JUDICIAL REVIEW OF PAROLE INELIGIBILITY (CRIMINAL CODE SECTION 745) AND THE VIEWS OF THE PUBLIC

Julie Belinda Erb
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ABSTRACT

This thesis explores the highly controversial provision that gives life sentence prisoners the opportunity to apply for a reduction in their original periods of parole ineligibility. Section 745 (s.745) of the *Criminal Code* was created in 1976 when capital punishment was abolished and the penalty structure for the crime of homicide was revised. Capital murder became first or second degree murder and the punishment became a minimum of life imprisonment without possibility of parole until certain periods of time had passed. For first degree murder, the period of parole ineligibility was automatically set at 25 years and for second degree murder parole ineligibility would be somewhere between 10 and 25 years.

Recognizing that offenders convicted of first (and to a lesser extent) second degree murder would now spend considerable periods of time behind bars, legislators created a mechanism to allow for review of the changes that may take place in this new group of prisoners over the years. This mechanism is provided for in s.745 and gives life sentence prisoners the opportunity to apply after 15 years have been served for a reduction in the number of years left before being eligible for conditional release. Section 745 was not designed as a releasing mechanism. A positive hearing gives applicants only the opportunity to apply to the National Parole Board at an earlier date than originally specified at the time of sentencing.

Critics contend that s.745 represents a loophole in the law and must be abolished. Advocates maintain that s.745 is part and parcel of the life sentence created in 1976 and should remain intact in its original form. At first glance it would appear that the public are opposed to s.745. Yet a paradox exists, namely, that it is members from the same communities where opposition abounds who are sitting on juries and granting reductions in parole ineligibility. The purpose of this thesis was to research the previously unexplored area of public opinion and s.745 in order to study the existence of this paradox.

The research was modeled on previous criminal justice research that found subjects' reactions to sentencing stories become more favourable when the level of information is increased. Four experiments were conducted to test the hypothesis that subjects would be more favourable to s.745 if they were given adequate amounts of information. The findings were inconsistent. While it could not be concluded that the public overwhelmingly oppose s.745, the results did not indicate substantive support for the provision either. Specifically, subjects were supportive of s.745 in certain circumstances, a finding that parallels the results of actual judicial review hearings to date.

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INTRODUCTION TO SECTION 745

CHAPTER OVERVIEW

This chapter introduces the subject of judicial review, the procedure by which life sentence prisoners may apply for a review of their parole ineligibility dates. The judicial review provision in the *Criminal Code* (Section 745) was created in 1976 at the time when the penalty structure for the crimes of homicide was revised. Since fifteen years must be spent in prison before being eligible to apply for a Section 745 (s.745) review, the number of hearings will increase in the forthcoming years. Many of the hearings - particularly in Western Canada - have provoked a great deal of public outcry and political reaction. In fact, a private member's bill has called for outright repeal of s.745 since 1988 and, this spring, the government introduced a bill that would make significant changes to the s.745 provision.

BACKGROUND

Although the warrant on a life sentence will never expire, the time to be spent in custody is regulated by the *Criminal Code* provision that determines parole eligibility dates. For example, all people convicted of first degree murder must serve at least 25 years in prison before they obtain the right to apply for parole. However, according to s.745, offenders sentenced to life imprisonment without the possibility of parole until at least fifteen years have passed, may

apply for a judicial review of their parole ineligibility periods. This means that a jury will review their case and decide whether they should be allowed the opportunity to make an earlier application for parole. This provision has been the object of considerable controversy; many articles have appeared in the news media and there have been numerous appeals for its abolition. A private member's bill to repeal s.745 in its entirety has garnered substantial public and political support and, just recently, the government introduced a bill that would significantly change the provision.

To date there has been little scholarly research paid to the subject, although the topic is rapidly gaining attention. In 1991, the Canadian Journal of Criminology published an analysis of the first judicial review hearing held in Ontario (O'Reilly-Fleming, 1991). In 1994, criminologists at the University of Ottawa published the first comprehensive piece of research on s.745. That research included an introduction to judicial review (Steele, 1994a), its involvement in the criminal justice system (Steele, 1994b), preliminary research on the role of public opinion (Roberts, 1994a), and a case history analysis of the first 40 judicial review hearings (Gaucher, 1994). Until recently, most of the documentation on s.745 had involved articles in the print medium, though several news programs on television had also addressed the issue. For instance, in 1994, Prime Time Magazine (the National News Program) broadcast a debate between the late Senator Earl Hastings (an advocate for s.745) and Scott Newark (an opponent of judicial review). On the parliamentary front,

Warren Allmand and John Nunziata symbolize, respectively, the politics for retention or abolition of the judicial review provision and the division amidst the governing federal Liberal party.[1] In recent months, special interest groups have published materials advocating various positions in the parliamentary debates on s.745.

ORIGIN OF SECTION 745

Although there had not been an execution in Canada since 1962, death remained legislated as the punishment for capital murder, among other crimes, until 1976. A private member's bill to abolish capital punishment had been proposed in 1914 but it was not until 1967 that any legislative changes began to take place. At this time, Parliament voted in favour of a motion to replace the death sentence with a sanction of life imprisonment for offences of murder, excluding people convicted of killing police officers and prison guards, for a trial period of five years. This bill was upheld in 1973 and, three years later in a vote of 130-124, Parliament abolished the sanction of capital punishment for all offences. In 1987, the Canadian government again voted on the death penalty question with the outcome being 148-127 against reinstating capital punishment (Gendreau, 1988).

The successful bill, C-84, put forth by Warren Allmand (Solicitor General of Canada at the time) that would abolish capital punishment and replace the

[1] Mr. Nunziata was expelled from the Liberal party in April 1996 for voting against a government bill. He currently sits as an independent Member of Parliament.

sanction for capital murder with life imprisonment also partitioned the crime of homicide into first degree murder, second degree murder, manslaughter and infanticide. Essentially, s.231 of the *Criminal Code* states that a person has committed murder in the first degree if the killing can be proven beyond a reasonable doubt to have been planned and deliberate, to have occurred during the commission of another offence, or if the victim was an employee protecting the state (i.e. a police officer or prison guard). All other forms of homicide are considered murder in the second degree, except killings that can be proven to have been committed in the heat of passion caused by sudden provocation. In cases such as this, the charge of murder can be reduced to one of manslaughter under s.232. And, lastly, according to s.233, when a mother kills her newly-born child, if it can be proven that her experience (for example, post-partum depression following the period of birth) has altered her state of mind, she is guilty of infanticide (Canada Law Book Inc., 1995).

In addition to the new categories and punishments for homicide legislated in 1976, Bill C-84 also outlined periods of parole ineligibility to accompany the minimum sentence of life-imprisonment for first and second degree murder. According to s.742 of the *Criminal Code*, for a conviction of first degree murder, 25 years must be spent in prison before the prisoner becomes eligible to apply for parole. Parole ineligibility for convictions of second degree murder remain within the purview of the judge to be determined at the time of sentencing. The judge can set eligibility somewhere between 10 and 25 years. If, however, the

offender has been previously convicted of homicide, the minimum parole ineligibility period for a conviction of second degree murder is automatically 25 years. According to s.236, life imprisonment is the maximum punishment for manslaughter with the custodial sentence and parole ineligibility period left to the discretion of the judge. And, under s.237, the maximum sentence for infanticide is 5 years imprisonment; there is no minimum penalty.

Recognizing that offenders convicted of first and (to a lesser extent) second degree murder would now spend considerable periods of time behind bars, Bill C-84 also included a mechanism to allow for a review of the changes that may take place in the life sentence prisoner over the years. This mechanism is outlined in s.745 of the *Criminal Code* and enables a life sentence prisoner to apply, after having served fifteen years, for a reduction in the number of years left to be served before being eligible for conditional release. Until recently, Bill C-84 amendments to the crime and punishment of homicide were questioned by few, although there have been occasional appeals for reinstatement of the death penalty. The debate surrounding capital punishment has, however, recently been overshadowed by calls from various Members of Parliament and numerous special interest groups for repeal of s.745. Critics of s.745 argue that the provision was hidden within Bill C-84 and represents a "loophole in the law." Advocates of judicial review maintain that s.745 is part and parcel of the life sentence punishment created through Bill C-84. To be eligible for a s.745 review, lifers must serve at least fifteen years in prison.

Accordingly, it has just been in the last few years that judicial review hearings have appeared across the country.[2]

DESCRIPTION OF SECTION 745

The purpose of s.745 was to recognize that although murder is a heinous crime, twenty-five years is a substantial amount of time to be isolated from conventional society without some form of review mechanism in place to monitor the changes in the prisoner that may occur over the years. Thus, after fifteen years have passed, life sentence prisoners have an opportunity to go before a jury of twelve members from the community where they were convicted to ask for a reduction in their parole ineligibility periods. When s.745 (formerly s.672) was originally drafted, the decision about any reduction in parole eligibility was to be the prerogative of a three member panel of judges. However, following a review by the Standing Committee on Justice and Legal Affairs (SCJLA), the onus on who would make the decision about parole eligibility was changed. The committee wanted to guarantee that the voice of the community would not be overlooked and believed this could be represented best by way of the jury process.

The objective of the s.745 review is not to re-try the original offence but rather to focus on the applicant's behavior following conviction. In fact, the role of the jury "... is not to reconsider the community's condemnation of the offence

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[2]The first judicial review hearing was held in Quebec in 1987. The applicant's original sentence of death was commuted to life-imprisonment when the legislation changed in 1976. Section 745 eligibility was calculated from the date of arrest in 1971.

and repudiation of the offender ... [but to determine] whether or not present circumstances justify leniency and an earlier consideration of the offender's case by the Parole Board" (Canada Law Book Inc., 1995, 1117). Accordingly, applications for a s.745 hearing are based on the following four factors which the jury will consider in their decision: personal character; conduct while serving sentence; nature of the offence for which he or she was convicted; and such other matters as the judge deems relevant to the circumstances of the case (e.g. victim impact statements) (Canada Law Book Inc., 1995). The General Division of the Ontario Court ruled in *Regina v. Swietlinski* that victim impact statements were not automatically admissible at s.745 hearings since "evidence of the impact of a crime on the victim clearly has no relevance to a jury's assessment of an applicant's conduct while in custody or of his character under s.745" (Supreme Court Report, 1994, 9). Nonetheless, in response to certain special interest groups recent sentencing legislation has addressed the issue of victim impact statements. In September 1996, Bill C-41 will be proclaimed into law and will amend s.745 to legislate the automatic inclusion of victim impact statements at judicial review hearings.

There are two standard documents that must be anthologized to meet the criteria set out in s.745 of the *Criminal Code*. The first is an "Agreed Statement of Fact" mutually submitted by the applicant's lawyer and the Crown. This document is required to give the jury a sense of the nature of the offence of which the applicant was convicted. The second document is a "Parole Eligibility

Report" (PER) prepared by Correctional Service Canada (CSC) staff. The purpose of the PER is to guide the jury's assessment of the applicant's character and conduct while serving their sentence. Essentially, the report is a "...comprehensive and factual summary of information relevant to parole eligibility, including the applicant's criminal, social and institutional history" (Correctional Service Canada, 1991, 3-5-2). Included are such records as psychiatric and psychological assessments; case management files (i.e. disciplinary, medical, visits, correspondence, employment); information regarding the applicant's social, family and criminal background; classification and disciplinary evaluations; and a summary of the applicant's performance, conduct and personal development while in prison (Correctional Service Canada, 1991). Family, friends and associates may also write letters of support for the prisoner to include with their application. On the other hand, victims may write letters to the Crown opposing the applicant's request for a reduction in parole ineligibility. A great deal of work is necessary to compose a s.745 application. Consequently, applications are rarely heard at the fifteen year mark. Often there are considerable delays between the time when prisoners have reached eligibility for a s.745 hearing to when their applications were submitted and their reviews heard in court. Gaucher (1994) found that among the first 40 judicial review hearings, applicants had spent, on average, just over 16 years in prison at the time of their hearing.

The application for a s.745 hearing is submitted by the prisoner's counsel to the chief justice of the province in which the conviction occurred, regardless of where in Canada the prisoner may be serving their sentence. Applicants must seek legal representation in the province where they were convicted and, currently, legal aid services remain accessible to judicial review applicants. Although s.745 is federal legislation, its application falls under provincial jurisdiction and, as such, each province has their own rules of procedure. Most provinces, however, follow similar procedures. Generally, the chief justice designates a judge to conduct a preliminary hearing to determine the validity of s.745 eligibility and to resolve any disputes between the parties over admissibility of evidence from the PER. At the outcome of the preliminary hearing, the judge can rule the prisoner's application inapplicable to s.745 and send it back to the chief justice, or the judge can deem the application valid and order that a jury be empannelled. The judge will establish the time frame over which the hearing will be held (usually between one and two weeks) and the hearing will proceed with the applicant and relevant others taking the stand to either support or oppose the application. Unlike trial court hearings where a unanimous verdict is compulsory, juries at judicial review hearings are obliged to have a two-thirds majority in their decision.

