979	-0.695	-0.759	0.584	-0.313	-1.074	-0.659
Std. Error of Kurtosis	0.555	0.535	0.555	0.535	0.555	0.535	0.555	0.535
Shapiro-Wilk	0.814	0.750	0.869	0.863	0.804	0.835	0.874	0.889
P-value of Shapiro-Wilk	< .001	< .001	< .001	< .001	< .001	< .001	< .001	< .001
Minimum	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Maximum	5.000	5.000	4.000	4.000	4.000	4.000	5.000	5.000

Table 5 Frequency of PD application by defendant ethnicity

case culture apply PD		Frequency	Percent Valid	Percent Cumulative	Percent
honour	Accept	20	27.397	27.397	27.397
	Reject	53	72.603	72.603	100.000
	Missing	0	0.000		
	Total	73	100.000		
non-honour	Accept	29	36.709	36.709	36.709
	Reject	50	63.291	63.291	100.000
	Missing	0	0.000		
	Total	79	100.000		

Manipulation Checks

Comprehension of the PD measure was assessed through 6 multiple-choice questions. 74% answered question one correctly, 63% answered question two correctly, 45% answered question three correctly, 78% for question four, 82% for question five, and 52% for question six. Attention to relevant details of the case summary, including defendant and victim name, defendant and victim gender, and defendant and victim ethnicity, were also assessed. The

percentage of participants whose response matched the condition they were assigned to for defendant name was 97% for white male defendant and white female defendant and 100% for both male and female Asian defendants. The pattern was identical for victim name. Defendant gender matched the condition 100% except for white female defendant with 95%. Victim gender had the same pattern. Defendant's background had 91% correct for white male defendants, 88% for white female defendants, 85% for Asian male defendants, 97% for Asian female defendants. 94% correctly identified white male victim background, 84% white female, 85% Asian male, and 92% Asian female.

There will be a significant effect of gender of actors on PD measure

This hypothesis, along with hypothesis 2 and 3, require multiple comparisons to be made and as such the Bonferroni correction has been utilised to reduce the possibility of a type one error (Navarro, Foxcroft, & Faulkenberry, 2019). While the original alpha level was $p=0.05$ in line with convention, each of the four elements of the PD plus its application requires their own test, and thus, the new alpha level is $p=0.01$. As the data is not normally distributed, the Kruskal-Wallis test is used as a non-parametric alternative to ANOVA. The Kruskal-Wallis test determines if there is a statistically significant difference between the medians of independent groups. For provocative conduct, $H(1)=0.8$; however, it was not significant ($p=0.37$). This is displayed in table 6. For Seriousness of provocative conduct, the Kruskal-Wallis Test also returned a non-significant result ($H(1)=0.06$, $p=0.801$). The loss of control variable has $H(1)=0.55$ $p=0.46$, which is not significant, and reasonableness is similarly non-significant ($H(1)=3.229$, $p=0.072$). As PD application is a nominal variable, a chi-square test was used to determine if there was a significant difference in application based on gender. It found $X^2(1, n=152) 2.53$, $p=0.11$.

Table 6 Kruskal-Wallis Test for gender of defendant by PD elements

	Statistic	df	p
Provocative Conduct	0.803	1	0.370
Seriousness	0.064	1	0.801
Lose control	0.548	1	0.459
Reasonableness	3.229	1	0.072

There will be a significant effect of the culture of actors on PD measure

The Kruskal-Wallis Test returned a non-significant ($H(1)=0.02$, $p=0.90$) result for the effect of culture of actors on provocative conduct. Significance is set at $p=0.01$ after Bonferroni correction. For seriousness, $H(1)=2.29$, however, $p=0.13$, and thus, there is no significant effect. Perception of loss of control did not report a significant effect ($H(1)=0.171$, $p=0.679$) and neither did reasonableness ($H(1)=1.26$, $p=0.261$). Chi-squared test of PD application by culture of defendant found $X^2(1, N=152)=1.51$, $p=0.22$, which is not significant.

Table 7 Kruskal-Wallis Test for defendant ethnicity by PD elements

	Statistic	df	p
Provocative conduct	0.016	1	0.901
Seriousness	2.290	1	0.130
Lose control	0.171	1	0.679
Reasonableness	1.264	1	0.261

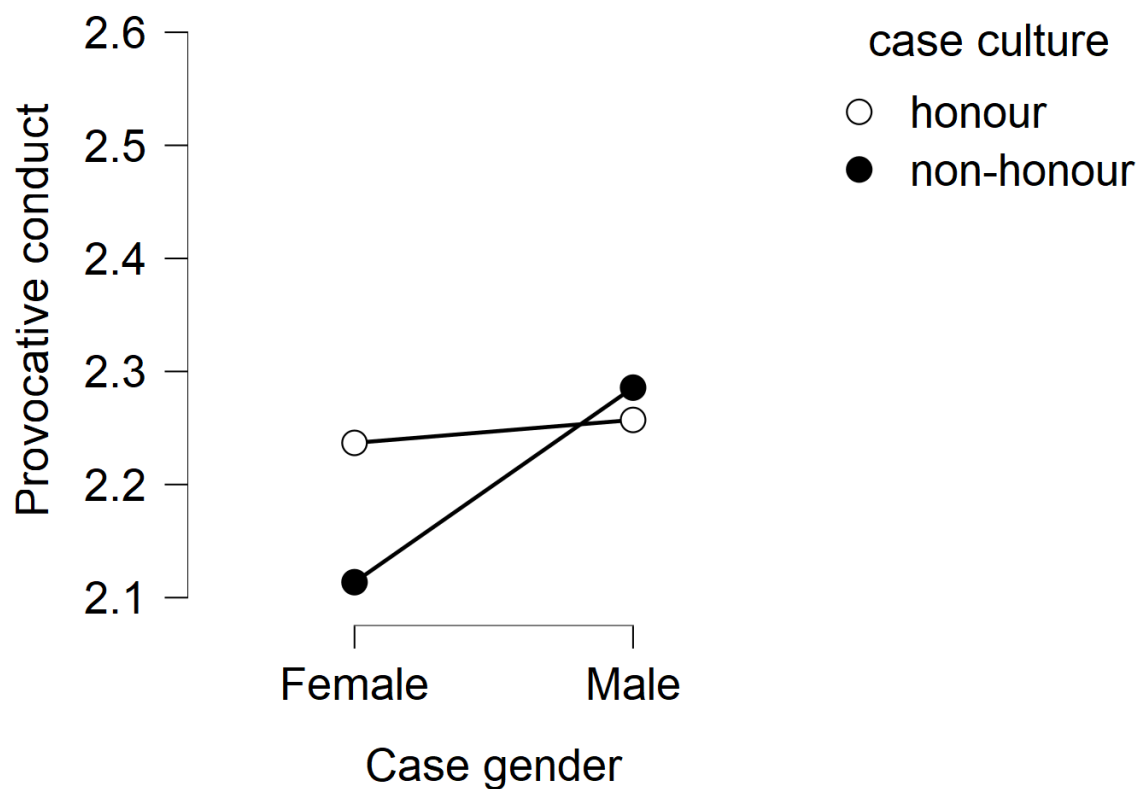
There will be an interaction effect between gender and culture of actors and PD measure

As indicated by the Shapiro-Wilks test, the data is unlikely to be normally distributed and thus a two-way ANOVA which would allow assessment of interaction effects is not possible.

Although the significance of the relationships cannot be tested, descriptive plots have been generated to illustrate the directions of the relationships between the PD measure and the gender of actors and the culture of actors.

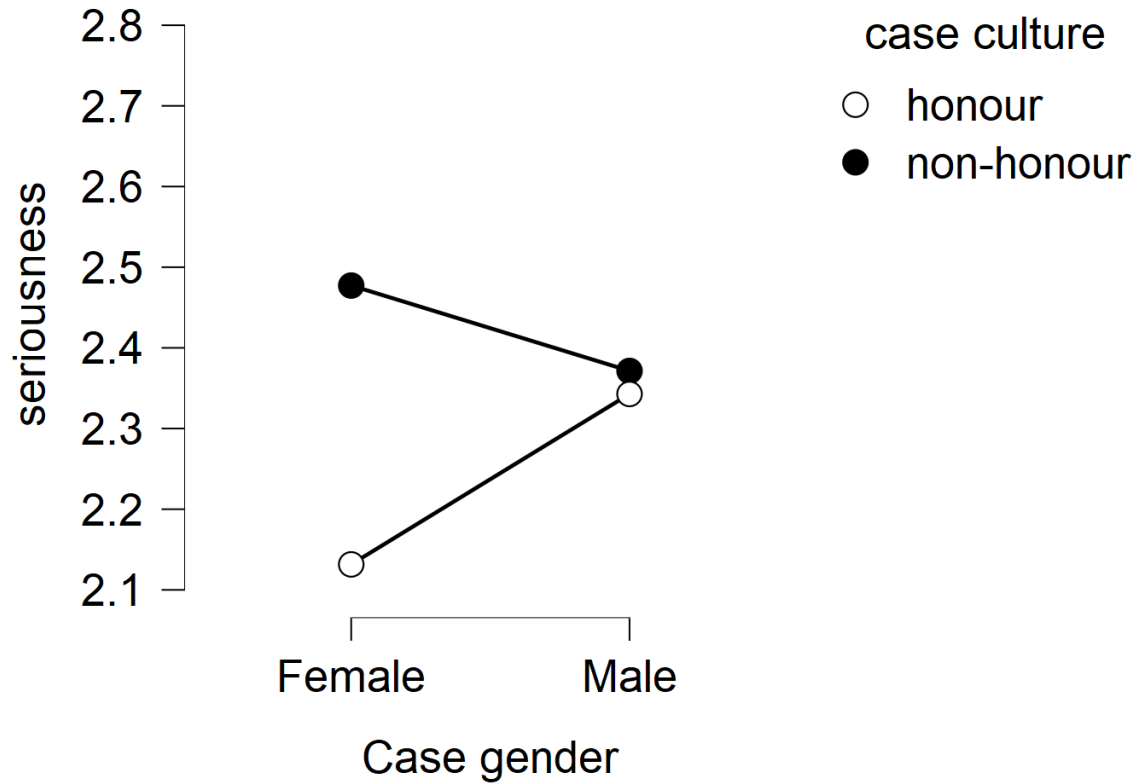
Provocative conduct, shown in figure 1, shows a slight crossover interaction between the gender and culture of actors. Female defendants from non-honour cultures appear to receive the lowest scores, which translates to stronger endorsement of provocative conduct on the part of the white male victim. While male defendants from a non-honour culture receive the highest scores indicating lower perceptions of provocative conduct on the part of white female victims. The relationship between male and female defendants from honour cultures seems comparatively flat.

