THE MEDIA ON TRIAL:
An investigation into the media's portrayal of the law in South Africa and the influence thereof on the legal consciousness of citizens.

by

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Declaration

By submitting this thesis electronically, I declare that the entirety of the work contained therein is my own, original work, that I am the owner of the copyright thereof (unless to the extent explicitly otherwise stated) and that I have not previously in its entirety or in part submitted it for obtaining any qualification.

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ABSTRACT

The relationship between the media and the law is an important one, especially in an adolescent democracy like South Africa. On the one hand the law has the power to control the fundamental right to freedom of expression – the very core of the media's existence. On the other hand, however, the media are vital mechanisms through which the law can ensure that citizens know that justice is being done. The media are therefore also powerful; having the ability to influence people's perceptions of and respect for the law.

The relationship between the media and the law is characterised internationally by frequent tensions and misunderstandings – a trend that has not escaped South Africa. Whereas some of these strains may be explained with reference to both the media and the law's respective duties in a democracy; many problems are also caused as result of misunderstandings and inaccurate expectations of both parties' responsibilities in a democracy. This study was thus launched from the premise that there is room and need for improvement in the relationship between the media and the law.

The way in which citizens perceive the law (or legal consciousness) was investigated; as were the sources of such perceptions. Making use of a questionnaire distributed to a sample of students at two Western Cape universities, it was established that students' opinions of lawyers and judicial officers are generally positive, but that they do not have much confidence in the efficacy of the South African legal system. The feedback also indicates that news and popular media are the most important sources of such opinions of the law – a context-specific finding that echoes similar results obtained internationally.

Popular media as an important source of perceptions give rise to several concerns. Not only do citizens struggle to distinguish between fact and fiction in popular media; but most of the popular (legally-themed) media available in South Africa are furthermore imported from the USA. This tendency, defined in this study as the Hollywoodization of South African law, lead to concerns that citizens may not only be basing their opinions of the law on fiction; but also that such media are premised on a very different (American) legal system from our own.

The importance of news media as a source was investigated more specifically by making use of a case study (the Inge Lotz/ Fred van der Vyver story). The way in which pre-trial publicity and court reporting may lead to the sacrifice of a defendant's right to a fair trial was investigated by looking at the influences of news media coverage on the parties involved; the presiding officers, assessors and witnesses; and the perceptions lay audiences may have of the specific case and (consequently) the law in general.

KEYWORDS:
Media; law; courts; media law; legal consciousness; news media; popular media; media effects theory; pre-trial publicity; court reporting; contempt of court; media and democracy; media and development.

OPSOMMING

Die verhouding tussen die media en die reg is ’n belangrike een, veral in ’n jong demokrasie soos Suid-Afrika. Aan die een kant het die reg die mag om die hart van die media se bestaansreg – die grondwetlike reg op vryheid van spraak – te beheer. Aan die ander kant is die media ook ’n noodsaaklike meganisme wat aan landsburgers oordra wanneer geregtigheid geskied, en wanneer nie. Die media kan dus die doeltreffendheid van die reg in ’n demokrasie ernstig beïnvloed.

Die verhouding tussen die media en die reg word wêreldwyd met misverstande en probleme gekenmerk – ’n tendens waarvan Suid-Afrika nie afgesonder is nie. Hoewel van dié stremminge veroorsaak word deur die partye se onderskeie natuurlike pligte in ’n demokrasie, word sommige probleme ook veroorsaak deur misverstande en onregverdige verwagtinge van wat beide partye se verantwoordelikhede behels. Die studie is gevolglik onderneem met die uitgangspunt dat daar moontlikheid vir verbetering in die verhouding tussen die media en die reg is.

Die wyse waarop burgers die reg beskou of ervaar (waarna in die studie verwys word as *legal consciousness* of regbewussyn) word ondersoek; en só ook die bronne van burgers se regsbewussyn. Deur gebruik te maak van ’n vraelys wat aan ’n groep studente by twee Wes-Kaapse Universiteite uitgedeel is, word daar vasgestel dat studente oor die algemeen baie respek het vir die regslui, maar min vertroue in die Suid-Afrikaanse regstelsel het. Die terugvoering bepaal ook dat nuus- en populêre/ gewilde media die belangrikste bronne van regsbewussyn is. Dié bevinding, wat konteks-spesifiek tot Suid-Afrika is, bevestig soortgelyke gevolgtrekkings wat internasionaal ook aanvaar is.

Die feit dat populêre media ’n belangrike bron van regsbewussyn is, lei tot talle bekommernisse. Behalwe dat daar reeds bevind is dat gebruikers van dié media nie kan onderskei tussen wat feite en wat fiksie is nie, word daar in Suid-Afrika hoofsaaklik Amerikaanse populêre media met regstemas versprei. Die gevaar is dus dat Suid-Afrikaanse burgers dalk besig is om hul indrukke van die reg te baseer op beide fiksie én ’n Amerikaanse voorstelling van die regstelsel (die sg. *Hollywoodization* van die Suid-Afrikaanse reg).

Die studie beskou verder die belangrikheid van die nuusmedia as ’n bron deur ’n gevallestudie van ’n bekende Suid-Afrikaanse moordondersoek en regssaak (die Inge Lotz/ Fred van der Vyver-saak). Die aard van beide voorverhoor-publisiteit en hofverslaggewing en die moontlikheid dat dit skade aan die regverdigheid van ’n verhoor kan verrig, word veral van nader beskou. Spesifieke aandag word ook geskenk aan die moontlike invloede van dié tipe mediadekking op die betrokke partye; die onafhanklikheid van voortsittende beamptes, assessore en getuies; en die indrukke wat by gewone burgers oor ’n spesifieke saak – en dus die reg in geheel – geskep kan word.

TREFWOORDE:
Media; die reg; regsbewussyn; mediareg; nuusmedia; populêre media; media-effekte teorie; voor-verhoor publisiteit; hofverslaggewing; minagting van die hof; media en demokrasie; media en ontwikkeling.

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I would like to thank the people who were willing to offer their time; advice and experience to me in the hope of improving a situation that has already caused many problems and injustices around the world.

I would also like to thank friends and family (both here and far away) for support, advice and inspiration.

I believe in the law; and I believe in the media. My hope is that the two can learn to work together to ensure that more justice is achieved in our country – especially for the many other Inge Lotzes out there.

TABLE OF CONTENTS

LIST OF FIGURES AND TABLES

(Excluding figures and tables found in the appendices)

LIST OF APPENDICES

QUICK ALPHABETICAL REFERENCE GUIDE
(Including parties frequently mentioned in the case study)

Altbeker, Antony	*Acclaimed researcher and author of two books on crime in South Africa; currently writing a book on the Inge Lotz and Fred van der Vyver story.*
Cohen, Dani	*Public relations liaison; the Lotz family's spokesperson.*
Day, Michael	*Journalist; writing a book on the Inge Lotz and Fred van der Vyver story.*
De Bruyn, Dup	*Advocate; part of Van der Vyver's legal team.*
Lotz, Inge	*Murdered on 16 March 2005; at the time the girlfriend of Fred van der Vyver.*
Lotz, Jan	*Inge Lotz's father; a professor in radiology.*
Lotz, Juanita	*Inge Lotz's mother.*
Pienaar, Barry	*Advocate; part of Van der Vyver's legal team and writing a book on the Inge Lotz/ Fred van der Vyver story.*
Shapiro, Robert	*American criminal defence lawyer; famous for being part of OJ Simpson's defence team in* California v Simpson *(1995).*
Teunissen, Carine	*Advocate; state prosecutor in* State v Van der Vyver *(2007).*
Trollip, Attie	*Police director; the inspector responsible for the investigation into Inge Lotz's death.*
Van der Vijver, Christenus	*Advocate; state prosecutor in* State v Van der Vyver *(2007).*
Van der Vyver, Fred	*Inge Lotz's boyfriend at the time of her death; the defendant in* State v Van der Vyver *(2007).*
Van der Vyver, Louis	*Fred van der Vyver's father; referred to as "Van der Vyver senior" in this study.*
Van Heerden, Neil	*A private investigator hired by the Lotz family after their daughter's murder, but dismissed upon Van der Vyver's arrest.*
Van Zyl, Deon	*Cape High Court Judge; presiding judicial officer in* State v Van der Vyver *(2007); referred to as "Judge Van Zyl" in this study.*
Wertheim, Pat	*American forensic fingerprint specialist; testified in* State v Van der Vyver *(2007) and author of a blog on the case (www.clpex.com).*

CHAPTER 1: RESEARCH DESIGN

1.1 Introduction

On 8 June 2005 a letter was sent to the Afrikaans daily newspaper *Die Burger*, complaining of the "journalistic transgressions" allegedly committed in a front page article that appeared in the newspaper on 5 June 2005 (Van der Vyver, 2005).

The particular article, titled "*Hamer van die dood*" (hammer of death), focused on the investigations surrounding the murder of 22-year-old Stellenbosch University student Inge Lotz, which occurred on 16 March 2005. The authors of the article not only insinuated that an ornamental hammer (belonging to a suspect) was the murder weapon, but also clearly stated that it had been given as a Christmas gift by Lotz's parents to said suspect in the case (Smith & Ekron, 2005:1).

In his letter Louis van der Vyver, father of Inge Lotze's boyfriend Fred, points out that it had never been proven that the hammer had ever been involved in the commitment of any crime. Accusing *Die Burger* of unfair and biased reporting, Van der Vyver senior furthermore adds (2005):

> "The insinuations leave no space for any reader to harbour a doubt about who committed the murder... The trial and conviction of my son without proof [by *Die Burger*] is unacceptable."

Whereas Fred van der Vyver was later formally accused (and subsequently acquitted) of the crime, this was not the only news coverage of the case that was arguably questionable from an ethical and legal point of view, and neither was *Die Burger* the only newspaper that could have received similar complaints. As noted by advocate Dup de Bruyn, who represented Van der Vyver in the case (2007):

> "From the beginning until very late in the case, the newspaper reporting was an absolute disgrace and a gross defiance of the accused's rights."

Complaints over biased coverage of high-profile trials, like the Van der Vyver case, are one of many indications of a tense relationship between the media and the law in South Africa. Pre-trial publicity and court reporting also constitute but one pixel of the larger picture depicting this troubled relationship.

Despite patent difficulties in the relationship, it however remains crucial for the health of democracy (Harber, 2006) that the media and the law learn to get along. As noted by Gies (2007:92):

> "A robust set of legal institutions, especially an independent judiciary willing and able to uphold the constitution and a free press are considered to be the twin jewels in the crown of liberal democracy."

1.2 Background information and research pointers

To call that which exists between the media and the law a "relationship" is perhaps a bit presumptuous. Yet according to *The Oxford English Dictionary (Online)*, a relationship refers to "the state of being related; a condition or character based upon this; kinship"

(2009). Whilst required to be independent of another, the media and the law are still interdependent – a clear indication of a relationship. As Gies notes (2007:129):

> "It is important to remember that the law *is* the media's business, just as regulation of the media is law's business."

If there is a point upon which a variety of authors, judges and other concerned parties (including Harber, 2008; Langa, cited in Pather, 2009; Asimow, Greenfield, Machura, Osborn, Robson, Sockloskie, Sharp & Jorge, 2005; Snyman, 1992; Burns, 1990; Duncan, 2008; Gies, 2007; Kaye, 1998; Bandes, 2006; Swanepoel, 2006; and Trach, 2003) agree, it is the incredible importance of a *good* relationship between the media and the law in any country.

The relationship between these two pillars of democracy has, however, never been an easy one, with criticism and blame being laid at both the media and the law's doors.

On the one hand the media are rarely satisfied with judiciary's approach towards them: incomplete court records; inaccessible judges and clerks; complicated and lengthy court documents and judgments; and frustrating court procedures are only some of the complaints frequently voiced by members of the media (Swart, 1999:7).

On the other hand, many members of the judiciary and other legal scholars are extremely concerned about the media's portrayal of the legal system. As explained by Gies (2007:1):

> "There is undeniably a sense of annoyance – despair even – among legal academics and senior judges at what they see as the mass media's iron grip on the popular legal imagination. Simply put, their fear is that a persistent stream of distorted and sensationalised media portrayals is crowding out sober legal fact and may ultimately prove corrosive of law's authority and autonomy."

Misunderstandings and tensions may in a sense seem natural, as the media's traditional watchdog function demands the scrupulous investigation of all matters – including the exposure of problems and wrongs within the legal system. "Viewed from this perspective, the uneasy relationship between law and the media is not so much a problem as a healthy sign of a vibrant democracy," argues Gies (2007:91).

Another sign of a vibrant democracy is the fact that courts are the ultimate protectors of the press freedom guaranteed by the South African Constitution (Act 108 of 1996). As noted by Gies (2007:96):

> "The media owe both their freedom and restrictions to the strength of legal institutions: if the latter are vigorous, media freedom may thrive within judicially enforced boundaries, but conversely if they are weak, the media are left unprotected against excessive state interference."

This factor arguably leads to more tensions between the media and the judiciary (Gies, 2007:95-96) – tensions that are perhaps inherent and natural to the relationship.

Whilst it may therefore be expected that the media write about and even criticise aspects relating to the law, and the law regulates the media, such "mutual busy-bodying" (Gies, 2007:129) becomes problematic and worrying when the media either overstep the boundary onto the legal turf or the law fails to administer justice and unfairly interferes

with the media. In other words, the mutual busy-bodying between the media and the law should not be allowed to go too far.

Knowing what is "too far" is, however, problematic. Whereas one may agree with Gies' argument that certain tensions are natural and inherent to the relationship between the media and the law, one may also add that not all tensions are necessary or natural. This study is accordingly based on the assumption that the media and the law's mutual busy-bodying sometimes goes too far; and that there is room for improvement.

Improving this relationship is important because not only the media and the law stand to be affected by it: Whilst most lay audiences have indirect contact with the law on a day to day basis (in the form of obliging traffic lights and other traffic signs, for example), direct contact with the legal system in general and courts in particular are limited to mere glimpses.

A significant section of lay audiences therefore depends on the media as their major source of legal knowledge – and the media are more than happy to quench this thirst for legal subjects. As noted by Kaye (1998:75):

> "Pick up a paper, flick on the TV, and chances are you will find depictions – real and fictional – of the latest trial of the century, analysis of current trends in crime and punishment, reports on the doings of high-profile attorneys and a plethora of pundits commenting on all of the above."

On a positive note, media's coverage of law and, especially, trials, therefore enables that which was previously arcane and mysterious (i.e. the alien world of the law) to become more fathomable and less remote to people. The media therefore play a potentially important role in allowing people to form opinions about the law (including the judiciary, legal profession and legal system as a whole).

Gies calls such an awareness of the law "legal consciousness" and defines it as "an individual awareness of law and legality which has a profound ideological effect on people's outlook on the world and their sense of self" (2007:134).

A recent study – conducted by questioning first year law students in order to determine their views of lawyers, the legal system and more – established that both news media and popular media play a pivotal role in the formation of law students' opinions of law and lawyers (Asimow *et al.*, 2005:427). News and popular media were found to be generally more helpful than even having lawyers in the family or as friends; conversations with friends and family or classes in schools (2005:410).

A number of other authors (including Gies, 2007:29; Swanepoel, 2006:13; and Kaye, 1998:75) agree with Asimow *et al.'*s finding that the media have an impact on legal consciousness. Sherwin, for instance, is a strong supporter of the notion that both popular and news media play a substantial role in establishing perceptions of the law (2008:3).

The importance of legal consciousness should be stressed, as today's consciousness inevitably leads to or influences tomorrow's important decisions and actions. Merry, for example, writes:

> "Consciousness is expressed in subtle and diverse ways, in the way people act and speak, as well as in the content of what they say. It is embodied in the practical knowledge by which people do things" (cited in Marshall, 2005:11).

Sherwin moreover adds that people absorb stories (whether factual or fictional) from both popular and news media, and that these perceptions inevitably influence their actions (2004:95): "We carry these stories and images in our heads wherever we go, including voting booths and jury rooms, where legal meanings – popular, formal and mixtures of the two – take effect."

Although South Africa may not have jury rooms; she does have voting booths, judicial officers and assessors, as well as other places and situations where legal meanings may be influential. A general awareness of the law (and a consciousness that is based on accurate information or perceptions) is vital amongst equal citizens, especially in a young democracy. As Sherwin (2004:109) argues:

> "Taking responsibility for the production and effects of legal consciousness is one (perhaps the most crucial) way in which we take responsibility for the kind of society in which we live."

The basis of the study can therefore be expanded to include not only that there is room for improvement in the relationship between the media and the law in South Africa, but also that such improvement is vital for the health of our citizens and thus society. As Harber points out (2006), "If they [the media and the law] do not develop a useful way of understanding and relating to each other... then both are weakened, as is our democracy."

As noted *supra*, one of the points of departure of this study is that the media and the law's mutual busy-bodying sometimes ventures too far. Besides the effect that inaccurate popular media portrayals of the law might have on legal consciousness, news media also play an important role as sources of legal consciousness and more– and especially so because many people believe that news media offer purely factual reflections of what occurs in society.

With specific regard to news media as a source, court reporting is an especially important example of how news media portray the law. Courtrooms are a place where the news media and the law inevitably meet due to the constitutional guarantee of an open court; offering media the opportunity to present society with a glimpse of the law's inner workings. Yet this is also one of the most popular arenas for the battles fought between the law and the media – impacting far more than just legal consciousness.

Criticism relating to pre-trial publicity and court reporting often means that the media are not managing the difficult task of balancing the right to freedom of expression with the right to a fair trial (both fundamental rights according to the Constitution, 1996). Particularly with cases that draw a lot of media and public attention, news media are often accused of assuming the duty of a court in "trying an accused" and thereby conducting a trial by media. As Swanepoel writes (2006:4):

> "The press is a powerful medium that has the right to publish written information about legal proceedings, but sensationalised crime reports may potentially deny the right of an accused person to a fair trial by an impartial court."

The media's coverage of courts therefore not only has a potential influence on legal consciousness of people, but may have an adverse effect on individuals' right to a fair trial – a frightening notion that has been addressed in a journal article by Swanepoel (2006), writing from a South African perspective. Whereas her work is incredibly helpful, she clearly writes from a legal-centric point of view. Not only may one respectfully question some parts of her article, but changes in the field since the article's appearance also demand attention.

As will be discussed in more detail in Chapter 2, court reporting and pre-trial publicity have mostly been studied to ascertain whether it has a *direct* effect on *jurors* (Bruschke & Loges, 2004) – and few studies have been undertaken in South Africa (with the exception of Swanepoel, 2006). There is arguably a need for studying more indirect effects of news media portrayals of court cases and the potential influence that it has not only on the impartiality of judicial officers, but also on lay citizens' perceptions of a specific case and the law in general.

It is therefore proposed that court reporting and pre-trial publicity be investigated in addition as it is not just an important part of how the news media contribute (or not) to legal consciousness, but also an integral reason for frequent tensions in the relationship with the law. These tensions may adversely affect both legal consciousness and fundamental human rights guaranteed by the Constitution (1996).

As contempt of court proceedings are a legal remedy that could perhaps curtail the more adverse effects of pre-trial publicity and court reporting, it will be investigated in detail in the literature review. It will not be examined beyond secondary literature, however, as it is essentially a legal matter that does not demand more detailed attention in this paper.

One possible reason for sensationalised and often incorrect articles related to the law (Gies, 2008:91) may be that journalists do not know enough of the law in the first place to enable them to portray the law more accurately.

A survey has found that South African journalists do not receive a proper legal education at tertiary institutions (or at their places of employment) to have a basic knowledge of the law as required in, for example, court reporting (De Beer & Steyn, 2002:20). A brief look will therefore be cast over journalists' (lack of) legal knowledge in the research (although it will not form a substantial part of the research).

Whilst on this topic, one should take note of Gies' use of the theory of autopoiesis to argue that the media are perhaps incapable of translating the law more accurately. Autopoiesis "recognizes inherent tensions between the legal system and the media as the inevitable consequence of their very different modes of communication," she writes (2007:101).

This theory will be investigated more thoroughly in the literature review as it certainly provides new insight and a possible reason for tensions between the media and the law. One may point out, however, that it still cannot suffice as an excuse for journalists that do not know enough about the law to ensure accurate reporting about legally-themed matters.

1.3 Problem statement

Keeping the aforementioned in mind, one can argue that the "acutely tense" relationship between the news media and judiciary (Gies, 2007:1) is an international phenomenon that has not escaped the young democratic South Africa (Harber, 2006; Swanepoel, 2006:4).

