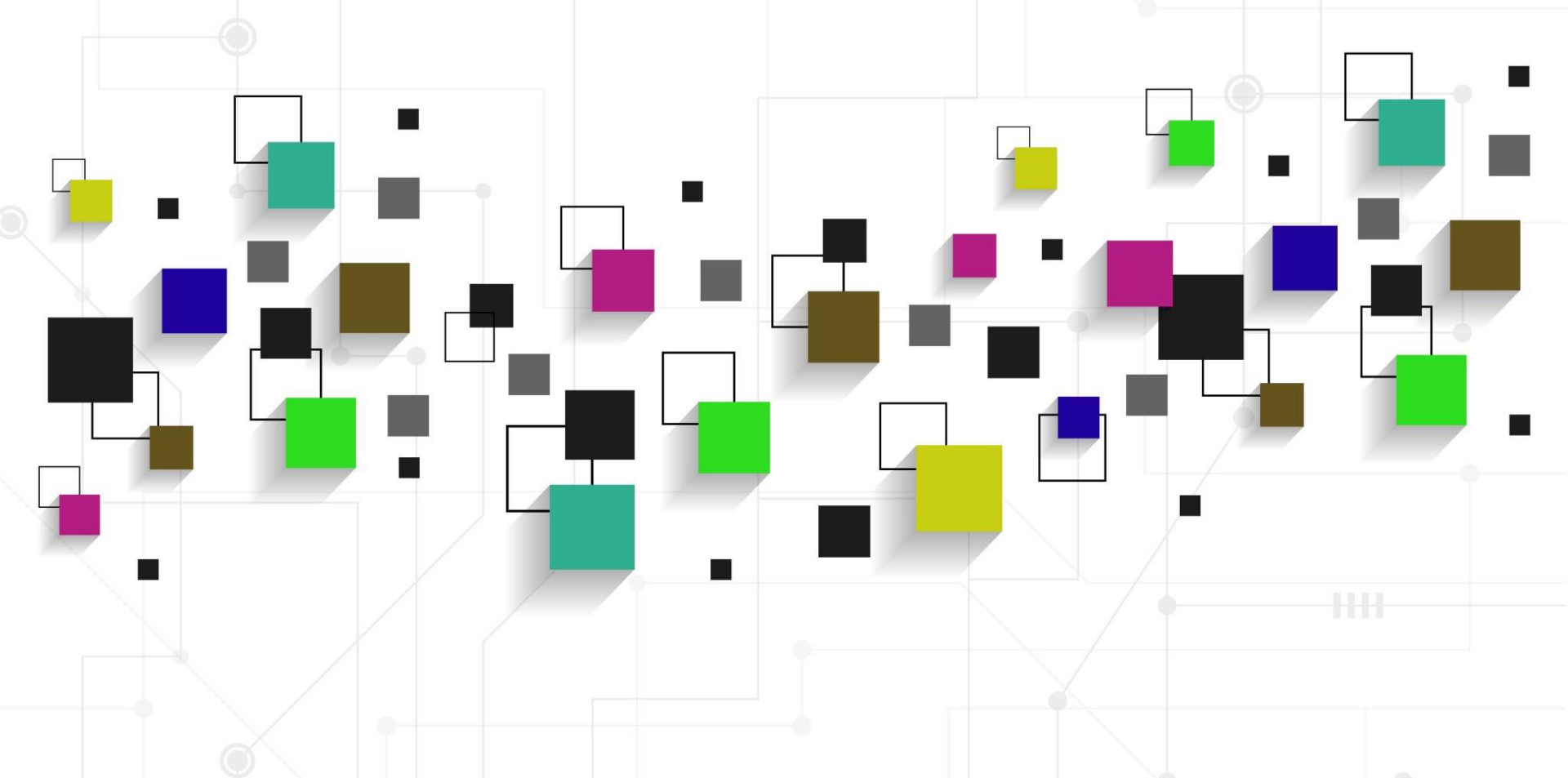




Juries and the Court - Jury decision making.