Figure 1 Provocative conduct by Defendant Gender and Culture



Seriousness of provocative conduct, as seen in figure 2, seems to have a negative relationship between female and male defendants in non-honour culture. Female defendants receiving the highest scores indicating participants perceived the provocative conduct as least serious for this group. Female defendants from honour culture received the lowest score, suggesting that the provocative conduct was perceived as most serious for this group.

Figure 2 Seriousness of provocative conduct by defendant gender and culture



Male defendants from honour cultures were perceived to have lost control the least while female defendants were perceived to have lost control the most. For non-honour culture, the females had a higher average rating than male defendants indicating that they were perceived to have lost control less.

Figure 3 Loss of Control by Defendant Gender and Culture

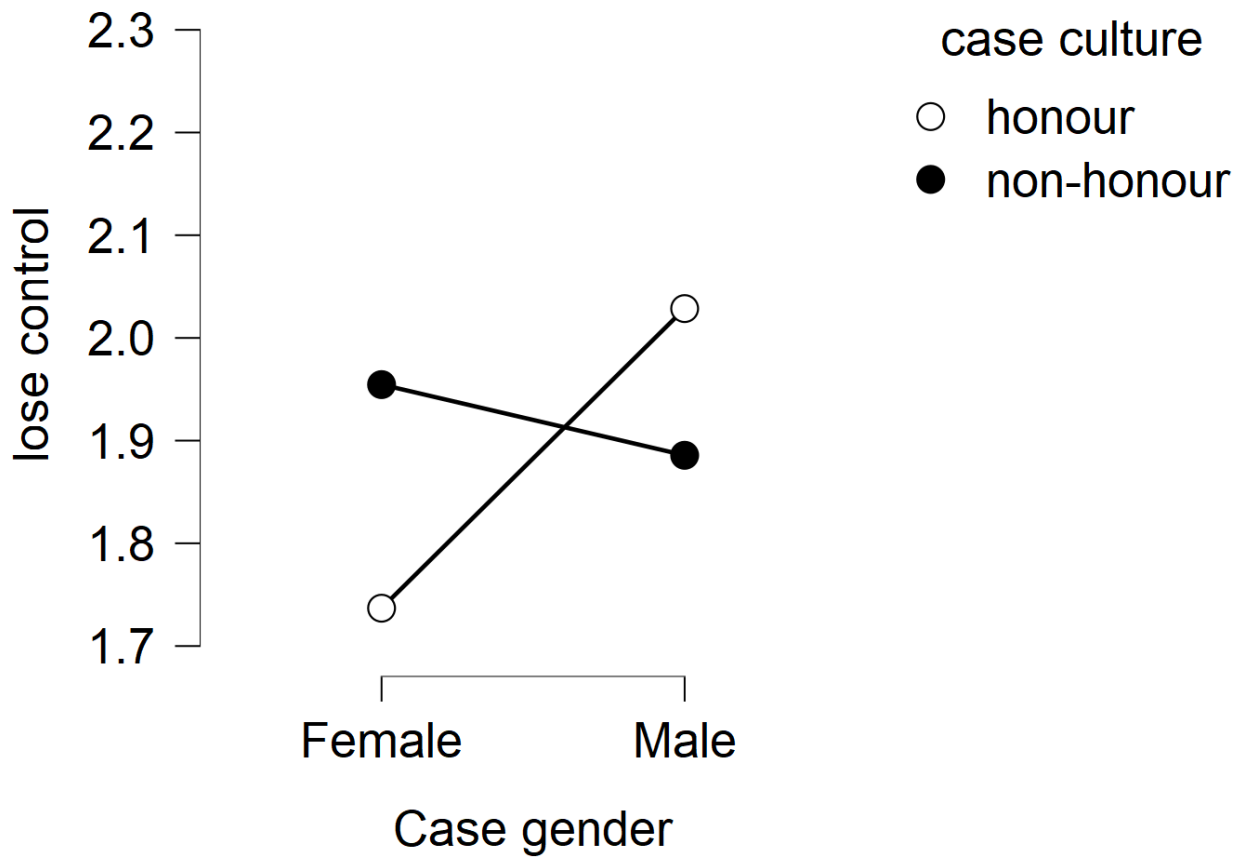
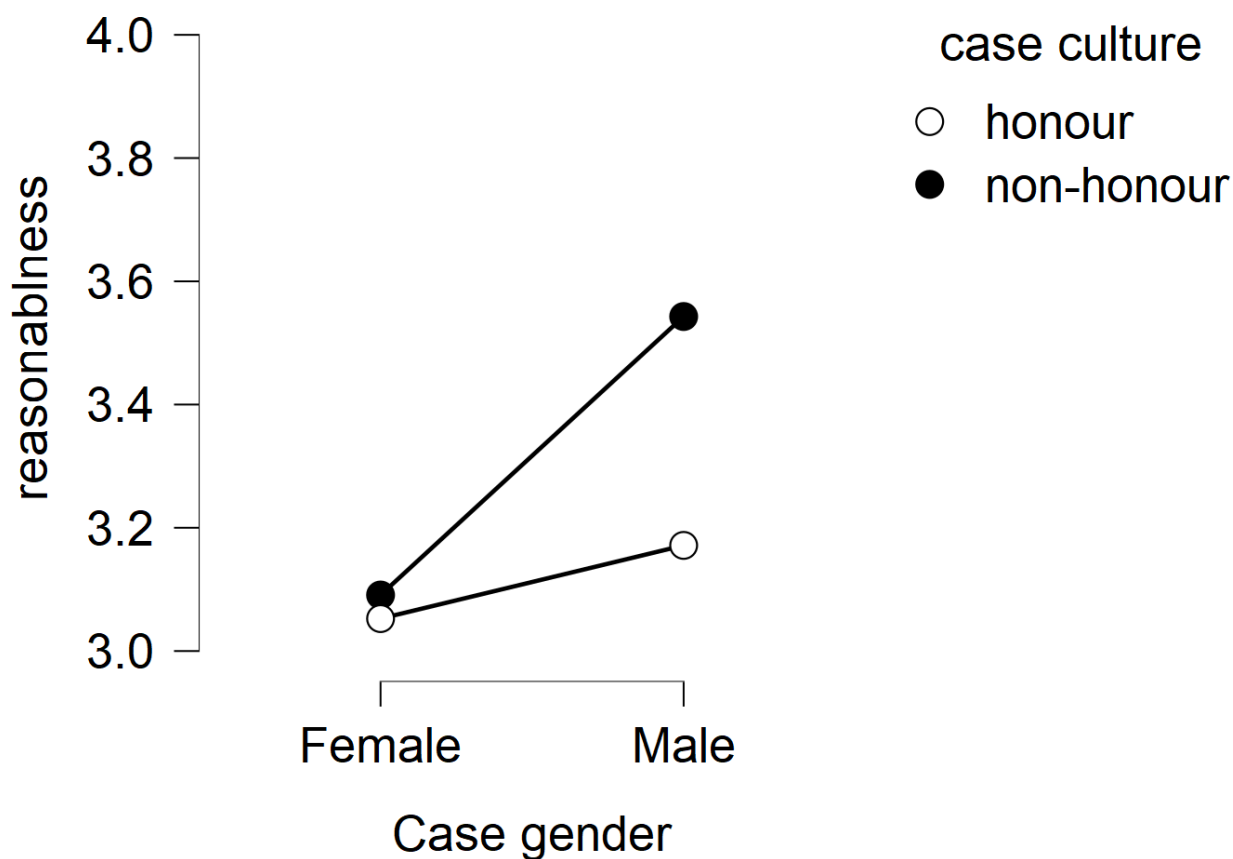


Figure 4 displays the relationship between the defendant gender and culture in ratings of reasonableness of actions. Male defendants from non-honour cultures have the highest average score indicating that their actions were viewed as the least reasonable. Female defendants from both honour and non-honour cultures received the lowest ratings on average, suggesting that their behaviour was seen as most reasonable.

Figure 4 Reasonableness by Defendant Gender and Culture



There will be a significant relationship between PD measure and measures of culture attitudes

the Mann-Whitney test is used to determine the relationship between the application of the PD defence and the subscales of the MBCS and RRAMS. As this hypothesis requires multiple comparisons, four because each measure of culture has two subscales, the alpha level for significance is $p=0.0125$ after Bonferroni correction. Assimilationist attitudes, a subscale of the RRAMS, had a $U(150)=2205.5$ $p=0.209$ and effect size of -0.126 which is given by rank biserial correlation. Pluralistic attitudes, the companion subscale of the RRAMS, had a

U(150)=2561.5 $p=0.881$ and effect size 0.015. Neither of which are significant. The MCBS subscale of Colour-blindness had U(150)=2964.00 $p=0.081$ and biserial correlation of 0.175. Multicultural attitudes was similarly non-significant (U(150)=2869.5, $p=0.168$, effect size=0.137).