The jury has three possible choices from which to select in making their determination: grant immediate eligibility to apply to the National Parole Board (NPB) for parole; reduce the number of years of imprisonment left to serve

before being eligible to apply for parole; or, deny the application. When the jury has chosen to deny a reduction in parole ineligibility, jurors will instead set the number of years that must pass before the prisoner can re-apply for a second judicial review hearing. Concurring with case precedent, the outcome of a s.745 hearing does not qualify for leave to appeal. Specifically, the Ontario Court of Appeal ruled in *Regina v. Vaillancourt* that 'the role of the jury in proceedings under s.745 is not part of the sentencing process so as to bring the case within the provisions of s.675(1)(b) for the purposes of a right of appeal" (Canadian Criminal Cases, 1989, 545).

When the jury grants either immediate eligibility or reduces the number of years of ineligibility, in technical terms this means the prisoner can apply for parole. In practice, however, all the NPB will consider at this point in time is the prisoner's suitability for a conditional release program. This program includes the following provisions that allow for gradual reintegration into society: escorted temporary absence (ETA), unescorted temporary absence (UTA), day parole, and full parole. For a life sentence prisoner, applications for ETA's, excluding those for medical reasons, must have the approval of the NPB when more than 3 years remain before the parole eligibility date (PED). Eligibility for UTA's, excluding those for medical and compassionate grounds, must also have the approval of the NPB when more than three years remain before the PED. Lifers become eligible for day parole three years before the full parole date set by law,

the judge at sentencing, or the jury at a s.745 hearing (Correctional Service Canada, 1991).

To summarize, a person convicted of first or second degree murder will be under the supervision of the CSC or NPB until their death. Any reduction in parole ineligibility obtained at the judicial review hearing will not automatically result in the release of the successful applicant. A favourable s.745 hearing merely provides lifers with permission to file an application with the NPB at an earlier date than the original period of parole eligibility set forth by law in cases of first degree murder or by the judge at sentencing in cases of second degree murder. The prisoner must still meet the standard criteria for obtaining conditional release set forth in federal legislation before being released into the community.

SECTION 745 TO DATE

The full text of the s.745 legislation provided in the *Criminal Code* is included below (see table 1).

TABLE 1
Criminal Code Section 745

APPLICATION FOR JUDICIAL REVIEW / Judicial hearing / Renewal of application / Reduction / Rules / Definition of "Appropriate Chief Justice" / Territories.

745. (1) Where a person has served at least fifteen years of his sentence
(a) in the case of a person who has been convicted of high treason or first degree murder, or
(b) in the case of a person convicted of second degree murder who has been sentenced to imprisonment for life without eligibility for parole until he has served more than fifteen years of his sentence,
he may apply to the appropriate Chief Justice in the province in which the conviction took place for a reduction in his number of years of imprisonment without eligibility for parole.

(2) Upon receipt of an application under subsection (1), the appropriate Chief Justice shall designate a judge of the superior court of criminal jurisdiction to empanel a jury to hear the application and determine whether the applicant's

number of years of imprisonment without eligibility for parole ought to be reduced having regard to the character of the applicant, his conduct while serving his sentence, the nature of the offence for which he was convicted and such other matters as the judge deems relevant in the circumstances and the determination shall be made by no less than two-thirds of the jury.

(3) Where the jury hearing an application under subsection (1) determines that the applicant's number of years of imprisonment without eligibility for parole ought not to be reduced, the jury shall set another time at or after which an application may again be made by the applicant to the appropriate Chief Justice for a reduction in his number of years of imprisonment without eligibility for parole.

(4) Where the jury hearing an application under subsection (1) determines that the applicant's number of years of imprisonment without eligibility for parole ought to be reduced, the jury may, by order,

(a) substitute a lesser number of years of imprisonment without eligibility for parole than that then applicable; or

(b) terminate the ineligibility for parole.

(5) The appropriate Chief Justice in each province or territory may make such rules in respect of applications and hearings under this section as are required for the purposes of this section.

(6) For the purposes of this section, the "appropriate Chief Justice" is

(a) in relation to the Province of Ontario, the Chief Justice of the Ontario Court;

(b) in relation to the Province of Quebec, the Chief Justice of the Superior Court;

(c) in relation to the Provinces of Nova Scotia and British Columbia, the Chief Justice of the Supreme Court;

(d) in relation to the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, respectively, the Chief Justice of the Court of Queen's Bench;

(e) in relation to the Provinces of Prince Edward Island and Newfoundland, the Chief Justice of the Supreme Court, Trial Division; and

(f) in relation to the Yukon Territory and the Northwest Territories, respectively, the Chief Justice of the Court of Appeal thereof.

(7) For the purposes of this section, when the appropriate Chief Justice is designating a judge of the superior court of criminal jurisdiction to empanel a jury to hear an application of a conviction that took place in the Yukon Territory or the Northwest Territory, the appropriate Chief Justice may designate the judge from the Court of Appeal or the Supreme Court of the Yukon Territory or the Northwest Territories, as the case may be (Canada Law Book Inc., 1995, 1115-1116).

As of March 31, 1996, 193 life sentence prisoners have become eligible to apply for a judicial review of their parole ineligibility. To date, 76 (39%) lifers have filed applications and of these, 65 (86%) cases have been heard by juries

across the country. Juries have reduced parole ineligibility in 51 (78%) cases and have denied any period of reduction in 14 (22%) cases. Of the applications that were reduced, 40 (78%) were for convictions of first degree murder and 11 (22%) were second degree murder (National Parole Board, 1996). The parole board has since granted conditional release to 26 (52%) lifers who received a reduction at their hearing; 24 (48%) remain incarcerated (refer to table 2 for breakdown). In whole, of the total number of lifers eligible for a s.745 hearing, 39% have filed an application, 26% have been granted a reduction in parole ineligibility and 13% have been subsequently released into the community.

TABLE 2
Section 745 Reductions & National Parole Board Release
(March 31, 1996)

On Conditional Release:	**26 (52%)**
Full Parole:	**18 (69%)**
Day Parole	**8 (31%)**
Incarcerated:	**24 (48%)**
UTA approval:	**6 (25%)**
ETA approval:	**3 (13%)**
Denied release:	**4 (17%)**
Not reviewed:	**3 (13%)**
Ineligible for day parole: 3 (13%)	
Revoked:	**5 (21%)**

(National Parole Board, 1996)

CURRENT CONTROVERSY SURROUNDING SECTION 745

As noted earlier, s.745 is currently an issue generating a great deal of controversy in Canada. Spearheading the movement for abolition of s.745 is Member of Parliament, John Nunziata supported by police and victim interest groups. For the second time in eight years, Mr. Nunziata has put forth a private member's bill to repeal s.745. The current bill, C-234, (originally C-226) passed second reading in the House of Commons in December 1994. In June, 1996, when Bill C-234 was reviewed by the SCJLA, committee members resolved to vote against the bill in their recommendation to Parliament.

The Canadian Police Association has campaigned for over 2 years for repeal of s.745 as have groups such as the Canadian Resource Centre For Victims of Crime, Victims of Violence, and Citizens Against Violence Everywhere Advocating its Termination (CAVEAT). The main argument, or premise for abolition, is that s.745 is a 'loophole in the law' enabling convicted murderers to qualify for a 'forty percent reduction' in their sentence. Critics protest that s.745 undermines truth in sentencing. Specifically, that, since a life sentence for first degree murder means eligibility for parole from prison after 25 years, the offender should serve the full 25 years. Scott Newark, speaking on behalf of Victims of Violence, contends 'If there is one thing that is causing the justice system to lose credibility it is the sense that it says one thing and does another' (Canadian Press Wire, 1994).

The most recent attention to the s.745 provision has involved Bill C-45. On the 11th of June 1996, the Minister of Justice and the Solicitor General of Canada jointly submitted a bill to amend s.745. Bill C-45 proposes to modify s.745 with the following three changes: (1) eliminate the availability of s.745 for people convicted of killing more than once; (2) remove the process for eligible prisoners to automatically apply for a s.745 hearing and instead place an onus upon a superior court judge to decide whether the applicant would have a reasonable prospect of success should the case proceed to court; and, (3) change the current requirement to reduce parole ineligibility from a two-thirds majority to complete unanimity. The first amendment would affect only those people convicted of a second murder after the legislation had been proclaimed into law. The remaining changes would be applied retroactively and affect all lifers who had yet to file an application before the changes became law (House of Commons Canada, 1996).

There has been much dispute over s.745, Bill C-234, and Bill C-45. Opponents of judicial review argue that the only appropriate measure is for s.745 to be eliminated from the *Criminal Code*. Some victims' groups have, however, given support to Bill C-45 as at least *a step in the right direction.* Advocates of s.745 argue that the provision should remain in the form originally intended in 1976 and warn of the consequences if Bill C-45 were to pass. Specifically, the Canadian Bar Association (1996) has cautioned that by excluding multiple murderers from s.745 the criminal justice system admits to

being incapable of handling a certain portion of offenders and takes one step back to capital punishment.

A series of hearings was held in mid-June in front of the Standing Committee on Justice and Legal Affairs and Bill C-45 was sent back to Parliament with the committee members' recommendation to approve the bill at third reading. Parliament has since recessed for the summer and the fate of Bill C-45 remains unknown until the House of Commons sits again in late September, 1996.

THE ROLE OF PUBLIC OPINION

A critical element in researching s.745 rests with understanding the role the public plays in the debate. Part of the impetus behind the abolition movement in general, and Bill C-234 in particular, is the contention that the public are opposed to s.745. On the one side, Mr. Nunziata has claimed *"I am convinced, given the discussions I have had with a great number of my colleagues, that this bill will in fact become law in the not too distant future. I am convinced as well because of the overwhelming public support for the removal of this section from the Criminal Code"* (House of Commons, 1994, 6932). On the other hand, Simon Fraser University criminologist Ezzat Fattah contends that, *"I don't think [the most vocal groups] are necessarily representative. I don't mean to minimize the tragedy, pain or suffering of them, but it would be a mistake to shape public policy according to the demands of a group that represents only the*

most terrible acts, which are unusual, and luckily, the minority" (Times Colonist, 1995a).

Accordingly, an analysis of public opinion is necessary to determine whether the special interest groups are reflecting the voice of the majority, or whether these are simply the only voices that can be heard. The role of the public is also fundamental to researching s.745 since, by virtue of the jury hearing, judicial review becomes one of the very few elements in the administration of justice where public views are directly incorporated.

PURPOSE OF THESIS

This thesis will explore the topic of judicial review of parole ineligibility (s.745) as it relates to a critical component in the determination of criminal justice policy: public opinion. The aim is to determine whether public attitudes toward granting early parole for life sentence prisoners can be affected by the amount of information given to them about the judicial review provision.

Chapter 2

THE ROLE OF THE MEDIA

CHAPTER OVERVIEW

This chapter explores the highly influential role of the media in shaping public opinion and the power of the media to drive public action and political reaction.

THE MEDIA AND PUBLIC OPINION

> Because relatively few people have extensive direct experience with crime, it seems reasonable to assume that the public's mental images of crime - as well as of criminals, victims, and criminal justice - are shaped, to a great extent, by the mass media (Garofalo, 1981, 334).

A survey by the Canadian Sentencing Commission (1987) found that 95% of respondents identified the news media as their primary source of information about sentencing issues. Hence, the media have a potentially enormous ability to influence and manipulate what the public know and think about crime and justice. Questionable, however, is the extent to which the media portray an accurate picture. For instance, stories of crime and justice are of great interest to the public and sensationalism sells newspapers. In fact, one study found that crime news accounted for between 4% to 28% of all stories reported in newspapers (Surette, 1992).

Chapter 3 will discuss the widespread opinion held by the public that violent crime is on the increase, contrary to police crime statistics. Nevertheless,

that the public have this impression is not difficult to conceive when looking at the research. The Canadian Sentencing Commission (1987) found that in over 800 articles on sentencing reported in the news media, more than half were stories about violent crime and more than one-quarter involved some form of homicide. Another study found that although homicide accounted for 0.2% of crime known to the police, murder was the subject of 26.2% of crime news stories whereas property crime accounted for 47% of reported crime and 4% of newspaper coverage (Surette, 1992). Surette (1992) notes that the definition of "news" is something that is new or uncommon. Violent crime, especially homicide, is particularly newsworthy not only by virtue of the fact that it occurs infrequently but also because of its dramatic impact. The public rely heavily on the media to learn about crime and the tendency of the media to focus on violent crime constitutes a serious source of misinformation about the true nature of crime. These types of practices all contribute to the creation of false perceptions about crime and offenders (Surette, 1992).

News Media Treatment of Sentencing Issues

News media stories have been found to provide insufficient context and information from which the public can draw upon to reasonably evaluate the events they read about (Roberts, 1992). This reporting bias creates numerous problems within such a controversial area as criminal justice. For instance, the Canadian Sentencing Commission found that news media accounts of

sentencing stories frequently included little more than the offence category and the sentence imposed. In fact, three-quarters of the newspaper stories omitted any discussion of the judge's reasons for sentencing. As a result, the stories confirmed public perceptions of a lenient criminal justice system (Roberts, 1992).

Survey research that studied sentencing under a variety of information conditions revealed that respondents' opinions could be influenced by the amount and the nature of information given to them in a questionnaire. Specifically, when one group of subjects was given a newspaper account of a sentencing decision and the second group read summaries of the actual court documents the results showed that 63% of the newspaper sample - compared with 19% of the court sample - believed the sentence handed out by the judge was too lenient. Further, subjects who read the newspaper version were significantly more negative in their views of the judge, the offence, and the offender (Doob, A. & J. Roberts, 1984).