Part 1



To consider factors
which may affect
jury decision
making including:

Social influence &
conformity.

Size of the jury &
consensus
required.

Individual factors
and characteristics
of jurors, victims,
experts, defendants
and all!

Aims of the lecture:

Juries

Juries have long been used to assist with the fair application of the law.

The system is generally regarded as democratic, held in high regard and frequently used by many countries who view themselves as a democracy.

Examples: England, Wales, Austria, New Zealand, Russia.

Singapore, South Africa, India- no jury.

France, Norway are more complex.

Juries – decision making



- Because of their importance in implementing justice, they are widely studied by social psychologists.
- Factors affecting the decisions they make and the processes by which they reach decisions are of paramount importance in operating a fair system of justice.
- What factors other than the evidence presented in court might influence them?

Researching juries

- The study of real jury deliberation is prohibited in the UK particularly.
- 2 methods of studying them are used:
- Mock jury: A group of PP's asked to consider a scenario and offer a verdict.
- Shadow jury: Selecting a group of pp's who would be eligible for jury service & asking them to sit in the public gallery to hear all evidence & deliberate.
- Problems?
- Use of students...
- Unrealistic scenario? (No, it is not: Bornstein, 1999).
- Ecologically valid? (Yes... Avilia-Mora & Sperry, 2010).





Selecting jurors

- Those called for jury service are not automatically chosen to serve on the jury.
- Challenging & vetting of jurors is now commonplace in many countries including the USA.
- The degree to which prospective jurors are challenged in the UK is much less than in America.

Goleman (1994) once remarked that the difference between jury trials in England and America is that in England the trial begins when the jury is chosen, whilst in America it is over once the jury has been selected...

Selecting jurors

- Goleman`s quote summarises the concern regarding the extent to which jury choice should be permitted.
- The famous Rodney King case sparked riots when four white L.A. P.O`s were accused of beating the black motorist.
- [The Rodney King beating](#)
- Due to pre-trial publicity, the trial was moved from urban Los Angeles to Ventura county.
- The demographics of the jury pool here were greatly in favour of acquittal.
- One expert: “I think the case was lost when the change of venue was granted”.
- A year later, in a civil court case, two black jurors were on the jury. This time two of the four police officers were convicted.

Size of the jury

- In Britain a jury is comprised of 12 people.
- In America jury sizes tend to vary more in number.
- 6 people juries can be used except in cases where the death penalty is a possible outcome.
- There are however many variations (See article by Hans, 2008).



Size of the jury

Psychological research shows much difference in the way smaller and larger juries operate (Saks & Marti, 1997).

Most research has found larger juries to be preferable because they tend to:

- Be fairer
- Spend more time in deliberation
- Show more accurate recall
- Produce more consistent verdicts
- Have a greater chance of being representative
- Are more likely to contain more than one person in the minority view (social support means less pressure to conform).

However, according to Zeisel (1971) a larger jury is more likely to result in a hung jury.



More on the jury (Saks & Marti, 1997)

- The larger the jury the longer the deliberation.
- Guilty verdicts are **not** more common in larger juries.
- Hung juries focus less on the trial evidence.
- The type of jury is also important: a majority jury tends to begin with a vote to establish a baseline overview of attitudes, compared with a unanimous jury, which tends to be evidence focused from the outset. Both jury types approach the case from a different starting point.
- Six person juries are more likely to result in extreme verdicts compared to 12 (Horowitz & Bordens 2002).

Voir Dire & Scientific jury by selection

Not everyone invited to the jury will be selected. Careful choice of representative jurors will occur via the 'voir dire' process. However, attempts have been made to scientifically select jurors as deemed best suited to the defence case.

Find sample of people similar as possible to those on jury. The jury are group of people invited to court and from whom the jury will be chosen. They may be a random group with a certain age range.

From this 'mock' panel find out what types of people are likely to be sympathetic to the case.

At the voir dire, the lawyer tries to steer the selection of jurors by objecting to those with the characteristics less sympathetic to your side.