There will be a significant relationship between PD application and measures of gender attitudes

Although a Shapiro-Wilks test suggests that the ASI (accept $W=0.976$ $p=0.379$, reject $W=0.980$ $p=0.124$) and AMI (accept $W=0.960$ $p=0.092$, reject $W=0.992$ $p=0.787$) may be normally distributed, the Mann-Whitney U will be reported for consistency sake. The dependent variables are participants scores on the ASI and AMI and the grouping variable is PD application. The ASI received a rank of U(150)=2085.00, $p=0.84$ effect size -0.174. The AMI U(150)=2025.00 $p=0.050$, effect size -0.98. After a Bonferroni correction the alpha level has reduced to $p=0.025$

RRAMS and MCBS will be strongly positively correlated

The construct validity of the RRAMS and MCBS was tested through Pearson's correlation of scores on the subscales of each measure, which purport to measure the same thing. The MCBS colour-blindness subscale and RRAMS assimilationist subscale shows a weak negative correlation ($r = -0.23$, $p=0.002$), as seen in table 10. The RRAMS pluralistic subscale and MCBS Multicultural subscale measure shows a moderate positive correlation ($r = 0.444$ $p<0.001$)

Table 8 Pearson correlations of MCBS and RRAMS subscales

	Pearson's r	p	Lower 95% CI	Upper 95% CI
Assimilationist - Pluralistic	-0.542 ***	< .001	-0.645	-0.419
Assimilationist - Colour Blind	-0.253 **	0.002	-0.396	-0.098
Assimilationist - Multicultural	-0.230 **	0.004	-0.376	-0.074
Pluralistic - Colour Blind	0.260 **	0.001	0.105	0.403
Pluralistic - Multicultural	0.444 ***	< .001	0.306	0.563
Colour Blind - Multicultural	0.345 ***	< .001	0.196	0.478

* p < .05, ** p < .01, *** p < .001

Discussion

There will be a significant effect of gender of actors on PD measure

Kruskal-Wallis Tests for each element of the provocation defence measure and the Chi-squared test of independence all returned p values above the 0.01 corrected alpha level. This means that the data do not support the first hypothesis of a significant effect of gender of actors on PD measure. This non-significant results has two possible explanations. The one possible explanation for the non significant result is that this study does not have sufficient power to distinguish between groups. The A Priori power analysis suggested that 280 participants would be needed to achieve 80% power for a two way ANOVA. This study only achieved n= 152 and the Kruskal-Wallis test is generally less powerful than its parametric counterpart.

Secondly, it could be the case that there is truly no effect of defendant gender on how juries perceive behaviour or attribute blame in incidences of IPV as measured by the PD measure. This would line up with findings by Korbels (2016) who also did not find a significant effect of gender of actors on PD application. It would not however line up with other literature on juror perception and gender. Devine and Caughlin (2014) found a small but significant effect of defendant gender on guilty decisions in their meta-analysis of individual characteristics and guilt judgements in mock trial research. Similarly, the results of this study do not line up with

Wasarhaley, Lynch, & Golding (2015) finding that masculine and feminine presentation of female actors in an IPV incident effected juror perception of defendant and victim provocation.

While this study did not find an effect of defendant gender between groups, in examining the mean scores on the PD measure an interesting pattern emerged. The mean scores for provocative conduct, visible in table 2, were 2.17 and 2.27 for female and male defendants respectively. This translates to participant agreeing that there was provocative conduct. For seriousness of provocative conduct mean scores were 2.317 female defendants and 2.357 for male defendants. This translate into participants most participants stating that the defendant would have felt ‘a lot’ provoked by the victim’s actions. The mean scores for loss of control were 1.854 for female and 1.957 for male. This translates into most participants agreeing or strongly agreeing that the accused lost control. The mean scores for the extent to which participants believed that a reasonable person would behave the same way as the defendant were a little higher, 3.073 for women and 3.357 for men, indicating that most participants neither agreed nor disagreed. However, despite this pattern on the elements of the PD which would seem to indicate that most participants would apply the PD, as can be seen in table 3, most participants rejected it. This perhaps indicates that although jurors perception of behaviour aligns with findings like Witte, Schroeder, & Lohr (2006), who found that verbal aggression on the part of the victim increased participants blame attribution, they were reluctant to formalise the attribution of blame to victim or absolve the defendant of guilt.

There will be a significant effect of the culture of actors on PD measure 507/400

Kruskal-Wallis Tests and chi-squared test of independence indicate that the null hypothesis cannot be rejected and therefore they hypothesis that culture of actors will have a

significant effect on PD measure is not supported. This runs counter to the findings of (Mitchell, Haw, Pfeifer, & Meissner's (2005) meta-analysis which found victim and defendant ethnicity had significant effects on jury decision making. It also doesn't align with Wittenbrink, Gist, & Hilton (1997) finding that stereotype information about African Americans could affect jurors perception of an incident of violence. The results of this study do align with Poli (2004) who found patterns in how different racial minorities were perceived by participants in an incident of violence but did not find a main effect of cultural group.

In addition to the two explanations for the non-significant of the H values explored in hypothesis one, it is possible that the manipulation which the investigators made to the independent variable failed. In order to control for this possibility manipulation checks of participants' attention to the pertinent details of the case summary and comprehension of the PD were included in the survey. The percentage of people who correctly identified which gender their defendant and victim belonged to varied between 95 and 100%. Comparatively, the percentage of participants who correctly identified the cultural background of the defendant and victim varied between 84% and 97%. While the scores for victim culture were slightly this evidence does not support the idea that the manipulation of defendant gender or cultural group failed. On the other hand participants' scores on multiple choice questions testing comprehension of the PD varied from 45% to 82% indicating that the PD was not particularly well understood by participants. This could have negatively impacted the PD measure responses and the results of the study. McKimmie, Antrobus, & Baguley (2014) however found that objective comprehension of jury instruction is not as important as subjective comprehension to understanding how jurors will behave.

Similarly to hypothesis one, there is an interesting pattern in the average scores which seems to reflect a perception of behaviour which generally follows previous findings about blame attribution in IPV despite a reluctance to attribute blame to the victim or absolve the defendant of responsibility. For both honor and non-honour groups the mean score was around 2 for provocative conduct. This means participants generally agreed that there was provocative conduct. For seriousness, the average across groups was around 2, indicating that participants thought the provoking conduct was severe. The mean score for loss of control was also around two indicating that participants agreed that the defendant was not in control of his behaviour. Reasonableness again attracted a higher score, approximately 3, suggesting participants neither agreed nor disagreed with the normality of the defendant's response to the provocation. The percentages of PD application frequency were however still heavily skewed towards rejection. This pattern in the responses to the PD does support De Pasquale's (2002) argument that PD defence does not truly grant special protection to minority groups instead reproduces dominant culture norms

There will be an interaction effect between gender and culture of actors and PD measure

The data for each element of the PD measure is not normally distributed and I was unable to find a nonparametric alternative to two-way ANOVA, which tests for interaction effects. The third hypothesis, that there is an interaction effect between gender therefore cannot be tested.

Although results are not significant and we cannot say that the differences displayed are real, it is still interesting to analyse the graphs of PD measure by culture and gender because it gives some indication of how these two independent variables are related to each other in this data set if nowhere else.

Provocative conduct, as displayed in figure 1, suggests that male defendants from white backgrounds received the highest scores and therefore lowest average ratings of provocative conduct. If this were a real effect it might mean that participants either perceived the physical and verbal aggression on the part of the white female victim as provocative least often or at least not provocative to a white male defendant, because as MacDowell (2013) points it is not only the beliefs about the victim which are important in how IPV is perceived but also there beliefs about the perpetrator. The positions are also reversed with female defendants from non-honour cultures receiving the lowest scores overall. The difference in mean scores between the male and female defendants from honour cultures was much smaller than the difference between non-honour culture male and female defendants This creates what could be a slight crossover interaction, where non-honour conditions are perceived as containing provocative conduct both most, for male defendants, and least, female defendants, often. While the differences in means for the gender and culture conditions on their own are not significant, it is sometimes possible that interaction effects are significant nonetheless. However, this cannot be assessed as the data is not normally distributed and it would not be appropriate to treat it as though it were.

Seriousness gives some measure of how severe the participants felt the provocative conduct was for each condition. Female defendants from honour culture received the lowest average score, suggesting that the provocative conduct was perceived as most serious for this group. In this case female defendants from non-honour cultures also had the highest mean suggesting provocation was rated as more severe least often in this condition. Male defendants from honour cultures and non-honour cultures received very similar mean scores. Female defendants making up either extreme of this arrangement is interesting especially given

Wasarhaley, Lynch, & Golding's (2015) finding an effect of gender stereotypes on jury perception when examining IPV in a lesbian couple.

Loss of control measures the perception that the defendant is in control of their actions at the time of the attack on the victim. In the non-honour culture condition female defendants were perceived to be in control less often than their male counterparts, however as can be clearly seen in figure 3, there is another crossover between the conditions as male Indian defendants had the highest mean score while female defendants had the lowest. Male defendants receiving the highest mean score and therefore being perceived as out of control least often is interesting because it does not align with Wittenbrink, Gist, & Hilton, (1997) findings that stereotype knowledge affected juror perception. The stereotype of men from minority groups being perceived as less able to control themselves does not appear to map out in the data.

Reasonableness measures the extent to which the participant believes that an ordinary person in the defendants' circumstances would behave in the same way. Female defendants from both honour and non-honour conditions received similar mean scores. The mean for male defendants from honour culture were higher but male defendants from non-honour cultures had the highest mean score. When viewing figure 4 the relationship between the variables looks like a classic interaction effect, however this cannot be tested because there did not appear to be a sensible non-parametric alternative to the two way ANOVA in this case.

Given the effect that the distribution had on the capacity of the study to test this hypothesis it is important to consider why data isn't normally distributed and should not be transformed to be this way. Although the study does lack power which is a common cause of both lack of significance and non-normal distributions the fatal flaw is actually in the design of the PD measure. The PD measure is a Likert scale, as such it returns ordinal data which does not

map onto a normal distribution. Unlike most psychological measures the PD does not sum across a number of different items as such scores on PD measure should not have natural variation like IQ or trait measures. However there is an underlying pattern of logic to ways in which people respond to the PD, the evidence for this can be seen in the across-group means of both gender and culture conditions.