The way in which both news and popular media (as sources) portray the law is influenced by these tensions; and such portrayals in turn affect lay audiences' perceptions of the law. People's perceptions of the law, or legal consciousness, impact their actions in a democratic state – thereby inherently influencing the development of South Africa.

The strenuous relationship between the media and the law therefore gives rise to fears over the effect that the various problems linked to these tensions can have not only on citizens' legal consciousness and the autonomy and authority of the law (especially when concerning the publicity surrounding court cases), but also on the strength of a democracy and a nation's ability to develop effectively.

1.4 Research focus

As this is a complicated and potentially vast field, the research will be delineated to focus on the media's role in causing the tensions in the relationship between the media and the law; whilst accepting from the outset that the law could also do much to improve relations (as noted in 1.2). The study will specifically emphasize the ways in which the media portray the law and the impact that such portrayals may have on legal consciousness and the law.

It should be stressed from the outset that the aim of this study is not to lay the blame for problems with the media or the law, nor is to be overly critical of either. The goal is rather to find the roots of the problems between the two in order to possibly pave the way for future solutions.

The fact that the relationship concerns two very different study fields has perhaps served as a barrier to more comprehensive research in the past. It is therefore proposed that a cross-disciplinary study (combining law and the media, even to a limited extent) could be very useful to the field, particularly in a South African context where there is a clear gap in the research area. Not only will such an approach allow for new perspectives, but it will also prevent a stance of being overly critical of the law or the media.

With regard to the impact of both news and popular media on legal consciousness, it should be noted that although the Asimow *et al.* questionnaire was conducted in a variety of countries (Argentina, Australia, England, Germany, Scotland and the USA); no similar exercises have been undertaken in South Africa, and very few internationally. Asimow *et al.* also express concern over the fact that the issue "has not been subject to detailed academic treatment" (2005:407).

Besides the fact that a lot of studies have ignored indirect media effects (see 1.2), the media's role with regard to legal consciousness in specifically developing countries (and

thus in democracy and development) has arguably also been neglected. It is therefore suggested that research relating to legal consciousness should be undertaken in a South African setting.

The aim is simple: to establish what South African citizens' opinions of the legal profession, judiciary and legal system are, and to determine what could be identified as the sources of these opinions. The hypothesis is that both popular and news media are important sources of such perceptions of the law.

In order to quantify the extent of the media's potential influences it would also be important to find out what happens when the media and the law's mutual busy-bodying goes too far. As noted in 1.2, the media are most often criticized with regard to pre-trial publicity and the way in which they report on court proceedings.

Court reporting and pre-trial publicity will therefore be examined as a case study that concerns the way in which news media influence legal consciousness, particularly because the consequences of mistakes in this field are potentially dire. Very little attention has been paid to indirect media effects on the law; and the study of court reporting creates the opportunity to fill this apparent gap.

1.5 Thesis statement

In the light of the preceding discussion, this study will consider the thesis that the way in which both popular and news media portray legal matters has a significant effect on legal consciousness and the law.

1.6 Research question

The following general research question was posited as the topic of this research:

> *Does the way in which both popular and news media cover legally-themed topics have an influence on legal consciousness and the law?*

As this is a multi-faceted question, clearly defined research objectives allow for a closer definition of what the research will aim to be establishing.

1.7 Research goals and objectives

In general, the goal of this study is to determine whether both popular and news media have a significant effect on legal consciousness and the law.

The following more specific research goals may be formulated:

- To evaluate the nature of the relationship between the media and the law in a South African context;
- To investigate the media's contemporary role (specifically with regard to the law) in democracy and development;
- To explore what the nature of people's perceptions of the law are;
- To investigate if and how both popular and news media as sources (respectively) influence these perceptions, or legal consciousness;

- To determine to what extent both popular and news media as sources (respectively) influence legal consciousness and the law;
- To evaluate what particular media sources have an effect on legal consciousness;
- To investigate the possible personal circumstances that might have an effect on the way in which audiences perceive the law;
- To look more closely at news media as source whilst focusing on the media's portrayal of specifically court cases – including:
    - The legal issues and principles involved with the reporting of court cases (both pre-trial and during the trial);
    - Factors that make certain cases more susceptible to media interest;
    - How the various parties involved with a case may be influenced by the media or may influence the media themselves;
    - The possible influences that news media may have on judicial officers and assessors involved with a certain case;
    - The possible influences that news media may have on the perceptions ordinary citizens maintain with regard to a certain case;
    - The legal remedies that should curtail the effects of negative and unbalanced coverage of a case; and
    - The level of expertise of journalists responsible for the court reporting beat.

1.8 Theoretical points of departure

This research was undertaken from the theoretical basis that the media have an important role to play in society in general, and in democracy and developmental efforts in particular. As such the study was conducted from the perhaps ideological viewpoint of what or how the media should or ought to act in a democracy – and particularly in an adolescent democracy like South Africa.

The idea that the media play a role in not only how the law is perceived by citizens, but also on how the law is enforced, also has its roots in the much-debated concept of media effects. Developmental efforts dating from after the Second World War have traditionally attributed much weight to the role that the media or communication can play in democracies:

> "*Effective* communication builds relationships, engenders debate, facilitates choices, enables informed decisions, helps build coalitions and alliances, and accelerates and generates change" (Panos London, 2007:3).

The emphasis in this instance is clearly on the fact that communication needs to be effective – it needs to meet the requirements of a particular society in order to facilitate improvement and development. As Groenewald adds (1992:60):

> "Mass media can make a substantial contribution to the improvement of living conditions of certain communities as long as it is applied in such a manner that specified needs within a community are satisfied."

Although the media's role in development has therefore received attention, the media's role in a matter closely related to and interlinked with development and democracy – a perception of the law – has arguably been neglected. Whereas researchers have looked at the direct effects of publicity on jurors' verdicts, for example, indirect media effects

specifically related to the law have rarely been measured. The theory of media effects will therefore also form part of this study (see 2.4.2).

The media and the law are both fundamental parts of a democracy, and the importance of the relationship between the two has been stressed in this chapter. The need to improve this generally strenuous relationship and to ensure that the media play the role that it *should* play in society, form the guiding normative tenet of the study.

1.9 Methodology

The research problem lends itself to broad interpretation and due to the diverse nature of aspects that should be addressed, a combination of both qualitative and quantitative methods were used. Various authors have stressed the fact that combining these approaches may be very beneficial to research (including Holliday, 2007:2; Holloway, 1997:31; and Davies, 2007:11).

Following a thorough literature review that addresses certain research objectives, there are two phases of research that are subdivided into three chapters. Whereas the findings from the first phase of the research are discussed in Chapter 5, the findings from the second phase of research are investigated in Chapter 4. Lastly, in Chapter 6, the first phase of research is used to cast light over matters relevant to the second phase of the research (the process will be described more clearly in Chapter 3).

The media's impact on legal consciousness was measured using a questionnaire (phase one) aimed at one particular population group. It was important to determine (amongst other things):

- What these participants' perceptions of the law (including the judiciary, legal profession, courts and the legal system) are;
- How positive or negative these perceptions are;
- What the sources of these perceptions are;
- If personal circumstances may have an effect on the way in which audiences perceive the law; and
- What role both news and popular media play in creating such perceptions, or legal consciousness.

The sample had to be a non-probability sample, which is arguably acceptable *in casu* due to the fact that the results only address one part of the research problem. This specific part has an exploratory nature, investigating a relatively new topic (the media's influence on legal consciousness) in a wholly new context – South Africa. Whereas similar studies have been undertaken in other countries (Asimow *et al.*, 2005), nothing related has been undertaken or attempted in South Africa.

In order to investigate the research problem more thoroughly and to simultaneously add a real-world dimension to the research, a case study was also used in conjunction with the questionnaire in the second phase of the research. With the case study the ways in which specifically news media impact not only legal consciousness, but also a variety of other people connected to a case (including the presiding officers; assessors and witnesses; the parties directly involved; journalists; investigating officers and more) were assessed.

Whereas it would certainly be interesting to measure all reporting relating to trials, the scope of this study was necessarily limited to one particular court case that received a lot of media attention. The possible conclusions derived from this case study are therefore suggestive instead of definitive.

1.10 Significance

On a theoretical level, it has been repeatedly stressed throughout this chapter that very few researchers have combined media and the law and looked at tensions between the two whilst using, among other things, the media effects theories.

Whereas media effects theories have been utilised to look at the role that media and communication can play in assisting development and democracy, it has not specifically investigated the role media may play in contributing to legal consciousness (something that inevitably influences democracy and development).

Most studies regarding this theme have furthermore traditionally focused on direct media effects on specifically jurors. Hopefully this study will add a new dimension to traditional media effects theories by incorporating both popular and news media's effects on legal consciousness.

On another level, it should be noted that democracy and development is essentially a practical condition. As will be investigated more thoroughly in the literature review, the media's developmental mandate should be defined more clearly. One important aspect hereof is the role that the media should play in helping citizens to become more educated about the law.

Such an awareness of the law, or legal consciousness, impacts the practical choices citizens make – thereby also having an influence on democracy. This study aims to show how important it is to stress the media's role in this process.

1.11 Definitions

1.11.1 Law

The concept 'law' has the ambiguous characteristic of most people knowing what it is, but few people knowing how to define it in clear terms.

Gies writes (2007:23): "As a set of rules, derived from a body of doctrine, case law, legislation and other sources, law can be found in a wide range of locales, its reign being most visible in highly institutionalised settings such as courts, law firms, police stations and probation offices."

It is however important to stress that the law cannot be limited to include only courts, legislation and the judiciary. As Marshall argues (2005:9):

> "Law is not simply a collection of judicial pronouncements that trickle down from the courts, but rather constitutes a powerful set of symbolic resources and everyday practices that shape politics, culture and social relations."

Sherwin also stresses the fact that the law forms part of everyday experiences. He writes (2004:95):

> "Law's power, like its meanings, is all over: not only in formal venues, such as courtrooms, legislatures, and government agencies, but also in everyday legal practices."

Burns writes that the "basic concepts of law" include constitutional supremacy; the Bill of Rights; the Constitution (1996); the constitutional state; co-operative government; the judiciary; the legislature and the section 36 limitation clause (2001:3-10).

For the purposes of this study, the ambiguous term "law" will have a wide definition incorporating the definitions and characteristics offered by these authors:

> *Law is a set of rules having a bearing on everyday life and the health of a democracy; derived from a collection of doctrine, precedent, legislation, common law and other sources; executed in courts; and including concepts like the judiciary, the court system, the Constitution (1996) and the Bill of Rights.*

1.11.2 Legal consciousness

Whereas a definition for legal consciousness (that of Gies) was provided in 1.2, it may be submitted that the definition should be adapted to ensure that it is more applicable to this study and a South African context.

A working definition of legal consciousness (based on Gies' definition, 2007:26), will therefore be adopted by the author. For the purposes of the study, legal consciousness will be defined as:

> *An individual awareness of the judiciary; legal system (including the courts); legal profession; law and legality which has a profound effect on people's outlook on democracy and the development of society.*

As an awareness of law and legality is difficult to measure, the study will focus on consciousness with regard to the judiciary, legal system and legal profession.

1.11.3 Media

Definitions of the media depend on the particular role or duties one would like to prescribe for the media in society (as will be discussed in more detail in Chapter 2). Without wanting to jump the gun in this regard, it would suffice at this point to say that the term "media", for the purposes of this study, includes both popular and news media. The term "media" will thus be used in plural form throughout this study.

1.12 Abbreviations and terminology

Asimow *et al.* (2005) refers to the study by Asimow, Greenfield, Machura, Osborn, Robson, Sockloskie, Sharp & Jorge (2005).

Adv. is an abbreviation for advocate.

In casu means in this case or in the circumstances.

In lieu means instead or in place of.

Infra means below; something that will follow in the paper.

NPA is an abbreviation for the (South African) National Prosecution Authority.

Per se means by itself, without consideration of extraneous factors.

Sanef is an abbreviation for the South African National Editors' Forum.

SAPS is an abbreviation for the South African Police Services.

Supra means above; something that was written earlier in the paper.

1.13 Structure of the study

The dissertation consists of seven chapters that will be presented as follows:

Chapter 1, the introductory chapter, will provide background on the research and serve as a general introduction to the research problem.

In **Chapter 2** the author will describe and explore literature relevant to the topic. Not only will the author point out what has been done and achieved by authors in the field, but also what topics need attention.

The methodology of the research will be described in detail in **Chapter 3.**

In **Chapter 4** the case study, used to investigate the possible effects of news media on legal consciousness and the law, will be discussed and assessed.

The results gleaned by the questionnaires with regard to legal consciousness and the sources thereof will be evaluated in **Chapter 5**. Note that relevant and detailed statistical data supporting these findings can be found in Appendix D.

In order to bring the results from Chapter 4 and 5 closer together, in **Chapter 6** participants' perceptions about the case used for the case study will be investigated.

In **Chapter 7** the conclusions will be summarised and contextualised briefly. The research objectives listed in this chapter will be compared to the findings; and recommendations for future research will also be made.

CHAPTER 2: LITERATURE REVIEW

2.1 Introduction

Establishing the field or discipline parameters for a study such as the current one is by no means a simple feat. Authors writing or working on topics related to media and the law; popular culture and the law; and more, hail from a variety of different fields and disciplines – making it near impossible (and unfeasible) to restrict the topic to just one field.

Bruschke and Loges' concerns in this regard should perhaps be noted from the outset. They argue that when different perspectives on a topic are highlighted by scholars from diverse fields, both negative and positive consequences could be the outcome. Whereas scholars from one field may offer new insights to another field; the variety, they warn, can lead to a lack of depth and conclusions that are difficult to compare to other studies (2004:3).

The interdisciplinary nature of a study like the current one may pose problems as mentioned by Bruschke *et al*. (2004), but may arguably also provide for new perspectives in a field that suffers from a lack of due attention.

The author will thus review both the manner in which legal academics studied the media, and the way in which media scholars studied the law – without drawing outright and strict distinctions between the two. Hopefully this *modus operandi*, one that aims to be less rigid in approach, will provide new insight into the relationship between the media and the law.

Although the importance of the relationship between the media and the law seems to be undisputed within the field (see 1.2), the exact nature of the relationship is a contentious issue amongst authors. It will be investigated in the following section.

2.2 The nature of the relationship between the media and the law

The normative belief that the relationship between the media and the law is important is arguably premised by another idea: that the media actually have a significant role to play in the development of society (and democracy, in South Africa's instance). This idea has its roots in the ideology of the media as Fourth Estate.

2.2.1 The media as watchdog and Fourth Estate

In 1843 the British Lord Macaulay commented that "the gallery in which the reporters sit has become a fourth estate of the realm" (cited in Ratcliffe, 2006:244). The principle of the powerful "Fourth Estate" media therefore originated with reference to reporters in Parliament; but was interpreted broadly to refer to the media "on a par with the other three 'estates' of power in the British realm: Lords, Church and Commons" (McQuail, 2005:169).

One may submit an equivalent comparison more relevant to a South African context: the media, or Fourth Estate, act as the unofficial fourth branch to the *trias politica* of our

state – the executive, the judicial and the legislative authority; each operating independent of another (Constitution, 1996: section 165).

According to Siebert, Peterson & Schramm (1956:1-2), the manner in which the press will act in relation to the other three estates, will depend on the nature of the concerned country's mode of governance:

> "Press always takes on the form and coloration of the social and political structures within which it operates. Especially, it reflects the system of social control whereby the relations of individuals and institutions are adjusted."

In their renowned and "influential" (Hallin & Mancini, 2004:7) book, Siebert *et al.* argue for the existence of four theories of the press: the Soviet communism-, authoritarian-, social responsibility- and libertarian models. In later years, other researchers also proposed the addition of the development and democratic participant theories (McQuail, 2005:178).

Hallin *et al.* summarises the hypothesis of Siebert *et al.*'s work well, noting (2004:8):

> "One cannot understand the news media without understanding the nature of the state, the system of political parties, the pattern of relations between economic and political interests, and the development of civil society, among other elements of social structure."

These authors however argue that many theorists that have followed upon Siebert *et al.*'s work have neglected the fact that the media also have an impact on social structures – not merely being passively *impacted upon* (Hallin *et al.*, 2004:8). In other words, instead of the media "reflecting" the political system within which it operates, the media also affects political institutions and are indeed "less 'reflective' than they once were" (Hallin *et al*, 2004:9).

Hallin *et al*. propose the introduction of three media system models (the liberal model; the democratic corporatist model and the polarised pluralist model), arguing that much of the appeal of Siebert *et al.*'s four models lay in the fact that a simple classification was presented (2004:10). They argue that their models effectively address the need for a change (Hallin *et al.*, 2004:10):

> "*Four Theories of the Press* has stalked the landscape of media studies like a horror-movie zombie for decades beyond its natural lifetime. We think it is time to give it a decent burial and move on to the development of more sophisticated models based on real comparative analysis."

Noting that political and media systems are indeed connected; Hallin *et al.* (2004:296) identify indicators that may enable the comparison of media systems:

> "The structure of media markets, including, particularly, the degree of development of the mass circulation press; the degree and form of political parallelism; the development of journalistic professionalism; and the degree and form of state intervention in the media system."

Whereas Hallin *et al.*'s work was based and developed solely with reference to North America and Western Europe, they still argue that they specifically tried to avoid Siebert *et al.*'s "universalistic" (Hallin *et al.*, 2004:305) approach. They therefore acknowledge the fact that media systems that developed in a diverse fashion and in different contexts

– like, for instance, South Africa's – should be approached in individual fashion (2004:205). Their models can, however, still be used "as a general example of how to think about the relation of media and political systems, and as a set of models against which others can be constructed" (Hallin *et al*, 2004:305).

Instead of going into much more detail on these and other theories, one should perhaps rather take note of Nordenstreng, Christians, Glasser and McQuail's view that a nation's media system should not be confined to one of the theories alone (cited in Fourie, 2007:201):

> "Each national media system and individual medium, even each individual journalist, can combine roles."

Berger seems to agree with these authors, writing that journalists may assume different roles in different situations and circumstances, or for different stories (2005:22). Authors also warn, however, that the media's role in democracy should be defined to at least a certain extent (Wahl-Jorgensen, 2004:2; Fourie, 2002:34; Berger, 2000:93). Street, for one, argues that there is a lack of theorising about the guidelines that should assist the media in fulfilling its democratic duties (2001:151).

Specifically in a nation like South Africa – still hovering between the demands of democracy and that of development (Fourie, 2002:37) – it is perhaps important to heed Wahl-Jorgensen's recommendation (2004:351), which indeed links to that of Hallin *et al.* (2004:305), mentioned above:

> "What exactly is understood by journalism's democratic role, and the notion of democracy itself, needs to be specified in particular cultural contexts."

Being a relatively young democracy adds more pressures. Gerwel, Hadland and Berger (in Hadland, 2005) all seem to respectively agree that South African media are still struggling to find their feet in our country. Gerwel writes (2005:5), "Democracy in a developing context brings with it new challenges for the media;" and Hadland adds (2005:13): "The media are still struggling to understand and fulfil their role in the new dispensation."

Both Hadland and Gerwel continue to list a range of requirements that should ideally be satisfied by South African media. Gerwel writes (2005:5), "Quality journalism... implies participation in the drive to build a better, fairer, more tolerant and happier society. This requires empathy, understanding and the capacity to inspire." Hadland adds (2005:13):

> "They [the media] must be watchdog and corruption-buster, but they must also nurture goodwill and support national unity. They must be critical but they must also be constructive."

Hadland's recommendations remind one of the notion of the media as watchdog or Fourth Estate. Gies notes that the media are required to keep watch over powerful institutions, including the judiciary (2007:94). As consequence "an element of scepticism and natural distrust is therefore part and parcel of the way in which the media are expected to perform their watchdog role in respect of the administration of justice," she argues (2007:95).

In accordance with the theory of the Fourth Estate, one can thus argue that tensions between the media and judiciary are to be expected – and even natural and required – in any liberal democracy.

2.2.2 Evaluating the contemporary relevance of the Fourth Estate ideology

Gies writes that the theory of the Fourth Estate cannot be used as a scapegoat for a troubled relationship as, she argues, the entire theory of the media as Fourth Estate is no longer as relevant in modern society (Gies, 2007:98):

> "Media policy and legal doctrine tend to hark back to a rose-tinted and largely nostalgic reading of the media's facilitating role in democracy. The watchdog narrative may actually be inflating the importance of the media."