Inform the lawyer/barrister of the characteristics of individuals sympathetic to your side.





Scientific jury selection

- According to Lieberman & Sales, most lawyers place great importance on the voir dire. Trial consultants are sometimes used to select appropriate members based on scientific selection.
- One study explored several factors related to jury selection; trust in Government, ages and activities of jurors' children, political, religions and organisational affiliations and spare time activities.
- They concluded that the 'best jurors' were **female**, with **no set religion, democratic, white collar** or blue collar skilled, **sympathetic** to the defendants' cause and tolerant of Government policies.
- However, Saks (1987) argues that the use of scientific selection is problematic, because the defendant is least likely to afford this service, 'experts' are not really any better at choosing/judging jurors and in many instances, scientific selection is not permitted.

Some... factors influencing decision making processes



- Witness confidence
- Expert witness
- Order of presentation
- Characteristics of Defendant
- Ethnicity/Race
- Juror characteristics- attitudes, knowledge etc.
- Social pressure/Group think
- Role of the Foreperson
- A fair Juror?



Juror characteristics- commonly held beliefs. True or not? (Fulero & Penrod, 1990)

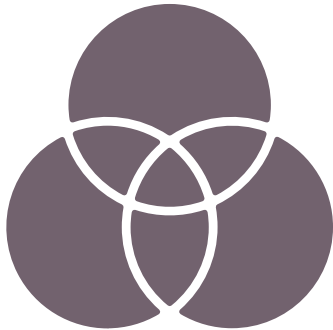
- **Previous jury experience:** is more likely to result in a conviction?
- **Young jurors** are less likely to convict?
- **Females more likely to convict rapists,** and
- **Women are unpredictable** or will be influenced by their husbands?
- **Women are least sympathetic** and should be avoided?
- **Women`s libbers`** are antagonistic to male defendants?
- **Authoritarian personalities** are more likely to convict than non authoritarian personalities?

However:



-
- Most Jurors have decided on their verdict before deliberation.
 - The **pre-deliberation** of individual jurors verdict preferences are the best **indicator** of the final jury verdict.
 - What does this imply?

Pre-trial publicity and juror attitudes



- Schemas may affect subsequent perception of defendant.
- Steblay et al. (1999). Meta analysis of 44 studies.
- E.g. OJ Simpson → perceived as a ‘good guy’ (high profile personality).
- Prospective jurors had to respond to a 61 page questionnaire with 294 questions. (JBS).
- More commonly: the PJAQ (Lecci and Myers, 2008).
- These presume that jurors give honest answers...

Pre-trial publicity...

- Studebaker et al., (2000) investigated a `hearing` associated with the Oklahoma City bombing.
- Firstly they performed **content analyses** of various local newspaper, followed by **questionnaires** with the population of the surrounding areas.
- They reported a **correlation** between the **attitudes** of the public and the version of the City bombings contained within the **publication** of their choice.

And...

- Seltzer et al., (1991) surveyed real jurors and found that 25-30% admitted concealing information about themselves.
- Are they then representative of their community?
- Each case is unique regarding the defendant, victim, barristers and their skills, strength, type of evidence, and the composition of the Jury!
- Also- key to these variables, is the way in which the arguments are framed.

Juror attitudes



- Beliefs that jurors hold before a trial **can and do** influence their decision.
- Therefore we need jurors with similar characteristics and backgrounds as the defendant.
- Will they be less sympathetic if not?
- Gender also plays a role.
- Jurors who do not agree with the death penalty are discharged from trials in America.

Barristers should check jurors for signs of prejudiced attitudes-possible or not?



Previous convictions

- ❖ These are **not allowed** to be taken into account in a trial in the UK.



Stages in the jury process



From **CA** of videotapes of mock jury deliberations, conclusions were reached about the Stages in Jury Decision making (Hastie et al., 1983).



Orientation period

Relaxed and open discussion, setting the agenda, raising questions, explore facts, differing opinions arise.