There will be a significant relationship between PD application and measures of culture attitudes

The Mann-Whitney tests were not significant at the $p = 0.0125$ level after the Bonferroni correction. Therefore, the fourth hypothesis, that there is a significant relationship between measures of attitude toward culture and PD application is not supported by the data. The non-significance of this result implies that the conjecture that the extent to which someone believes that race should not and does not matter is not related to their attributions of blame when observing an incident of IPV at least in the context of the PD. Similarly, the idea that a person's beliefs about accepting cultural diversity are not related to their willingness to absolve the defendant or blame the victim in a case of IPV. This finding is somewhat in line with De Pasquales (2002) argument that there is no 'culture defence' within the PD or at least that it does not serve to protect minority groups.

There will be a significant relationship between PD application and measures of gender attitudes

The Mann-Whitney tests for the ASI and AMI by PD application were not significant at the $p=0.25$ level therefore the null hypothesis of no effect cannot be rejected. The fifth hypothesis, that there will be a significant relationship between measures of attitude towards gender and

participants acceptance or rejection of the provocation defence is not supported. This undermines the propositions made in the introduction about the possibility of attitude to gender being linked to their willingness to attribute blame to the victim or excuse the defendant in an incident of intimate partner violence. It also does not align with Korbelis (2016) who found that there was a significant relationship between attitudes towards gender roles and PD application.

RRAMS and MCBS will have a strong positive relationship.

In order to test the conceptual validity of the recently developed RRAMS measure participants scores on each subscale were compared with subscales which purport to measure the same thing on a similar scale the MCBS. There was a significant moderate positive correlation between Assimilationist subscale from the RRAMS and Colour-blind attitudes subscale from the MCBS. There was also a significant moderate positive correlation between the Pluralistic subscale of the RRAMS and the Multicultural attitudes subscale from MCBS. This suggest that the sixth hypothesis, there will be a strong positive relationship between the RRAMS and MCBS is partially supported because although there relationships were found to be significant and in the expected directions they were not as strong as expected.

Strengths, Weaknesses, and Conclusions

The strengths of this study lie in its exploration of a novel area for mock juror research through its simultaneous examination of gender and culture manipulations. The testing of jurors comprehension of the PD and then its application contributes to research around comprehension of jury instructions. It also contributes to Australian psychological literature on minorities other than indigenous persons which is quite underdeveloped considering the cultural and ethnic diversity of Australia as a nation. This study also contributes to the literature by testing the

construct validity of a newly developed scale of attitudes to culture which is aimed at an Australian population.

The weaknesses of the study however are severe. Firstly, the study is low on power, this is attributable both to insufficient recruitment and to the high rate of participant attrition, possibly due to survey length. Power could be improved with more participants and also more specific hypotheses which would reduce the number of participants needed to achieve the conventional 80% power. Secondly, the Likert scale PD measure means the data is not normally distributed and as such hypothesis three cannot be tested. This could be improved through formulating hypotheses which take into account the limitations of ordinal data.

The implications of these weaknesses make drawing conclusions in this study difficult. The low power means the results of significance testing is inconclusive, possibly there is no effect of gender or culture on PD although this is counter to the logic from the literature around racial and gender effects on perception of behaviour and blame attribution. One pattern that seemed clear in the data was despite answers on measures elements of the PD which would support acceptance of the PD, participants overwhelmingly rejected it. Perhaps this reflects a reluctance to attribute blame to the victim or absolve perpetrators guilt in the official manner of a trial.

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Appendices

Appendix 1 Scales and Flowchart

PD Questionnaire

If you were a juror on the case summary presented above, please answer the following questions about the extent to which you believe the elements of the Provocation Defense have been satisfied.

Was there Provocative conduct?

To determine whether there is provoking conduct is an objective test. Look at words or conduct by the victim that occurred at one single event, or over time, and would be provoking to an ordinary person. It need not be conduct which would cause someone to murder someone, but conduct that would generally give rise to a reaction or emotion. To what extent do you believe there was provoking conduct?

1 Strongly Agree 7 Strongly Disagree

How serious was the provocative conduct?

The level of provocation is a subjective test and must be assessed by reference to relevant characteristics of the accused, eg gender, ethnicity. This means that conduct which might not be insulting or hurtful to one person might be extremely so to another because of that person's gender, ethnicity, or circumstances. Keep in mind that the provocation may be words alone, e.g., "I hate you," which in themselves do not seem provocative, but might be provocative to the accused given an accumulation of previous actions that have subsequently built up over time.

Taking into account all these considerations, from the viewpoint of the accused, to what extent do you believe the accused would have felt provoked by all the victim's words/actions

1 A Great Deal 7 Not At All

Did the Accused lose self-control?

Loss of self-control is not literal because if a personal literally lose self-control, their actions would not be voluntary, and therefore, they would have no criminal liability imposed. It refers to a stage between 'icy detachment and going berserk.' This is a subjective test, so think about it from the perspective of the accused. To what extent do you think the accused 'lost self-control'?

1 Strongly Agree 7 Strongly Disagree

Could the provocation cause a reasonable person to lose self-control?

Assuming that what occurred in the final meeting was the "last straw," Ask yourself, to what extent do you believe whether the provocation of your chosen level of seriousness could cause an ordinary person to lose self-control and act in a manner which would encompass the accused's actions?

1 Strongly Agree 7 Strongly Disagree

Would you, as a juror in this case, accept the provocation defense and thereby reduce the verdict from murder to manslaughter?

Yes/No

Ambivalent Sexism Inventory

Table 3
Factor Loadings for ASI Items Across Five Studies

Scale item	Study				
	1	2	3	4	5
Hostile Sexism					
Women exaggerate problems at work	.71	.70	.71	.80	.73
Women are too easily offended	.76	.81	.66	.69	.66
Most women interpret innocent remarks as sexist	.74	.69	.61	.55	.70
When women lose fairly, they claim discrimination ^b	.74	.49	.31	.77	.66
Women seek special favors under guise of equality	.68	.74	.70	.59	.71
Feminists are making reasonable demands ^a	.75	.60	.50	.49	.42
Feminists not seeking more power than men ^a	.73	.50	.47	.56	.64
Women seek power by gaining control over men	.67	.64	.72	.70	.69
Few women tease men sexually ^a	.60	.51	.37	.25	.46
Once a man commits, she puts him on a tight leash	.73	.65	.65	.81	.77
Women fail to appreciate all men do for them	.68	.69	.66	.64	.58
Benevolent Sexism					
Protective Paternalism					
A good woman should be set on a pedestal	.68	.58	.66	.58	.62
Women should be cherished and protected by men ^b	.69	.43	.28	.66	.49
Men should sacrifice to provide for women	.69	.54	.73	.67	.69
In a disaster, women need not be rescued first ^a	.62	.48	.35	.33	.47
Complementary Gender Differentiation					
Women have a superior moral sensibility	.69	.74	.75	.77	.56
Women have a quality of purity few men possess	.82	.80	.82	.78	.61
Women have a more refined sense of culture, taste	.72	.69	.71	.67	.71
Heterosexual Intimacy					
Every man ought to have a woman he adores	.67	.57	.69	.64	.55
Men are complete without women ^a	.69	.70	.51	.63	.55
Despite accomplishment, men are incomplete without women	.79	.75	.84	.66	.71
People are often happy without heterosexual romance ^a	.67	.50	.37	.36	.44
<i>N</i>	811	171	937	144	112

Note. ASI = Ambivalent Sexism Inventory.

^a Indicates items reverse-worded (and reverse-scored) for Studies 2–6 and on the final scale.

^b Indicates items for which reversed wording (and reversed scoring) was used in Studies 2 and 3 but which were returned to their original wording for the final version of the scale and for Studies 4–6.

Ambivalence Toward Men Scale

Below are a series of statements concerning men and women and their relationships in contemporary society. Please indicate the degree to which you agree or disagree with each statement using the scale below:

0	1	2	3	4	5
disagree strongly	disagree somewhat	disagree slightly	agree slightly	agree somewhat	agree strongly

- B(M) _____ 1. Even if both members of a couple work, the woman ought to be more attentive to taking care of her man at home.
- H(S) _____ 2. A man who is sexually attracted to a woman typically has no morals about doing whatever it takes to get her in bed.
- B(G) _____ 3. Men are less likely to fall apart in emergencies than women are.
- H(S) _____ 4. When men act to "help" women, they are often trying to prove they are better than women.
- B(S) _____ 5. Every woman needs a male partner who will cherish her.
- H(G) _____ 6. Men would be lost in this world if women weren't there to guide them.
- B(S) _____ 7. A woman will never be truly fulfilled in life if she doesn't have a committed, long-term relationship with a man.
- H(G) _____ 8. Men act like babies when they are sick.
- H(P) _____ 9. Men will always fight to have greater control in society than women.
- B(M) _____ 10. Men are mainly useful to provide financial security for women.
- H(P) _____ 11. Even men who claim to be sensitive to women's rights really want a traditional relationship at home, with the woman performing most of the housekeeping and child care.
- B(S) _____ 12. Every woman ought to have a man she adores.
- B(G) _____ 13. Men are more willing to put themselves in danger to protect others.
- H(S) _____ 14. Men usually try to dominate conversations when talking to women.
- H(P) _____ 15. Most men pay lip service to equality for women, but can't handle having a woman as an equal.
- B(S) _____ 16. Women are incomplete without men.
- H(G) _____ 17. When it comes down to it, most men are really like children.
- B(G) _____ 18. Men are more willing to take risks than women.
- H(S) _____ 19. Most men sexually harass women, even if only in subtle ways, once they are in a position of power over them.
- B(M) _____ 20. Women ought to take care of their men at home, because men would fall apart if they had to fend for themselves.