She offers another reason for the alleged antiquity of the watchdog model, noting that the media are not interested in educating or informing, but are rather concerned with entertainment. Technical or more complicated aspects of the law are thus largely ignored, whilst only the most entertaining aspects are "cherry-picked" (2007:99).

Duncan seems to agree, adding that the media cater for the needs and wants of the public (2008:4):

> "In reality, however, educating the public often becomes secondary to satisfying the public's hunger for scintillating, scandalous and sordid stories. These novelette type stories appeal to the public's voyeuristic interests as opposed to serving any legitimate goal of a democratic society."

Although Gies writes that the influences of dominant interests (e.g. big business) are not such a large factor in the need to re-evaluate the watchdog narrative (2007:98), Street feels otherwise. He may be writing more specifically about the media's relationship to politics, but his point remains relevant. He describes certain influences that owners, governments and spin doctors may have on the media and then concludes (2001:146), "journalists are the lapdogs of partial interest, not the watchdogs of public interest."

Berger also explains this position, noting that (2000:84) "the self-appointed watchdog [is] not necessarily without bias in its biting." He explains that many writers are of the opinion that owners have strong influences on editors and staff, whilst journalists are no longer adept at challenging the *status quo* (2000:84):

> "It is in this light that writers... have reinterpreted—at institutional level— the watchdog metaphor as a 'guard dog', meaning a media that defends the interests of the establishment."

Whereas it is difficult to ascribe a role to the media in light of these arguments, this study will investigate possible discernable influences on the media in very broad terms – although it will not form a guiding tenet of the study.

2.3 Media, development and democracy

Although criticisms of the media's role in society are interesting to keep in mind, this study is more concerned with the normative idea of what the media should or ought to be (as noted in 1.8). As noted by Wahl-Jorgensen on the topic of normative research

(2004:351), “It can provide us with tools for making our societies more democratic and our institutions more accountable.”

Whether or not a watchdog, it can still be argued that the media have at least some duties to perform in a democratic society. In South Africa the constitutional guarantee of press freedom (in terms of section 16 of the Constitution, 1996), necessarily leads to certain expectations regarding the media’s role in society. Swanepoel notes that “a free press has a duty to be the public’s watchdog – to bring the truth into the sphere of public debate” (2006:10).

Besides causing potential tensions between the media and the law (as explained in 1.2 and 2.2), the notion of a free press – in accordance with the normative view, otherwise known as the free press theory (McQuail, 2005:177) – leads to additional expectations:

> “The media is seen as a source of information and a platform for the expression of divergent opinions, informing people about government affairs and other issues and enabling them to monitor their government and form their own ideas about policy” (Fourie, 2007:192).

One can thus argue that the media’s role in South Africa also involves a developmental aim. In the South African Broadcasting Act, for example, it is noted that one of the aims of South African broadcasting is to “contribute to democracy [and the] development of society” (1999: section 2).

Although South African media’s developmental mandate has therefore not been defined other than in broad strokes, it has already been accused of not meeting this vague mandate. In 2000 already, for example, the South African government claimed that the media “did not support development plans and ideals and were thus not serving the national interest” (cited in Fourie, 2002:28).

Fourie is of the opinion that the media and the government need to reach agreement on what role the media is meant to fulfil in the development of South Africa (2002:34). In defining the media’s role, he argues, care should be taken that “the media cannot be expected to act primarily as an instrument for development” (2002:34).

According to Panos London – an organisation that works towards ensuring that information is used effectively to foster debate, pluralism and democracy – the role of communication should be more clearly identified in both government planning and development agencies’ work, “from high-level international agreements to local-level resource management projects” (2007:43).

Berger seems to agree with Fourie and Panos London on this point, but he also warns that the media’s developmental role should not be overemphasised (2005:23):

> “Watchdog journalism represents the public interest and it upholds human rights. The only caveat is that this role should beware of narrowing into guard-dog journalism – i.e. working on behalf of special interests instead of the general interest. Playing the watchdog role needs to be even-handed.”

As noted in 2.2.1 *supra*, the roles that the media play in a developed country is also vastly different to the ones that the media fulfil in a developing country (Wahl-Jorgensen,

2004:351). Developing or Third World media have additional concerns that distinguish them from the models that originated in developed countries (Berger, 2000:90).

In comparison with other Third World countries where the media should help to strengthen or establish a democratic dispensation (Berger, 2000:91), however, South Africa already has a relatively strong democracy. As such the developmental role will arguably be more important in South Africa than in other Third World countries, where democratisation is the priority.

Panos London identifies specific developmental goals that should be stressed in fledgling democracies (2007:6):

a) Improved material conditions for everyone;
b) Greater equity in access to the world's natural resources and wealth;
c) Improved knowledge of human rights, freedom and security;
d) More and better choices;
e) Self-determination and the power to effect change in one's own life; and
f) Sustainability.

Special attention can be drawn to the third goal – namely that an *improved knowledge of human rights, freedom and security* is one developmental objective.

This target is specifically relevant to the relationship between the media and the law, as it can be argued that the media play a role in enabling people to have a better understanding of human rights, the judiciary and the legal system. As noted by Swanepoel (2006:22), "Cooperation between the media and the judicial system will strengthen and, it is hoped, justify the public's confidence in both institutions."

The media's role in promoting an awareness of human rights is part and parcel of the way in which the media create a consciousness of the law. The nature of this role is another contentious issue, as is the nature of legal consciousness. The debates surrounding these issues will be investigated next.

2.4 The media and legal consciousness

Although the organisation Panos London stresses the significance of an improved *knowledge* of human rights, freedom and security (*supra*, 2007:6), it is submitted that an improved *consciousness* or *awareness* of these rights, as well as of other legal matters, should already be an important milestone in the quest for development and an improved democracy.

The term "legal consciousness" has already been defined in this paper (see 1.11.2), but it remains important to stress that *consciousness* is the keyword here, and not knowledge or attitude (Gies, 2007:26).

2.4.1 The media's influence on legal consciousness

Taking responsibility for legal consciousness, the need for which is pointed out in 1.2, is difficult as the way in which it is produced and generated is as yet unknown. Gies explains that the law is not very visible or obviously present in everyday life – rather presenting itself through vicarious experience (2007:19).

Gies argues that the law is so essentially basic to everyday life that it goes unnoticed (2007:23) – almost like the air we breathe. Citizens are thus to an extent oblivious of the law's omnipotent presence (2007:23):

> "Being subtly woven into our habits and practices, law succeeds in remaining largely invisible until such moment when there is a breakdown in the social relations governed by it: divorce, a breach of contract, a neighbour dispute."

Sherwin writes that "*what* we think about and *how* we think when we think about law reflects the culture around us" (original emphasis, 2008:2). Mass media form an important part of this culture, as communication is vital to culture's existence. McQuail, for instance, argues (2005:113), "Perhaps the most general and essential attribute of culture is communication, since cultures could not develop, survive, extend and generally succeed without communication."

McQuail furthermore writes that modern media can be said to assume the earlier roles of, for example, schools, religion and the state to help people make sense of reality (2005:81):

> "The media to a large extent serve to constitute our perceptions and definitions of social reality and normality for the purposes of a public, shared social life and are a key source of standards, models and norms."

Both popular and news media arguably also serve to influence citizens' perceptions of at least some aspects of the law – therefore contributing to legal consciousness. In terms of Fourth Estate or watchdog criteria (2.2 and 2.3 *supra*), the media are supposed to act as the conduit of legal information from the judiciary to South African citizens. Duncan argues that the media have the potential to keep institutions accountable; to educate and give the public confidence in the law; and to assist in the solving of crimes (2008:4).

Gies furthermore points out that the media play an important role in simplifying the arcane and complicated world of the law, arguing (2007:37):

> "Given the relative opacity of everyday practices, it is perhaps not surprising that law's presence in everyday life is often thought of as the exclusive realm of media representation: law is seen as too solemn, too technical and too arcane a subject to be the object of ordinary experience. Consequently, what the media say about the law is routinely conflated with what people think about the law."

Whether the media actually play these roles or fulfil these expectations is another issue. Gies points out (2007:7):

> "There is a growing awareness among legal actors of the need to address deficiencies in the public's knowledge of the law. It is felt that for too long it has been left to the media to be a gateway to information about the legal system."

On the other hand, Gies also argues that one should be careful of overemphasising the media's role in influencing and creating legal consciousness. She warns that the media's influence should not be taken as self-evident; that the media are not the only contact that people have with the law on a daily basis (2007:39). In other words, the law

is actually strongly present in ordinary, everyday experiences, where it also shapes individuals' legal consciousness (2007:4):

> "Law is a formidable construct to which we respond through quiet resignation, vociferous contestation and active negotiation. To say that almost everything we know about law comes from the media is to ignore the potential of everyday legal experience to act as a resource which we bring to bear on our interpretation of media contents."

Gies furthermore points out that the media's influence on legal consciousness is rarely mentioned in studies of legal consciousness (2007:28). One can, however, argue that the fact that the media's influence has rarely been taken into account is exactly the reason why researchers *should* start investigating the media's influence on legal consciousness. As can be seen from studies mentioned below, research has often focused only on short term and direct media effects.

2.4.2 Media effects and legal consciousness

The exact extent and impact of the media's portrayal of legal matters on citizens' perceptions of the law, or legal consciousness, is clearly a contentious issue. Taking the media's influence into account essentially leads one to the complicated and unresolved, circuitous debate regarding media effects.

a) Media effects and developmental efforts

The media effects theory is one of the guiding tenets of most traditional developmental efforts, wherein communication policies played and still play an important role. A broad overview is perhaps necessary before delving deeper into media effects and the law.

The communication effects approach developed during the 1920's, when newer forms of media, like radio and films, came into existence. This was a time that witnessed, for example, the effects of propaganda (in the USA during the First- and Second World War), and also various instances of abuse of the media by dictators and governments. As Campbell, Martin & Fabos write (2002:514):

> "Having watched Hitler use radio, film, and print media as propaganda tools for Nazism, they worried that the popular media in America also had a strong hold over vulnerable audiences."

The theory, which developed between the 1930's and 1970's, was based on the premise that the media have enormous power and influence on audiences. In other words, there was "an assumption that contact from the media message will be related at some given level of probability to an effect" (Melkote & Steeves, 2003:108). Audiences were, in turn, regarded as passive receivers of information, accepting any and every bit of information at face-value.

Initially, in terms of this hypodermic-needle model (also called the magic-bullet or direct-effects theory), it was suggested that the media have direct and potent effects on audiences and people's behaviour.

Besides the hypodermic-needle model, short-term theories also include that of the two-step-flow theory, which challenges the notion of passive audiences – asking *what do*

people do with the media? (Fourie, 2001:297); and the uses and gratifications theories, that are based on the notion that media users actively select media content for personal use and gratification (Fourie, 2001:298). To summarise, the short-term theories operate from the basis that the media have direct effects on people's behaviour (Fourie, 2001:294).

This perception also pervaded the approach to development communication during this period, as development was viewed as a linear, top-down and one-directional process. As Melkote *et al.* explain (original emphasis, 2003:112):

> "In the Third World countries diverse fields such as agricultural extension and health education began using mass media for the *transmission* of information and for *persuasion*. The emphasis was on particular communication effects: creating awareness of new ideas and practices and eventually bringing about attitude and behavioural changes in individuals."

Communication therefore played an important role in developing countries, acting as both "a product and reinforcer of economic growth and development" (Melkote *et al*., 2003:101). The extent to which communication was perceived as a primary cause of development naturally depended on whether it was before or after the 1970's – when mass media started being regarded as "agents of reinforcement" instead of "primary movers" (Melkote *et al.*, 2003:111).

In short, the long-term media effects theories operate from the assumption that people's way of thinking, or perceptions, are affected by the media over a longer period of time. Various theories are characterised by this notion (only some of which will be discussed in more detail), including (Fourie, 2001:298-305; 512):

- the accumulation theory (media focus on a particular issue in a specific manner and may influence audience's perceptions of such issue);
- the diffusion of innovation theory (see below);
- the modelling theory (media's depictions of people's behaviour may be adopted by media users);
- the social expectation theory (societal norms and expectations are idealised and "taught" by the media);
- the meaning construction theory (media condition audiences to attach certain meanings to certain things);
- the stereotype theory (media plays a role in creating and sustaining certain stereotypes);
- the agenda-setting theory (media create a particular image or perception of reality);
- the framing theory (media make use of specific angles or frameworks from which issues are reported on – impacting audience's perceptions of certain issues);
- the spiral of silence theory (media only reflect a portion of the public opinion; discarding and isolating certain contrasting viewpoints; leading to silencing and polarisation of such views); and
- the cultivation theory (media act as ideological agents and have effects in cultivating people's perceptions of violence – see below).

According to the diffusion of innovation approach, which became increasingly important to developmental strategies in the 1960s, traditional people and societies evolve to more

modern ways of life by being exposed to mass media or communication (Groenewald, 1992:71). The research done in this utilitarian field "established the importance of communication in the modernisation process at the local level. In the dominant paradigm, communication was visualised as the link through which exogenous ideas entered local communities" (Melkote *et al.*, 2003:126).

As the cultivation theory is an approach that is relative to the current study, it should also be investigated in a little more detail. The theory was developed by George Gerbner and associates, and focused on the effects of television on audiences. As noted by Croteau & Hoynes (2003:246):

> "They argue that, through its regular and almost ritualistic use by viewers, television plays a homogenising role for otherwise heterogeneous populations. Influence occurs because of continued and lengthy exposure to television in general, not just exposure to individual programs or genres."

The cultivation theory, which focused on television's portrayal of specifically violence, found that heavy television viewers will for instance perceive crime and violence in a different way than light television viewers, and that television portrays crime and violence much more frequently than it actually occurs in real life (a notion that needs to be tested in a South African context, however). "Heavy viewers are more likely than moderate or light viewers to believe that people cannot be trusted" (Croteau *et al.*, 2003:246), for example.

To summarise, a clear shift from direct to less direct effects of the media can therefore be identified in the way in which the media's consequences have been studied. This shift is also noticeable in the role ascribed to the media in supporting development.

Whilst the media's role in promoting awareness of the law also forms part of this developmental mandate (see 2.2) – something that has not really been studied per se – one should stress the fact that this study will be more concerned with indirect media effects, thereby corresponding with way in which media effects theories have developed over the years.

Whereas media effects theories have by no means provided many answers and is thus a dangerous theoretical framework to use as the basis of this study, one should perhaps heed Fourie's words (2001:291):

> "The fact remains that the media are pervasive and do have an influence of some kind on our existence this underlines the importance of continued effect research."

b) Media effects and portrayals of the law

In terms of the media's portrayals of the law, Asimow *et al.* point out that as soon as the law (including lawyers) started to feature in popular media "there were concerns that the legal profession might be shown in a bad light" (2005:407). The effects of these portrayals, especially in films, were feared (Asimow *et al.*, 2005:407):

> "The assumption was that films had 'effects' and that 'bad effects' were to be avoided or at least balanced."

The hypothesis that both popular and news media shape the way in which we perceive the law has influenced both Asimow *et al.*'s study and this one. Asimow *et al.*'s study is

interestingly (and by analogy) based on the cultivation theory (investigated briefly above):

> "Cultivation theory supports the hypothesis that frequent and recent exposure to vividly negative films about lawyers should increase the number of people who will make negative heuristic judgments about lawyers. On the other hand, heavy consumption of positive TV shows about lawyers should increase the number of people who make positive heuristic judgments about lawyers."

It should be noted that this study is based on the same notion – that frequent exposure to negative popular and news media portrayals of legal matters may have an effect on the (negative) perceptions that people have with regard to the law and legal matters.

c) Legal consciousness and audiences' power of interpretation

Whereas this research will not delve further into the effects debate, it remains important to point out that the power of the audience in the process of legal consciousness creation should not be underestimated. Pillay (2004:360) writes:

> "Not only are we subjects shaped by the power of the media; we can also, as the work of cultural studies sought to show, make meaning rather than take meaning. If we can manufacture consent then we can also manufacture dissent."

Our ability to manufacture consent or dissent depends on our circumstances. Gies (2007:32) writes that "depending on their social status, people feel more or less comfortable with law's presence in their lives." She argues that generalisation with regard to media's influence (or effect) on legal consciousness should be avoided – and that factors like race; gender; personal experience; social identity and class lead to diverse interpretations of the law (2007:32-34).

Personal experience, according to Gies, outweighs the importance of media portrayals (2007:32):

> "When people have predominantly negative personal experiences of law, this will somehow have a greater impact on their legal consciousness than any media coverage has. The injury of personal confrontation runs deeper than any indignation at particular media portrayals."

Gies has an important point, but it may be noted that personal experiences in Britain – the setting of her writing – will be vastly different from personal experiences of the law in South Africa.

Not only did South African law develop in a different fashion than the British law; but the South African legal system has also been greatly influenced by the gross neglect and disregard of the certain racial groups' human rights during the Apartheid era. The effects of this process and decades of human rights abuses are unknown, but should surely have had an impact on many South Africans' perceptions of and trust (or lack of trust) in the law.

In short, this study does not propose to disregard the so-called power of the audience and the various variables (including personal, cultural and socio-economic backgrounds) that might have an influence on their perceptions of the

law; but will nevertheless broadly study the *possible* influences that certain media forms *might* have on perceptions of the law.

Whereas one can, for the moment, accept that the media may be influential in shaping legal consciousness, and argue that the extent of influence depends on the individual, it is submitted that the sources (including personal experience, news and popular media, friends and family, classes or courses) that play a role (and to what extent) in creating these perceptions should be identified.

News and popular media and its possible effects on legal consciousness are very important to the study, and warrant a closer look – granted *infra*.

2.4.3 Legal consciousness and popular media

The possible effects of popular media on legal consciousness form an important part of this research. Something to keep in mind is the fact that South African television is largely inundated by North American legal stories (as can be seen by simply casting a cursory glance over television schedules) could have additional effects in our society. Gies explains that audiences used to a "Hollywood diet" could become more knowledgeable about foreign (or American, accusatorial) legal systems than their own (Gies, 2007:66).

Sherwin also noticed the impact of the globalisation of American culture in Canada, for example (2008:10):

> "Consider, in this regard, the Canadian nationals who insist on their *Miranda* rights [i.e. that the individual has the right to remain silent; anything he or she says may be used against him or her in a court of law] when stopped by Canadian police. Having been virtually 'naturalized' by an inundation of American law films and TV shows they apparently feel entitled to the same rights and privileges as 'other' US citizens."

Papke argues that a shift has occurred in the way in which popular media portray, for example, judges. Originally judges were portrayed in a "flat" manner: all judges were thought to symbolise the law equally and almost without personality (2006:2) – "a system in which officials can resolve disputes and end controversies fairly and without bias by referring to a neutral, accessible body of laws."

He refers to an older American study (undertaken in 1987 by the US National Centre for State Courts), wherein it became evident that a substantial part of participants did not have a lot of confidence in the functioning of courts (2006:15). The study furthermore revealed that many participants thought that judges "did not put in a full day's work, showed little interest in people's problems, and rigidly insisted following the letter of the law" (2006:16).

Papke suggests that obvious public distrust in the legal system was "picked up" by the mass media industry, providing an opportunity for the production of new pop culture commodities with "non-flat" portrayals of judges (2006:2):

> "New and different portrayals of judges in American popular culture suggest a change is occurring. Many pop cultural judges have slipped off their pedestal and joined the ranks of routine pop cultural characters."

Sherwin seems to agree and even goes beyond Papke's findings in identifying a similar shift in expectations of the *entire* legal system (2004:102): "A comparative analysis of law films also reveals significant shifts in social norms and expectations regarding lawyers and the legal system."

It is doubtful that this shift in norms has been embraced or even accepted by lawyers and the legal system. With regard to the perceptions of judges in South Africa, at least, the Chief Justice of the South African Constitutional Court, Pius Langa, has spoken out about the criticism of judges by party members of the ruling ANC-government (his words could arguably also be applicable to the media). He said that whereas the scrutiny of judgments is to be expected, criticism of judges should not "jeopardise or impugn the integrity and dignity of the judgment... People need to have regard for the institution itself, especially people in leadership roles because what they say impacts on others" (cited in Pather, 2009).

It should be stressed that most research regarding popular media's effects on the law and people's perceptions of the law have been conducted from American perspectives (including that of Sherwin and Papke, *supra*). The fact that these researchers write from an American context makes it less applicable in other contexts – also making it important to obtain data specifically relating to South African citizens' perceptions and whether or not popular media have an influence thereon.