Open Confrontation

Fierce debate, with focus on detail, exploring different interpretations and pressure on the minority to conform.

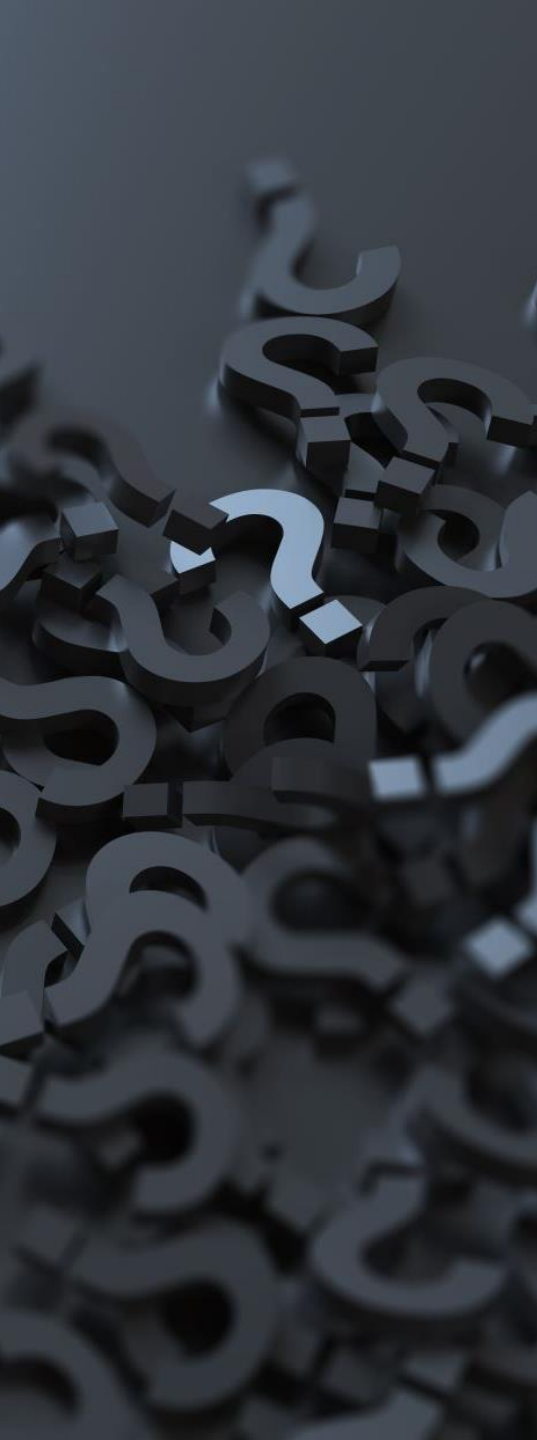


Reconciliation

Attempts to smooth over conflicts with tensions released through humour



The jury will be **either evidence or verdict focused** and this depends on the type of jury situation you have.



Order of presentation

- Pennington and Hastie also found that in interviews with 26 pp's, that individual jurors told very different 'stories' of the evidence.
- How jurors make sense of the information given to them influences their decision:
- Their '**story telling model**' shows that jurors **construct plausible** stories of what happened and **use their preferred story** to interpret the evidence.
- Information presented **logically** and in order is most **influential**.
- Devine & Ostrom (1985) agreed that unorganised stories have the least impact on jurors.
- Pennington & Hastie (1998) varied the order of presentation of events: The **easier to follow** stories dominated the **decision** process.
- They also found that more decisions were made in favour of **evidence organised by story** rather than by legal issues.



Therefore- Judicial instructions

- The Judges' instructions (Jury Charge) **have to be clear** and with the **emphasis on 'Law'** in mind.
- Do Jurors understand the Judges' instructions?
- Ogloff and Rose (2005) propose that they think they do, but the reality is that they probably don't!
- Daftary-Kapur, Dumas and Penrod (2010) suggest that jurors should be able to **make notes** and be provided with clear written instructions.
- Also, inadmissible evidence is difficult to ignore- therefore jurors should be provided with **decision trees** to for-see the consequences of certain decisions.