Thus, not only do the public form opinions without sufficient knowledge of the issues but the information source they have access to also plays a role in influencing what the public think. The ease by which people form opinions in the absence of personal experience is illustrated in the following two studies. One study found that when only 2% of the sample had ever been to a prison, a full 88% of respondents said they had some idea of what prison life was like (Moore, 1985 as cited in Roberts 1992). Another study found that when subjects were asked what they thought of the court system, almost all respondents gave an

opinion when just one-third had ever personally attended a court hearing (Roberts, 1992).

THE MEDIA AND POLITICS

> In Canada today, we place considerable emphasis on the responsiveness of our political leaders and institutions of government to the attitudes and aspirations of the public. It appears that governments and opposition parties are influenced more by public opinion polls than by proceedings in Parliament (Siegel, 1983, 18).

The mass media play a substantial role in influencing the public and political spectrum. Siegel's (1983) ideas about the power of mass media can be recognized in many of the elements of the s.745 debate. He postulates five major sources from which media power flows: information providers, political linkage, agenda-setting, editorial offerings, and direct influence on political actors.

First, the media as providers of information have the power to disseminate information to the public and, as such, to shape opinion. The media do this by making newsworthy certain topics and by choosing certain spokespeople to discuss issues. For example, s.745 has been brought to the public's attention and cited by some as a serious flaw in the criminal justice system.

Second, the media have the ability to influence public opinion and political reaction since they constitute the major link between the public and the government. For example, the media have been used extensively as a vehicle by special interest groups such as CAVEAT to get their opinions about s.745

known to the government. One newspaper (the Calgary Sun) even went so far as to initiate a postcard campaign soliciting readers to demand repeal of s.745.

Third, the media, by virtue of the first and second power, have the ability to define the public and political agenda. Specifically, the aforementioned efforts have played a substantial role in influencing the government to react to special interest group opposition to s.745, the effect of which is evident in Bill C-45.

Fourth, by virtue of what editors choose to print in their newspapers (i.e. editorials, background stories that discuss political issues and their merits, articles by political columnists, interpretive stories and political cartoons) the media have enormous potential to sway public opinion. For example, an informal survey of national newsprint articles collected over the course of this research showed that stories pointing out the merits of s.745 were few compared with the overwhelming number of articles that portrayed s.745 in a negative manner.

And, lastly, the media sustain political power by virtue of the fact that politicians rely on the media to convey messages to the public. For example, press conferences have been heavily relied upon by both Mr. Nunziata and Mr. Rock, as well as victim groups, to generate public awareness that something must be done and is being done to respond to the apparently widespread public opposition to s.745.

THE MEDIA AND SECTION 745

> ***FREE KILLERS CODE - Section 745 creates deadly discount for murderers.*** *It's discount time. All sentences slashed. As much as 40 percent off for all killers serving life. Where's the deal? Come on down to Canada, where the Criminal Code lets lifers apply to get out on our streets after serving just 15 years* (Winnipeg Sun, 1994).

Not surprisingly, s.745 encompasses all the elements of a good news story. As chapter one noted, little attention had been paid to s.745 until the last year or two and, as a result, little scholarly research has been carried out on the topic. Consequently, the media (along with special interest groups) have to a large extent been the primary disseminators of information to the public on s.745. For instance, Maclean's magazine recently addressed s.745 in a cover story about parole:

> ***PAROLE ON TRIAL: They have been convicted of brutal murders. They are serving their time. The question is: Should they get out early?***
> ***IS A 'FAINT HOPE' TOO MUCH? A controversial federal parole law comes under attack*** (Nemeth, 1996, 49)

Problematically, one of the best known concerns about mass media coverage is that it can lead to a disruption of the criminal justice process and to a violation of an offender's right to due process (Surette, 1992). Often, "... extensive media attention can create social panic and result in public crusades against types or classes of individuals" (Cohen & Young, 1981 as cited in Surette, 1992, 73). This very sentiment has in fact occurred at a number of the judicial review hearings to date. In fact, media and special interest group opposition to s.745 has provoked numerous judicial proceedings. Gaucher

(1994) cites one case where an Alberta newspaper was charged with contempt of court for pre-hearing commentary that caused the hearing to be delayed and another where visible lobbying by police and victims groups resulted in the hearing being canceled. These types of occurrences raise concerns about the effects such *environmental contaminants* are playing on s.745 hearings.

Chapter 3

PUBLIC KNOWLEDGE AND OPINION

CHAPTER OVERVIEW

This chapter will discuss the discrepancies between fact, knowledge and public opinion about crime. Public opinion toward parole for murder offenders will be examined in view of the impact such attitudes may have on the current debate over s.745.

CRIME, THE MEDIA AND PUBLIC OPINION

> Crime in Canada is on the rise, the courts are letting criminals get away with all sorts of mayhem and the parole system is a sick joke, right? Wrong, says University of Ottawa criminologist Dr. Julian Roberts. ... 'The system is not the lenient joke people believe it to be. Everything is not fine, but the problems are not necessarily what the public believes them to be' (Times Colonist, 1995b).

Research that has compared responses from public opinion polls to results of victimization surveys and police-reported crime statistics has documented a general public perception that the level of crime in Canada has increased in the last few years (Hung, K. & S. Bowles, 1995). More specifically, research has found that Canadians believe most of the crime committed is violent in nature. For instance, a Maclean's poll found that 51% of the population surveyed believed the crime problem has become a great deal worse and 85% believed the rate of violent crime had increased in the last decade (McDonald, 1995). Another poll showed a 10% increase in the percentage of

respondents who believed the level of violent crime in their neighborhood had become significantly worse in the last three years (Hung, K & S. Bowles, 1995).

In reality, however, the rate of police reported crime has declined each year for the last four years and the decrease from 1993 to 1994 was the largest decline since Uniform Crime Report data began being collected. The violent crime rate also decreased in 1994 by 3% after 15 years of annual increases. In fact, of the 2.6 million Criminal Code offences reported in 1994 (excluding traffic offences), violent crime accounted for just 12% of the total number of offences (Hendrick, 1995). Likewise, the rate of homicide dropped 6% in 1994 reaching a 25 year low (Fedorowycz, 1995).

Johnson (1996) notes the public disbelief when crime statistics are at odds with personal perceptions and cautions that national trends represent the average rate of violent crime for the entire country; some provinces and cities will be above the national average and some will fall below. For instance, although Manitoba reported a dramatic increase in violent crime during 1990, Alberta reported an equally dramatic decline over the same period. Thus, while a "...small number of very disturbing crimes can .... give the impression of a crime wave ... they may not have an appreciable effect on the crime rate calculated as a rate per 100,000 population at the national or provincial level" (Johnson, 1996, 14).

Nonetheless, the public appears to remain dissatisfied. Priscilla de Villiers of CAVEAT organized a petition which demanded tougher justice and

parole policies which she claims was signed by 2.5 million people across the country. In reference to the petition, she declared that "[t]he public has become totally cynical about the numbers... these are people who are just tired of worrying and want to protect their families'" (McDonald, 1995, 29). And, according to Myron Thompson, the Reform party justice critic, "[t]he problem is massive in the eyes of the people. Anybody sitting in their ivory tower in Ottawa saying everything is hunky-dory had better think twice" (McDonald, 1995, 28). On the other hand, however, it would be deceptive to overlook that "criminologists have repeatedly pointed out that if stiffer sentences discouraged crime then the United States, which has developed the world's harshest penalties, would boast the most crime-free society" (McDonald, 1995, 30).

CRIME, THE MEDIA AND PUBLIC PERCEPTION

Chapter 2 noted the public rely heavily, if not exclusively, on the media for information about criminal justice issues and that crimes or sentences which are in some way different (exceptional) tend to be reported more frequently. Roberts (1992) identified two principal causes for public misperceptions of criminal justice statistics. The first deals with the distorted and unsystematic presentation of information by the news media which, as discussed in chapter 2, sensationalize crimes of violence and promote stories of a lenient criminal justice system. The second, which will be discussed in the forthcoming chapter,

concerns generalizations the public deduce from these media stories and the resulting discrepancies between knowledge, opinion and reality.

Abhorrent crimes of personal violence (such as murder and sexual assault) tend to make the headlines rather than the mundane (albeit far more common) property crimes of theft and break and enter. For instance, the Environics Research Group reported in 1989 that the specific offences the public believe to be increasing the fastest are those like murder that attract the most media coverage and not those increasing statistically at the fastest rate (Roberts, 1992). In fact, one survey found that 67% of respondents believed the number of homicides had risen since capital punishment was abolished (Roberts, 1994b). In reality, although the public are unlikely to know this, the murder rate has not increased significantly over the past 20 years and fell to a 25 year low in 1994.

Whether people draw upon "official" crime statistics or victimization surveys, the public's view would appear to be at odds with reality. Nowhere is this more evident than in a study that sought to find out what the Canadian public actually know about the criminal justice system. Roberts (1994b) compared results from several years of public opinion polls with police reported statistics and victimization surveys and found numerous examples where public perceptions were in direct contrast with reality. Among the findings are the following:

- Although two-thirds of Canadians believe crime rates have risen during the past five years, such rates generally have remained stable.

- Most Canadians believe homicides are increasing more quickly than any other crime. In fact, the rate has remained relatively stable for 30 years and actually has begun falling, especially since the abolition of capital punishment. In 1977, the year after abolition, it was 3.06 per 100,000 population. By 1992 the rate was 2.7 per 100,000.

- Although most Canadians believe that breaking-and-entering is on the rise, this too is a misperception. In 1980 there were 26.3 such incidents reported to police for every 1,000 households. In 1990 the rate was 22.4 per 1,000 households. A recent survey conducted by Statistics Canada also showed that rates of such crimes had fallen 7 per cent between 1988 and 1993.

- The widespread view that gun use is becoming more common in crimes is also false. Thirty-seven per cent of all robberies committed in 1978 involved a firearm, but by 1990 this had fallen to 26 per cent. The proportion of homicides involving a gun has risen slightly, from 32 per cent in 1980 to 34 per cent in 1992.

- A growing proportion of Canadians (85 per cent In 1992) feel that sentences are not harsh enough. When questioned, however, they consistently underestimated the proportion of convicted criminals sent to prison.

- Canadians are highly anxious about what they perceive to be lax parole rules, but, again, this is based on a misperception. They tend to believe that more than half of prisoners get parole and that more parole than ever is being granted. In fact, the federal parole-granting rate stands at 34 per cent, roughly where it has been for a decade.

- Contrary to public opinion, the majority of those paroled complete their terms in the community without committing another crime. Between 1978 and 1988, nearly three-quarters were successfully paroled. Parole was revoked for 12 per cent because they committed new crimes (Times Colonist, 1995c).

PUBLIC OPINION AND KNOWLEDGE ABOUT PAROLE

The results of a 1988 Gallup Poll found that more than three-quarters of the public said they had not much or no faith in the Canadian system of granting parole (Roberts, 1994b). Cumberland and Zamble (1992) found that 78% of

their sample were dissatisfied with the parole system in general and 82% believed the parole system was too lenient. Their results further indicated that although the public was opposed to parole for violent offenders (87% believed the release rate was too high) they were somewhat in favour of parole for nonviolent offenders (54% said the release rate was about right) (Cumberland, J. & E. Zamble, 1992). In another study, Roberts (1992) found that, overall, the public believe a large proportion of prisoners are getting out of prison early and a substantial percentage are failing to complete their sentences in the community without reoffending.

The implications of these beliefs are interesting. Opinion research on sentencing has found that public attitudes toward the courts and judiciary can be correlated with, and potentially determined by, the level of knowledge about the sentencing process (Roberts, 1992). It follows, then, that people's perceptions of parole would be influenced by the level of information the public has regarding the process. Adams (1990) notes that some of the public fear of crime and negative perceptions of the criminal justice system is founded upon incomplete or inaccurate knowledge. For instance, research would suggest that although most people have a negative opinion about parole, few are actually aware of what it means for offenders to be released conditionally from prison. One survey found that only 15% of the public were able to identify the correct definition, among four choices, of parole (Roberts, 1994b). The public are also misinformed about the numbers of offenders being released on parole and the

rate of reconviction once in the community. Specifically, one survey found that the public believed more than 50% of offenders are granted parole when the actual rate was 34% (Canadian Criminal Justice Association, 1987). Another survey found that over 60% of the respondents thought the recidivism rate for offenders released on parole was between 40% and 100% when, in reality, at the time of the study just 13% of paroled offenders had been reconvicted of a violent crime. Further, the public is unlikely to know that statistics which count the number of paroled offenders returned to custody do not differentiate between revocations for new convictions and those for technical violations (Roberts, 1994b).