2.4.4 Legal consciousness and news media

Besides popular media, news media are also frequently criticised for the coverage of not only judges, but also other legal matters – and thus news media also have a potential effect on legal consciousness.

Trach writes that the news media can paint similarly misleading pictures of justice and the legal system, and these pictures may seem even more believable than those offered by popular media (2003:5):

> "Perhaps the most frightening medium through which people's attitudes about the justice system are prejudiced is the [news] media. This is because people consider the [news] media to be based on fact, whereas they know there is some element of fiction to television and movies."

Especially the coverage of perceived injustices in the legal system can have far-reaching influences on legal consciousness and more. As argued by Nadler (2002:19), when people start questioning the integrity of the legal system, they might be more likely to violate the law than they would have if they did not question the law's integrity.

Court reporting is generally the category of news reporting at which such criticism is aimed, and due to the possible detrimental effect of inaccurate reporting in this field (affecting much more than just legal consciousness); it deserves individual attention.

2.5 Courts and the media

Courts are often the forum where the media and law collide. Gies, for example, writes that high-profile trials and popular media portrayals of the law are the most studied

examples of the media's "problematic relationship with the legal truth and the extent to which they are in the business of embellishing the law as well as consistently distorting it" (2007:73).

Kaye, an American judge and writer, also delves out criticism with regard to the media's court coverage, in effect arguing that such coverage has a detrimental effect on legal consciousness (1994:78):

> "How the media portrays [*sic*] us affects our ability to carry out our role, and it is no understatement that the courts have not fared well in the media. Sensationalised reports on a handful of cases distort the public's understanding of their justice system."

2.5.1 Media and public interest in courts and trials

The coverage of certain court cases by the news media is perhaps particularly scrutinised because it is so popular with media and audiences alike. As Kaye explains (1997:78), "Public interest in the courts is understandable. There is natural drama in courtroom dramas, especially those that deal with life's darker or more bizarre twists."

Andrew Tyndall, publisher of the *Tyndall Report* (a weekly analysis of American network news), has, for instance, found that news events relating to trials are the only stories in the American news media to "break into the ranks of the most heavily covered stories" (1998:59).

As for the media's profound interest in court cases, Tyndall writes that trials are the cream of the law crop – meeting all the requirements of a good story (1998:54):

> "All the action takes place in one room so news gathering is inexpensive; is has a beginning, a middle and an end so the commitment of resources is not open-ended; it has a limited cast of characters so explanations are not too convoluted; it has winners and losers decided by a jury [or, in South Africa's case, a judge]."

Certain trials seem to entice the media to an even higher extent, thus garnering an extraordinary amount of coverage across various mediums. Tyndall found that the 1995 OJ Simpson trial, for example, ranked extremely high on the list of the top ten most heavily covered news stories between 1989 and 1999 (Tyndall, 1998:55-59).

The amount of coverage dedicated to *California v Simpson* (1995) came second only to the Persian Gulf War – thus receiving more coverage than stories like the Tiananmen Square massacre (1989); the collapse of the Berlin Wall (1989); the fall of the Soviet Union (1991); and the 1995 Yugoslavian wars (Tyndall, 1998:56).

Alexander (2003:ix) writes that the Simpson case was covered by more than 1000 journalists daily over a period of a year and a half; and over 2000 hours of live coverage on the trial was aired on TV. The verdict, in turn, was watched by 150 million US viewers alone (Alexander, 2003:1):

> "Media coverage of *California v Simpson* – one in a series of high-profile criminal cases described by commentators as 'The Trial of the Century' – was indeed pervasive."

Closer to home, South African media were also imbued over the past few years by the trials of, for example, Najwa Petersen (convicted of murdering her husband, Taliep); Dina Rodrigues (convicted of ordering the murder of six-month-old Jordan-Lee Norton); Jacob Zuma (accused of and acquitted on charges of rape; with separate charges of corruption against him being dismissed); and Fred van der Vyver (accused and acquitted of the murder of his girlfriend, Inge Lotz).

Unfortunately South Africa lacks an equivalent to the *Tyndall Report* that can provide clear statistics as to the exact amount of coverage attributed to trials and legal events. Judging from the amount of news media dedicated to the coverage of trials, however, in the absence of concrete data one can only guess that court reporting must also influence citizens' opinions of the law – thus having some effect on the legal consciousness of citizens.

The result of the OJ Simpson trial, for instance, was not just that the American public's interest in the law was spiked. As noted by Alexander (2003:ix):

> "American Bar Association-Gallup polls showed that coverage of the case resulted in loss of public respect for both lawyers and the media – and lowered confidence in the criminal justice system."

Arguably research needs to be undertaken in a South African context to ascertain what the possible influences of news media coverage may be on legal consciousness.

2.5.2 Court reporting and the law

Court reporting is something that it is, in effect, statutorily required in a democracy. In South Africa, more specifically, the principle of open justice and/or courts is entrenched by section 34 of the Constitution (1996) and section 152 of the Criminal Procedure Act (Act 51 of 1977) for the purposes of "transparency and accountability" (Swanepoel, 2006:12).

Swanepoel writes that the media have a responsibility to report accurately on what transpires in court as most people do not have the opportunity or time to attend trials. The media thus help to ensure that the administration of justice is upheld (2006:12). The Lord Chief Justice of England (1922-1940), Gordon Hewart, also proclaimed the media's importance in this regard in his well-known aphorism (in the case of *Rex v Sussex Justices* (1923), cited in Ratcliffe, 2006:247):

> "A long line of cases shows us that it is not merely of some importance, but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."

The principle of open justice cannot really be mentioned in a vacuum – both the right to freedom of expression (section 16 of the Constitution, 1996) and the right to a fair trial (section 35(3) of the Constitution, 1996) are closely related to open justice.

The principle of open justice and the right to freedom of expression are limited in cases of sexual or similar offences; extortion; and where the witnesses or accused are younger than 18. In these cases, the media may be prohibited from releasing the identities of involved parties in order to protect both those younger than 18 and the victims of said crimes (Swanepoel, 2006:12).

Another important instance of limitation is the publication of the identity of a suspect. The exact moment that a person's identity can be revealed is however contested. On the one hand Ritchie & Ansell write that a suspect's identity can only be released after he or she has pleaded to an offence (2005:70).

Groenewald, on the other hand, argues that whereas identifying a person as a suspect to a crime, or publishing the fact that he or she was arrested, is defamatory; once a person appears in court his or her identity may be disclosed "as the media have *a qualified privilege* to report on court proceedings" (original emphasis, 2006).

Whereas the matter remains undecided until a court rules on it, in the meantime it should be stressed that the identity of a person or suspect may not be disclosed until he or she appears in court (at the earliest).

Limitations to press freedom are justified in terms of section 7(3) and 36 of the Constitution (1996), which allows certain restrictions in particular circumstances. As explained by Du Plessis (1999:181), whereas freedom of expression "is vital in any democracy, it can nevertheless be limited in order to prevent certain forms of expression from violating human dignity."

Section 36 effectively entails that press freedom may be limited by laws of general application (including the common law) "to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom" (Constitution, 1996).

The section furthermore provides that certain factors should be taken into consideration, including the importance of the purpose of the limitation; the nature and extent thereof; the relation between the limitation and its purpose; and whether there are less restrictive ways of achieving such a purpose. The nature and importance of the right should also be considered – and relevant case law have illustrated that press freedom is considered a vital right in a democratic country (Swanepoel, 2006:11).

In especially a young democracy, the balancing act required by section 36 should be carefully approached. In the case of *S v Mamabolo (e-TV, Business Day and the Freedom of Expression Institute Intervening)* (2001), the court noted that "freedom of expression is all the more important to us because our democracy is not yet firmly established and must feel its way. Therefore, we should not be particularly astute to outlaw any form of thought-control" (cited in Swanepoel, 2006:11).

The same care applies for presiding judicial officers' relations with the media. Whereas judicial officers were previously not allowed to communicate with the media, judicial officers' right to freedom of expression are now respected, albeit within limits (Swanepoel, 2006:22). As noted in the Uniform Rules of Ethics of the General Bar Council of South Africa (amended rule 4.18.3 (f); cited in Swanepoel, 2006:22):

> "It is undesirable for a member to express an opinion in the press, by letter, article, interview or otherwise on any matter which is still pending in the Courts. Notwithstanding the aforegoing [*sic*], a member may express an opinion in the media, in general terms, on an issue which is still pending, provided that the member does not thereby purport to pre-judge the result."

2.5.3 Pre-trial publicity, court reporting and the law

As pointed out by Gies, the right to freedom of expression is not an unqualified privilege: "The corollary of these special legal safeguards [to protect freedom of expression], however, is the expectation that high journalistic standards will be maintained" (2007:93). Such maintenance is difficult, especially when it concerns the need to balance the right to freedom of expression and that of a fair trial.

One of the most important concerns that affect this precarious balancing act is the matter of pre-trial publicity and court reporting's effects on the fairness of a trial. Duncan, for example, writes (2008:3): "The debate between society and academics about how the amount and content of media coverage affects legal proceedings highlights the tension between important competing democratic values."

Bruschke & Loges have proposed an interesting way of approaching the problem, noting that the concern should not simply be to ensure a free press and fair trials (2004:ix). They argue that the media are not always fair, and with the vast expenses involved with securing a strong case in court, trials are often only fair if clients have the means to pay for expensive representation. As a consequence, they propose that the adjectives ("fair" and "free") should be switched in order to provide some new insights to the debate (2004:ix):

> "A productive way to address the free press and fair trial issue is to think of ways to make the press fair and the trials free as the logical counterpart of keeping the press free and the trials fair.

The free/fair press *versus* fair/free trial debate has drawn the attention of many parties on both sides of the debate. Countless fears over the possible effect that publicity has on a trial have also been expressed (including Swanepoel, 2006:4; Gies, 2007:2; Kaye, 1998:76; Bruschke & Loges, 2004:3; Sherwin, 2004:102-3; Duncan, 2008:3; Nadler, 2002:3). In his foreword to Bruschke & Loges' book, American attorney Terry Giles writes (2004:viii):

> "Publicity is a multi-edged sword which, of course, can impact a trial. But it can also grind the subject into fine powder, destroying reputations, relationships, and careers as it rolls over everything in its path."

Whereas other authors also share Giles' concerns regarding the negative potential of pre-trial publicity (including Duncan 2008:3 and Gies 2007:2), the extent of such possible effects is a contentious issue. Some researchers may support the idea that pre-trial publicity has direct influences on verdicts (see Swanepoel, 2006:4), but Bruschke *et al.* believe that most reviews of relevant studies have "vastly overstated" the (direct) effects of pre-trial publicity (2004:135).

Bruschke *et al.* identified a number of empirical studies on the direct effects of pre-trial publicity on jurors, and studied 36 of these. They found that more or less the same amount of studies found a pre-trial publicity effect than those studies that did not; and many studies produced only mixed results (2004:66).

They also established that pre-trial publicity does not happen in proportional terms (2004:5): "Concerns over the incidence of publicity derive from the total number of cases

affected (a respectable 12,000 a year) rather than the percentage of cases involved (no more than 20% and probably somewhere between 1% and 5%)." The intensity of media interest in particular cases also differs from case to case and media medium to medium – in other words, a few cases get "a disproportionate amount of attention" (Bruschke *et al.*, 2004:5)

In certain instances, however, Bruschke *et al.* argue that pre-trial publicity may have a more substantial impact. This is particularly so in cases that suffer from such an extensive degree of exposure that it is termed "trial by media" (Swanepoel, 2005:4). Bruschke *et al.* write that "when a case becomes the focus of intense scrutiny and moves from one that simply attracts some media attention to one that has become a 'media trial'" (2004:74), pre-trial publicity is a valid cause for concern.

In *S v Harber: In re S v Baleka and Others* (1986), Judge Kees van Dijkhorst stresses this need for concern when high degrees of publicity abound:

> "Trial by newspaper is intrinsically objectionable as it would lead to disrespect for the law... If the mass media are allowed to usurp the function of the courts and judge the issues which are to be tried, not only will unpopular causes not get a fair trial, but the public will be led to believe that it is easy to find the truth, *viz* in the popular press, and disrespect for the process of the law could follow. Wild speculation in the press about the outcome of a case would tend to lower the esteem in which our courts are held... Trial by newspaper is a monster which should not be allowed to set foot on our soil."

Bruschke *et al.* mention certain factors that may make a case – or verdict – more susceptible to this kind of influence or publicity. They believe that the evidence in a case must be close (2004:137) – "where conviction and acquittal are equally likely outcomes." They also argue that pre-trial publicity that contains information that is more probative in nature will be more likely to persuade the jurors (or judiciary) than other publicity (2004:137).

Whereas it would seem that Bruschke and Loges are suggesting that pre-trial publicity is "not the pernicious ogre previously reported" (2004:75), one should be careful not to attach too much importance to the findings. As mentioned, the focus of the studies was on jurors and the *direct* effect that *pre-trial* publicity could have on outcomes or *verdicts*. Broader (and vital) questions concerning the possible effect of more long term and indirect effects of media coverage of legal matters have consequently been ignored.

Such a limitation or restriction is strange in the sense that media effects theorists have long since discarded the idea that the media have direct and linear effects – opting to support more long-term, indirect media effects (see 2.4.3). Clearly such research – i.e. on long term effects of media exposure on legal consciousness (for argument's sake) – could be incredibly beneficial to the topic.

Unfortunately few serious studies on the effects of pre-trial publicity have been undertaken from a media studies perspective – thus suggesting a definite gap in the field. As Bruschke *et al*. also admit (2004:99):

> "Invisible elephants have two conspicuous features: They are large, and they can't be seen. Media theory has been the invisible elephant for pre-trial publicity research."

Making use of the cultivation theory (see media effects, 2.4.2), Bruschke *et al.* argue that "the totality of crime news in the media may cultivate beliefs about the world that in turn make some kinds of narratives sensible and some harder to believe" (2004:108).

Although they don't use the words, what these authors are in fact referring to is legal consciousness – in other words, they are admitting that the media could also be playing a role in creating perceptions and expectations of the law (see legal consciousness, *supra*). It is therefore submitted that there is a clear need to study news media portrayals of the law (specifically court reporting and pre-trial publicity) and the (indirect) effects it may be having on not only judicial officers and parties closely involved with a case, but also citizens' legal consciousness.

2.5.4 Managing pre-trial and trial publicity

Perhaps because of the potential that publicity harbours, many an attorney and advocate have started realising the need to learn how to manage such media exposure. As Giles notes (cited in Bruschke *et al*, 2003:viii):

> "It would be absolute incompetence for an attorney to not be as prepared for handling his client's case in the courtroom of public opinion as he or she would at trial. There is no choice... If your client is public fodder you have to get aboard, or the train will leave without you."

Well-known American criminal defence lawyer Robert Shapiro, who was part of OJ Simpson's (successful) defence team, notes that lawyers are thrust into the role of a public relations liaison as soon as they represent someone in a high-profile case. Simply refusing to talk to the media is, according to him, not an option (1994):

> "'No comment' is the least appropriate and least productive response... It adds absolutely nothing and leaves the public with a negative impression."

Shapiro feels that lawyers who are defending someone in a high-profile criminal case have to take particular care in their handling of the press – especially because police and prosecuting authorities would already have had the first opportunity to create an impression about the accused in the press. He notes (1994):

> "The first impression the public gets is usually the one that is most important. Unfortunately, in criminal cases, this generally is the biased report issued by the investigating law enforcement agency and, subsequently, the prosecuting agency... The story is framed in a way to give the prosecutor's version of the case the greatest weight."

Alexander points out that an increasing amount of "litigation public relation" officers (otherwise known as litigation support or litigation specialists) are being appointed in order to ensure that lawyers deal correctly with the court of public opinion (2003:94). These specialists have to ensure that their clients' cases are presented favourably in the media – something that involves "keeping up" with the evolving world of the media (Giles, cited in Bruschke *et al.*, 2003:ix).

These specialists, Alexander argues, try their utmost to use the press in order to ensure that their clients are portrayed in more positive ways (2004:94):

> "Many lawyers assume they are much smarter than journalists and can have their way with them. One of the most frequent suggestions to lawyers being interviewed is simply to ignore a journalist's questions and instead repeat the answer to a different question, one that will better serve the client's interest."

Shapiro still stresses the need for good relationships with the media, noting that lawyers can also help in ensuring that people become more knowledgeable about the law (1994):

> "My experience is that most reporters couldn't tell you the difference between a preliminary hearing and a pre-trial conference. They know little or nothing of how bail is posted and what the legal requirements are. By answering these simple questions, a lawyer not only can develop a relationship with the press, but can also educate the public on the true workings of our justice system."

This apparent lack of journalists' legal knowledge (also see 2.6 *infra*), however, also leads to the manipulation of the press. Shapiro has his own recommendations for being positively portrayed in the media (cited in Alexander, 2004:95):

> "The less choice you give the news director or reporter, the greater chance you have of airing the precise words you want aired... Repeat them continuously and they will be repeated by the media. After a while, the repetition almost becomes a fact. That is your ultimate goal."

These "facts" and stories influence not only the perceptions and opinions ordinary citizens have with regard to the guilt or innocence of a party, but also (potentially) the impartiality of members of the judiciary (specifically judicial officers and assessors) before they even know they will be adjudicating a particular case. As noted by Shapiro (1994):

> "The lawyer's role as spokesperson may be equally important to the outcome of a case as the skills of an advocate in the courtroom. The importance and power of the media cannot be overemphasized."

It remains important to study the degree to which pre-trial and trial publicity is "managed" in a South African context in order to ascertain whether it could have the effects forewarned by Shapiro and others. These possible consequences will be discussed in more detail below.

2.5.5 Consequences of pre-trial publicity and court reporting

a) The impartiality and independence of the judiciary

As noted, most of the research regarding the impartiality of the judiciary has been undertaken in countries that still have the jury system – a system that has been defined as "Asking the ignorant to use the incomprehensible to decide the unknowable" (Zobel, 1995; cited in Ratcliffe, 2006:255).

Research on the impartiality of the judiciary is not easily applicable in South Africa, where the jury system was abolished in both civil and criminal cases in respectively 1927 and 1969 (Van der Merwe & Schwikkard, 2002:5). Yet Swanepoel is of the opinion that even judges may be affected by publicity (2006:9): "It is respectfully submitted that the judiciary, being human, can be susceptible to media influence."

In the judgment of *S v Harber: In re S v Baleka* (1986), Judge Van Dijkhorst also writes that “a reason for the objection to the prejudging of issues to be tried by a court of law is that it may affect the mind of those who may later be witnesses or possibly even of the judicial officer”. It would thus seem that the learned judge at least acknowledges the possibility of undue influence by the media on the judiciary.

Whereas judges have training and knowledge that should however remind them to remain independent, Swanepoel points out that witnesses and lay assessors (used in lower and higher courts to help the presiding judicial officer decide on questions of fact) largely do not have this luxury (2006:9). In this respect, she argues, assessors are similar to juries and that they are also susceptible to media influence (2006:9).

One should perhaps be reminded of some characteristics of assessors that distinguish them from juries – thus casting doubt over Swanepoel’s argument. Although Van der Merwe *et al.*’s book on the law of evidence is not concerned with media influences, the authors do set out important differences between juries and assessors (2002:16):

> “Assessors – unlike a jury – must give reasons for their verdict. They either agree or disagree with the presiding officer’s reasons and finding, and in the event of a disagreement must furnish their own reasons in a separate judgement which is read out in court by the presiding judicial officer. And assessors – unlike jurors – are under constant and immediate judicial guidance in the sense that a judge (or magistrate) and the assessors involved in the trial have joint deliberations in reaching their respective verdicts. During these deliberations the presiding judicial officer can and must draw the attention of lay assessors to certain rules which govern the evaluation of evidence.”

It is respectfully submitted that Swanepoel’s argument can therefore not be accepted at face value, as the fact that judicial officers still guide assessors – pointing out certain facts and drawing their attention to important rules – prepares them (to an extent) for the necessary independence and impartiality required of the judiciary. As judicial officers can also overrule assessors on matters relating to the law, the right to a fair trial is also protected (to the extent to which judges can be trusted to remain independent and impartial).