Eye Witness confidence

- Wells et al., (1979) witness confidence accounted for **half of the juror belief in the witness** itself.
- Penrod & Cutler (1987) jurors are most strongly influenced by more **confident** witnesses.
- Cutler et al., (1989) manipulated 10 witness factors; witness **confidence** was the **most significant** factor in influencing juries.
- Deffenbach (1986) conducted a meta analysis of 35 tests of EWT confidence and found their accuracy to be significant at 0.25. Whilst low, this is significant. But, does confidence imply accuracy?
- Shaw (1996) found that **repeated questioning** leads to more confident testimonies!!!
- Ethnicity and age also influence jurors' confidence in the EWT.



Expert Witness



- Klaus & Sale (2001) investigated 208 mock jurors- more influenced by clinical experts or witness experts based on research.
- **Clinical expert** testimonies were the most influential.
- But... students as their pp`s...
 - representative or not?



Attribution theories

- People do not always make sound decisions based on the facts but are influenced by **cognitive biases**, which are not totally logical...
- A large body of cognitive psychology focuses on attributions- the judgements we make about the causes of a particular behaviour.
- Distorted patterns of attribution (or biases) may have serious consequences for jurors making decisions about a suspect's responsibility and their guilt or innocence.



Attribution theories

Heider (1958)

- Distinguishes between Internal & External attributions.
- Attributing behaviour to the sort of person we think they are
 - “Internal attribution”

Or the result of circumstances

- “External attribution”

Fundamental attribution error (FAE)

- As a general rule when interpreting the behaviour of others we **overestimate** the role of **dispositional** factors.
- And **underestimate** the role of **situational** factors.
- Example –
 - *Woman caught stealing alcohol from the supermarket: we think that she is a bad person or has an addiction, rather than she might be selling to get money to pay a bill.*



Attributional bias

Walster, 1966:

- Attributions made by observers can change based on the consequences of the action.
- Procedure: Pp's presented with a story of a car rolling down a hill.
- Story had a variety of different endings with varying severity of consequences.
- Pp's asked to explain why car was rolling down the hill.



Attributional bias

- Results:
- Condition which showed **little injury or damage** as a consequence – pp`s tended to attribute **situational** factors e.g. mechanical failure
- In the condition with **severe** consequences – pp`s tended to blame driver & attribute **dispositional** factors e.g. not applying handbrake properly.

Conclusions:

- **Witnesses interpretation & subsequent recall of events are subject to social information processing biases (attribution errors).**



Attribution theories

Just world hypothesis – Lerner 1980

- People have a need to believe in a world that is just and fair and that people ‘get what they deserve’.
- In general, this works **in favour** of the effectiveness of the jury system.
- However, it could **also introduce a bias** whereby victims **may be blamed** for their own misfortune.
- This is in order to uphold the belief that they ‘get what they deserve’.
- Example overleaf...



Attribution theories

Just world hypothesis – Lerner 1980

- One of the most disturbing aspects of this is the attitude sometimes expressed towards rape victims e.g. ‘**she led him on**’. ‘what does she expect dressed like that etc.

Bell et al., (1994).

- Using a mock jury method, they asked pp`s to consider 4 different rape cases (2 involved strangers, 2 involved date rape).
- Findings: Pp`s placed more responsibility for what happened **when the victim knew her assailant** than when he was a stranger.
- Conclusions: Juries may have preconceived ideas on the guilt or innocence of a suspect based on their perceptions of the victims responsibility, which may stem from a **cognitive bias**.

Overview:

Interpersonal influences on jury decisions

- Hastie and Pennington (1983) also report on various **social influences on jury decision making**:
- Leadership
- Majority influence
- Minority influence





Interpersonal influences: Leadership

- Before any deliberations take place the jury selects a foreman who is responsible for calling for votes, liaising between the judge and jurors and announcing the verdict to the court.
- Strodbeck & Hook (1961) found that several factors influence who becomes the foreman:
 - People who have previously served on a jury.
 - Those of a high social economic status.
 - Those who spoke first.
 - Those who sit at the head of the table.