Race-Related Attitudes and Multiculturalism Scale

Item	Estimate (SE)	p-value	95% C.I.	CITC	LI _{IRF}
Subscale 1: Anglo-centric/Assimilationist attitudes					
1. We need to stop people spreading dangerous ideas and stick to the way things have always been done in Australia.	0.629(0.014)	<0.001	[0.601, 0.656]	0.43	0.00
10. Racial or ethnic minority groups take away jobs from other Australians.	0.784(0.010)	<0.001	[0.764, 0.804]	0.50	0.72
11. The Australian way of life is weakened by people from minority racial or ethnic backgrounds maintaining their cultural beliefs and values.	0.856(0.009)	<0.001	[0.838, 0.874]	0.58	0.44
12. People from racial and ethnic minority groups should behave more like mainstream Australians.	0.814(0.010)	<0.001	[0.794, 0.834]	0.57	0.01
Subscale 2: Inclusive/Pluralistic attitudes					
4. We should do what we can to create equal conditions for different racial or ethnic groups.	0.652(0.016)	<0.001	[0.620, 0.684]	0.41	-1.58
7. People from racial or ethnic minority groups benefit Australian society.	0.627(0.016)	<0.001	[0.595, 0.658]	0.39	-1.16
8. People from racial and ethnic minority groups experience discrimination in Australia.	0.680(0.013)	<0.001	[0.655, 0.706]	0.43	-0.80
9. Something more should be done to reduce discrimination experienced by people from racial or ethnic minority groups in Australia.	0.835(0.012)	<0.001	[0.813, 0.858]	0.54	-0.86
Factor correlation (anglo-centric/assimilationist attitudes x inclusive/pluralistic attitudes)	-0.638 (0.016)	<0.001	[-0.669, -0.608]	-	-

CITC = Corrected Item-Total Correlations. LI_{IRF} = Location Index based on the Item Response Function. Standardized factor loadings are displayed. Point estimates and SE were pooled across 20 imputed datasets according to Rubin's rules. LI_{IRF} was calculated based on pooled item thresholds and factor loadings.

<https://doi.org/10.1371/journal.pone.0230724.t003>

Multiculturalism Colour-Blind Scale

Participants asked to indicate the degree (1 to 7) to which they think the items would improve intergroup relations in Australia

Ideology item	Multicultural (Factor 1)	Colorblind (Factor 2)
Adopting a multicultural perspective.	.83	.03
Recognizing that there are differences between ethnic groups.	.82	.07
Emphasizing the importance of appreciating group differences between ethnic groups.	.78	-.04
Accepting each ethnic group's positive and negative qualities.	.63	.45
Judging one another as individuals rather than members of an ethnic group	-.05	.80
Recognizing that all people are basically the same regardless of their ethnicity.	-.16	.78
Recognizing that all people are created equally regardless of their ethnicity.	.33	.64
Adopting a colorblind perspective in which one's ethnic group membership is considered unimportant.	.41	.59

Notes: N = 87. Boldface indicates item loading on that factor.

Appendix 2 Trial Transcripts

Female Asian (SITA KUMAR)

Judges Summary of Evidence

1 Sita Kumar you are accused of the murder of your husband Ramesh Kumar at Balwyn on 21 July .

2 You and the deceased married in 1980 when he was only 19 and you were only 20 years of age. Following some initial difficulties in the marriage including a separation of some months, you and your husband had two children – a son born and a daughter. You studied part time and worked your way through a series of accounting jobs to become the joint proprietor of a successful business involved in the re-enamelling of bathtubs. Your husband also after some years studied part time and obtained employment for four days a week as a bookkeeper with a clothing company.

3 It is apparent that in the two years prior to her death your husband was increasingly unhappy in the marriage. In particular he found your behaviour controlling and oppressive, and it seems likely that his dissatisfaction also related back in part to some incidents earlier in the marriage.

4 In any event, in May he left the family home while you were on a business trip to Japan and Korea. On your return you found that he and your daughter had moved into a flat in Toorak and that your son Matthew, who was then undertaking his final school year, was still living at the family home.

5 I accept that the breakdown of your marriage in this way was from your point of view sudden, unexpected and emotionally destabilising in a way which you did not easily accept.

6 It is clear from the evidence of your family and friends that your reaction was to try desperately to re-establish the marriage. You immediately sought to make and maintain contact with your husband and met with him at least weekly for meals. You sought advice as to what you should do from trusted family friends and from friends of your husband in particular. You saw a series of counsellors for advice and set up joint appointments for both your husband and yourself to try and provide a framework for reconciliation.

7 While undertaking these steps it is also clear that you suffered continuing and substantial anxiety. You ruminated obsessively about getting your husband back and had long and difficult discussions with your children (particularly your son) and other friends as to what was happening and as to what you should do.

8 In the interim your husband had gained confidence and newfound happiness after the separation and had met another woman to whom he felt a strong initial attraction and with whom he rapidly formed a close relationship.

9 In summary the period of weeks leading up to your husband's death was one in which you anxiously hoped and desperately endeavoured to re-establish your marriage while conversely your husband was seeking to "let you down gently" as he described it to those close to him.

10 On Tuesday 15 June, your husband attended two counsellors in sequence with you. At the first counselling session he made it clear that from her point of view the marriage was virtually over. But at the second, after a detailed discussion of the marriage and its problems, the possibility that you would get back together was left open. Your husband said he was not going anywhere and three further appointments were made for joint counselling. Following this you had dinner together. The following day you confirmed with the counsellor that there was a

possibility that the relationship might be saved. You continued to try and make changes in your life which might help achieve this end. You sought to complete renovations to the family home and you attended a meditation therapist and after an initial session booked in for an extended sequence of meditation therapy sessions.

11 At the same time your husband's relationship with his new female friend progressed to the point where, on the Friday, he characterised the relationship as serious and spoke with her of future plans together in some detail.

12 On the Saturday your husband went to Geelong with you to watch your son play football. During the course of the day it is apparent that he told you he was seeing someone else. A mutual friend who observed you at the football that day says it was obvious that there was tension between you. On that evening and the following day you expressed doubts to others as to the future of the relationship and you inquired of your friends and children as to what they knew of your husband's new friendship. Understandably those close to you were reluctant to confront you with all they had been told by your husband of his situation. They quite properly took the view that this was something you would have to work out with each other. Nevertheless, with hindsight it can be seen that you received mixed messages about the situation. Thus your husband's twin sister assured you that there was nothing in the relationship with the new woman and that your husband was just spreading his wings.

13 On the Sunday night your son, again entirely understandably, asked your husband to tell you the true situation if in fact there was no prospect that he would return to you.

14 You had requested your husband to come back to the family home and view renovations to the kitchen and family room areas which were almost completed. You had put

considerable effort into completing these renovations in a way which you believed would please your husband and which you hoped would attract him to return home.

15 On Monday 21 June, your husband went out to visit you at about midday at the family home in Balwyn. On that morning he had told workmates how happy he was in the new relationship he had formed and that he wanted to bring things out into the open. There is circumstantial evidence to suggest that he did not intend the meeting with you to be long.

16 There is no direct evidence of what then occurred save for the account given by you in your record of interview. I am prepared to accept that this account sets out the essential sequence of events. It is circumstantial and detailed and describes a spiralling confrontation in a manner which would not easily be invented.

17 It appears that firstly, there was a discussion concerning the renovations. Your husband dismissed these as being of no significance.

18 Next, you pleaded with him to return. He said "You don't get it do you? I'm over you. I should have left you 10 years ago."

19 Next, there was reference to your daughter, in the course of which your husband suggested that he would not allow her to visit you anymore.

20 In turn, you told your husband that your son was upset with the situation and that the two of you needed to handle the situation properly.

21 Next, there was a discussion about your husband's new female friend and you said to him that your daughter was "afraid of this girl."

22 This produced an emphatic reaction from your husband that it was none of your business and that he was not with you anymore. Next, you asked how serious the relationship was. Your husband told you that he had had sleepovers and how much nicer than you the new

woman was, that they shared interests and he cared for her. He then said that sex with you repulsed him and screwed up his face and either said or implied how much better his new friend was. You assert that at this point he pushed you hard enough that you fell back against the kitchen wall.

23 At this point you state in your record of interview that you lost control and attacked him. It is apparent from that record of interview and from the forensic medical evidence that you struck at least two heavy blows to his face, and that he then fell to the ground striking his head severely on the kitchen counter on the way down (the alternative to this last event being that you struck him a third severe blow to the side of the head). Then having knocked him down and in circumstances where he was already affected by the initial blows, you proceeded to deliberately strangle him with your bare hands until he appeared lifeless. These blows to the head rendered him unconscious and subsequently caused his death.

24 Following this you embarked immediately on a detailed and careful series of actions by way of cover up to which I shall shortly return. It is highly improbable but not absolutely certain that your husband was dead when you believed him to be. The assertion of the forensic medical examiner is that he died of positional asphyxiation suffered in the state of unconsciousness you had caused and did nothing to redress.

25 After the fatal assault you made no attempt to revive your husband or to obtain emergency assistance for him. Rather, you embarked immediately on a sequence of careful and calculated actions to try and cover up what you had done - cleaning the scene of the crime with detergent, removing the deceased's body and his belongings and placing them in your car, moving the deceased's car from your home to a nearby car park, taking with you a change of clothes and shoes, and a spade and driving to the Yan Yean area. In the course of this journey

you made phone calls designed to simulate a lack of knowledge of your husband's whereabouts. On arriving at a relatively remote location you dragged your husband's body over the ground, buried it roughly in a crude shallow grave and concealed that grave with bush litter. You buried a number of other incriminating items in a separate hole nearby and likewise concealed this hole. You drove back to Melbourne washing your car on the return journey and arranged to attend and then attended premises in Reservoir where you completed the process of ordering granite tops for benches for your kitchen in a collected and calm fashion. On returning home you washed both your clothes and yourself and maintained an appearance of normality taking your son to dinner and answering a telephone inquiry from your daughter as to your husband's whereabouts on the basis that you did not know where he was. Subsequently that evening you contacted a friend and then handed yourself in to the police.

26 Turning then to the evidence as to provocation, I accept that it is likely that you were provoked to rage and anger by the confrontation with your husband. It is apparent from the evidence of a whole series of witnesses who had contact with you (including a number of persons with relevant professional expertise) that you were extremely anxious, obsessed and emotionally fraught at the disintegration of your marriage.