PUBLIC ATTITUDES ABOUT PAROLE FOR LIFERS

Surveys conducted over the last twenty years clearly demonstrate that, in the opinion of the general public, parole should never be granted to offenders serving life sentences for murder. The Canadian Sentencing Commission found that more than 80% of their sample classified offenders convicted of first or second degree murder as prisoners who should not be eligible for release on parole (Roberts, 1994b). Given the kinds of information the public receive about murderers, they are unlikely to know that lifers have a very low rate of recidivism once released from prison. In fact, people convicted of murder are much less likely to reoffend than people convicted of other offences. For instance, fewer than 9% of murderers released on parole between 1975 and 1986 were

reconvicted of another offence (Marron, 1996). A fifteen-year follow-up study of 658 paroled murderers found 77.5% living in the community under a life warrant. Of the remaining, 13.3% had been reincarcerated for violating parole conditions, 9.2% had recidivated by committing indictable offences, and 0.8% (or 5 of the 658 offenders) had been reconvicted for a further homicide (Erwin, 1992). Between 1990 and 1995 there were 41 murders known to have been committed by parolees. Of these, one homicide was known to have been committed by a murder offender on parole (Marron, 1996). Nevertheless, the results of opinion surveys suggest the public oppose parole for lifers.

THE PUBLIC OPINION SURVEY

The results of public opinion polls serve as evidence to support the perspectives of many groups of people including, for example, policy makers, criminal justice professionals, the media and special interest groups (Roberts, 1992). While opinion surveys have merits there are often problems with relying too heavily on the results. For instance, it is often difficult for researchers to know whether "...the so-called opinions we have tapped reflect enduring attitudes, firmly held beliefs, top-of-the-mind views, judgment based on experiences and knowledge, or simply an answer created on the spot in order to fill out the questionnaire" (Himelfarb, 1990, 21).

Another criticism of the survey method is that questionnaires usually provide respondents with minimal amounts of information. Subjects are often

asked to answer questions in the absence of adequate context to consider their response. Consequently, responses tend to be uninformed and public opinion distorted. Research in the area of sentencing illustrates this concern. For instance, studies that have altered the levels of information given about the offender and crime consistently find that when subjects are given more information they become less punitive (Roberts, 1992).

The manner in which questions are worded will also affect the nature of responses solicited. For instance, globalized questions tend to generate much more punitive responses than questions that ask about specific cases (Cumberland, J. & E. Zamble, 1992) since people often imagine the worst case they are aware of and consider their response based on this picture (Zamble, 1992). Specific case scenario questions may, therefore, give results that could be preferable in measuring public opinion (Cumberland, J & E. Zamble, 1992). For instance, each time global questions about the death penalty are posed, public opinion polls consistently report that 70-80% of Canadians support capital punishment. However, when the polling method changes to ask the public whether they would implement the death penalty in a specific case scenario the results reveal substantially less support for capital punishment (Himelfarb, 1990).

QUANTITY AND QUALITY OF INFORMATION

Although most people have a great deal of interest in crime and justice this does not mean that they are also well-informed (Roberts, 1994b). Research has found that when people are given increased amounts of information their attitudes change. The Doob and Roberts (1984) study is an example of this phenomenon. Subjects' reactions toward the same sentence were compared between those who read court transcripts and those who read newspaper reports of the sentencing decision. The results clearly indicated that people's opinions were dependent upon the version of the case that they had read. Doob and Roberts concluded that, "it is not the sentence that people are reacting to (since it was constant across accounts) but the context in which the sentence is placed" (1984, 277). Thus, what appeared to policy makers as a call by the public for harsher sentences was instead a consequence of perceptions founded upon incomplete and frequently inaccurate news media accounts (Doob, A. & J. Roberts, 1984).

Roberts (1994b) suggests that public confidence in, and support for, the criminal justice system would probably increase if these kinds of misperceptions were addressed by public legal education. That attitudes toward criminal justice issues can change through public education campaigns is evidenced with the crime of sexual assault. A 1992 survey replicated from four years previous revealed that respondents were less likely to subscribe to myths about sexual assaults in 1992 (i.e. most perpetrators are strangers or when a women says

'ho" she does not always mean 'ho') (Roberts, 1994b). Public legal education programs have also proven their ability to reach the community in the arena of crime prevention. For instance, when the public was asked in the early 1980's about their knowledge of crime prevention programs, more than half of those surveyed said they were unaware of even such well-publicized crime prevention programs as Block Parents (Roberts, 1994b). In 1989, however, after a decade of public education campaigns almost 90% of respondents were aware of Block Parents (Roberts, 1989).

PUBLIC OPINION AND SECTION 745

The preceding material may be summarized in the following way. First, a paradox exists: while surveys show that most Canadians are opposed to parole for life sentence prisoners, juries have reacted positively to s.745 applications to date. A resolution to this contradiction would appear to lie in the methodological aspects of research in this area. Previous research on other criminal justice issues (such as sentencing) has found that public attitudes are very different when the respondents in the research program are given an adequate amount of information. Specifically, when people are given an actual case to consider, their responses are very different than when they are asked a global, general question. The purpose of the present research will be to apply this logic to the issue of judicial review. The research will evaluate public reaction to reductions

in parole eligibility for lifers under conditions which vary in terms of the amount of information provided to the respondent.

Chapter 4

EXPERIMENT 1

CHAPTER OVERVIEW

This chapter will outline the experimental design, explain experiment 1 and discuss the findings.

DESIGN

The purpose of the investigation was to test the effects of two independent variables: knowledge and opinion. Two questionnaires were devised. Questionnaire "A" was developed with the intention of giving subjects only minimal information about s.745 prior to asking for their opinion on the provision. Questionnaire "B", on the other hand, was devised with the intention of giving subjects a substantial amount of information about s.745 prior to asking for their opinion toward the provision and decision on an application for judicial review. The research was designed to test the hypothesis that subjects' opinions toward s.745 would be influenced by the level of information provided to them in a questionnaire. Specifically, it was hypothesized that subjects responding to questionnaire "B" would be more favourable toward s.745 than subjects responding to questionnaire "A."

The research was also designed to find out whether prior knowledge toward the issue of judicial review had any effect on responses. Thus, the two questionnaires were administered to two separate groups of subjects. Subjects

in experiment 1 were not previously informed about s.745 and subjects in experiment 2 were the group with prior formal information.

The research used a two cell design structured to explore opinion under one of two conditions: (1) low and high information questionnaire and (2) naive and informed subjects. The independent variables are (1) version of the questionnaire - low or high information - and (2) prior knowledge of s.745. The dependent variables are (1) general attitude toward s.745 - in favour or opposed - and (2) case study decision - grant or deny.

	Experiment 1 Naive Subjects	Experiment 2 Informed Subjects
Low Information		
High Information		

EXPERIMENT 1: NAIVE SUBJECTS

METHOD

Subjects: Subjects were 112 students enrolled in a first year criminology class at the University of Ottawa in the 1996 winter semester. This particular group of students had yet to be formally exposed by their professor to the topic of s.745 and thus comprise the naive subject experiment.

Materials: Subjects were randomly given one of two self-administered questionnaires. Questionnaire "A" was a low-information 5-item survey that asked general questions about peoples' opinions toward the penalties for murder and their awareness of and opinion toward the s.745 provision (see

Appendix I). The second questionnaire, "B", was a high-information 3-item survey comprised of two sections (see Appendix II). The first part provided subjects with a fact sheet on s.745 and then asked them to respond to questions that measured their awareness of and opinion toward s.745. Subjects were then asked to read a case study of an application for judicial review and state whether they would grant or deny a reduction in parole ineligibility.

Independent Variables: The independent variables are (1) version of the questionnaire - low or high information - and (2) prior knowledge of s.745. Subjects were randomly assigned to the first variable; accordingly, it was a "true" independent variable. Subjects were classified into two groups - aware or unaware - depending upon their response to the prior knowledge question.

Dependent Variables: The dependent variables are (1) general opinion toward s.745 - in favour or opposed - and (2) case study decision - grant or deny. The second dependent variable was restricted to those subjects who responded to questionnaire "B".

Results: The first stage of analysis looks at responses from questions that appeared on both the low and high information questionnaires. There were two questions of this nature. They are: (1) "Prior to today, had you ever heard of the section 745 provision? and, (2) "In general, are you in favour of or opposed to a provision of this nature?" The second stage of analysis looks at responses from only the high information questionnaire that asked subjects to read the following case study and answer one question afterward.

The applicant is Mark Gregory, convicted in 1978 of first degree murder. In the spring of 1994, after having served 15 years, Mr. Gregory applied for a s.745 hearing. Mr. Gregory's case file detailed how he had spent his time while in prison and included such things as: improvements made through work, counseling and education, and projects he had developed to help youth in the community. At the hearing, Mr. Gregory called a number of witnesses from the community, including his wife, to support his assertion that he had developed close ties with the community and would reintegrate well. Correctional Service Canada staff testified that while Mark's institutional record was not flawless, he had consistently shown improvements in his attitudes and behaviours. Mr. Gregory was 26 years old when he was convicted of murder and had never been convicted of a crime before.

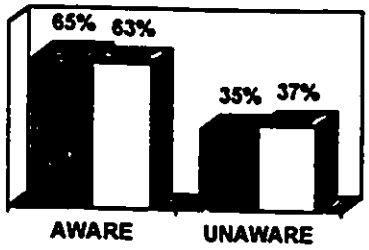
Subjects were asked, "If you had been a juror on Mark Gregory's judicial review hearing, what would your decision have been?" Subjects were given two options: (1) "allow him to apply for parole at some point before 25 years have elapsed" or, (2) "deny his request to apply for parole before 25 years have elapsed." Fifty-two subjects responded to the low information questionnaire and 60 subjects answered the high information questionnaire.

RESULTS

PRIOR KNOWLEDGE OF S.745

When subjects were asked if, prior to that day, they had heard of s.745, 34 (65%) low information subjects and 38 (63%) high information subjects said they were previously aware of the provision. Although this group comprises the naive subject condition, it would appear that a large number of respondents had some prior knowledge of the provision. This finding is not surprising since, as explained in chapters 1 and 2, there has been a lot of media attention paid toward s.745 in the last couple of years. As expected, since the questionnaires had been randomly distributed, there were no differences between subjects with prior knowledge and those without in the two groups, $\chi^2(1) = .04$, $p > .05$ (see table 3).

TABLE 3
Prior Knowledge of S.745:
Low & High Information Conditions



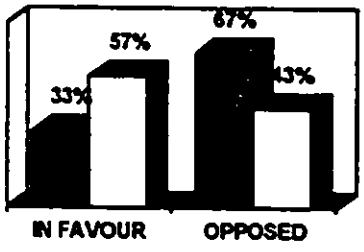
	Aware	Unaware
Low Information	34 (65%)	18 (35%)
High Information	38 (63%)	22 (37%)

ATTITUDE TOWARD S.745

When subjects were asked about their opinion toward s.745, 33% (17) of the respondents from the low information condition said they agreed with the idea of s.745. Subjects from the high information condition were more evenly divided. Fifty-seven percent (34) of respondents said they were in favour and 43% (26) of subjects said they were opposed to s.745. These findings represent a statistically significant relationship between the version of questionnaire answered and opinion toward s.745, $\chi^2(1) = 6.46$, $p < .05$ (see table 4).

Thus, subjects who were given minimal information were more likely to oppose s.745 than subjects who were given considerably more information. This finding is evidence to support the principal hypothesis being tested in this research: when people are given an adequate amount of information, they tend to be more supportive of the s.745 provision.

TABLE 4
Attitude Toward S.745:
Low & High Information Conditions

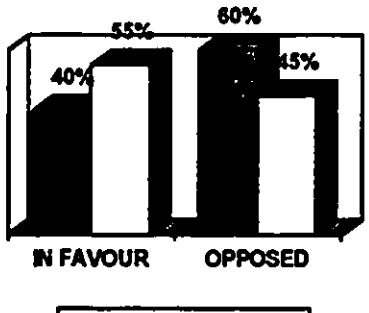


	In Favour	Opposed
Low Information	17 (33%)	35 (67%)
High Information	34 (57%)	26 (43%)

PRIOR KNOWLEDGE & OPINION - LOW & HIGH INFORMATION CONDITIONS

The previous finding indicates that subjects responses were affected by the level of information provided on the questionnaire (i.e. subjects who received more information were favourable to s.745). When the low and high information conditions were combined to determine whether prior knowledge affected opinion, 60% of aware subjects opposed s.745 and 55% of unaware subjects were in favour of the provision. Thus, although aware subjects are more likely to be opposed and unaware subjects are more likely to be supportive, opinion was not shown to be significantly influenced by the presence or absence of prior knowledge, $\chi^2(1) = 2.3$, $p > .05$ (see table 5).

TABLE 5
Relationship Between Prior Knowledge & Opinion:
Low and High Information Conditions

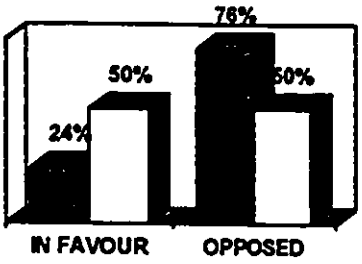


	In Favour	Opposed
Aware	29 (40%)	43 (60%)
Unaware	22 (55%)	18 (45%)

PRIOR KNOWLEDGE & OPINION - LOW INFORMATION CONDITION

When responses from subjects who responded to the low information questionnaire were examined, 76% (26) of aware subjects were opposed to s.745 and 50% of unaware subjects were equally in favour and opposed to the provision. The results indicate a statistically significant relationship between version of questionnaire and opinion (i.e. subjects who responded to the low information questionnaire were more likely to be opposed to s.745 when they had no prior knowledge of the provision), $\chi^2(1) = 3.8$, $p < .05$ (see table 6).