Gender & SES



- Kerr et al., (1982) in a series of 179 real life trials, **women** were elected as foreman in **only 10%** of cases (despite males and females being equal in number overall).
- **Males speak more than females** and higher SES jurors participate at a higher rate than lower SES jurors.

Location at table



- People who sit at the head of a rectangular table are more likely to be chosen as foreman than those sitting at the sides (Strodtbeck et al.).
- Jurors seated at ends and middle of rectangular table also participate at higher rates than jurors in other positions.

Interpersonal influences: Leadership

- Ainsworth & Pease (1987)
summarise...

‘... the person most likely to be chosen as foreman is an upper class male who sits at the head of the table and opens the discussion. These findings are important as the person elected foreman may have more influence than any other juror’.

Interpersonal influences:

Leadership of discussion:

- Content analysis of videotapes of mock juries (in Hastie & Pennington study) showed that on average:
- 3 out of the 12 jurors produced **more than half of all** the spoken utterances in deliberation;
- More than **20%** of mock jurors were entirely **silent**.



Interpersonal influences: Majority influence

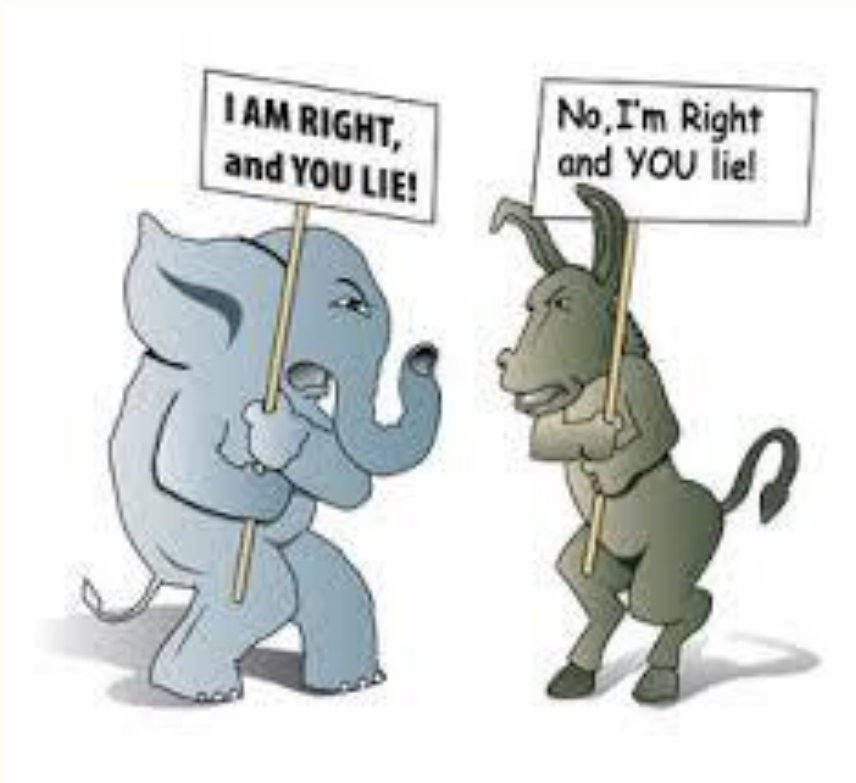
- A **post deliberation survey** (not allowed in UK) of jurors in 225 real criminal cases showed that in **roughly 9/10 cases** decided in the **direction of the initial majority**.

Hastie et al., (1983) again...

- If the original majority is not guilty, then **final verdict not guilty 86%** of time.
- If original majority guilty, then **final verdict guilty 90%** of time.



Majority influence



- Majority influence can work through groups processes:
- Risky shift or...
- Group Polarisation
- Conformity or...
- Group Think
- Hindsight bias