Despite the fact that assessors might not be quite as susceptible to influence as Swanepoel suggests, the issue of impartiality deserves further attention, and needs to be investigated in South Africa specifically. The need is arguably for research from a less legal-centric point of view that takes a broad look at the *possibility* that judicial officers and/or assessors *might* be influenced (more indirectly) by news media in a South African context. (Please refer to 2.4.2 for the need to study indirect effects instead of direct effects).

b) Effect of publicity on the parties involved in court cases

Besides the influence on judicial officers, assessors and witnesses; pre-trial publicity also has an effect on the parties involved – and in particular the defendant(s) concerned.

Duncan argues that even acquitted defendants will face problems with employers, the loss of social relationships and future job opportunities (2008:11), and will also have to live with many people always harbouring suspicions about their possible guilt (2008:10): "The old adage 'where there is a smoke there is fire' resonates with many."

The reason for this suspicion could, at least in part, be explained by the possible loss of the presumption of innocence due to extensive publicity. Bruschke *et al.* explain that as members of the press and the prosecution authority naturally have more contact with one another, publicity tends to be prejudicial against the defendant (2004:104): "Thus, a defence attorney has reason to be concerned if the defendant's case has received *any* coverage in the media."

As noted in *S v Dzukuda and Others; S v Tshilo* (2000; cited in Swanepoel, 2006:20-21):

> "Of particular importance in the pre-conviction stage of the trial is the prejudice suffered by accused to their liberty and security (dignity) interests ... Despite being presumed innocent, the accused is subject to various forms of prejudice and penalty merely by virtue of being an accused, *because many in the community pay little more than lip service to such presumption of innocence*" (own emphasis).

Pre-trial publicity therefore also poses a potential threat to the presumption of innocence – described (in a South African context) by Schwikkard as "a rule placing the burden on the prosecution to prove the guilt of an accused person beyond reasonable doubt" (1999:39).

Bruschke *et al.* write that the presumption of innocence serves as proof of a natural bias against any person(s) accused of a crime (2004:xiii):

> "We put this presumption in our legal code to remind ourselves, as jurors and even as victims, that we must withhold judgment until evidence is presented because we are tempted to indulge a bias against people accused of crimes."

Even though the rule may be an indication of an underlying bias against defendants, it is still supposed to be "a constitutional pre-requisite for the right to a fair trial" (Schwikkard, 1999:9). Shapiro however writes that the presumption of innocence is lost when the public believes what the media write about a case (1994):

> "The initial headlines of the arrest often make the presumption of innocence a myth. In reality, we have the presumption of guilt."

Bruschke *et al.* seem to agree with Shapiro – they write that "the very appearance of a person in the news as a suspect in a crime may be prejudicial in ways that no abstract presumption of innocence can overcome." Yet if trials that suffer from such publicity do lead to prejudice against an accused, Bruschke *et al.* argue that the effect should be higher conviction rates for the defendants concerned – a proposition that has only been researched by these authors (2004:76).

Bruschke *et al.* conducted a study of murder trials in the USA over a three-year period, and found that highly publicised trials have conviction rates identical to trials that had no publicity at all. They thus concluded (once again) that the issue of pre-trial publicity effects cannot be reduced to a simple linear pattern effect on verdicts (2004:136).

Putting aside more long term media effects (*supra*) for the moment, it should be noted that Bruschke *et al*. also attribute the supposed lack of findings related to the ability of pre-trial publicity to bias decisions to the effectiveness of legal remedies (2004:75):

> "Pre-trial publicity... may have been blocked from the legal system because of the efficacy of extant remedies, which suggests that the issue is not one to dismiss as irrelevant but instead that careful attention ought be given to appropriate remedies. The search for smarter, more effective remedies can only improve the course of justice."

In South Africa the major "remedy" perhaps preventing or stalling the adverse effect of pre-trial publicity is contempt of court proceedings. As this is a legal remedy, it will be investigated by looking at secondary literature only – but it remains an important concept as it essentially allows one to decide when reporting with regard to courts is fair and reasonable. A thorough look at secondary literature with regard to contempt of court will therefore follow in the subsequent section.

2.5.6 Protecting the fair administration of justice: Contempt of court proceedings

Both Burchell & Milton (1997:693) and Burns (2001:223) define contempt of court as unlawfully and intentionally violating the dignity, repute or authority of a judicial body, or interfering in the administration of justice in a matter pending before it. Snyman (1992:351) and Maré (2008:29) add that contempt of court also includes violating the dignity, repute or authority of a judicial officer in his official capacity.

Burchell *et al.* explain that the crime is based on the broad notion that no one may interfere with justice and the courts (1997:693):

> "Three main interests are protected by the crime: (i) the citizen's right to a fair trial (ii) maintaining the confidence of the public in the judiciary [and] (iii) upholding the integrity of judicial orders and instructions."

In order to protect the above-mentioned interests, courts should be able to make their decisions and pronounce their verdicts without undue influence from outside sources (Burns, 2001:223) – sources like the media. As Snyman explains (2002:352):

> "If the regard for and the authority of a court is undermined, public policy is itself undermined as the courts exist in order to protect the interests and well-being of the entire community."

The essential elements of the crime of contempt of court include unlawfulness; a judicial body that may be violated; the act of contempt; and fault (Snyman, 1992:352-355; Burns, 2001:225-232; Burchell *et al.,* 1997:695).

a) Unlawfulness

With regard to unlawfulness, it should be noted that Snyman (1992:352-3), Burns (2001:225) and Burchell *et al.* (1997:695-6) emphasise the point that *fair and legitimate* criticism on the verdict of a case or the general administration of justice does not constitute contempt.

Snyman notes that debates surrounding the execution of justice in a democratic society are not only acceptable but also necessary in order to ensure that the law and the

execution of justice meet the expectations of citizens (1992:353) – thus again emphasising the aforementioned importance of the relationship between the media (as facilitator of debates) and the law.

The authors also respectively quote the British case of *Ambard v Attorney-General of Trinidad* (1936; cited in Snyman, 1999:353; Burns, 2001:226; Burchell *et al.*, 1997:695), wherein Lord Atkin noted:

> "Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men."

Ordinary men naturally include the mass media – but what exactly constitutes "fair and legitimate criticism" is another issue (and concern). According to Snyman, commentary is fair if it is "reasonable, *bona fide*, in acceptable language and in the interest of the proper administration of justice" (1992:353).

Knowing what is fair and reasonable in this regard is something that the media arguably needs to know and be educated about – a matter that will be discussed later.

b) Judicial body or officer

Snyman emphasizes the fact that the alleged contempt has to impact a judicial officer in his professional capacity, as public interest does not stand to be affected by violations of a judicial officer in his or her private capacity (1992:352):

> "The reason for the existence of the crime is not to protect the dignity of an individual judicial official, but to protect the administration of justice. When the authority and dignity of a court or judicial official is threatened, the respect that the public has for the court and the administration of justice, and thus the legal order, is undermined."

Burchell *et al.* (1997:701-2) and Burns (1990:226) agree. Burns also notes that the supposed attack may be directed at the judiciary in general instead of at just a specific officer of the law (2001:227). "Court" furthermore refers to all courts – whether supreme or magistrates' courts with civil or criminal jurisdiction – except commissions of enquiry (Burns, 2001:226-7).

c) The act: forms of contempt

The type of contempt that arguably influences the media most is contempt *sub judice*, forming part of contempt *ex facie curiae* with reference to pending judicial proceedings. Other forms of this type of contempt also include interfering with witnesses and the judicial officer (etc.); insulting the court; or defaulting on an appearance in court.

The two additional classifications of possible contempt include contempt *in facie curiae* (where contempt must occur in the presence of the concerned court) and contempt *ex facie curiae* which do not refer to pending proceedings (including insulting the court; interrupting court processes; obstructing court officials and disobeying court orders) (Burchell *et al.*, 1997:696).

The media could be the accused party in many of these forms of contempt, but contempt *sub judice*, otherwise known as "newspaper cases" (Burns, 1990:215), will form the focus

of this investigation of literature. Contempt *sub judice* is arguably the most relevant and contentious issue regarding the relationship between the media and the law.

Sub judice contempt of court "consists in unlawfully and intentionally interfering in the administration of justice in a matter pending before a judicial body, by means of a publication which has the tendency to interfere improperly with the administration of justice" (Maré, 2008:29).

The reason for the existence of the crime is essentially to prevent trial by media. As noted by Burchell *et al.* (1997:697):

> "The basis of the objection to media comment upon pending proceedings is that the comment may have the effect of influencing the mind of the court, thus rendering it not impartial in the matter. Furthermore, it is said that, to permit comment upon matters that are *sub judice* may lead to a situation where, in the public mind, the opinion of the media concerning the matter supplants that of the judiciary."

Burchell *et al.* explain that, with criminal proceedings, matters are "pending" from their commencement (even if the trial has not yet started) – "whether this has taken place by arrest, summons or warning to appear" (1997:697). With civil trials, a matter is also pending from the moment that it commences (Burns, 1990:228). The matter is pending until "the ultimate court of appeal delivers its judgment or when the time available for the noting of an appeal has expired, or appeal has been noted" (Burns, 1990:219).

Swanepoel (2006:21) and Crone (1989:141) point out that a matter that is perhaps imminent, but not yet pending (e.g. where there are suspicions that a suspect will be arrested), may not qualify for *sub judice* procedures, but the press may still be held accountable on the grounds of obstructing the ends of justice. Burns writes that contempt of court and the crime of defeating or obstructing the course of justice thus tend to overlap at times (2001:223):

> "This means that acts which fall beyond the ambit of contempt of court could well fall into the ambit of defeating or obstructing the course of justice."

Burchell *et al.* list some examples of contempt *sub judice* (1997:697) that may be useful to keep in mind: "Comment that a person is guilty or innocent of the offence charged, or attacking or praising his character; comment on the character, demeanour or credibility of a witness; exhorting judges to disregard evidence given in the course of proceedings." Crone adds that publishing a photograph of a suspect when he is about to appear in an identity parade; or anticipating the verdict also constitutes examples of *sub judice* contempt of court (1989:137-9).

d) Fault

With regard to the fault requirement for the crime, it should be noted that the crime can only be committed if the intention (*dolus* in legal terms) to do so can be proven (Snyman, 1992:353; Burns 2001:225; Burchell *et al.* 1997:702). Yet it should be noted that one clear exception to the rule exists in cases of *sub judice* contempt of court, where *culpa* (negligence) will also supply the necessary fault (Burchell *et al.*, 1997:702; Maré, 2008:29).

As noted in the case of *S v Harber and Another: In re S v Baleka and Another* (1986):

> "The existing law in regard to cases of contempt of court in the form of newspaper publications is that the proprietor, publisher and editor of the newspaper which is the subject of the charge are liable even in the absence of intent. This conforms with modern exigencies. The Courts cannot allow the powerful media to attack the dignity of the Courts and interfere with the administration of justice with impunity."

Both Snyman (2002:354) and Burns (2001:226) stress the fact that individual reporters should not be held responsible for contempt *sub judice* once the editor and/or publisher have been held accountable.

The crime of *sub judice* contempt is committed when a publication has the *tendency* to prejudice. Burchell *et al.* argue that "the gist of the test is thus not whether the trial *was* prejudiced by the publication but rather whether it *might* have been" (original emphasis, 1997:697) – in other words the guiding test is whether publication *tends to* prejudice (accepted in *S v Harber and Another: In re S v Baleka and Another* (1986)).

Therefore, as noted by Maré, the crime will be committed regardless of whether the court or judicial officer saw or read the publication or was actually influenced or not (2008:29-30). As Snyman correctly points out (1992:357), "the test is therefore especially wide."

The tendency test, when it concerns *sub judice*, is but one of the constitutionality concerns frequently leveraged against the crime since the advent of constitutionalism in South Africa. Others include that negligence is sufficient to prove fault; and that the crime is adjudicated by summary procedure. As explained by Burchell *et al.* with regard to the latter, "the court before whom the contempt is committed may there and then sentence the contemnor" (1997:702).

According to Burchell *et al.*, the summary procedure poses potential challenges on the grounds that it both violates the presumption of innocence and the *audi alteram partem*-rule (the right to have both sides to a dispute heard) (2007:91). They furthermore write (2007:703):

> "The summary procedure is so fraught with potential violations of the citizen's right to a fair trial that, on the face of it, it appears to be in conflict with s 35(3) of the Republic of South Africa Constitution 1996 which provides a constitutional right to a fair trial."

Steytler also argues that despite the importance of protecting the dignity of the courts and the execution of justice, the summary procedure should only be used when there is no other option available (2008:235):

> "In most extreme cases, a case could be made out that the infringement of the right to have adequate time to prepare a defence should give way to the compelling interest of protecting a court's dignity and authority; the courts are after all the institution around which the administration of justice turns. However, unless an immediate and compelling need to act summarily can clearly be demonstrated, there should be no deviation from full compliance of fair trial rights."

e) Developments with regard to the constitutionality of contempt sub judice

Keeping these concerns regarding *sub judice* contempt in mind, it is perhaps no wonder the Freedom of Expression Institute (FXI)'s Law Clinic noted in their annual activity report of 2006 that the "ultimate precedent" would be for the *sub judice* rule to be declared unconstitutional (Delaney, 2007:9).

Yet whilst various authors (including Burchell *et al.*, 1997:693; Swanepoel, 2006:14 and Maré, 2008:30) agree that the requirements for *sub judice* entail an infringement of press freedom, such infringement might be justified. As mentioned in 2.5.2, section 36 of the Constitution (1996) allows limitations of fundamental rights as long as the limiting law is a law of general application (*sub judice* contempt is a common-law crime, which meets this requirement) and is reasonable and justifiable in a democratic society.

In this instance section 36 of the Constitution (1996) will demand that the purpose of the *sub judice* rule (ensuring a fair trial) be balanced against freedom of the press. Maré (2008:22) and Hoctor (2005:466) agree with Burchell *et al.* (1997:697) that *sub judice* is justified and reasonable in the light of what it protects – the right to a fair trial. As noted by Burchell *et al.* (1997:697):

> "This limitation is justified in that it prevents 'trial by newspaper', something which has been described by a South African judge as 'a monster' [see 2.5.3]."

Despite Swanepoel's support of the need for *sub judice* contempt of court in ensuring the proper administration of justice and the fair trial rights of the accused (2006:14); she proposes some amendments that, it is submitted, would perhaps allow the crime to be more acceptable in a constitutional democracy. She argues that the tendency test's threshold is too low, broad and imprecise (2006:19) – as also noted *supra*.

Swanepoel proposes using the "real risk" or "substantial likelihood" tests (used in various foreign constitutional nations) whilst being careful not to set the parameters for contempt too high – something that would "effectively stifle the *sub judice* rule" (2006:20):

> "I believe that when the test for the rule of *sub judice* contempt of court is one of 'substantial likelihood that will or may prejudice or interfere with the administration of justice', then the threshold to protect freedom of expression is more attainable, is in line with foreign law and meets constitutional demands. Actual prejudice need not be shown, but the prejudice must be trial-related."

In the Supreme Court of Appeal case of *Midi Television (Pty) Ltd t/a e-TV v Director of Public Prosecutions (Western Cape)* (2007), the issue of contempt of court came under limelight – including the extent to which rights may be abridged in order to protect the administration of justice.

In his judgment of the case, Judge Nugent again reaffirmed the fact that the purpose served by contempt of law requirements allows the limitation of press freedom (2007):

> "The integrity of the judicial process is an essential component of the rule of law. If the rule of law is itself eroded through compromising the integrity of the judicial process then all constitutional rights and freedoms - including the freedom of the press - are also compromised."

He notes that a more important and relevant question is how serious the potential prejudice (by pre-trial publication) needs to be before the limitation of press freedom will be allowed (2007). Judge Nugent describes the various tests used in respectively the USA, Canada and England, and notes that:

> "What is required by all those tests (implicitly, even if not always expressed) before a ban on publication will be considered is a demonstrable relationship between the publication and the prejudice that it might cause to the administration of justice; substantial prejudice if it occurs; and a real risk that the prejudice will occur."

Judge Nugent argues that the earlier, pre-constitutional precedent established in *S v Harber and Another: In re S v Baleka and Another* (1986) (*supra*) – that the tendency test is sufficient to establish fault – is no longer applicable in our democracy. He rules that "no less" than the above-mentioned test (as derived from other contemporary democracies) is required to prove contempt of court:

> "A publication will be unlawful, and thus susceptible to being prohibited, only if the prejudice that the publication might cause to the administration of justice is demonstrable and substantial and there is a real risk that the prejudice will occur if publication takes place. Mere conjecture or speculation that prejudice might occur will not be enough."

Besides the real risk of prejudice, Judge Nugent furthermore requires that the limitation be necessary in order to achieve its purpose – i.e. to protect the dignity of the courts – and that the advantage of the limitation must outweigh the disadvantage. The party that furthermore alleges the crime of contempt, thus demanding the limitation of freedom of expression, shall bear the onus of proving the need for such limitation (2007).

Judge Nugent argues that whenever a court has to consider the restriction of press freedom in favour of protecting the administration of justice, or "whenever press freedom is sought to be restricted in protection of another right", the same principles should apply (2007):

> "If a risk of that kind is clearly established, and it cannot be prevented from occurring by other means, a ban on publication that is confined in scope and in content and in duration to what is necessary to avoid the risk might be considered."

In reaction to Judge Nugent's judgment, Sanef noted in a press release (2007):

> "Judge Nugent's decision means that South African law has been brought into line with global trends and what may be expected in contemporary democracies, and effectively rules that the *sub judice* rule is outdated. This means that recourse to this legal excuse to avoid public discussion of an issue – a favourite ploy of politicians – is no longer valid and those using it can be called to account."

Whereas Sanef's jubilant statements were widely, and without question, quoted in the media, it is respectfully submitted that the interpretation that Sanef gave to Judge Nugent's judgment was incorrect *in casu.*

By having a careful look at the judgment, it is clear that only one requirement of *sub judice* was amended in order to "bring it in line with global trends and what may be

expected in contemporary democracies". This requirement is the tendency test, which has now been changed to the real risk test (for establishing fault) – as proposed by Swanepoel (*supra*).

2.6 Education of journalists and autopoiesis

*"The path of the newspaperman is beset with perils. Without a knowledge [*sic*] of the law relating to his craft, he is liable to stumble into one of the many pitfalls created by the common law, and the numerous statutes which bear on the press. The consequences for the unsure of foot may, of course be serious..."*

– Judge HC Nicholas (cited in Stuart, 1986:v)

The Sanef press release serves as a good example of how easy it is to stumble into the many pitfalls mentioned by Judge Nicholas by misinterpreting the law. Especially with contempt of court, journalists should know what exactly their rights are. As noted earlier, everyone is allowed to publish fair and legitimate criticism on court proceedings.

Judge Langa also writes that courts deserve to be criticised from time to time, but that such criticism should be based on sound legal facts and a complete understanding of the legal principles involved in the judgment (cited in Ritchie & Ansell, 2006:2):

> "Without this knowledge, criticism will be unconstructive and deceiving and neither the courts, nor the public, nor the media will be served."

Besides criticism, other comments on the workings of court should also be based on a thorough understanding of law basics. Welsh & Greenwood argue that every journalist or sub-editor should have a basic knowledge of both criminal and civil procedure (1990:10). Kaye also writes (1998:77):

> "To tell the full story about a decision, a reporter should understand something of the interplay of statutes, precedents, evidence and arguments so the public can be told not just who, what, where and when, but also why."

Without knowing what their *own* rights are regarding the law, journalists are furthermore incapable of challenging courts when reporting is restricted without good or valid cause. Welsh *et al.* write that journalists should know the limits to a court's power to restrict reporting so that they can "recognise where the court has made an order of dubious legality" (1990:66).

Louw writes that basic legal knowledge (as outlined above) would be greatly beneficial to the relationship between the media and the law (2005:128):

> "The journalist who remembers the principles behind freedom of expression and that the freedom exists in the context of other rights, such as human dignity, privacy, freedom of religion and belief and equality, will enjoy and succeed in the relationship with the law."

Law is, however, a demanding and difficult topic. As Gies argues (2007:99), "law in its modern-day guise is dense and complex, capable of confounding at times the most accomplished practitioner and, consequently, its undistorted portrayal is likely to elude the most conscientious reporter or editor."

Unfortunately it would seem that South African journalists have not been able to surpass these difficulties; and do not possess the skills emphasised by Gies and other authors. In Sanef's Skills Audit report of 2002 it was noted that South African journalists "lack the necessary media law skills to know legal boundaries" (De Beer & Steyn, 2002:21). De Beer *et al.* comment that (2002:21) "important aspects like defamation, the *sub judice* rule, the section 205 issue, and copyright seem to have fell [*sic*] by the wayside".