TABLE 6
Relationship Between Prior Knowledge & Opinion:
Low Information Condition

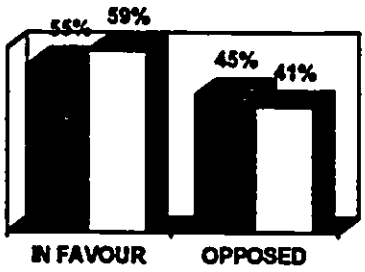


	In Favour	Opposed
Aware	8 (24%)	26 (76%)
Unaware	9 (50%)	9 (50%)

PRIOR KNOWLEDGE & OPINION - HIGH INFORMATION CONDITION

When responses from the high information condition were examined, the reverse was found: regardless of prior knowledge, both aware and unaware subjects were supportive of s.745 (55% of the aware subjects and 59% of the unaware subjects). Although this relationship was not statistically significant, χ^2 (1) = .082, $p > .05$ (see table 7), findings such as these make clear that a new hypothesis has emerged. Specifically, when subjects are given a higher quantity and quality of information their opinions will be changed. Thus, not only does the amount of information given to people have an affect on opinion but the nature of the information provided will also play a role in influencing opinion.

TABLE 7
Relationship Between Prior Knowledge & Opinion:
High Information Condition

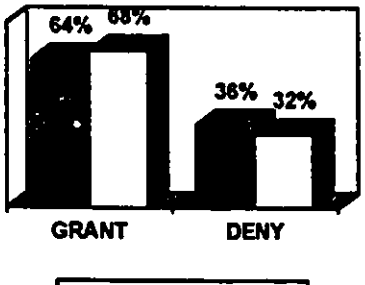


	In Favour	Opposed
Aware	21 (55%)	17 (45%)
Unaware	13 (59%)	9 (41%)

PRIOR KNOWLEDGE & CASE DECISION

It will be recalled that the case decision question was posed only to respondents in the high information condition, hence comparisons between information conditions was not possible. Overall, more subjects chose to grant the applicant a reduction regardless of whether or not they were previously aware of s.745. Although this finding was not statistically significant, these results would suggest that when subjects are given higher amounts of information they are more likely to respond favourably, $\chi^2(1) = 1.3$, $p > .05$ (see table 8).

TABLE 8
Relationship Between Prior Knowledge & Case Decision:
High Information Condition

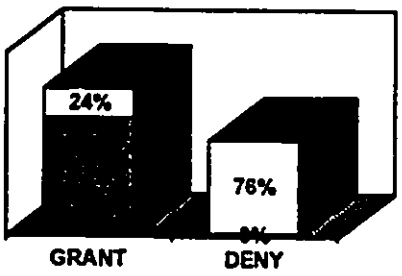


	Grant	Deny
Aware	23 (64%)	13 (36%)
Unaware	15 (68%)	7 (32%)

ATTITUDE TOWARD S.745 & CASE DECISION

As expected, the relationship between opinion and case decision is statistically significant: subjects favourable toward s.745 chose to grant and those opposed said they would deny the applicant a reduction $\chi^2(1) = 33.52$, $p < .05$ (see table 9).

TABLE 9
Relationship Between Attitude & Case Decision:
High Information Condition



	Grant	Deny
In Favour	32 (97%)	1 (3%)
Opposed	6 (24%)	19 (76%)

Chapter 5

EXPERIMENT 2

CHAPTER OVERVIEW

This chapter will outline experiment 2 and discuss the findings. Experiment 2 constitutes a replication and extension of experiment 1.

METHOD

Subjects: Subjects were 129 students enrolled in a first year criminology class at the University of Ottawa in the 1996 winter semester. These subjects had been formally exposed to both sides of the s.745 debate through a lecture by their professor and a speaker from Victims of Violence. As such, this group comprises the informed subject experiment.

Materials: Materials were identical to those employed in experiment 1. It will be recalled that subjects were randomly given one of two self-administered questionnaires. Questionnaire "A" was a low-information 5-item survey that asked general questions about subjects' opinions toward the penalties for murder and their awareness of and support for the s.745 provision (see Appendix I). The second questionnaire, "B", was a high-information 3-item survey comprising two sections (see Appendix II). The first part asked subjects to read a fact sheet on s.745 and then answer two questions that measured their awareness of and support for s.745. Subjects then read a case study about an

application for judicial review and chose whether they would grant or deny a reduction in parole ineligibility.

Independent Variables: The independent variables are (1) questionnaire version - low or high information - and (2) prior knowledge of s.745. Subjects were randomly assigned to the first variable; accordingly, it was a 'true' independent variable. Subjects were classified into two groups - aware or unaware - depending upon their response to the prior knowledge question.

Dependent Variables: The dependent variables are (1) general opinion toward s.745 - in favour or opposed - and (2) case study decision - grant or deny. The second dependent variable affected only those subjects who responded to questionnaire "B".

Results: The analysis of experiment 2 was identical to experiment 1. It will be recalled that the first stage of analysis locked at results from the two questions that appeared on both the low and high information questionnaires. They were: (1) 'Prior to today, had you ever heard of the section 745 provision? and, (2) 'In general, are you in favour of or opposed to a provision of this nature?' The second stage of analysis looked at responses from only the high information questionnaire that asked subjects to read the following case study and answer one question afterward.

The applicant is Mark Gregory, convicted in 1978 of first degree murder. In the spring of 1994, after having served 15 years, Mr. Gregcry applied for a s.745 hearing. Mr. Gregory's case file detailed how he had spent his time while in prison and included such things as: improvements made through work, counseling and education, and projects he had developed to help youth in the community. At the hearing, Mr. Gregory called a number of witnesses from the community, including his wife, to support his assertion that he had developed close ties with the community and would reintegrate well. Correctional Service Canada staff testified that while Mark's institutional record was not flawless, he had consistently shown improvements in his attitudes and behaviours. Mr. Gregory was 26 years old when he was convicted of murder and had never been convicted of a crime before.

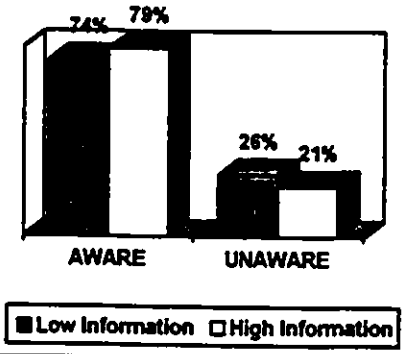
Subjects were asked, "If you had been a juror on Mark Gregory's judicial review hearing, what would your decision have been?" Respondents were given two options: (1) "allow him to apply for parole at some point before 25 years have elapsed" or, (2) "deny his request to apply for parole before 25 years have elapsed." Sixty-eight subjects responded to the low information questionnaire and 61 subjects answered the high information questionnaire.

RESULTS

PRIOR KNOWLEDGE OF S.745

When subjects were asked if they had heard of the s.745 provision prior to that day, 74% (50) of the low information subjects and 79% (48) of the high information subjects said they were previously aware. The high number of aware subjects was expected in light of the in-class discussion that preceded the administration of the questionnaire by less than a month. There were no differences in prior awareness between the two groups of subjects due to random distribution, $\chi^2(1) = .469$, $p > .05$ (see table 10).

TABLE 10
Prior Knowledge of S.745:
Low & High Information Conditions

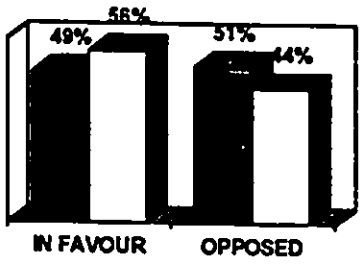


	Aware	Unaware
Low Information	50 (74%)	18 (26%)
High Information	48 (79%)	13 (21%)

ATTITUDE TOWARD S.745

As hypothesized, similar to experiment 1, subjects who responded to the low information questionnaire were generally opposed to s.745 and those from the high information condition were more supportive of the provision. Unlike experiment 1, however, the relationship between these variables was not statistically significant $\chi^2(1) = .669$, $p > .05$ (see table 11).

TABLE 11
Attitude Toward S.745:
Low & High Information Conditions

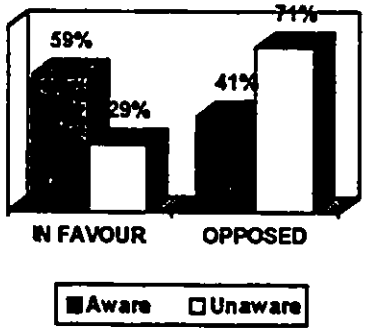


	In Favour	Opposed
Low Information	33 (49%)	35 (51%)
High Information	34 (56%)	27 (44%)

PRIOR KNOWLEDGE & OPINION - LOW & HIGH INFORMATION CONDITIONS

When the low and high information conditions are combined, aware subjects were more supportive (59%) toward the provision and unaware subjects were more opposed (71%). An increased level of knowledge is significantly associated with more favourable opinions; people who know more about s.745 are more likely to support the provision, $\chi^2(1) = 8.6$, $p < .05$ (see table 12). This was not the effect found in experiment 1. In fact, the results indicated the reverse: aware subjects were more likely to be opposed (60%) and unaware subjects were more likely to be in favour of s.745 (55%). Thus, the nature of information again appears to have a favourable influence on subjects opinions.

TABLE 12
Relationship Between Prior Knowledge & Opinion:
Low & High Information Conditions

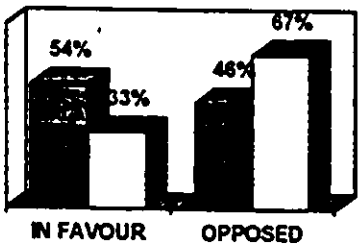


	In Favour	Opposed
Aware	58 (59%)	40 (41%)
Unaware	9 (29%)	22 (71%)

PRIOR KNOWLEDGE & OPINION - LOW INFORMATION CONDITION

When prior knowledge and opinion was examined in the low information condition, the reverse of experiment 1 was again found. In experiment 1, 76% of aware subjects were opposed to s.745 and 50% of unaware subjects were in favour of s.745. Conversely, in experiment 2, 54% of aware subjects were in favour and 67% of unaware subjects were opposed to s.745. Although these results were not statistically significant, it would appear that the nature of information has a role in favourably influencing subjects opinions, $\chi^2(1) = 2.3$, $p > .05$ (see table 13).

TABLE 13
Relationship Between Prior Knowledge & Opinion:
Low Information Condition

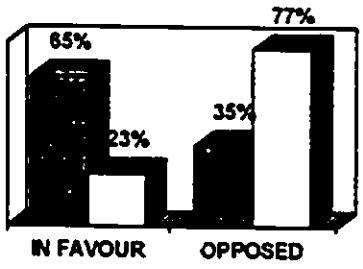


	In Favour	Opposed
Aware	27 (54%)	23 (46%)
Unaware	6 (33%)	12 (67%)

PRIOR KNOWLEDGE & OPINION - HIGH INFORMATION CONDITION

Similar to the findings from the low information condition, aware subjects in the high information condition were more likely to be in favour of s.745 (65%) and unaware subjects were more likely to be opposed to s.745 (77%). The relationship between prior knowledge and opinion was found to be statistically significant, $\chi^2(1) = 7.2$, $p < .05$ (see table 14). Interestingly, this relationship did not emerge in experiment 1. Instead, it was found in experiment 1 that a higher percentage of subjects were in favour of s.745 regardless of whether or not they were previously aware of the provision.

TABLE 14
Relationship Between Prior Knowledge & Opinion:
High Information Condition

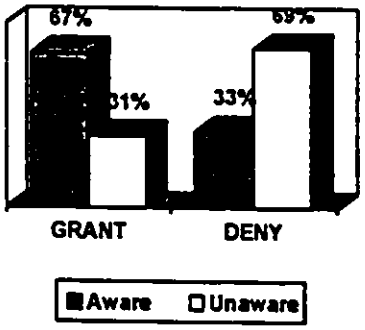


	In Favour	Opposed
Aware	31 (65%)	17 (35%)
Unaware	3 (23%)	10 (77%)

PRIOR KNOWLEDGE & CASE DECISION

Unlike experiment 1 where, overall, subjects were more likely to grant the applicant a reduction whether or not they had prior knowledge of s.745, differences between aware and unaware subjects emerged in experiment 2. Sixty-seven percent of aware subjects would grant the applicant a reduction and 69% of unaware subjects would deny any reduction. Chi-square analysis supports a statistically significant relationship between prior knowledge and case decision, $\chi^2(1) = 5.4$, $p < .05$ (see table 15). Interestingly, unlike experiment 1, the opinions of unaware subjects in the high information group were not affected by the increased levels of information.