27 This evidence included evidence from impressively impartial witnesses such as Dr Rob Moodie and Dr Catherine Clarke, with whom you had had a series of contacts over the preceding days and who last saw and spoke to you on the day prior to the killing. The jury also heard evidence from a series of very experienced psychologists and counsellors who saw you in the period immediately prior to the killing. As I have said the weight of this evidence supports the view that you were at the time of the fatal confrontation in a state of extreme obsessive anxiety and desperately seeking to reassert control over the relationship with your husband.

28 Conversely, it is apparent, as I have said, that your husband enjoyed a growth in personal confidence and happiness after his separation from you. He was excited by the new possibilities life appeared to hold for him. In addition he was pleased by the apparently reasonable way you reacted to the separation and I am satisfied he was not in any immediate fear of violence from you or he would not have travelled alone with you to Geelong on the Saturday, two days prior to his death, and advised you of his new relationship; nor come out to visit you alone on the day of his death.

29 In these circumstances, I accept that it is likely that at the time of the final confrontation with you, and at the climax of an argument in which both parties said a series of hurtful things to each other that you were unambiguously told what you feared most was true, namely that the marriage was over and that your husband had found a new lover.

30 I turn now to the Jury, it is now your duty to weigh the evidence put to you by the crown and the defense, which I have summarised here, and to reach a decision as to whether the accused is: a) not guilty of murder, b) guilty of murder or c) not guilty of murder but guilty of manslaughter by provocation.

31 The issue which the Crown must establish in order to prove that Sita Kumar is guilty of murder is that the accused was not acting under provocation when she killed Ramesh Kumar. It is not for the defense to prove that the accused was acting under provocation but for the Crown to prove beyond reasonable doubt that they were not.

32 If the Crown satisfies you beyond reasonable doubt that all the other elements of murder have been established beyond reasonable doubt and Sita Kumar was not provoked to do what she did, the appropriate verdict is "guilty of murder". If, however, the Crown does not

satisfy you that she was not provoked, the accused will be “not guilty of murder” but “guilty” of the less serious offence of manslaughter (that is, manslaughter by provocation).

Male Asian (RAMESH KUMAR)

Judges Summary of Evidence

1. Ramesh Kumar you are accused of the murder of your wife Sita Kumar at Balwyn on 21 July .
2. You and the deceased married in 1980 when she was only 19 and you were only 20 years of age. Following some initial difficulties in the marriage including a separation of some months, you and your wife had two children – a son born and a daughter. You studied part time and worked your way through a series of accounting jobs to become the joint proprietor of a successful business involved in the re-enamelling of bathtubs. Your wife also after some years studied part time and obtained employment for four days a week as a bookkeeper with a clothing company.
3. It is apparent that in the two years prior to her death your wife was increasingly unhappy in the marriage. In particular she found your behaviour controlling and oppressive, and it seems likely that her dissatisfaction also related back in part to some incidents earlier in the marriage.
4. In any event, in May she left the family home while you were on a business trip to Japan and Korea. On your return you found that she and your daughter had moved into a flat in Toorak and that your son Matthew, who was then undertaking his final school year, was still living at the family home.

5. I accept that the breakdown of your marriage in this way was from your point of view sudden, unexpected and emotionally destabilising in a way which you did not easily accept.
6. It is clear from the evidence of your family and friends that your reaction was to try desperately to re-establish the marriage. You immediately sought to make and maintain contact with your wife and met with her at least weekly for meals. You sought advice as to what you should do from trusted family friends and from friends of your wife in particular. You saw a series of counsellors for advice and set up joint appointments for both your wife and yourself to try and provide a framework for reconciliation.
7. While undertaking these steps it is also clear that you suffered continuing and substantial anxiety. You ruminated obsessively about getting your wife back and had long and difficult discussions with your children (particularly your son) and other friends as to what was happening and as to what you should do.
8. In the interim your wife had gained confidence and newfound happiness after the separation and had met another man to whom she felt a strong initial attraction and with whom she rapidly formed a close relationship.
9. In summary the period of weeks leading up to your wife's death was one in which you anxiously hoped and desperately endeavoured to re-establish your marriage while conversely your wife was seeking to "let you down gently" as she described it to those close to her.
10. On Tuesday 15 June, your wife attended two counsellors in sequence with you. At the first counselling session she made it clear that from her point of view the marriage was virtually over. But at the second, after a detailed discussion of the marriage and its

problems, the possibility that you would get back together was left open. Your wife said she was not going anywhere and three further appointments were made for joint counselling. Following this you had dinner together. The following day you confirmed with the counsellor that there was a possibility that the relationship might be saved. You continued to try and make changes in your life which might help achieve this end. You sought to complete renovations to the family home and you attended a meditation therapist and after an initial session booked in for an extended sequence of meditation therapy sessions.

11. At the same time your wife's relationship with her new male friend progressed to the point where, on the Friday, he characterised the relationship as serious and spoke with her of future plans together in some detail.
12. On the Saturday your wife went to Geelong with you to watch your son play football. During the course of the day it is apparent that she told you she was seeing someone else. A mutual friend who observed you at the football that day says it was obvious that there was tension between you. On that evening and the following day you expressed doubts to others as to the future of the relationship and you inquired of your friends and children as to what they knew of your wife's new friendship. Understandably those close to you were reluctant to confront you with all they had been told by your wife of her situation. They quite properly took the view that this was something you would have to work out with each other. Nevertheless, with hindsight it can be seen that you received mixed messages about the situation. Thus your wife's twin sister assured you that there was nothing in the relationship with the new man and that your wife was just spreading her wings.

13. On the Sunday night your son, again entirely understandably, asked your wife to tell you the true situation if in fact there was no prospect that she would return to you.
14. You had requested your wife to come back to the family home and view renovations to the kitchen and family room areas which were almost completed. You had put considerable effort into completing these renovations in a way which you believed would please your wife and which you hoped would attract her to return home.
15. On Monday 21 June, your wife went out to visit you at about midday at the family home in Balwyn. On that morning she had told workmates how happy she was in the new relationship she had formed and that she wanted to bring things out into the open. There is circumstantial evidence to suggest that she did not intend the meeting with you to be long.
16. There is no direct evidence of what then occurred save for the account given by you in your record of interview. I am prepared to accept that this account sets out the essential sequence of events. It is circumstantial and detailed and describes a spiralling confrontation in a manner which would not easily be invented.
17. It appears that firstly, there was a discussion concerning the renovations. Your wife dismissed these as being of no significance.
18. Next, you pleaded with her to return. She said "You don't get it do you? I'm over you. I should have left you 10 years ago.
19. Next, there was reference to your daughter, in the course of which your wife suggested that she would not allow her to visit you anymore.
20. In turn, you told your wife that your son was upset with the situation and that the two of you needed to handle the situation properly.

21. Next, there was a discussion about your wife's new male friend and you said to her that your daughter was "afraid of this guy."
22. This produced an emphatic reaction from your wife that it was none of your business and that she was not with you anymore. Next, you asked how serious the relationship was. Your wife told you that she had had sleepovers and how much nicer than you the new man was, that they shared interests and he cared for her. She then said that sex with you repulsed her and screwed up her face and either said or implied how much better her new friend was. You assert that at this point she pushed you hard enough that you fell back against the kitchen wall.
23. At this point you state in your record of interview that you lost control and attacked her. It is apparent from that record of interview and from the forensic medical evidence that you struck at least two heavy blows to her face, and that she then fell to the ground striking her head severely on the kitchen counter on the way down (the alternative to this last event being that you struck her a third severe blow to the side of the head). Then having knocked her down and in circumstances where she was already affected by the initial blows, you proceeded to deliberately strangle her with your bare hands until she appeared lifeless.
24. Following this you embarked immediately on a detailed and careful series of actions by way of cover up to which I shall shortly return. It is highly improbable but not absolutely certain that your wife was dead when you believed her to be. The assertion of the forensic medical examiner is that she died of positional asphyxiation suffered in the state of unconsciousness you had caused and did nothing to redress.

25. After the fatal assault you made no attempt to revive your wife or to obtain emergency assistance for her. Rather, you embarked immediately on a sequence of careful and calculated actions to try and cover up what you had done - cleaning the scene of the crime with detergent, removing the deceased's body and her belongings and placing them in your car, moving the deceased's car from your home to a nearby car park, taking with you a change of clothes and shoes, and a spade and driving to the Yan Yean area. In the course of this journey you made phone calls designed to simulate a lack of knowledge of your wife's whereabouts. On arriving at a relatively remote location you dragged your wife's body over the ground, buried it roughly in a crude shallow grave and concealed that grave with bush litter. You buried a number of other incriminating items in a separate hole nearby and likewise concealed this hole. You drove back to Melbourne washing your car on the return journey and arranged to attend and then attended premises in Reservoir where you completed the process of ordering granite tops for benches for your kitchen in a collected and calm fashion. On returning home you washed both your clothes and yourself and maintained an appearance of normality taking your son to dinner and answering a telephone inquiry from your daughter as to your wife's whereabouts on the basis that you did not know where she was. Subsequently that evening you contacted a friend and then handed yourself in to the police.
26. Turning then to the evidence as to provocation, I accept that it is likely that you were provoked to rage and anger by the confrontation with your wife. It is apparent from the evidence of a whole series of witnesses who had contact with you (including a number of persons with relevant professional expertise) that you were extremely anxious, obsessed and emotionally fraught at the disintegration of your marriage.

27. This evidence included evidence from impressively impartial witnesses such as Dr Rob Moodie and Dr Catherine Clarke, with whom you had had a series of contacts over the preceding days and who last saw and spoke to you on the day prior to the killing. The jury also heard evidence from a series of very experienced psychologists and counsellors who saw you in the period immediately prior to the killing. As I have said the weight of this evidence supports the view that you were at the time of the fatal confrontation in a state of extreme obsessive anxiety and desperately seeking to reassert control over the relationship with your wife.
28. Conversely, it is apparent, as I have said, that your wife enjoyed a growth in personal confidence and happiness after her separation from you. She was excited by the new possibilities life appeared to hold for her. In addition she was pleased by the apparently reasonable way you reacted to the separation and I am satisfied she was not in any immediate fear of violence from you or she would not have travelled alone with you to Geelong on the Saturday, two days prior to her death, and advised you of her new relationship; nor come out to visit you alone on the day of her death.
29. In these circumstances, I accept that it is likely that at the time of the final confrontation with you, and at the climax of an argument in which both parties said a series of hurtful things to each other that you were unambiguously told what you feared most was true, namely that the marriage was over and that your wife had found a new lover.
30. I turn now to the Jury, it is now your duty to weigh the evidence put to you by the crown and the defense, which I have summarised here, and to reach a decision as to whether the accused is: a) not guilty of murder, b) guilty of murder or c) not guilty of murder but guilty of manslaughter by provocation.