Gies points out that the view that the media should be better informed and educated is based upon the idea that the media's coverage necessarily and directly influences the public's perception of the law (2007:99):

> "The aim is to enlighten journalists and the general public so as to correct erroneous understandings and banish misconceptions concerning the nature and the role of the judiciary. If only the public were better informed, so the argument goes, people would be more appreciative of the work of judges and hold them in high(er) esteem."

Yet, on the other hand, Gies notes that this argument and consequent criticism of the media's coverage of legal matters are based on the perception that there *is* a more correct way of portraying the law – yet that which is accurate from a legal viewpoint does not necessarily correspond to that which is accurate from the media's perspective (2007:114). She writes (2007:91):

> "I want to question the orthodoxy that the media should in principle be capable of offering a more accurate portrayal of the legal system."

Gies thus argues that the law is perhaps incapable of being portrayed more correctly as the inherent differences between the media and the law are insurmountably large (2007:100). She makes use of the theory of autopoiesis to support her argument, writing (2007:91):

> "Autopoiesis, which holds that social systems are entirely self-generated and largely impenetrable to each other, focuses attention on the way in which the legal system and the media deploy very different criteria for validating and creating reality."

Without going into too much detail on autopoiesis, it would arguably suffice to say that law and the media are different social subsystems according to this theory – and each of these systems use different modes of communication and have diverse roles to play in society (Gies, 2007:100-4).

Autopoiesis also means that media reports have a very limited influence on the law (thus discounting any supposed media effects, e.g. the pre-trial publicity effect) (2007:106). She writes (2007:108):

> "The autopoietic legal system is seen as robust enough to rise to the challenge and handle media pressure."

Whereas Gies' argument is interesting, it should be noted that this study is concerned with the effect on citizens as well – and in particular citizens' legal consciousness. Whereas accepting Gies' use of the theory of autopoiesis would mean that tensions between the media and law are natural due to fundamental differences in subsystems, it is submitted that not all tensions can be related to or excused by the theory of autopoiesis.

Supporting this approach, other authors are also convinced of the penetrability of the two systems (the media and the law). Sherwin, for instance, writes (2004:95):

> "There is a two-way system between law and popular culture. Real legal issues and controversies give rise to popular legal representations just as popular legal representations help to inform and shape real legal issues and case outcomes."

2.7 Concluding remarks

In this chapter the nature of the relationship between the media and the law was investigated, including the role that the media should play in terms of Fourth Estate or watchdog criteria. The need to reassess this traditional theory and idea with regard to the media's role in democracy was also examined, and will be looked at in the research as well.

Legal consciousness was investigated, including the way in which the media contribute to such awareness of the law. Media effects formed part of this discussion, and a general overview of the way in which media effects studies have progressed over the years was briefly outlined.

The need to study how traditional communication for development theories (including media effects) can be adapted in order to include the ways in which media's coverage of legal themes can influence democracy, was stressed. Both popular and news media's possible effects on legal consciousness were also pointed out, especially in terms of indirect and/or long-term media effects.

The fact that different audiences may be more or less susceptible to media effects was pointed out, and will also be touched on again in the research. In other words, the study will attempt to look at whether personal circumstances influence perceptions of the law gleaned from media coverage of legal matters.

A distinction was drawn between popular media coverage and news media coverage of legal matters. Whereas popular media can have specific influences because of its non-factual and, arguably, "Hollywoodized" account of the law; news media have potentially profound influences, especially when concerning the coverage of trials. The need to study the importance of news media (specifically with regard to pre-trial and court reporting) and popular media as sources of legal consciousness is thus vital.

With regard to the coverage of court cases, factors that make a case more susceptible to media interest were mentioned, but arguably need to be examined in a South African context.

The ways in which media may be "managed" (arguably a euphemism for "manipulated") by parties to a case were investigated, but the fact that this is quite a new "field" in South Africa entails that it demands attention from context-specific perspective.

The justifications for limiting press freedom were discussed; including the legal concepts possibly impacting the matter. Possible effects of news media on judicial officers and assessors were investigated, but due to the fact that little research on the matter has been tailored to a South African context, this research will also take a look at the

possibility of such influence – being a difficult, if not impossible, matter to measure definitively.

Contempt of court, a common law legal principle that should effectively curtail the possible adverse effects of pre-trial publicity and court reporting, was investigated by looking at secondary literature written by legal scholars and also taking note of modern developments. This matter will not be studied again in the research, but should suffice to explain when reporting is deemed to be fair and reasonable in the eyes of the law.

Lastly one possible reason for frequent misrepresentations of the law by the media was investigated, namely the (lack of) education of journalists. This matter will also be looked at again in the research, although it will not be a focus of the study. A possible justification for misinterpretations, namely autopoiesis, was pronounced and rejected for the purposes of this research.

To summarise, one could argue that the relationship between the media and the law is perhaps particularly difficult because of the various complexities involved – as illustrated by the diverse themes discussed in this literature review. Whereas this literature review might have been lengthy, it is arguably necessary to provide a complete overview of the issues involved so that the problems associated with the strenuous relationship can be better contextualised.

In the light of the above, the research will aim to fill the gaps pointed out by this literature review in order to address this important matter. The way in which these problems will be studied, will be discussed in the following methodology chapter.

CHAPTER 3: METHOD

3.1 Introduction

As noted in Chapter 1, the study considers the thesis that the way in which both popular and news media portray the law has a significant influence on citizens' legal consciousness.

It is therefore important to determine what people think of the law and whether the media play a role in influencing or forming such legal consciousness. Both popular and news media's influences on legal consciousness should also be investigated in more detail.

In order to quantify the extent of the news media's effect in a real world context, it was furthermore proposed to study court reporting (including pre-trial publicity) – one of the most frequently voiced concerns when it concerns the relationship between the media and the law.

Due to the complex nature of the purpose of the study, a diverse method of study was utilised to provide the desired results. Various authors have asserted that using a mixture of both quantitative and qualitative methods can actually be beneficial to research. As noted by Laws (2003:28):

> "Most research for practical purposes contains some element of both and this is how it should be."

Holliday (2007:2) also stresses that drawing strict boundaries between the two approaches leads to oversimplification, and that qualitative research always involves quantitative elements and *vice versa*. The two are therefore not mutually exclusive. Whereas quantitative studies lead to statistics, qualitative studies allows for "a way of exploring the phenomenon in its context" (Holloway, 1997:31). A mixture of the two can lead to a more well-rounded result in research (Davies, 2007:11).

A mixed-method approach should, however, only be followed when appropriate and if it ultimately leads to a greater comprehension of the core issues (Anderson & Poole, 2009:27). If objectively measured variables can be more clearly clarified by using qualitative methods, or where qualitative research serves as the basis for future empirical research "in the interest of expansion, explanation or support", the requirement of appropriateness is satisfied (Anderson *et al.*, 2009:27).

Whereas the current design made use of quantitative and qualitative methods, these were mainly used in different and separate phases of study. There was one instance where the paradigms were mixed (see 3.3.1 d) and 3.3.2 c) below), but the overall design generally had a two-phase nature.

In the next section the research design will be discussed, followed by an investigation of the methodology applied (3.3) – focusing on the two research instruments used; the samples involved; the data and the interpretation thereof. In 3.5 the ethical considerations will be addressed; concluded by final remarks in 3.6.

3.2 Research design

The study addresses a topic that has a potentially large impact on South Africa as a democracy – the strenuous relationship between the media and the law. Ideally one would therefore prefer it if the data collected could be extrapolated to say something about South African society as a whole.

Oppenheim (1992:5) notes that an appropriate research design is needed whenever one wants to generalise one's findings – as *in casu.* Whether generalisation will be possible is addressed in this section, as is the overall approach used to investigate the research problem.

As explained in the introduction to this chapter (3.1), a combination of qualitative and quantitative methods was used to provide the desired data.

The concept of the Asimow *et al.* study (2005) was used to guide the design of a survey questionnaire. The aim of the questionnaire was to determine whether popular and news media have an effect on legal consciousness, and if yes, to what extent this effect influences legal consciousness.

In conjunction with the questionnaire, a case study was also used in order to investigate specifically the way in which news media portray the law (thus influencing among other things legal consciousness) in the instance of court reporting and pre-trial publicity – a much-vexed issue. Studying the problem in the real world and in context is important in the present scenario – a requirement met by case study research (Holloway, 1997:31).

In an attempt to integrate the two different methodologies, it was decided to also explore the case study by making use of the said questionnaire. A specific section of the questionnaire was therefore used to gather information for the case study.

The research design can therefore be divided into two broad phases that will be discussed separately in 3.2.1 (case study) and 3.2.2 (questionnaire) below.

3.2.1 Case study

a) General: Case study research

Because of the choice of a case study to investigate the possible effects of news media coverage of legally-themed matters (and relevant issues), the research arguably veered in a more qualitative direction – therefore incorporating all the benefits associated with qualitative studies.

The process of case study-research is explained well by Creswell (1994:12), who writes:

> "The researcher explores a single entity or phenomenon ('the case') bounded by time and activity (a program, event, process, institution, or social group) and collects detailed information by using a variety of data collection procedures during a sustained period of time."

Hofstee argues that case studies should be used when detailed knowledge is required of any particular case (2006:123). Mouton (2008:149) furthermore writes that case studies allow for in-depth insight and enables the researcher to establish rapport with research

subjects. Whereas the latter is a secondary concern for this study, in-depth insight was greatly beneficial to the research.

Case studies also allow for a more reflective approach; one that is able to explore feelings and experiences more closely. As Davies (2007:141) writes:

> "Small sample studies have been shown to have value as ends in themselves because of the way, when they are used cleverly, they throw light on feelings, prejudices and subliminal ideas that it is difficult to tap into by more structured methods. They allow respondents to supply the researcher with wide-ranging perspectives on complex issues."

b) Concerns with regard to the use of case studies as a research instrument

Despite all the benefits of using case studies, there are also many dangers surrounding the use of thereof. By limiting the extent of the study, results cannot be generalised and will merely serve as an indication. Other concerns include the risk of losing focus; not being subjective enough; and also the amount of time that the required detail will demand and consume (Mouton, 2008:149; Hofstee, 2006:123).

Hofstee (2006:123) suggests that case studies should, if possible, be used in conjunction with other research instruments – a recommendation that is met by this study. Being aware of the danger of being overly biased, we were also very careful with any assumptions made. As noted by Creswell (1994:6):

> "The qualitative researcher admits the value-laden nature of the study and actively reports his or her values and biases, as well as the value nature of information gathered from the field."

Holloway (1997:31) furthermore warns that as case studies are generally used to investigate cases tied to a specific situation, "this type of inquiry is even less readily generalisable [*sic*] than other qualitative research." This criticism can be met by pointing out that as the case study was used in combination with another research instrument, the ability to generalise – whereas undoubtedly valuable – is not of paramount importance in this instance.

3.2.2 Questionnaire

a) General: Questionnaire research

Surveys can be defined as "studies that are usually quantitative in nature and which aim to provide a broad overview of a representative sample of large populations" (Mouton, 2008:154). Du Plooy writes that surveys are generally used in communication research to "explore and/or describe what is; rather than to evaluate why an observed distribution (e.g. of attitudes) exists" (1997:127).

Laws proposes (2003:307-8) that one makes use of questionnaires or surveys when data from a large number of literate respondents are needed; when one knows exactly what data is needed; and when such required information is straightforward and presentable in a standardised format.

Keeping in mind that the aim of this phase of the research was to determine what people think of the law, and if and to what extent both popular and news media respectively influence legal consciousness; survey questionnaires met Laws' requirements. The information needed was clear and could be collected from a survey of standardised content; it would be useful to make use of a relatively large group of people; and these people should be literate in order to be duly exposed to both popular and news media's proposed influences.

This method was not chosen without weighing the potential problems and weaknesses involved up against the benefits. The benefits derived from using questionnaires include that results may be extrapolated to a larger population if the sample is reliable and representative; results are generally reliable if the questionnaire is constructed properly; and high construct validity exists if the proper controls are exercised (Mouton 2008:153).

Clearly a lot of *if's* abound when using structured questionnaires for gathering data. As noted by Hofstee (2006:122): "Surveys, of whatever nature, are also a potential minefield."

In constructing the questionnaire particular care was therefore taken to ensure that the wording of questions were not ambiguous, unclear, loaded, presumptive or too lengthy; that the questions were not loaded, double-barrelled, overly sensitive or complex; and that the general layout and design of the questionnaire and the order of questions were logical and aesthetically pleasing (see Mouton 2008:103-4; Du Plooy, 1997:132-142; Hofstee, 2006:133-134).

b) Open-ended questions

Whereas most of the questions were close-ended and formulated using rating scales (like that of Likert), provision was also made for a couple of open-ended questions. Hofstee argues that open-ended questions not only allows for more in-depth answers, but can also "put respondents at ease, and being able to express themselves in their own words can give them a sense of control" (2006:133).

The difficulty with open-ended questions lies with the interpretation thereof – but this matter will be addressed in the methodology section *infra*.

c) Linking the questionnaire to the case study

Whilst on the topic of more in-depth answers to open-ended questions, it should be noted that the very last section of the questionnaire was focused on a topic more relevant to the case study. The questions in this section were all open-ended. It was our hope that the sample population could also, in answering this section, provide insight into the way in which participants perceive the particular case used for the case study.

Whereas this aspect of the study may be accused of abusing the nature of a quantitative study by some purists, this dominant-less dominant triangulation approach – where one small part of one approach is included in another – also has its benefits. Not only does it bring the phases of the research (as *in casu*) closer together, thereby preventing unnecessary confusion, but it also allows for the gathering of more detailed information (Creswell, 1994:177).

d) Validity and reliability concerns

Concerns regarding whether the data is representative enough, and whether there was enough depth to the questionnaires (as noted by Mouton, 1998:153), still abound. The general validity and reliability of the data can also be threatened by extraneous factors. These include the specific language used; culture and context-specific assumptions and preconceptions; researcher bias; high non-response percentages and high refusal rates (Du Plooy, 1997:146).

At least some of these potential dangers were addressed by conducting pilot studies and testing the questionnaires on a group of diverse friends and family willing to give advice and feedback on the nature of the questionnaire; whether all the questions are clear and easily comprehensible; and whether the structure was simple to follow.

A statistician at the Centre for Statistical Consultation, Department of Statistics and Actuarial Sciences (Stellenbosch University), was also consulted in the various stages of the execution of the research in order to ensure the validity and reliability of the data.

Such feedback was taken into consideration and the questionnaire was adapted accordingly before being distributed amongst the participants.

e) Context and topic concerns

Another danger was inherent to the fact that the study that serves as the inspiration for the questionnaire was developed in other countries (see 1.2 and 2.2.1 regarding the need for country-specific research, particularly in developing nations). To see an example of the Asimow *et al.* study, please refer to Addendum A.

Whereas the Asimow *et al.* study was undertaken at law schools in Argentina, Australia, England, Germany, Scotland and the USA, it was not developed keeping South Africa in mind. From the outset we therefore felt that it was important to adapt and transform the Asimow *et al*. study so as to keep the unique nature and needs of South African society, and the specific research objectives, at the forefront of the research.

Some of the questions remained the same, however. It should therefore be noted that reliability and validity concerns were also addressed by comparing these two studies where possible.

The last concern centred on the nature of the topic. Legal consciousness is clearly a difficult issue to study, having a lot to bear on the topic of media effects – arguably one of the most contentious topics in the field of communication research (see 2.4.2).

A concern was that very little is known regarding the way in which the media influences things, including its effect on legal consciousness. As there is no way to measure future or latent effects, we had to be satisfied with a survey that could only wish to measure *some* effects.

In the following section the samples used and the design of the two methods will be discussed individually; starting with the case study.

3.3 Methodology

3.3.1 Case study

The case study entails an investigation of one particular court case that, for the purposes of this study, commences with the commission of a specific murder and ends with the deliverance of judgment in the related criminal trial. Although the occurrences that followed the judgment will be referred to in brief for the sake of diligence, the focus will be the media's portrayal of the case both pre-trial and during the (criminal) trial.

a) The case

In deciding upon an example, we endeavoured to find a court case that would serve the aim of this part of the research: an illustration of the tensions in the relationship between the media and the law; and the potential dangers inherent in the ways news media portray legal matters.

The selection process was therefore simple: Without being concerned with the ability to generalise findings (the purpose was more to use the concerned case as an example), the objective was to select a case that attracted a lot of media and audience attention and caused much speculation in society.

A case that immediately drew our attention was that of Inge Lotz/ Fred van der Vyver (mentioned in 1.1). Inge Lotz, a 22-year old Stellenbosch University student, was found murdered in her flat in Stellenbosch on 16 March 2005.

Her boyfriend, Fred van der Vyver, was later accused and acquitted of the murder; has subsequently instituted an action against the minister of safety and security for wrongful arrest; and has also been sued in a civil court by Lotz's parents (although this case has been withdrawn). The case clearly fascinated many (and continues to do so), and was a favourite subject in newspapers, television news, Internet articles and weblogs – both local and foreign.

In deciding upon whom and what to include in the sample needed for the case study, Davies' advice was heeded. He notes that one should aim to select a variety of people, objects or experiences that will add different (and relevant) perspectives to the problem whilst also challenging assumptions regarding the topic (2007:144).

Both Davies (2007:146-7) and Blatter (2008:68) stress the fact that the sample of people that one attempts to include in the study should be limited, or otherwise it may tend to become too quantitative in nature. Importantly, the aim is not to have findings that are representative of a population, but rather findings that allow for more detailed insights. As Davies (2007:146-147) also writes:

> "The smaller the sample, the more detailed, intense and sophisticated will be the process of exploring psychosocial reality."

A variety of interviews were conducted (in person and *via* e-mail) in order to obtain closer information with regard to parties' experience of the media's involvement with the case. Consultations were held with:

- Fred van der Vyver (the defendant in *State v Van der Vyver*)
- Louis van der Vyver (the defendant's father, referred to as "Van der Vyver senior" in this paper);
- Dani Cohen (the Lotz family's spokesperson)
- Advocates Dup de Bruyn and Barry Pienaar (part of Van der Vyver's legal team);
- Advocates Carine Teunissen and Christenus van der Vijver (state prosecutors in *State v Van der Vyver*)
- Judge Deon van Zyl (the judge who adjudicated *State v Van der Vyver*)
- Niel van Heerden (a private investigator hired by the Lotz family after their daughter's murder, but dismissed upon Van der Vyver's arrest);
- Some journalists that covered the case (including Marlene Malan from *Rapport*, Karen Breytenbach from *Cape Times*, Estelle Ellis from *Cape Argus;* and Llewelyn Prince and Carryn-Ann Nel from *Die Burger*);
- Other journalists who have experience in court reporting (Adriaan Basson from *Mail & Guardian* and Katrien Smit from *Beeld*); and
- Authors writing books on the Inge Lotz/ Fred van der Vyver story – or anything related to the case (Michael Day, Antony Altbeker and adv. Barry Pienaar).

Please note that, for the sake of convenience, a quick reference guide is available on p.11 *supra*, including the names of parties often mentioned in the case study chapter and an explanation of the nature of their involvement in the case.

Whilst we looked at some of the media coverage both before and during the trial, we mainly focused on newspapers' coverage of the case.

c) Analysis and interpretation

Some of the newspaper article examples were compared to what several of the interviewees had to say and the facts as represented and accepted in the Cape High Court (obtained from the judgment). This approach arguably indicates discrepancies between the "facts" of the case and what some of the journalists wrote; thus illustrating some of the concerns with regard to the court reporting and pre-trial publicity.

Whilst aiming to be subjective and to defer from personal judgment on the media's coverage, the approach arguably offers a good indication of how fair and/or reasonable (see contempt of court, 2.5.6) the news media coverage of the case really was.

Identifying recurrent themes that became apparent during the research phase, the interviews were used to substantiate these themes, and were interspersed by examples from newspapers. These themes address at least some of the gaps in knowledge indicated by the literature review.

With regard to language, it should be noted that some of the interviewees were Afrikaans and were thus interviewed in Afrikaans. Many of the newspaper articles used were also written in Afrikaans; as was the judgment in the case of *State v Van der Vyver* (2007).

We tried our utmost to translate these to English without sacrificing validity and reliability in the process. Whereas this was relatively easy with the questionnaires (and also

checked and verified during pilot runs), it should be noted that the major concern was to convey the tone accurately – and as such the focus was not verbatim translations, but rather translations that could serve the research by telling the reader what, in essence, the interviewee said or the journalist wrote.