TABLE 15
Relationship Between Prior Knowledge & Case Decision: High Information Condition

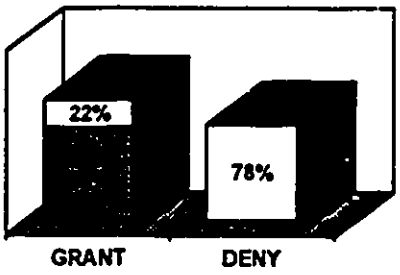


	Grant	Deny
Aware	32 (67%)	16 (33%)
Unaware	4 (31%)	9 (69%)

ATTITUDE TOWARD S.745 & CASE DECISION

As expected, chi-square analysis again substantiates the significance of the relationship between opinion and case decision, $\chi^2(1) = 27.09$, $p < .05$ (see table 16). Eighty-eight percent of subjects in favour of s.745 would also grant the applicant a reduction and 78% of subjects opposed to s.745 would also deny the applicant a reduction.

TABLE 16
Relationship Between Attitude & Case Decision:
High Information Condition



	Grant	Deny
In Favour	30 (88%)	4 (12%)
Opposed	6 (22%)	21 (78%)

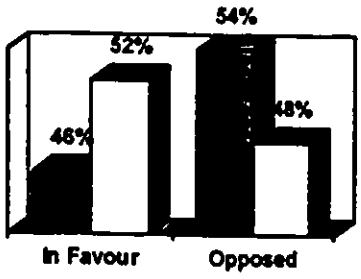
RESULTS: EXPERIMENTS 1 & 2 COMBINED

In order to determine whether the formal exposure to s.745 had an effect on opinions in experiment 2, a comparison between experiments is warranted. Overall, given the hypothesis that increased information contributes to more favourable opinions, it is expected that opinions toward s.745 would be more supportive in experiment 2.

ATTITUDE TOWARD S.745

Slightly more subjects in experiment 2 were in favour of s.745 (52%) compared with experiment 1 (46%), and slightly more subjects were opposed to s.745 in experiment 1 (54%) compared to subjects from experiment 2 (48%). While differences have emerged, there was no statistical significance between subjects attitudes toward s.745 in experiments 1 and 2, $\chi^2(1) = .05$, $p > .05$ (see table 17).

TABLE 17
Attitude Toward S.745:
Experiments 1 & 2

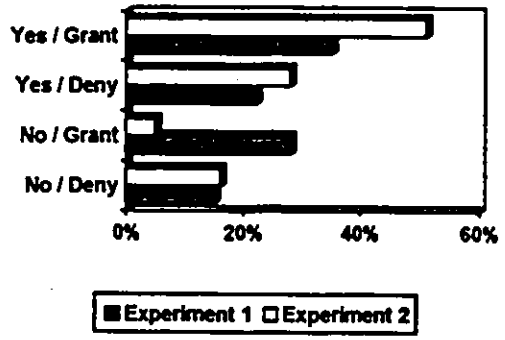


	In Favour	Opposed
Experiment 1 (n = 112)	51 (46%)	61 (54%)
Experiment 2 (n = 129)	67 (52%)	62 (48%)

PRIOR KNOWLEDGE & CASE DECISION

Overall, a higher percentage of subjects indicated they would grant the applicant a reduction in experiments 1 and 2, 63% (38) and 56% (34) respectively, regardless of whether or not they had prior knowledge of s.745. Sixteen percent more of the aware subjects in experiment 2 responded that they would grant a reduction and 6% more would deny the reduction than respondents in experiment 1. Subjects without prior knowledge were equally likely to deny the applicant a reduction in experiments 1 and 2, 15% and 16% respectively. Chi-square analysis found that the relationship between prior knowledge and case decision is statistically significant, $\chi^2(3) = 8.33$, $p < .05$ (see table 18).

TABLE 18
Relationship Between Prior Knowledge & Case Decision: Experiments 1 & 2

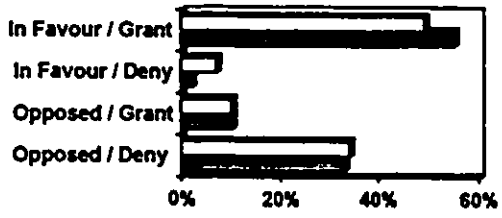


	Yes / Grant	Yes / Deny	No / Grant	No / Deny
Experiment 1	21 (35%)	13 (22%)	17 (28%)	9 (15%)
Experiment 2	31 (51%)	17 (28%)	3 (5%)	10 (16%)

ATTITUDE TOWARD S.745 & CASE DECISION

Although a slightly higher percentage of respondents from experiment 1 were in favour of s.745 and chose to grant the applicant a reduction in his parole ineligibility (55% compared to 49% of subjects from experiment 2), no statistically significant relationship was found, $\chi^2(3) = 1.9$, $p > .05$ (see table 19).

TABLE 19
Relationship Between Attitude & Case Decision:
Experiments 1 & 2



	In Favour / Grant	In Favour / Deny	Opposed / Grant	Opposed / Deny
Experiment 1	32 (55%)	1 (2%)	6 (10%)	19 (33%)
Experiment 2	30 (49%)	4 (7%)	6 (10%)	21 (34%)

Chapter 6

EXPERIMENT 3: REPLICATION

CHAPTER OVERVIEW

This chapter will outline the experimental design and discuss the findings of experiment 3. An essential feature of empirical research is the concept of replication. Without replication, it is impossible to rule out the possibility - although it may be remote - that the statistically significant effect was caused by chance variation. A second purpose behind replication is the extension of experimental effects. Both purposes were addressed in experiment 3. First, the research was designed in the attempt to replicate the effect obtained in experiment 1 - namely, that the provision of additional information will make subjects favourable to the concept of judicial review. Second, on this occasion the case scenario was now provided to both groups of subjects: those that responded to a questionnaire with minimal information and those who responded to the same questionnaire having received substantial information about the subject.

DESIGN

The purpose of this experiment was to determine whether manipulating the level of information about s.745 given to subjects on a questionnaire would influence their decision in the case scenario. Two questionnaires were devised. Questionnaire 'C' provided subjects with minimal information about s.745 prior

to asking for their decision on the case study. Questionnaire "D", on the other hand, provided subjects with extensive information about s.745 prior to asking for their decision on the case study. The research was designed to test the hypothesis that opinions from subjects responding to Questionnaire "D"would be more supportive than opinions from subjects in the other experimental condition.

The independent variable was the version of the questionnaire - low or high information. The dependent variable was the case decision - grant or deny.

EXPERIMENT 3

METHOD

Subjects: Subjects were 60 people employed in the work force. Just over half of the subjects were located in their place of business and the remainder were approached during the lunch hour outside a downtown Ottawa office building. Subjects were asked if they would like to participate in a public opinion questionnaire. Afterwards, subjects were informed that the experiment involved two questionnaires and the purpose was to determine whether responses would be different depending on the level of information given in each questionnaire.

Materials: Subjects were assigned at random to respond to one of two self-administered questionnaires. Each questionnaire asked respondents to read the identical case study and make a decision about the application for judicial review. The variable that was manipulated was the level of information

about s.745 provided on the questionnaire. Accordingly, questionnaire "C" was a low-information survey (see Appendix III) and questionnaire "D" was a high-information survey (see Appendix IV).

Independent Variable: The independent variable was the questionnaire version to which subjects were assigned - high or low information. Subjects were randomly assigned to the first variable; accordingly, it was a "true" independent variable.

Dependent Variable: The dependent variable was the case decision - grant or deny.

Method: Subjects were asked to read the following information about s.745 in the low information condition.

> *Currently, prisoners serving life sentences for first degree murder must serve 25 years in prison before being eligible for parole. However, Section 745 in the Criminal Code gives these prisoners the right to apply for early parole after 15 years. This means a jury will review the case to see if the prisoner may apply for parole before the 25 year period has elapsed.*

Subjects were asked to read the following information about s.745 in the high information condition.

> *Murder in Canada is either first degree murder or second degree murder. Murder is first degree when it is planned and deliberate, was committed in the commission of another crime, or when the victim was a person working to protect the state (i.e. a police officer or prison guard); otherwise murder is second degree. All people convicted of first and second degree murder receive a mandatory sentence of life imprisonment. This means that the person will be under the control and supervision of the state for the rest of their life.*
>
> *However, once the offender has spent a certain period of time in prison, they become eligible to apply for parole. People convicted of first degree murder must spend 25 years in prison before they are eligible to apply for*

parole. People convicted of second degree murder must spend a minimum of 10 years in prison up to a maximum of 25 years before they are eligible to apply for parole. The actual amount of time a person convicted of second degree murder must spend in prison is up to the Judge and will be decided at the time of sentencing.

The government recognized that 25 years was a long time to spend in the penitentiary and legislated a provision in the Criminal Code to give prisoners a means whereby they might be able to reduce their original parole ineligibility periods. Section 745 of the Criminal Code gives prisoners the right to apply for a hearing in front of a jury to have the merits of their case reviewed after spending at least 15 years in prison. The jury does not have the power to grant early release to the prisoner, but they can reach a decision that would allow the prisoner to make an application to the National Parole Board before the 25 year mark has been reached. For example, a jury may decide that the prisoner be allowed to apply for parole after 20 years, instead of having to wait until the full 25 years have elapsed.

In considering the prisoner's application, the jury is presented with information about the case. This includes such details as the nature of the offence, the character of the offender, his or her conduct while incarcerated, and anything else the judge may deem relevant (i.e. victim impact statements). After hearing the prisoner's case, the jury has three options from which to choose: grant the applicant immediate eligibility for parole, reduce the number of years the applicant must serve before being eligible for parole, or deny the applicant any reduction.

As of March 31, 1996, 193 life sentence prisoners have become eligible to apply for a judicial review of their parole ineligibility. To date, 65 applications have been heard by juries across the country. Juries have reduced parole eligibility in 51 cases and have denied any form of reduction in 14 cases. The parole board has since granted conditional release to 26 of the prisoners who received a reduction at their hearing.

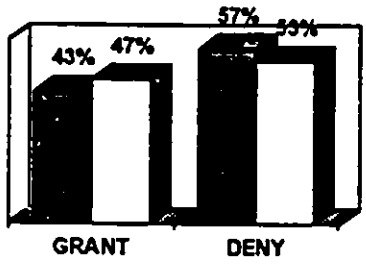
Respondents were then asked to make a decision whether to grant or deny a reduction in parole eligibility. Thirty subjects responded to the low information questionnaire and 30 subjects answered the high information questionnaire.

RESULTS

LEVEL OF INFORMATION & CASE DECISION

When the relationship between level of information and case decision was examined, no statistically significant result was found between respondents who answered either the low or high information questionnaires, $\chi^2(1) = .07$, $p > .05$ (see table 20). Accordingly, giving subjects more information about s.745 did not influence the likelihood that subjects would respond more favourably than subjects who were given minimal information.

TABLE 20
Relationship Between Level of Information & Case Decision: Experiment 3



	Grant	Deny
Low Information	13 (43%)	17 (57%)
High Information	14 (47%)	16 (53%)

Chapter 7

EXPERIMENT 4

CHAPTER OVERVIEW

This chapter will outline the experimental design and discuss the findings of experiment 4. Experiment 4 was undertaken in response to the finding in experiment 3 that giving subjects an increased level information about s.745 had no favourable effect on opinion. Thus, experiment 4 was designed to test whether there would be a favourable effect on opinion if the level of information given about the case study was manipulated.

The results of experiments 2 and 3 suggest that providing information about s.745 itself does not have a dramatic impact on attitudes toward the provision. Accordingly, in the following experiment an alternative was explored. Specifically, it was hypothesized that an increased amount of information about the specific case study would result in a more favourable reaction to a s.745 application.

DESIGN

The purpose of experiment 4 was to test whether manipulating the level of information given about the case would affect respondents' tendency to grant or deny a reduction in the case study. Two questionnaires were devised. Each questionnaire was equal in the amount of information provided about s.745. Questionnaire 'E' gave subjects minimal information about the case prior to

asking for their decision on the s.745 application. Questionnaire "F", on the other hand, gave subjects extensive information about the case prior to asking for their decision on the s.745 application. The research was designed to test the hypothesis that opinions from subjects responding to Questionnaire "F" would be more supportive than opinions from subjects in the other experimental condition.

The independent variable was the version of the questionnaire - low or high information (about the application). The dependent variable was the case decision - grant or deny.

EXPERIMENT 4

METHOD

Subjects: Subjects were 70 people sitting outside in downtown Ottawa on a summer weekday at noon. The majority of respondents were office workers. Subjects were approached and asked if they would like to participate in a public opinion questionnaire. Afterwards, subjects were informed the experiment involved two questionnaires and the purpose was to determine whether responses would be different depending on the level of information given about the case in each questionnaire.

Materials: Subjects were assigned at random to respond to one of two self-administered questionnaires. Each questionnaire had an identical amount of information about s.745 and either a great deal or a minimum amount of

information about the application. After reading this information subjects were asked to state whether they would grant or deny a reduction in parole ineligibility at the s.745 hearing. The variable that was manipulated was the level of information provided on the questionnaire. Accordingly, questionnaire "E" was a low-information survey (see Appendix V) and questionnaire "F" was a high-information survey (see Appendix VI).

Independent Variable: The independent variable was the questionnaire version to which subjects were assigned - high or low information. Subjects were randomly assigned to the first variable; accordingly, it was a "true" independent variable.

Dependent Variable: The dependent variable was the case decision - grant or deny.

Method: Subjects were asked to read the following information about the case in the low information condition.