31. The issue which the Crown must establish in order to prove that Ramesh Kumar is guilty of murder is that the accused was not acting under provocation when he killed Sita Kumar. It is not for the defense to prove that the accused was acting under provocation but for the Crown to prove beyond reasonable doubt that they were *not*.
32. If the Crown satisfies you beyond reasonable doubt that all the other elements of murder have been established beyond reasonable doubt and Ramesh Kumar was not provoked to do what he did, the appropriate verdict is “guilty of murder”. If, however, the Crown does not satisfy you that he was not provoked, the accused will be “not guilty of murder” but “guilty” of the less serious offence of manslaughter (that is, manslaughter by provocation).

Female Caucasian (AMELIA SMITH)

Judges Summary of Evidence

- 1 Amelia Smith you are accused of the murder of your husband Oliver Smith at Balwyn on 21 July .
- 2 You and the deceased married in 1980 when he was only 19 and you were only 20 years of age. Following some initial difficulties in the marriage including a separation of some months, you and your husband had two children – a son born and a daughter. You studied part time and worked your way through a series of accounting jobs to become the joint proprietor of a successful business involved in the re-enamelling of bathtubs. Your husband also after some years studied part time and obtained employment for four days a week as a bookkeeper with a clothing company.

3 It is apparent that in the two years prior to her death your husband was increasingly unhappy in the marriage. In particular he found your behaviour controlling and oppressive, and it seems likely that his dissatisfaction also related back in part to some incidents earlier in the marriage.

4 In any event, in May he left the family home while you were on a business trip to Japan and Korea. On your return you found that he and your daughter had moved into a flat in Toorak and that your son Matthew, who was then undertaking his final school year, was still living at the family home.

5 I accept that the breakdown of your marriage in this way was from your point of view sudden, unexpected and emotionally destabilising in a way which you did not easily accept.

6 It is clear from the evidence of your family and friends that your reaction was to try desperately to re-establish the marriage. You immediately sought to make and maintain contact with your husband and met with him at least weekly for meals. You sought advice as to what you should do from trusted family friends and from friends of your husband in particular. You saw a series of counsellors for advice and set up joint appointments for both your husband and yourself to try and provide a framework for reconciliation.

7 While undertaking these steps it is also clear that you suffered continuing and substantial anxiety. You ruminated obsessively about getting your husband back and had long and difficult discussions with your children (particularly your son) and other friends as to what was happening and as to what you should do.

8 In the interim your husband had gained confidence and newfound happiness after the separation and had met another woman to whom he felt a strong initial attraction and with whom he rapidly formed a close relationship.

9 In summary the period of weeks leading up to your husband's death was one in which you anxiously hoped and desperately endeavoured to re-establish your marriage while conversely your husband was seeking to "let you down gently" as he described it to those close to him.

10 On Tuesday 15 June, your husband attended two counsellors in sequence with you. At the first counselling session he made it clear that from her point of view the marriage was virtually over. But at the second, after a detailed discussion of the marriage and its problems, the possibility that you would get back together was left open. Your husband said he was not going anywhere and three further appointments were made for joint counselling. Following this you had dinner together. The following day you confirmed with the counsellor that there was a possibility that the relationship might be saved. You continued to try and make changes in your life which might help achieve this end. You sought to complete renovations to the family home and you attended a meditation therapist and after an initial session booked in for an extended sequence of meditation therapy sessions.

11 At the same time your husband's relationship with his new female friend progressed to the point where, on the Friday, he characterised the relationship as serious and spoke with her of future plans together in some detail.

12 On the Saturday your husband went to Geelong with you to watch your son play football. During the course of the day it is apparent that he told you he was seeing someone else. A mutual friend who observed you at the football that day says it was obvious that there was tension between you. On that evening and the following day you expressed doubts to others as to the future of the relationship and you inquired of your friends and children as to what they knew of your husband's new friendship. Understandably those close to you were reluctant to confront you with all they had been told by your husband of his situation. They quite properly

took the view that this was something you would have to work out with each other. Nevertheless, with hindsight it can be seen that you received mixed messages about the situation. Thus your husband's twin sister assured you that there was nothing in the relationship with the new woman and that your husband was just spreading his wings.

13 On the Sunday night your son, again entirely understandably, asked your husband to tell you the true situation if in fact there was no prospect that he would return to you.

14 You had requested your husband to come back to the family home and view renovations to the kitchen and family room areas which were almost completed. You had put considerable effort into completing these renovations in a way which you believed would please your husband and which you hoped would attract him to return home.

15 On Monday 21 June, your husband went out to visit you at about midday at the family home in Balwyn. On that morning he had told workmates how happy he was in the new relationship he had formed and that he wanted to bring things out into the open. There is circumstantial evidence to suggest that he did not intend the meeting with you to be long.

16 There is no direct evidence of what then occurred save for the account given by you in your record of interview. I am prepared to accept that this account sets out the essential sequence of events. It is circumstantial and detailed and describes a spiralling confrontation in a manner which would not easily be invented.

17 It appears that firstly, there was a discussion concerning the renovations. Your husband dismissed these as being of no significance.

18 Next, you pleaded with him to return. He said "You don't get it do you? I'm over you. I should have left you 10 years ago."

19 Next, there was reference to your daughter, in the course of which your husband suggested that he would not allow her to visit you anymore.

20 In turn, you told your husband that your son was upset with the situation and that the two of you needed to handle the situation properly.

21 Next, there was a discussion about your husband's new female friend and you said to him that your daughter was "afraid of this girl."

22 This produced an emphatic reaction from your husband that it was none of your business and that he was not with you anymore. Next, you asked how serious the relationship was. Your husband told you that he had had sleepovers and how much nicer than you the new woman was, that they shared interests and he cared for her. He then said that sex with you repulsed him and screwed up his face and either said or implied how much better his new friend was. You assert that at this point he pushed you hard enough that you fell back against the kitchen wall.

23 At this point you state in your record of interview that you lost control and attacked him. It is apparent from that record of interview and from the forensic medical evidence that you struck at least two heavy blows to his face, and that he then fell to the ground striking his head severely on the kitchen counter on the way down (the alternative to this last event being that you struck him a third severe blow to the side of the head). Then having knocked him down and in circumstances where he was already affected by the initial blows, you proceeded to deliberately strangle him with your bare hands until he appeared lifeless. These blows to the head rendered him unconscious and subsequently caused his death.

24 Following this you embarked immediately on a detailed and careful series of actions by way of cover up to which I shall shortly return. It is highly improbable but not absolutely certain that your husband was dead when you believed him to be. The assertion of the forensic medical

examiner is that he died of positional asphyxiation suffered in the state of unconsciousness you had caused and did nothing to redress.

25 After the fatal assault you made no attempt to revive your husband or to obtain emergency assistance for him. Rather, you embarked immediately on a sequence of careful and calculated actions to try and cover up what you had done - cleaning the scene of the crime with detergent, removing the deceased's body and his belongings and placing them in your car, moving the deceased's car from your home to a nearby car park, taking with you a change of clothes and shoes, and a spade and driving to the Yan Yean area. In the course of this journey you made phone calls designed to simulate a lack of knowledge of your husband's whereabouts. On arriving at a relatively remote location you dragged your husband's body over the ground, buried it roughly in a crude shallow grave and concealed that grave with bush litter. You buried a number of other incriminating items in a separate hole nearby and likewise concealed this hole. You drove back to Melbourne washing your car on the return journey and arranged to attend and then attended premises in Reservoir where you completed the process of ordering granite tops for benches for your kitchen in a collected and calm fashion. On returning home you washed both your clothes and yourself and maintained an appearance of normality taking your son to dinner and answering a telephone inquiry from your daughter as to your husband's whereabouts on the basis that you did not know where he was. Subsequently that evening you contacted a friend and then handed yourself in to the police.

26 Turning then to the evidence as to provocation, I accept that it is likely that you were provoked to rage and anger by the confrontation with your husband. It is apparent from the evidence of a whole series of witnesses who had contact with you (including a number of

persons with relevant professional expertise) that you were extremely anxious, obsessed and emotionally fraught at the disintegration of your marriage.

27 This evidence included evidence from impressively impartial witnesses such as Dr Rob Moodie and Dr Catherine Clarke, with whom you had had a series of contacts over the preceding days and who last saw and spoke to you on the day prior to the killing. The jury also heard evidence from a series of very experienced psychologists and counsellors who saw you in the period immediately prior to the killing. As I have said the weight of this evidence supports the view that you were at the time of the fatal confrontation in a state of extreme obsessive anxiety and desperately seeking to reassert control over the relationship with your husband.

28 Conversely, it is apparent, as I have said, that your husband enjoyed a growth in personal confidence and happiness after his separation from you. He was excited by the new possibilities life appeared to hold for him. In addition he was pleased by the apparently reasonable way you reacted to the separation and I am satisfied he was not in any immediate fear of violence from you or he would not have travelled alone with you to Geelong on the Saturday, two days prior to his death, and advised you of his new relationship; nor come out to visit you alone on the day of his death.

29 In these circumstances, I accept that it is likely that at the time of the final confrontation with you, and at the climax of an argument in which both parties said a series of hurtful things to each other that you were unambiguously told what you feared most was true, namely that the marriage was over and that your husband had found a new lover.

30 I turn now to the Jury, it is now your duty to weigh the evidence put to you by the crown and the defense, which I have summarised here, and to reach a decision as to whether the

accused is: a) not guilty of murder, b) guilty of murder or c) not guilty of murder but guilty of manslaughter by provocation.