With regards to newspaper articles, as noted above, the original copies of both how the articles appeared in the newspaper (layout) and the words of the articles (in the original language) are included in Appendix C.

3.3.2 Questionnaire

a) Sample

Being of a quantitative nature, it is important that the nature of the participants be described more clearly before commenting on the choice of questions. Davies (2007:54-5) writes that one should decide on a sample that is appropriate to the research objectives; is feasible within personal time constraints; and can be recruited in an accessible setting.

From the outset it was clear that limited time and resources were available for administering the questionnaire to participants. Whether it would certainly be profoundly worthwhile and interesting to measure the entire South African population's legal consciousness, this was neither possible nor practical. Although generalising the results is therefore impossible, the research can still offer a broad overview of what these participants think of the law – a first in South Africa.

It was decided to delineate the study to an accessible population of first year (academically) law students, and the sample (in total 496 participants) was drawn from one specific year group at two universities – Stellenbosch University (US) and the University of the Western Cape (UWC).

In the Asimow *et al.* study, the importance of making use of law schools that are similar in size, faculty numbers and quality and that produce law graduates was stressed (2005:417). As the current study was different from the Asimow *et al*. one, this need was not vital, although UWC and the US did meet these requirements, neither being atypical of law schools in South Africa.

Also similarly to the Asimow *et al.* study, the population parameters in the study were set by the age or year (being only first year students) and the subject of study (the law). The focus was therefore first year law students at the point where they were about to commence their law studies (a snapshot study). As explained by Asimow *et al*. (2005:408):

> "When students arrive at law school, they carry with them an enormous amount of ideological baggage, including information and misinformation about law, lawyers, and the legal system."

As this was the first study of its type in South Africa (and thus of exploratory nature), the use of a non-probability sample (a sample that does not represent the population) was deemed acceptable (Du Plooy, 1997:55).

The fact that the questionnaires were distributed at two universities at least addresses the need for replication to an extent. The fact that UWC and the US were furthermore very different on a demographical front (see 5.2) allows for greater diversity and heterogeneity (the need for which is expressed by Kumar, 2005:181).

At this point it should also be noted that, where possible, comparisons were made with the Asimow *et al.* study (2005). Due to the fact that the Asimow *et al.* study was essentially executed in a variety of different countries with diverse legal systems, using only first year law students – as in South Africa – comparisons were deemed possible in instances where the questions were identical.

With at least some of the findings being similar, one can argue that confidence in the findings is warranted. As noted by Davies (2007:67):

> "If the study was replicated by another student elsewhere and the same (or similar) findings emerged, this would greatly increase the level of confidence you would have in your findings."

To ensure that there were no external factors that could have had a substantial effect on what participants think of the law, questions asking participants whether they have studied law before and whether they have members of the judiciary or legal profession in their close family, were also included. Naturally the fact that the questionnaires were distributed in one of the first law classes that these participants would experience, should mean that they have no prior legal education that may have influenced their perceptions (with the exceptions of students that have studied law before).

Other questions relating to age, sex, nationality and race were also included to ensure the representativeness of the data. These variables may also have a possible impact on perceptions of the law (see 4.2).

With regard to the language used throughout the questionnaire, it should be noted that US participants could choose between English and Afrikaans questionnaires (as the University has many English and Afrikaans students); whereas the UWC participants were only given English questionnaires (as few Afrikaans students attend the University).

b) The questions: Legal consciousness

With regard to the nature of the study itself, it should be repeated that whereas the Asimow *et al.* study was used as a basis of the questionnaire, it was adapted to provide for the specific needs of this research. While the Asimow *et al.* study only focused on the participants' perceptions of lawyers, for example, this questionnaire sought to expand the focus to also include what participants think of judicial officers and the South African legal system (i.e. legal consciousness).

Each of the subsections related to participants' perceptions and opinions of (respectively) lawyers (advocates and attorneys), judicial officers (magistrates and judges) and the legal system included a set of statements upon which participants could either agree or disagree to a variety of degrees (using Likert scales).

The first three questions were aimed at determining what participants think of lawyers and judicial officers (respectively) as social actors in a democracy. Chapter 2 highlighted

the fact that popular and news media portrayals of the law may influence what people think of judicial officers and also the law – hence there was a need to determine whether this is true in South Africa.

With regard to judicial officers, for example, participants were asked to what extent they agree or disagree with the following statements:

- Judicial officers have a lot of prestige;
- Judges officers are trustworthy and ethical; and
- Judicial officers are role models in society.

Participants were given the same three statements about lawyers, plus a fourth one:

- Lawyers deserve the income they earn.

This question was also asked in the Asimow *et al.* study (2005) and the researchers note that the assumption is generally that lawyers' incomes are relatively high: "This perception is generally sustained by the media, as well as the lifestyles of the lawyers observed in modern popular culture" (2005:423). It is interesting to compare the Asimow *et al.* findings to that of this study on the income matter – as will be discussed in Chapter 4.

Concerning the South African legal system, participants were asked to rate the following statements:

- Courts operate to the best of their abilities;
- The South African legal system is fair;
- The South African legal system is effective;
- There are shortcomings in the South African legal system; and
- The South African legal system is corrupt.

These statements were included in order to determine how positively or negatively participants perceive the law. In general it is thought and argued by a variety of scholars that the media portray the law in a very negative manner, thus resulting in a lack of public confidence in the law (Gies, 2007:2). It was therefore deemed important to determine how participants perceive the legal system, and whether they have confidence (or not) in the law.

Each of these three question sets concluded with an open-ended question providing participants with the opportunity to supply more details regarding their opinions about – respectively – judicial officers, lawyers and the legal system.

These questions were analysed by dividing answers simply between those comments that were positive, negative or neutral on a topic.

c) The questions: Sources of legal consciousness

The subsequent section in the questionnaire asked participants to rate how important various sources of information regarding the above-mentioned topics are to them individually, thus helping them form opinions regarding the listed statements.

These sources included having lawyers as friends and family; classes in schools or other courses; personal experiences with hiring a lawyer or being in court; news media (described as “news coverage about lawyers, judges or trials”); and popular media (described as “novels, television shows, or movies about legal matters”).

It was decided to rate news media and popular media separately, as it was deemed important to determine whether participants distinguish between the two; and which one is more influential in contributing to legal consciousness. The subsequent two sections also focused more specifically on, respectively, news and popular media – determining which sources of both news and popular media are particularly important to participants.

With regard to popular media, a few television series were selected that have been broadcasted in South Africa and that concern legal topics. These include *Shark*, *Ally McBeal*, *Boston Legal*, *The Practice*, *Judge Judy*, *Damages* and *Law & Order*. There was also allocated space for participants to write down additional law series that they like to watch. Participants were asked to note whether they watch a specific series never, rarely or frequently.

The American Bar Association (ABA) compiled a list of the 25 “greatest legal films ever made” in 2008 (Brust, 2008). A variety of these films were selected – including *I am Sam* (2001), *Erin Brokovich* (2000), *Presumed Innocent* (1990), *Philadelphia* (1993) and *Michael Clayton* (2007). Many of the films on the ABA list were very old, and as result we also chose a couple of others: *The Rainmaker* (1997), *Primal Fear* (1996), *A Civil Action* (1998), *The Firm* (1993), *Liar Liar* (1997), *Class Action* (1991), *Jagged Edge* (1985), *The Devil’s Advocate* (1997) and *Rules of Engagement* (2007).

A South African legally-themed film, *A Reasonable Man* (1999), was also included just to see whether students had actually shown an interest in South African legal issues as portrayed by films. Participants were asked to tick next to the films that they had seen.

The fact that most of these television series and films are American should sound a warning alarm. As mentioned in 2.4.3, American laws, rights and courts differ vastly from South African law, thus leading one to wonder whether participants are actually aware of this fact. It was therefore important to determine whether participants watch these films and television series.

d) The questions: Link to case study

Being aware of the fact that a case study would be used to add a real-world dimension to the research, we thought it would be useful to also ask the questionnaire participants a few questions related to the case selected for the case study.

More detail on the nature of the case can be viewed in 3.3.1 *supra* and 3.3.3 *infra*.

e) Interpretation and analysis

Knowing that the interpretation of almost 500 reasonably lengthy questionnaires could be quite the daunting task, we consulted with prof. Martin Kidd, a statistician at the Centre for Statistical Consultation, the Department of Statistics and Actuarial Sciences

(US), who offered invaluable input and assistance and ensured the validity, reliability and credibility of the data.

He assisted with the design of the questionnaires; the developing of data sheets; the correct input of data; the rating of answers; the analysis of contingencies and variables and the subsequent interpretation thereof on a statistical analysis programme, *Statistica.* He also assisted with the necessary reliability and significance tests. Many of the graphs and histograms developed in this process are attached as an appendix (Appendix D), but most of the results will be discussed in Chapter 5.

3.3.3 Linking the questionnaire to the case study

As noted in 3.2.2 c), it was decided to link the case study (representing the real world) with the more abstract nature of the questionnaire by including questions related to the case study in the questionnaire.

Firstly participants were asked if they have heard of the Van der Vyver case or not. To assist them, a picture collage (that was published in *Die Burger* as an accompaniment to a story – see fig. 3.1) was reproduced so that participants could have a visual image or reminder of the case and the participants (the victim and defendant in the criminal trial):

Figure 3.1: A picture collage that was published in the Afrikaans daily newspaper, *Die Burger*. "Lotz-moordsaak" means Lotz murder case.

Those participants who did know about the case were subsequently asked where they heard of the case. This question was included in order to see what sources are important to participants (as was also investigated by the questionnaire).

In order to test how accurate their recollections of the case are, participants were also asked whether Van der Vyver was convicted or acquitted of murder. Because of all the

speculation surrounding the case, including allegations of inaccuracies and inconsistencies with regard to evidence and forensics, the following question asked participants whether they think it was a fair judgment, and why.

In order to investigate the opinions participants have of the media's portrayal of the case, and whether such perceptions are positive or negative, participants were also asked what they thought of the way in which the media treated and approached the case.

Lastly, participants were asked whether they think Van der Vyver is actually guilty or innocent of Inge Lotz's murder. Besides being interesting, we hypothesized that participants would have an opinion on the matter, and that such opinions can be correlated to the sources of their opinions of the law or legal consciousness (as addressed by the questionnaire).

3.4 Ethical and legal considerations

3.4.1 Case study

The personal and emotional nature of the Fred van der Vyver/ Inge Lotz case study demanded much respect and care. We were fully aware of this fact, and tried our utmost to be sensitive in the investigation. All parties interviewed were informed of the nature of the study and the importance of taking part therein.

Some parties requested that some of their information be given on precondition of them remaining anonymous. Whereas this request detracted from the quality of the information, the request was honoured. Most of this information (i.e. information obtained under the precondition of anonymity) was not quoted verbatim in this study.

One of the largest ethical considerations was the imperative to ensure impartiality and objectivity. The Inge Lotz/ Fred van der Vyver story involves a lot of loss and pain that many of the involved parties had to suffer – we did not want to aggravate such pain or impose on these parties. We did our utmost, however, to talk to both sides involved in order to come as close as possible to being objective. We therefore spoke to both state prosecutors and some of the defendant's legal defence team, for example.

Whereas interviews were also conducted with Fred van der Vyver, we did not speak to Inge Lotz's parents. Whereas it would certainly have benefitted the research to talk to them, many sources interviewed were fearful of Jan and Juanita Lotz's health and emotional state (Teunissen, 2009; Malan, 2009). We therefore decided not to approach them. We did, however, manage to speak to Dani Cohen, who acted as their spokesperson.

With civil suits still pending for Fred van der Vyver (see 4.6.1), his legal representatives were concerned that anything that they or Van der Vyver could say and that would be used in the context of this dissertation could, if quoted out of context in the media, cast an unfavourable light on the case.

As was noted earlier in this chapter, Jan and Juanita Lotz (Inge Lotz's parents) sued Van der Vyver in a civil court after his acquittal in the Cape High Court. The case was settled out of court in May 2009; one of the settlement conditions being that neither party could

comment on the matter in the media. Van der Vyver and his legal representatives did not want to dishonour these settlement conditions.

Whereas Van der Vyver and his legal representatives were very accessible and helpful, a lot of what they said was therefore off the record (the condition being that it could only be published after all legal proceedings are eventually concluded).

3.4.2 Questionnaires

Whereas a variety of scholars (including Jenkins, 1999:9; Davies, 2007:45) argue that one should tell participants what the purpose of the study is, how the results will be used and how participants were selected; we felt that it was important that students should have no idea what to expect from the questionnaire. In other words, we were concerned that if participants knew that the study was concerned about the media's influence on their perceptions regarding the law; this knowledge may have influenced their answers.

Although we therefore did not include an explanation of the purpose of the study or other details, we did include a preamble ensuring participants of the confidentiality and anonymity of the information, and that their participation is completely voluntary and their answers confidential (see Appendix A).

Another potential ethical problem concerned the questions asked relating to sex, age, race and whether or not the participants have family members in their families. These demographical questions were necessary for statistical purposes, and we also explained this fact at the beginning of the section.

We strongly believe that the questionnaires held no potential for harm and that all possible and necessary precautions were taken to prevent possible damage. In any event, both the US' law department and the UWC's Ethics Committee approved the questionnaire for distribution in their respective classes following a detailed questionnaire proposal that was submitted to them (see Appendix B). We feel that this is enough proof of the fact that no harm was inflicted by the questionnaires.

3.5 Concluding remarks

This chapter was written with the aim of providing a methodological background to the study and describing how the results that will be listed in the following chapters, were obtained.

The chapter commenced with an explanation for combining qualitative and quantitative methods in the research, and also gave a general overview of the research instruments chosen to investigate the research questions. The nature of both survey questionnaires and case studies was investigated, including the general benefits and detriments of using these research instruments and the reasons for choosing both.

The research instruments were also discussed in detail, including the choice of samples and the specific nature of the respective instruments. The various limitations and problems experienced whilst undertaking the research were discussed throughout the chapter in order to ensure that the necessary context did not get lost along the way. Lastly the ethical considerations involved with the research were also noted.

The following chapter will focus on the Inge Lotz/ Fred van der Vyver story, followed by the questionnaire results in Chapter 5. In an attempt to harmonise the results from these two chapters, Chapter 6 will contain the questionnaire results pertaining to the case study.

CHAPTER 4: NEWS MEDIA ON THE STAND – THE INGE LOTZ STORY

> *Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.*
>
> - Martin Luther King JR (1963)

4.1 Introduction

The promising life of Inge Lotz, a 22-year old student at the University of Stellenbosch, came to an abrupt end on 16 March 2005. She was found murdered in her apartment in Welgevonden, Stellenbosch, where she had been hit on the head with a blunt object, and stabbed repeatedly in the neck and chest with another, sharper object.

Over the ensuing weeks and months newspapers and magazines, radio and television news bulletins, Internet weblogs and news websites were awash with the newest allegations, speculations and rumours regarding the case – some less true than others.

Accuracy and other concerns aside for the moment, the amount of media coverage that the Lotz case received was clearly unusual in a country riddled with violent deaths: Inge Lotz was but one girl who lost her life in a year that over 18 000 other people in South Africa were murdered (Day, 2008:16). An important issue to therefore address from the outset of this chapter is why specifically *this* case was chosen as a topic for a case study.

As aptly argued in a *Cape Argus* article by Michael Day, who is writing a "real-life thriller" on his research into the life and death of Inge Lotz (Day, 2009), there is in fact little reason why this case should *not* be singled out for further investigation (2008:16):

> "It so readily illustrates much that is wrong with our system today: ill-disciplined police work, crime scene contamination, alleged evidence tampering and false testimony, the list goes on and on."

Besides being a good example of the ways in which news media can affect legal consciousness and more, the Lotz case is arguably also symptomatic of injustice in many senses of the word and to the worst degree (as will hopefully become evident in this chapter). And, as argued by King (*supra*), injustice affects everyone and everything.

As the case was and is characterised by immense media interest, one should ask whether the media can be added to Day's list of things that betrayed Lotz – and simultaneously allowed injustice to triumph.

Day's list is important, as are his recommendations – tailored to a local context – for trying to set right much that will arguably never be rectified in the situation. He notes (2008:16):

> "Solving them overnight is not going to happen. It's a painful process which must be undertaken, for all our sakes, one careful step at a time, the African way. Each journey begins with a single step."

Investigating the way in which the media reacted and is still reacting to Inge Lotz's murder (and the resultant events, including the criminal trial and pending civil trials), is arguably also a step on the path to securing justice for Inge Lotz and all involved.

Before starting this journey, however, one first needs to take a detour and learn more about the Inge Lotz story; including the reasons why the media and society were so interested in the case (4.2). In order to provide the necessary context for the rest of the chapter, the criminal trial will also be discussed in brief. Restrictions to the length of this dissertation unfortunately make a more detailed investigation of the murder and resultant events (and trials) impossible.

The media's involvement with the case will be investigated next (4.3) – including both general and specific concerns that interviewees had with regard to the coverage of the case. Examples from mainly newspaper media will also be referred to in order to support arguments; and possible reasons for arguably biased reportage follows in 4.4.

The consequences that media coverage could possibly have had will be discussed in 4.5, including the personal effects on parties involved; the possibility of undue influences on judicial officers and assessors; and the perceptions of citizens. Whereas some of the questionnaire findings are relevant with regard to the latter, it will be discussed in detail in Chapter 6.

As the case study focuses mainly on pre-trial and court coverage, the events that followed the criminal trial will briefly be discussed in 4.6, including predictions as to the possible outcomes of the case. Lastly, a few concluding remarks will follow in 4.7.

In summary it is hoped that this chapter will serve the thesis of this research by illustrating how the news media as a source of legal consciousness can impact not just citizens' opinions of legal matters like trials, but can also have far wider and possibly-dire repercussions on the practice and independence of the law.

4.2 The case for Inge Lotz

Not all cases are as widely reported by the media and so ardently followed by citizens than the Van der Vyver case. As noted by Carine Teunissen (2009), state prosecutor in the Lotz criminal case, "Extreme – and irresponsible – publicity does not happen with every case."

Bruschke *et al*. for instance argue that only a small number of cases receive a lot of media attention. Whereas the possible reasons for specific cases getting substantial coverage were investigated in 2.5.3, one still needs to know what made South African society and media so interested in this particular case.

The answer might be found in the peculiarity of the crime: Inge Lotz was not the typical murder victim, and her case was not just any case. "These kinds of crimes don't happen to these kinds of girls," explains Antony Altbeker (2009), who is writing a book on the case, and has authored *A country at war with itself: South Africa's crisis of crime* (Jonathan Ball Publishers, 2007) and *The Dirty Work of Democracy* (Jonathan Ball Publishers, 2005).

4.2.1 Propelling a case to stardom: Media interest in the Inge Lotz story

The "beautiful, brilliant" (Altbeker, 2007) young Inge Lotz hailed from the upper echelons of an Afrikaans community in the Cape Town suburb Welgemoed; and was the only child of a professor in radiology, Jan Lotz, and a mother, Juanita Lotz, to whom she was very close.

She was a devout Christian and a hard-working student (busy with her master's degree in mathematical statistics at the US) who lived in the quaint, academic Stellenbosch – a town generally sheltered from the excesses of violent crime – at least still in the year that she was murdered (SAPS Crime Information Analysis Centre, 2005).

Lotz was in a serious relationship with Fred van der Vyver – an intelligent and religious young actuarial assistant, and part of a "top Eastern Cape Afrikaans family" (Van Zyl, 2007). At her funeral, Van der Vyver said Lotz was "like Jesus" to him (Breytenbach, 2005:1). Dani Cohen, who acted as the Lotz family's spokesperson, notes that Van der Vyver and Lotz "were the fairytale couple, and like Afrikaans royalty" (2009).

Whereas the media might therefore have been drawn to the story of Inge Lotz's murder because of the unusual victim, the elements surrounding the crime were also intriguing: In the weeks following the murder, it was widely reported that nothing valuable had been taken from Lotz's apartment (except the remote control to the gate of the security complex where she lived, and a small kitchen knife). As noted by Cohen (2009):

> "A violent death in South Africa is not unexpected, but one that does not involve crime – like theft – is very unusual."