> *The applicant is Richard Smith, convicted in 1980 for the second degree murder of George Black, his estranged wife's new boyfriend. Mr. Smith was sentenced to life-imprisonment with parole eligibility after 20 years. Mr. Smith was 19 years old at the time of the offence and had never been convicted of a crime before.*
>
> *In the fall of 1995 Richard Smith applied for a s.745 hearing. The jury heard that Mr. Smith had spent his time while in prison upgrading his education to a high school level and was currently working on an auto-mechanic's license. Mr. Smith's psychological report showed that his attitudes and behaviour's had improved since taking anger management and substance abuse programs. Correctional Service Canada staff supported Richard's application. Richard Smith is now 34 years old.*

Subjects were asked to read the following information about the case in the high information condition.

> *The applicant is Richard Smith, convicted in 1980 for the second degree murder of George Black, his estranged wife's new boyfriend. Mr. Smith was sentenced to life-imprisonment with parole eligibility after 20 years. Mr. Smith was 19 years old at the time of the offence and had never been convicted of a crime before.*
>
> *Richard Smith had been married to Treena Deloit for a period of eight months when she decided to end the relationship; Ms. Deloit was three months pregnant with Mr. Smith's child at this time. Ms. Deloit demanded that Mr. Smith move out of the apartment they shared and get on with his life. Almost immediately afterward Ms. Deloit began dating George Black.*
>
> *Mr. Smith and Ms. Deloit had been separated five months prior to the date of the offence. During this time Mr. Smith had become heavily involved in drugs and had desperately wanted to reconcile with his wife, especially since his child was to be born in one month.*
>
> *On the third day of January 1980, Mr. Smith went to Ms. Deloit's home to once again ask for a reconciliation. When he arrived at the apartment, Mr. Black answered the door. An argument between Mr. Black and Mr. Smith ensued at which time Mr. Smith ran into the kitchen, grabbed a knife from the counter and stabbed Mr. Black in the heart. Mr. Smith was under the influence of drugs at the time of the stabbing.*
>
> *In the fall of 1995, after having served 15 years, Mr. Smith applied for a s.745 hearing. The jury heard that Mr. Smith had spent his time in prison upgrading his education to a high school level and was currently working on an auto-mechanic's license. Mr. Smith's psychological report showed that his attitudes and behaviour's had improved since taking anger management and substance abuse programs. Correctional Service Canada staff supported Richard's application. Richard Smith is now 34 years old.*

Respondents were asked, "If you had been a juror on Richard Smith's judicial review hearing, what would your decision have been?" Subjects were given two options: (1) "Allow Richard to apply for parole at some point before 20 years have elapsed," or (2) "Deny Richard's request to apply for parole before 20

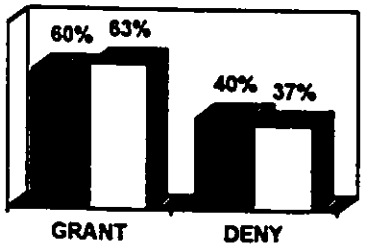
years have elapsed." Forty subjects responded to the low information questionnaire and 30 subjects answered the high information questionnaire.

RESULTS

LEVEL OF INFORMATION & CASE DECISION

When the relationship between level of information and case decision was examined, no statistically significant result was found between respondents who answered the low or high information questionnaires, $\chi^2 (1) = .08$, $p > .05$ (see table 21). Accordingly, giving subjects more information about the case did not influence the likelihood that subjects would respond more favourably to the s.745 review than subjects who were given minimal information.

TABLE 21
Relationship Between Level of Information & Case Decision: Experiment 4



	Grant	Deny
Low Information	24 (60%)	16 (40%)
High Information	19 (63%)	11 (37%)

Chapter 8

CONCLUSION

CHAPTER OVERVIEW

This chapter will present a summary of research findings, discuss these findings in relation to the results of previous research and the implication of these results for public attitudes toward s.745. Some suggestions for future research in this area will also be advanced.

SUMMARY OF FINDINGS

In total, four experiments were conducted to test the principal hypothesis that when subjects are given adequate amounts of information about the subject of judicial review they tend to be more favourable in their opinions. Overall, the results of experiment 1 were found to support this hypothesis while the results of experiments 2, 3 and 4 did not show such an effect (see table 22).

Experiments 1 and 2 sampled university students in two subject conditions (naive or informed) depending on previous formal exposure to s.745 via an in-class discussion on the topic. A low and high level information questionnaire was randomly distributed to both subject groups with each respondent answering just one questionnaire. The purpose of these experiments was to determine whether opinions toward s.745 would be more favourable from subjects who responded to the high information questionnaire. However, since only those subjects who responded to the high information

questionnaire condition were asked to decide about a specific s.745 application, experiment 3 was undertaken to test whether the information effect could be replicated when another group of subjects were asked to decide on a case study.

A low and high information questionnaire was again designed with the level of information given about s.745 being the variable that was manipulated. Subjects were approached in their place of employment and outside a downtown office building during the lunch hour and asked to make a decision about an application for judicial review. The results of experiment 3 showed that the information effect did not emerge when the amount of information given about s.745 was varied. Thus, a fourth experiment was undertaken.

The final trial of the information effect was designed to test whether manipulating the level of information given to subjects about the case could replicate the information effect. Experiment 4 also consisted of a two condition questionnaire, low and high information, with one significant change. Unlike the first degree murder case used in the previous three experiments, the case study in experiment 4 concerned an applicant convicted of second degree murder. Subjects were randomly approached outside office buildings in downtown Ottawa around noon on a summer weekday. While the information effect again failed to emerge, experiment 4 revealed that respondents were more willing to grant a reduction to the offender convicted of second degree murder, irrespective of the questionnaire answered.

TABLE 22
Summary of Research Findings

EXPERIMENT	RESULTS
1 Naive Subjects	• A large number of subjects were previously aware of s.745. • Subjects given minimal information were more likely to oppose & subjects given substantial information were more likely to be in favour of s.745. • Subjects **with** prior knowledge were more likely to be **opposed** & subjects **without** prior knowledge were more likely to be **in favour** of s.745. • Overall, more subjects grant a reduction regardless of whether or not they are previously aware of s.745. • Subjects in favour of s.745 grant and those opposed deny a reduction.
2 Informed Subjects	• The majority of subjects were previously aware of s.745. • Subjects given minimal information were more likely to oppose & subjects given substantial information were more likely to be in favour of s.745. • Subjects **with** prior knowledge were more likely to be **in favour** & subjects **without** prior knowledge were more likely to be **opposed** to s.745. • Subjects with prior knowledge are more likely to grant and subjects without prior knowledge are more likely to deny a reduction. • Subjects in favour of s.745 grant and those opposed deny a reduction.
3	• Giving subjects more information about s.745 did not influence their decision to grant or deny a reduction in the judicial review application.
4	• Giving subjects more information about the case did not influence their decision to grant or deny a reduction in the judicial review application.

Relation of Findings To Previous Research

The present research was modeled on the studies of Doob and Roberts (1984) (among others) that manipulated levels of information to examine whether this would have an effect upon public reactions. As previously mentioned, Doob and Roberts (1984) found that when subjects were given higher levels of information about a case they were more likely to respond favourably to the sentence imposed by the judge. Furthermore, since the case study method is considered a more reliable approach to researching opinion, the present research employed case studies. For instance, the research on capital punishment already mentioned showed that, although opinion polls suggest the public are largely in favour of capital punishment, when subjects are given an actual case to consider they are less willing to sentence an offender to death (Himelfarb, 1990).

The interpretation of public opinion is complicated. It is possible that the public may not be as punitive in their opinions as politicians believe the case to be. As noted in chapter 2, s.745 has been predominantly presented to the public in a negative manner. As such, it was hypothesized that subjects who had previously heard of s.745 would most likely hold negative opinions toward the provision. This was in fact the case in experiment 1. Specifically, aware subjects from experiment 1 (naive subject condition) were found to hold more negative views toward s.745 whereas aware subjects from experiment 2 (informed subject condition) were found to hold more positive views. Prior

exposure to s.745 via the in-class lecture may have provided subjects in experiment 2 with an informed context from which to make a reasoned opinion.

The present research also found the case scenario effect to hold true only in experiment 1. Regardless of whether or not subjects were previously aware of s.745, more respondents were willing to grant a reduction in the case study question. Specifically, although public opinion was negative toward s.745, when subjects were given an actual case to consider respondents were more willing to give the applicant the chance to apply for parole at an earlier point.

As mentioned, experiments 3 and 4 were undertaken in an attempt to replicate the information and scenario effect found in previous research. Interestingly, neither experiment found either effect to hold true. Specifically, subjects were no more willing to grant a reduction in parole eligibility when provided with increased information about s.745 or the case.

The results of experiment 4 may shed some light as to why this occurred. Specifically, subjects were more willing to grant a reduction to the offender convicted of second degree murder regardless of the level of information they received about the case. Thus, it would appear that respondents differentiate between convictions for first and second degree murder when they make decisions about applicants who deserve reductions in parole ineligibility. This would suggest that circumstances surrounding the murder (i.e. victim) are important factors that the public take into consideration. Further, public

acceptance and / or opposition to s.745 will likely depend on the particular case in question.

Future Research Directions

A number of possibilities for future research emerge from the failure of the present research to replicate an effect in each experiment. To begin with, it is possible that the information manipulation conditions were not strong enough. For instance, in the Doob and Roberts (1984) study, subjects were given summaries of court documents that took 15-20 minutes to read. This amount of time was not possible with the subject population used in the present research. A potential study for future research that would require substantially more time could replicate the idea of the Doob and Roberts (1984) study and compare responses between a group of subjects that received summaries of court documents from a s.745 hearing and a group that received newspaper accounts of the same hearing.

Secondly, the statistical power may have been insufficient to detect an effect given the relatively small number of subjects sampled. Although a larger subject population was not feasible in these experiments, it is possible that using more subjects might produce an effect. A suggestion for future research would be to change the locale to a place (i.e. the Ontario Science Centre) where larger numbers of subjects would be more prepared to spend greater amounts of time answering questionnaires.

Thirdly, given that an effect was observed in the best case scenario (i.e. second degree murder) the relationship between favourable opinions and murder charge should be explored in greater extent. Specifically, in experiment 4, the only experiment conducted on a second degree murder case, more subjects were willing to grant the applicant a reduction. This finding should attempt to be replicated.

Lastly, given that a statistically significant relationship between information level and case decision did not emerge in experiments 3 and 4, future research should be undertaken to find out whether apparent public opposition toward s.745 is based on misperceptions about the provision or ideological opposition toward releasing lifers before their parole ineligibility periods have been served.

POLICY IMPLICATIONS

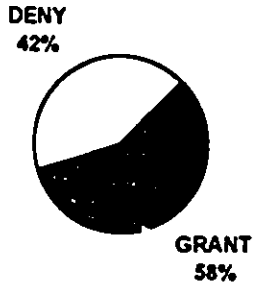
The findings of the present research indicate a number of policy implications for government. It has become clear that the government must undertake future research in the area of public opinion and s.745 so that a more representative sampling of knowledge and attitude will be documented. For instance, jury decisions at judicial review hearings indicate dramatic regional differentiations and the characteristics of the regions would be interesting to compare. A nationwide survey would thus be of interest. As well, since both the quantity and quality of information have been shown in both present and

previous research, it is apparent that the government has a large role to play in information collection and dissemination.

THE FUTURE OF SECTION 745

The findings of this research help to resolve the paradox raised at the beginning of this work. Chapter 2 noted that the public appear implacably opposed to granting parole for prisoners serving life sentences for murder. Evidence for this comes from the Gallup survey conducted on behalf of the Canadian Sentencing Commission in 1988. On the other hand, 78% of the s.745 applications to date have resulted in a positive outcome (i.e. reduced parole ineligibility) for the applicants (National Parole Board, 1996). And, overall, 58% of the respondents in the present research made favourable "decisions" about the s.745 applications (see table 23).

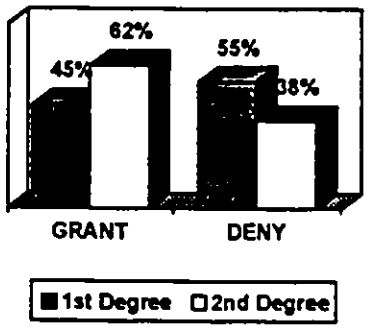
TABLE 23
Section 745 Outcome



	Grant	Deny
Case Decision (n = 249)	144 (58%)	105 (42%)

This finding suggests that other factors (i.e. type of murder conviction) are taken into consideration when judgments about actual cases are made. For instance, of the first forty judicial review hearings, 62% of the applicants convicted of second degree murder were granted immediate eligibility compared with 41% of first degree murder applicants (Gaucher, 1994). Likewise, 62% of the respondents in the second degree murder experiment said they would reduce parole eligibility compared with 45% of the respondents in the first degree murder experiment, $\chi^2(1) = 3.5$, $p > .05$ (see table 24).

TABLE 24
Relationship Between Murder Conviction & Section 745 Decision:



	Grant	Deny
1st Degree Murder (n = 60)	27 (45%)	33 (55%)
2nd Degree Murder (n = 70)	43 (62%)	27 (38%)

The results of the present research suggest that s.745 should not be abolished and, further, that using Gallup polls to solicit opinion on s.745 may distort the true nature of public opinion toward the issue. Specifically, after looking at the findings from actual decisions made by juries in chapter 1 and the decisions of simulated juries in the present four experiments, it is very difficult to

conclude that the general public oppose s.745. In fact, the public appear to be accepting of s.745 in some cases, a finding that parallels with the results of hearings to date. Nonetheless, if s.745 was to be reformed solely on the basis of the opinion found in this research, the provision would (except in exceptional cases) exclude offenders convicted of first degree murder and be available primarily for offenders convicted of second degree murder.