31 The issue which the Crown must establish in order to prove that Amelia Smith is guilty of murder is that the accused was not acting under provocation when she killed Oliver Smith. It is not for the defense to prove that the accused was acting under provocation but for the Crown to prove beyond reasonable doubt that they were not.

32 If the Crown satisfies you beyond reasonable doubt that all the other elements of murder have been established beyond reasonable doubt and Amelia Smith was not provoked to do what she did, the appropriate verdict is “guilty of murder”. If, however, the Crown does not satisfy you that she was not provoked, the accused will be “not guilty of murder” but “guilty” of the less serious offence of manslaughter (that is, manslaughter by provocation).

Male Caucasian (Oliver Smith)

Judges Summary of Evidence

1. Oliver Smith you are accused of the murder of your wife Amelia Smith at Balwyn on 21 July .
2. You and the deceased married in 1980 when she was only 19 and you were only 20 years of age. Following some initial difficulties in the marriage including a separation of some months, you and your wife had two children – a son born and a daughter. You studied part time and worked your way through a series of accounting jobs to become the joint proprietor of a successful business involved in the re-enamelling of bathtubs. Your wife also after some years studied part time and obtained employment for four days a week as a bookkeeper with a clothing company.

3. It is apparent that in the two years prior to her death your wife was increasingly unhappy in the marriage. In particular she found your behaviour controlling and oppressive, and it seems likely that her dissatisfaction also related back in part to some incidents earlier in the marriage.
4. In any event, in May she left the family home while you were on a business trip to Japan and Korea. On your return you found that she and your daughter had moved into a flat in Toorak and that your son Matthew, who was then undertaking his final school year, was still living at the family home.
5. I accept that the breakdown of your marriage in this way was from your point of view sudden, unexpected and emotionally destabilising in a way which you did not easily accept.
6. It is clear from the evidence of your family and friends that your reaction was to try desperately to re-establish the marriage. You immediately sought to make and maintain contact with your wife and met with her at least weekly for meals. You sought advice as to what you should do from trusted family friends and from friends of your wife in particular. You saw a series of counsellors for advice and set up joint appointments for both your wife and yourself to try and provide a framework for reconciliation.
7. While undertaking these steps it is also clear that you suffered continuing and substantial anxiety. You ruminated obsessively about getting your wife back and had long and difficult discussions with your children (particularly your son) and other friends as to what was happening and as to what you should do.

8. In the interim your wife had gained confidence and newfound happiness after the separation and had met another man to whom she felt a strong initial attraction and with whom she rapidly formed a close relationship.
9. In summary the period of weeks leading up to your wife's death was one in which you anxiously hoped and desperately endeavoured to re-establish your marriage while conversely your wife was seeking to "let you down gently" as she described it to those close to her.
10. On Tuesday 15 June, your wife attended two counsellors in sequence with you. At the first counselling session she made it clear that from her point of view the marriage was virtually over. But at the second, after a detailed discussion of the marriage and its problems, the possibility that you would get back together was left open. Your wife said she was not going anywhere and three further appointments were made for joint counselling. Following this you had dinner together. The following day you confirmed with the counsellor that there was a possibility that the relationship might be saved. You continued to try and make changes in your life which might help achieve this end. You sought to complete renovations to the family home and you attended a meditation therapist and after an initial session booked in for an extended sequence of meditation therapy sessions.
11. At the same time your wife's relationship with her new male friend progressed to the point where, on the Friday, he characterised the relationship as serious and spoke with her of future plans together in some detail.
12. On the Saturday your wife went to Geelong with you to watch your son play football. During the course of the day it is apparent that she told you she was seeing someone else.

A mutual friend who observed you at the football that day says it was obvious that there was tension between you. On that evening and the following day you expressed doubts to others as to the future of the relationship and you inquired of your friends and children as to what they knew of your wife's new friendship. Understandably those close to you were reluctant to confront you with all they had been told by your wife of her situation. They quite properly took the view that this was something you would have to work out with each other. Nevertheless, with hindsight it can be seen that you received mixed messages about the situation. Thus your wife's twin sister assured you that there was nothing in the relationship with the new man and that your wife was just spreading her wings.

13. On the Sunday night your son, again entirely understandably, asked your wife to tell you the true situation if in fact there was no prospect that she would return to you.
14. You had requested your wife to come back to the family home and view renovations to the kitchen and family room areas which were almost completed. You had put considerable effort into completing these renovations in a way which you believed would please your wife and which you hoped would attract her to return home.
15. On Monday 21 June, your wife went out to visit you at about midday at the family home in Balwyn. On that morning she had told workmates how happy she was in the new relationship she had formed and that she wanted to bring things out into the open. There is circumstantial evidence to suggest that she did not intend the meeting with you to be long.
16. There is no direct evidence of what then occurred save for the account given by you in your record of interview. I am prepared to accept that this account sets out the essential

sequence of events. It is circumstantial and detailed and describes a spiralling confrontation in a manner which would not easily be invented.

17. It appears that firstly, there was a discussion concerning the renovations. Your wife dismissed these as being of no significance.
18. Next, you pleaded with her to return. She said "You don't get it do you? I'm over you. I should have left you 10 years ago."
19. Next, there was reference to your daughter, in the course of which your wife suggested that she would not allow her to visit you anymore.
20. In turn, you told your wife that your son was upset with the situation and that the two of you needed to handle the situation properly.
21. Next, there was a discussion about your wife's new male friend and you said to her that your daughter was "afraid of this guy."
22. This produced an emphatic reaction from your wife that it was none of your business and that she was not with you anymore. Next, you asked how serious the relationship was. Your wife told you that she had had sleepovers and how much nicer than you the new man was, that they shared interests and he cared for her. She then said that sex with you repulsed her and screwed up her face and either said or implied how much better her new friend was. You assert that at this point she pushed you hard enough that you fell back against the kitchen wall.
23. At this point you state in your record of interview that you lost control and attacked her. It is apparent from that record of interview and from the forensic medical evidence that you struck at least two heavy blows to her face, and that she then fell to the ground striking her head severely on the kitchen counter on the way down (the alternative to this

last event being that you struck her a third severe blow to the side of the head). Then having knocked her down and in circumstances where she was already affected by the initial blows, you proceeded to deliberately strangle her with your bare hands until she appeared lifeless.

24. Following this you embarked immediately on a detailed and careful series of actions by way of cover up to which I shall shortly return. It is highly improbable but not absolutely certain that your wife was dead when you believed her to be. The assertion of the forensic medical examiner is that she died of positional asphyxiation suffered in the state of unconsciousness you had caused and did nothing to redress.
25. After the fatal assault you made no attempt to revive your wife or to obtain emergency assistance for her. Rather, you embarked immediately on a sequence of careful and calculated actions to try and cover up what you had done - cleaning the scene of the crime with detergent, removing the deceased's body and her belongings and placing them in your car, moving the deceased's car from your home to a nearby car park, taking with you a change of clothes and shoes, and a spade and driving to the Yan Yean area. In the course of this journey you made phone calls designed to simulate a lack of knowledge of your wife's whereabouts. On arriving at a relatively remote location you dragged your wife's body over the ground, buried it roughly in a crude shallow grave and concealed that grave with bush litter. You buried a number of other incriminating items in a separate hole nearby and likewise concealed this hole. You drove back to Melbourne washing your car on the return journey and arranged to attend and then attended premises in Reservoir where you completed the process of ordering granite tops for benches for your kitchen in a collected and calm fashion. On returning home you washed both your

clothes and yourself and maintained an appearance of normality taking your son to dinner and answering a telephone inquiry from your daughter as to your wife's whereabouts on the basis that you did not know where she was. Subsequently that evening you contacted a friend and then handed yourself in to the police.

26. Turning then to the evidence as to provocation, I accept that it is likely that you were provoked to rage and anger by the confrontation with your wife. It is apparent from the evidence of a whole series of witnesses who had contact with you (including a number of persons with relevant professional expertise) that you were extremely anxious, obsessed and emotionally fraught at the disintegration of your marriage.

27. This evidence included evidence from impressively impartial witnesses such as Dr Rob Moodie and Dr Catherine Clarke, with whom you had had a series of contacts over the preceding days and who last saw and spoke to you on the day prior to the killing. The jury also heard evidence from a series of very experienced psychologists and counsellors who saw you in the period immediately prior to the killing. As I have said the weight of this evidence supports the view that you were at the time of the fatal confrontation in a state of extreme obsessive anxiety and desperately seeking to reassert control over the relationship with your wife.

28. Conversely, it is apparent, as I have said, that your wife enjoyed a growth in personal confidence and happiness after her separation from you. She was excited by the new possibilities life appeared to hold for her. In addition she was pleased by the apparently reasonable way you reacted to the separation and I am satisfied she was not in any immediate fear of violence from you or she would not have travelled alone with you to

Geelong on the Saturday, two days prior to her death, and advised you of her new relationship; nor come out to visit you alone on the day of her death.

29. In these circumstances, I accept that it is likely that at the time of the final confrontation with you, and at the climax of an argument in which both parties said a series of hurtful things to each other that you were unambiguously told what you feared most was true, namely that the marriage was over and that your wife had found a new lover.
30. I turn now to the Jury, it is now your duty to weigh the evidence put to you by the crown and the defense, which I have summarised here, and to reach a decision as to whether the accused is: a) not guilty of murder, b) guilty of murder or c) not guilty of murder but guilty of manslaughter by provocation.
31. The issue which the Crown must establish in order to prove that Oliver Smith is guilty of murder is that the accused was not acting under provocation when he killed Amelia Smith. It is not for the defense to prove that the accused was acting under provocation but for the Crown to prove beyond reasonable doubt that they were *not*.
32. If the Crown satisfies you beyond reasonable doubt that all the other elements of murder have been established beyond reasonable doubt and Oliver Smith was not provoked to do what he did, the appropriate verdict is “guilty of murder”. If, however, the Crown does not satisfy you that he was not provoked, the accused will be “not guilty of murder” but “guilty” of the less serious offence of manslaughter (that is, manslaughter by provocation).