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APPENDIX I

Questionnaire

We would just like to ask your opinion about a criminal justice issue in the news recently. Specifically, we are interested in your attitudes towards parole for people convicted of first degree murder.

For a conviction of first degree murder, the offence must be proven to have been planned and deliberate, or the victim must have been either a police officer or prison guard. The mandatory penalty for first degree murder is life imprisonment.

1. In your opinion, is this penalty:

   1 _____ too lenient 2 _____ about right 3 _____ too severe

2. Are you in favour of, or opposed to, parole for people convicted of murder?

   1 _____ in favour 2 _____ opposed

For a conviction of first degree murder, the parole ineligibility period is automatically set at 25 years. This means that the prisoner must serve 25 years in prison before being able to apply for parole.

3. In your opinion, is this period:

   1 _____ too lenient 2 _____ about right 3 _____ too severe

Currently, prisoners serving life sentences for first degree murder must serve 25 years in prison before being eligible for parole. However, section 745 in the Criminal Code gives these prisoners the right to apply for early parole after 15 years. This means a jury will review the case to see if the prisoner may apply for parole before the 25 year period has elapsed.

4. Prior to today, had you ever heard of the section 745 provision?

   1 _____ yes 2 _____ no

5. In general, are you in favour of or opposed to a provision of this nature?

1 _____ YES I am in favour of giving prisoners convicted of murder the opportunity to apply for a review of their parole eligibility.

2 _____ NO, I am opposed to giving prisoners convicted of murder the opportunity to apply for a review of their parole eligibility.

APPENDIX II

Questionnaire

In this brief survey we are going to ask you to make a decision about an application under Section 745 of the Criminal Code, but first we will explain exactly what this provision is all about.

People convicted of first degree murder receive a mandatory sentence of life imprisonment. This means that they must spend 25 years in prison before being considered for release on full parole. However, according to Section 745 of the Criminal Code, such prisoners may apply to have their cases reviewed by a jury after spending 15 years in prison. The jury does not have the power to grant early release to the prisoner, but the jury can allow the individual to make an application to the parole board before the 25 year mark has been reached. For example, the jury might decide that the prisoner can apply for parole after serving 20 years.

In making their decision to grant or deny an application for early parole consideration, juries are presented with information about the case. This would include such details as the nature of the offence, the character of the offender, his or her conduct while incarcerated, and anything else the judge may deem relevant.

Some recent judicial review statistics indicate that as of July 1995, 173 prisoners have been eligible to apply for a judicial review hearing. Of the 60 hearings held to date, 46 prisoners have received reductions anywhere from one year to immediate eligibility, and fourteen applications were denied. Of the 46 prisoners who obtained a reduction, 21 have been granted some form of parole.

Questions

1. Prior to today, had you ever heard of the section 745 provision?

   1 _____ yes 2 _____ no

2. In general, are you in favour of or opposed to a provision of this nature?

   1 _____ YES I am in favour of giving prisoners convicted of murder the opportunity to apply for a review

   2 _____ NO, I am opposed to giving prisoners convicted of murder the opportunity to apply for a review

Case

We would like to now ask you to consider the following case.

The applicant is Mark Gregory, convicted in 1978 of first degree murder. In the spring of 1994, after having served 15 years, Mr. Gregory applied for a s.745 hearing. Mr. Gregory's case file detailed how he had spent his time while in prison and included such things as: improvements made through work, counseling and education, and projects he had developed to help youth in the community. At the hearing, Mr. Gregory called a number of witnesses from the community, including his wife, to support his assertion that he had developed close ties with the community and would reintegrate well. Correctional Service Canada staff testified that while Mark's institutional record was not flawless, he had consistently shown improvements in his attitudes and behaviours. Mr. Gregory was 26 years old when he was convicted of murder and had never been convicted of a crime before.

1. If you had been a juror on Mark Gregory's judicial review hearing, what would your decision have been?

   1 _____ allow him to apply for parole at some point before 25 years have elapsed.

   2 _____ deny his request to apply for parole before 25 years have elapsed.

APPENDIX III

Questionnaire

In this brief survey we are going to ask you to make a decision about an application under Section 745 of the Criminal Code, but first we will briefly mention what s.745 permits.

Currently, prisoners serving life sentences for first degree murder must serve 25 years in prison before being eligible for parole. However, Section 745 in the Criminal Code gives these prisoners the right to apply for early parole after 15 years. This means a jury will review the case to see if the prisoner may apply for parole before the 25 year period has elapsed.

Case

We would like to now ask you to consider the following case.

The applicant is Mark Gregory, convicted in 1978 of first degree murder. In the spring of 1994, after having served 15 years, Mr. Gregory applied for a s.745 hearing. Mr. Gregory's case file detailed how he had spent his time while in prison and included such things as: improvements made through work, counseling and education, and projects he had developed to help youth in the community. At the hearing, Mr. Gregory called a number of witnesses from the community, including his wife, to support his assertion that he had developed close ties with the community and would reintegrate well. Correctional Service Canada staff testified that while Mark's institutional record was not flawless, he had consistently shown improvements in his attitudes and behaviours. Mr. Gregory was 26 years old when he was convicted of murder and had never been convicted of a crime before.

1. If you had been a juror on Mark Gregory's judicial review hearing, what would your decision have been?

   1 _____ allow him to apply for parole at some point before 25 years have elapsed.

   2 _____ deny his request to apply for parole before 25 years have elapsed.

APPENDIX IV

Questionnaire

In this brief survey we are going to ask you to make a decision about an application under Section 745 of the Criminal Code, but first we will explain exactly what this provision is all about.

Murder in Canada is either first degree murder or second degree murder. Murder is first degree when it is planned and deliberate, was committed in the commission of another crime, or when the victim was a person working to protect the state (i.e. a police officer or prison guard); otherwise murder is second degree. All people convicted of first and second degree murder receive a mandatory sentence of life imprisonment. This means that the person will be under the control and supervision of the state for the rest of their life.

However, once the offender has spent a certain period of time in prison, they become eligible to apply for parole. People convicted of first degree murder must spend 25 years in prison before they are eligible to apply for parole. People convicted of second degree murder must spend a minimum of 10 years in prison up to a maximum of 25 years before they are eligible to apply for parole. The actual amount of time a person convicted of second degree murder must spend in prison is up to the Judge and will be decided at the time of sentencing.

The government recognized that 25 years was a long time to spend in the penitentiary and legislated a provision in the Criminal Code to give prisoners a means whereby they might be able to reduce their original parole ineligibility periods. Section 745 of the Criminal Code gives prisoners the right to apply for a hearing in front of a jury to have the merits of their case reviewed after spending at least 15 years in prison. The jury does not have the power to grant early release to the prisoner, but they can reach a decision that would allow the prisoner to make an application to the National Parole Board before the 25 year mark has been reached. For example, a jury may decide that the prisoner be allowed to apply for parole after 20 years, instead of having to wait until the full 25 years have elapsed.

In considering the prisoner's application, the jury is presented with information about the case. This includes such details as the nature of the offence, the character of the offender, his or her conduct while incarcerated, and anything else the judge may deem relevant (i.e. victim impact statements). After hearing the prisoner's case, the jury has three options from which to choose: grant the applicant immediate eligibility for parole, reduce the number of years the applicant must serve before being eligible for parole, or deny the applicant any reduction.

As of March 31, 1996, 193 life sentence prisoners have become eligible to apply for a judicial review of their parole ineligibility. To date, 65 applications have been heard by juries across the country. Juries have reduced parole eligibility in 51 cases and have denied any form of reduction in 14 cases. The parole board has since granted conditional release to 26 of the prisoners who received a reduction at their hearing.

Case

We would like to now ask you to consider the following case.

The applicant is Mark Gregory, convicted in 1978 of first degree murder. In the spring of 1994, after having served 15 years, Mr. Gregory applied for a s.745 hearing. Mr. Gregory's case file detailed how he had spent his time while in prison and included such things as: improvements made through work, counseling and education, and projects he had developed to help youth in the community. At the hearing, Mr. Gregory called a number of witnesses from the community, including his wife, to support his assertion that he had developed close ties with the community and would reintegrate well. Correctional Service Canada staff testified that while Mark's institutional record was not flawless, he had consistently shown improvements in his attitudes and behaviours. Mr. Gregory was 26 years old when he was convicted of murder and had never been convicted of a crime before.

1. If you had been a juror on Mark Gregory's judicial review hearing, what would your decision have been?

   1 _____ allow him to apply for parole at some point before 25 years have elapsed.

   2 _____ deny his request to apply for parole before 25 years have elapsed.

APPENDIX V

Questionnaire

In this short survey we are going to ask you to make a decision about an application under Section 745 of the Criminal Code, but first we will briefly explain what s.745 permits.

Section 745 in the Criminal Code gives people convicted of murder and sentenced to life imprisonment the right to apply for early parole after 15 years have been served in prison. This means that if a judge had sentenced the person to 22 years without parole, the offender has the right to have his or her case heard in front of a jury of people from the community where he or she was convicted after 15 years. The jury is requested to consider the following factors: the nature of the applicant's offence, his or her character and conduct while incarcerated, and anything else the judge may deem relevant. After hearing the applicant's case, the jury may either grant the prisoner immediate eligibility for parole, reduce the number of years left to be served before being eligible for parole, or deny a reduction in parole eligibility.

Case

We would like to now ask you to consider the following case.

The applicant is Richard Smith, convicted in 1980 for the second degree murder of George Black, his estranged wife's new boyfriend. Mr. Smith was sentenced to life-imprisonment with parole eligibility after 20 years. Mr. Smith was 19 years old at the time of the offence and had never been convicted of a crime before.

In the fall of 1995 Richard Smith applied for a s.745 hearing. The jury heard that Mr. Smith had spent his time while in prison upgrading his education to a high school level and was currently working on an auto-mechanic's license. Mr. Smith's psychological report showed that his attitudes and behaviour's had improved since taking anger management and substance abuse programs. Correctional Service Canada staff supported Richard's application. Richard Smith is now 34 years old.

1. If you had been a juror on Richard Smith's judicial review hearing, what would your decision have been?

   1 _____ Allow Richard to apply for parole before 20 years have elapsed.

   2 _____ Deny Richard's request to apply for parole before 20 years have elapsed.

APPENDIX VI

Questionnaire

In this short survey we are going to ask you to make a decision about an application under Section 745 of the Criminal Code, but first we will briefly explain what s.745 permits.

Section 745 in the Criminal Code gives people convicted of murder and sentenced to life imprisonment the right to apply for early parole after 15 years have been served in prison. This means that if a judge had sentenced the person to 22 years without parole, the offender has the right to have his or her case heard in front of a jury of people from the community where he or she was convicted after 15 years. The jury is requested to consider the following factors: the nature of the applicant's offence, his or her character and conduct while incarcerated, and anything else the judge may deem relevant. After hearing the applicant's case, the jury may either grant the prisoner immediate eligibility for parole, reduce the number of years left to be served before being eligible for parole, or deny a reduction in parole eligibility.

Case

We would like to now ask you to consider the following case.

The applicant is Richard Smith, convicted in 1980 for the second degree murder of George Black, his estranged wife's new boyfriend. Mr. Smith was sentenced to life-imprisonment with parole eligibility after 20 years. Mr. Smith was 19 years old at the time of the offence and had never been convicted of a crime before.

Richard Smith had been married to Treena Deloit for a period of eight months when she decided to end the relationship; Ms. Deloit was three months pregnant with Mr. Smith's child at this time. Ms. Deloit demanded that Mr. Smith move out of the apartment they shared and get on with his life. Almost immediately afterward Ms. Deloit began dating George Black.

Mr. Smith and Ms. Deloit had been separated five months prior to the date of the offence. During this time Mr. Smith had become heavily involved in drugs and had desperately wanted to reconcile with his wife, especially since his child was to be born in one month.

On the third day of January 1980, Mr. Smith went to Ms. Deloit's home to once again ask for a reconciliation. When he arrived at the apartment, Mr. Black answered the door. An argument between Mr. Black and Mr. Smith ensued at which time Mr. Smith ran into the kitchen, grabbed a knife from the counter and stabbed Mr. Black in the heart. Mr. Smith was under the influence of drugs at the time of the stabbing.

in the fall of 1995, after having served 15 years, Mr. Smith applied for a s.745 hearing. The jury heard that Mr. Smith had spent his time in prison upgrading his education to a high school level and was currently working on an auto-mechanic's license. Mr. Smith's psychological report showed that his attitudes and behaviour's had improved since taking anger management and substance abuse programs. Correctional Service Canada staff supported Richard's application. Richard Smith is now 34 years old.

1. If you had been a juror on Richard Smith's judicial review hearing, what would your decision have been?

   1 _____ Allow Richard to apply for parole before 20 years have elapsed.

   2 _____ Deny Richard's request to apply for parole before 20 years have elapsed.