It also became known that there were no signs of forced entry into Lotz's apartment, and it was accordingly suspected that Lotz might have known her attacker (Isaacs, 2005:1). As noted in *State v Van der Vyver* (2007:6), "Because she was very set on security... it is highly improbable that she would have unlocked [the door and security gate to her apartment] for a stranger."

A month after Lotz's murder, Fred van der Vyver was questioned and allegedly "roughed up" by police trying to force a confession out of him (Malan, 2005a). In the period following this development, media accounts were rampant with rumours and allegations – some more obviously absurd than others (see examples in 4.3.1 a) *infra*).

On 13 June 2005 a warrant for Van der Vyver's arrest was issued, and on 17 June 2005 he plead "not guilty" to a charge of murder in the Stellenbosch municipal court. If Lotz could be described as someone who fascinated the general public and media, Van der Vyver – the "talented" (Van Zyl, 2007), "brilliant" (Cohen, 2009), "softly-natured and peace-loving Christian" (Pienaar, 2005:2) – was even more enticing.

According to Jeffrey Toobin – a court reporter that covered the OJ Simpson trial and subsequently authored the book *The Run of His Life: The People v. OJ* Simpson (Simon & Schuster, 1997) – when an unusual suspect is accused of murder, the media are commonly enthralled (1998:39):

> "It is a compelling defendant – not a victim – that attracts great interest to a case... Wealthy and celebrated defendants will always generate public fascination; not so seemingly bizarre or unfamiliar criminals."

Bruschke *et al.* also note that when a white male is cast in the role of the defendant and a young person is the victim, the media will be interested. With white males apparently being considered as the most socially privileged ethnic group and sex, the notion of them breaking rules defies status expectations (see 2.5.4). On the other hand a young victim defies cultural expectations. They argue that "a combination of status and cultural deviance contribute to the decisions journalists make with regard to publishing an account of crime, and then the length of the report" (Bruschke *et al.*, 2004:11).

The combination of two atypical characters in the roles of victim and accused therefore arguably led to both "Inge Lotz" and "Fred van der Vyver" becoming household names in at least South Africa. Many newspapers – and not just the tabloid newspapers – referred to both Lotz and Van der Vyver on a first-name basis, for example – thereby indicating familiarity (a practice criticised by Van Zyl, 2007). "Anything that potentially undermines the perfect picture is loved by the media," argues Cohen (2009).

But the very reasons that so captivated the media and society – the high calibre of the involved parties; the absurdity of a murder without clear crime motive; the setting of the crime in picture-perfect Stellenbosch – also became the reasons why the media should arguably have taken special care in their coverage. As noted by Judge Van Zyl (2007), who adjudicated the criminal case:

> "The Lotz story is a human tragedy that plays out in the little town of Stellenbosch. It affects all of us – especially people with children. Just think, you come home with the nicest guy, he had seven distinctions in matric and has always been a gentleman. *That* is why the public is so fascinated, and also why it is so incredibly important that they are not misled."

Whether this responsibility not to mislead was met by the media is another issue – one that is also perhaps overshadowed by other dire effects that extensive coverage of a case – both pre-trial and during the trial – might have (see 2.5.3). Whereas these negative influences will be discussed later in this chapter, background information regarding the criminal trial of Van der Vyver should, however, first be explored in order to provide the necessary context for looking at the media's coverage of the case.

4.2.2 The criminal case: *State v Frederik Barend ("Fred") van der Vyver*

Following months of speculation, insinuations and creative guesswork (for examples of pre-trial publicity, see 4.3.1a)), the criminal case against Fred van der Vyver eventually began in the Cape High Court in October 2006. The state prosecutors essentially relied on three pieces of "evidence":

1) A fingerprint that was allegedly lifted from the plastic cover of a DVD (*The Stepford Wives*, 2004) that Lotz had rented on the afternoon of her murder. If it could be established that it was indeed Van der Vyver's fingerprint and that the print actually came from the DVD cover, the state prosecutors would simultaneously prove that Van der Vyver was not at work that afternoon (as his alibi alleged), but must have been in Lotz's apartment.
2) A bloody mark found in the guest bathroom of Lotz's apartment. The prosecutors alleged that the mark was a footprint made by a training shoe belonging to Van der Vyver.

3) An ornamental hammer, given to Van der Vyver as a Christmas gift by the Lotz family in 2004. The state alleged that the hammer caused the fatal injuries to Lotz's head.

Lastly, the state prosecutors also argued that Van der Vyver had the motive to murder Lotz due to a letter that she had given him the morning before her death, and because his behaviour before and after her death was allegedly highly suspicious (*State v Frederik Barend van der Vyver*, 2007:30 – henceforth referred to as *State v Van der Vyver*).

Whilst the onus was on the state prosecutors to prove beyond reasonable doubt that Van der Vyver was guilty of the murder, his defence team alleged that he had an *alibi*, having been in meetings at his place of work at Old Mutual, in Pinelands (Cape Town), during the time period that Lotz would arguably have been murdered (*State v Van der Vyver*, 2007:9).

With regard to the "evidence" the state relied on, Van der Vyver's legal team in turn called a variety of expert witnesses (from as far as the USA and Netherlands) to attempt to show that the state's case against Van der Vyver was unfounded. Not only did they allege that the fingerprint, although it was indeed Van der Vyver's, came from a drinking glass and not the DVD cover (*State v Van der Vyver*, 2007:23-30); they also showed that the alleged footmark was not made by Van der Vyver's shoe – if it was even made by a shoe at all (*State v Van der Vyver*, 2007:13-18).

Lastly, with regard to the alleged murder weapon, it was quickly established that there was no concrete proof that the hammer was indeed used to murder Lotz. Forensic tests could only confirm traces of male genetic material on the hammer – there were no positive tests for blood, not even to speak of Lotz's blood. Van der Vyver's expert witnesses furthermore argued that the marks on Lotz's head were inconsistent with marks that the ornamental hammer would or could have made on a human head (*State v Van der Vyver*, 2007:18-23.)

After a tense criminal trial that lasted 70 days in the Cape High Court (and cost millions of South African Rand), Van der Vyver was acquitted on 29 November 2007. In his judgment, Judge Van Zyl rejected the evidence that state prosecutors Teunissen and Van der Vijver presented to the court, and noted (*State v Van der Vyver*, 2007:39):

> "There was clearly not sufficient evidence to hold the accused accountable for this awful deed. In the process the accused and his family had to endure suffering over an extended period of time. The question involuntarily arises whether there had ever been, in the first place, sufficient grounds to bring him before this court. Even though I may be reluctant to question the way the police function, it would seem like this case suffered from ineffective and, at times, inept investigative work – especially in the beginning."

Judge Van Zyl also writes that although he is aware of the immense sorrow surrounding Inge Lotz's death, and the fact that the community demands that justice should prevail, the court cannot find someone guilty without evidence (*State v Van der Vyver*, 2007:39):

> "When a beautiful and extremely talented young girl's life is cut short in such an absurdly cruel way, it is understandable that the community can demand that

someone should pay the price. The court cannot, however, do more than what the evidence in front of it allows."

Although the gavel has pounded the wood in the case of *State v Van der Vyver*, the question that remains to be answered, however, is whether the media "did" or reported more than the evidence allowed in the case of Fred van der Vyver and the story of Inge Lotz. As warned in 2.4.4 and noted in 2.5.4, the consequences of unbalanced reporting may be catastrophic.

4.3 The media on trial: The Inge Lotz story and *State v Van der Vyver*

"On the one hand you have to fight a very complicated murder case whilst, on the other hand, you have to handle the onslaught of the press. If you don't react to this [media] assault, it is said that you accept it. If you do react to it you have to handle two actions – the murder case and the media's case."

- Advocate Dup de Bruyn (2007).

Whereas the need for court reporting is not debatable (see 2.5.2), the fair/ free trial and free/ fair media issue (see 2.5.3) is increasingly relevant with both pre-trial publicity and court reporting (which is inevitably influenced by the prior publicity). Whether the right to a fair trial was balanced with the right to press freedom in the Cape High Court for Fred van der Vyver's criminal trial, is another question that is pertinent *in casu.*

a) General concerns

The vast majority of people interviewed in connection with this case study expressed concerns regarding the way in which the media covered *State v Van der Vyver*. Problems include the alleged insensitivity and a lack of human dignity afforded to Inge Lotz *post mortem*; and the way in which Van der Vyver was treated by the majority of the media.

Another concern highlighted was the amount of pressure that the media allegedly placed on the investigating authorities to name a suspect in Lotz's murder case. As noted by Pat Wertheim (2007:2), who testified as an expert fingerprint witness during *State v Van der Vyver*:

> "This was a very high-profile case with daily headlines for six weeks after it happened. The police continually promised an early arrest, but could not deliver. I think the pressure on them to solve the murder was intense."

Teunissen is also critical about the amount of information demanded and published by the press in the period following Lotz's murder. "There is an obsession with information, and that obsession is often to our [state prosecutors'] detriment. The facts are also often inaccurate – something that leads to later complications in trials. It also places the police under pressure, leading to even more problems," she explains (2009). "Why does Joe Public have to know everything about a case immediately, and in detail?"

Private investigator Niel van Heerden argues that the pressure that the media allegedly placed on police to name a suspect might also have had some positive consequences, however. He thinks the publicity and scrutiny might have led to the police getting more investigators (like inspector dir. Attie Trollip) involved in the Lotz investigation (2009). As

soon as Van der Vyver was named as a suspect, however, “the media already portrayed him as guilty,” argues Van Heerden (2009).

Although alleging that Van der Vyver was exposed to a trial by media would not serve the interests of this research (it not being the researcher’s wish to be overtly judgmental), saying that the media were unfair to Van der Vyver in their coverage could arguably still be an understatement. As Judge Van Zyl asks during an interview (2007): “Was Fred not vilified by the media and society in any case?”

Altbeker, who was present in court for most of the trial, also notes that the media’s pre-trial coverage “clearly suggested that Fred was guilty”. When he arrived at the Cape High Court, he was apparently convinced that Van der Vyver was guilty. “I flew down [to Cape Town in order to be present during court proceedings] to see if he would get away with it,” he explains (2009).

These interviewees’ concerns resound with those mentioned in Chapter 2; wherein it was noted that various authors write that media and society fail to honour the presumption of innocence.

Shapiro, for instance, argues that the police and prosecuting authorities have the first opportunity to “sell” their cases against a suspect to the media (see 2.5.4). Shapiro feels that many members of a lay audience believe the worst about a defendant because of these initial condemning newspaper headlines – leading to “the presumption of guilt” (see 2.5.5 c)).

Advocate Dup de Bruyn, who defended Van der Vyver during the criminal trial, feels that the media’s coverage of the case in general was “scandalous” – with only a minority of journalists remaining truly objective (2007). Advocate Barry Pienaar, who assisted in Van der Vyver’s defence, says (2009):

> “I think the media was incredibly negative and hostile towards Fred – not because of inherent evilness, but maybe because of perceptions, ignorance and emotions.”

Not only those on Van der Vyver’s “side” of the court feel that the media were unfair, however. Teunissen (for example) ardently agrees that the media were “very biased against Fred during the criminal trial” (2009); as does Cohen (2009). On the other hand, another state prosecutor involved, advocate Christenus van der Vijver, thinks the reporting was in general “quite balanced” (2009).

b) Specific concerns

The major issues that interviewees have over the coverage of *State v Van der Vyver* (including pre-trial publicity) include accuracy; a lack of context; insinuations made without factual basis; framing and the selection of stories; familiarity with the parties (see 4.2.1); changes made in the editing process; the apparent lack of skills and experience of court reporters; and the failure to educate citizens (Altbeker, 2009; Cohen, 2009; Teunissen, 2009; Van der Vyver, 2009; Van Zyl, 2007; Ellis, 2009).

The most pertinent of these will be discussed below; using examples from news media (newspapers) to illustrate possible problems (where it was deemed useful to also see the layout and entire article, copies of concerned articles are included in Appendix C).

Where possible, the articles will be compared to what interviewees had to say, and the facts as accepted in the judgment of *State v Van der Vyver* (2007).

Please note that due to the length of the *State v Van der Vyver* (2007) judgment, it could not be attached as an appendix to this study.

4.3.1 Accuracy, balance and allegations

a) Pre-trial publicity

As noted in 4.1, Inge Lotz's murder was one that fascinated media and society alike. From 17 March 2005 (the day after she was murdered) rumours and speculations appeared alongside facts in various newspapers.

On 1 May 2005, for example, Malan wrote the following in the Afrikaans Sunday newspaper *Rapport* (2005b:1. See Appendix C):

> "Spots of semen on the couch in the lounge in Lotz's flat also form part of the investigation. It is believed the semen landed on the couch after her death."

In the entire 40-page judgment of *State v Van der Vyver* (2007), wherein every bit of evidence is discussed in excruciating detail, semen is never mentioned. As noted during an interview with Teunissen (state prosecutor in the case), "the semen allegations (made in *Rapport*) were absolute nonsense" (2009).

Besides articles not being based on correct facts, however, mere allegations or rumours also frequently served as the basis for articles. On 2 May 2005, for example, an Afrikaans daily newspaper published an article containing the following paragraphs (*Die Burger*, 2005:2):

> "Allegations that a friend asked Inge Lotz for her forgiveness shortly before her death because he had cursed her and her boyfriend is the most recent strange occurrence in this murder that has captivated South Africans over the past six weeks.
>
> This strange murder contains all the ingredients of a thriller: Not only do detectives think it was a passion murder by someone close to her, but horror stories about the murder are also being spread by some students. Rumours on the Maties campus even include that Inge's heart was cut out. There were also allegations that the murder can be linked to cult activities..."

More than a week before a warrant for Van der Vyver's arrest was even issued, on 4 June 2005, *Die Burger*'s front page was emblazoned with the heading "*Hamer van die dood: Verdagte is reeds geïdentifiseer*" (Hammer of death: Suspect is already identified); accompanied by a photograph of Fred van der Vyver and Inge Lotz (Smith & Ekron, 2005:1. See Appendix C).

Louis van der Vyver, father of Fred, wrote a letter of complaint to both the South African press ombudsman, at the time Ed Linington, and *Die Burger*'s press ombudsman, at the time George Claassen (see 1.1). Amongst other things, Van der Vyver senior complained about the heading, which was based on an unproved (and, to date, never proven) statement (2005).

In *State v Van der Vyver* it was established that only a limited amount of male genetic material was found on the hammer, and that the wounds on Lotz's head were inconsistent with the marks that the ornamental hammer could have made (2007:18-23). As noted by Judge Van Zyl (*State v Van der Vyver*, 2007:23):

> "It therefore follows that the court necessarily has to exclude the probability that the ornamental hammer was used as murder weapon. There simply is not sufficient evidence to support the state's allegations in this regard."

Van der Vyver senior also complained because of the layout of the article (2005), and specifically the depiction of a hammer next to a photograph of his son and Inge Lotz (also used without permission):

> "The depiction of the hammer right next to the photo of my son is totally acceptable [*sic*] and is regarded as an abuse of his human rights and human dignity!"

As noted in 1.1, Van der Vyver senior was also concerned because the article allegedly insinuates that the unnamed suspect is Van der Vyver (2005) – whereas the identification of a suspect is prohibited until he or she appears in court (see 2.5.2):

> "I accept that the involved journalists, supported by their editor, will argue that they never wrote that Fred is the suspect, but they will be unable to persuade anyone that another inference can be made. No other suspect's name was ever named in this case, although his was frequently referred to."

Whereas Van der Vyver senior requests an expedient remedy of the situation that is "not less prominent than the article(s) themselves" (2005), the press ombudsman of *Die Burger* replied more than a week later, when Fred van der Vyver was arrested (Claassen, 2005). His answer seems to confirm suspicions that presumption of guilt becomes a reality once a suspect is named or arrested in a case (see 4.3 a) regarding the presumption of guilt):

> "In the light of this morning's occurrences in Stellenbosch I believe [your] complaints are no longer applicable. Please contact me if you want to discuss this matter further."

Louis van der Vyver was not the only person to complain about the article. Referring to the article as example, Altbeker notes that "coverage clearly suggested that Fred was guilty" (2009). De Bruyn adds (2007):

> "I don't think the accused was treated fairly by the media at all... It led to articles that were absolutely false [and] scandalous headings like, for example, the accused's hammer that was on the first page with a colour photo and the heading *Hamer van die dood*."

Following this article, however, Van der Vyver's legal team allegedly recommended that Van der Vyver and his family no longer address the media (Van der Vyver, 2009a). Nevertheless – or perhaps *because of* this silent approach (see 2.5.4 and 4.4.2 *infra*) – examples of more biased pre-trial publicity until October 2006, when the case appeared in the Cape High Court, are bountiful.

On 11 December 2005, for example, *Rapport* published an article with the heading *Lotz glo vermoor nadat sy haar kêrel afsê: Vriend se hoop om ontslag ná haar dood beskaam* (Lotz apparently murdered after she dumps her boyfriend: Friend's hope for dismissal after her death unlikely). In the article, Malan writes (2005c:5. See Appendix C):

> "The murdered Matie student Inge Lotz dumped the man who is accused of her murder the morning after he had spent the night at her apartment... In what can be described as one of the most mysterious murders yet, someone who is close to the Lotz family said to *Rapport* that some of Lotz's closest friends openly tell her that Lotz and Van der Vyver's relationship were on the rocks and that she had dumped him in a letter the morning of her death."

At least one blatant factual mistake in this article can be pointed out: in the mentioned letter (handed by Lotz to Van der Vyver on the day of her death), Lotz never breaks up with Van der Vyver (although one would never know if she perhaps did so verbally). Lotz in fact writes (*State v Van der Vyver*, 2007:30):

> "You NEVER again have to doubt for one moment that I am absolutely committed and that I want to be with you with everything in me... I love you with my whole heart and there is no doubt for me that I want to spend the rest of my life with you."

b) Court reporting

Court reporting of *State v Van der Vyver* (2007) was arguably not that much different from the preceding publicity, at least not on an accuracy level. Both Altbeker (2009) and Teunissen (2009) say that they were at times shocked and surprised to read newspapers after they themselves had been in court the previous day. As noted by Altbeker (2009):

> "It was extraordinary to sit in court, and the next day what you read in the newspapers do not relate at all to what you experienced in court. Sometimes I'll read the newspaper reports the next day and wonder: 'Was I in the same room yesterday?'"

A simple (and less serious) example that Altbeker refers to clearly illustrates the lack of accuracy that often pervaded court reports of the Van der Vyver trial: In order to see whether Van der Vyver's ornamental hammer could have caused the blunt wounds on Lotz's head and face, Captain Frans Maritz, a senior forensic analyst, tested the hammer on a pig carcass (*State v Van der Vyver*, 2007:39).

The exercise was filmed and shown in court, and on the video one clearly hears Maritz expressing a disappointed "Ooooh" (*Carte Blanche: Forensics Investigated*, 2008) when, after one or two hits with the ornamental hammer, the hammer bends. The following day, a court reporter wrote in the tabloid newspaper *Kaapse Son* (Menges, 2007:7):

> "The only time that the bottle opener-side [of the hammer] was used, it bent backwards. The surprise of Supt. Johan Kok, who hit the pig carcass with the hammer, is clear when he calls out "*O fok*" [Oh fuck] after realising what had happened."

To add to concerns regarding accuracy, worryingly enough most of a lay audience will accept that which is written in a newspaper as fact (see 2.4.4 and 5.7.1) – especially if they know no better. "People who read newspapers are not legal experts!" warns Judge Van Zyl (2007). As Teunissen also comments (2009), "People believe everything they read in newspapers."

Even when journalists do not state something *per se*, audiences can still draw their own inferences from an article or read between the lines (as alleged by Van der Vyver senior regarding the *Hammer of death* article, *supra*). As noted by Judge Van Zyl (2007):

> "Someone recently said something to me over the phone about the Lotz case that made my hair rise. I realised that people have the complete wrong impression about the evidence that is being given in court, and that they draw unfounded conclusions."

4.3.2 Framing

"Evidence is often coloured by evidence that was heard before or that will still be heard," notes Judge Van Zyl (2007). With a case that continues for a long period of time – like Van der Vyver's case – however, "evidence that is reported in piecemeal fashion can sometimes sketch an unnecessarily sombre picture" (Van der Vijver, 2009).

This lack of context was apparently also a problem in the Van der Vyver case. Van der Vijver argues (2009):

> "I think that what frustrated Fred's team was the fact that they knew the whole time when the state would be presenting evidence that would put certain aspects in perspective, but still, for the newspaper and the reader, it might have seemed like the evidence being presented at that stage painted a sombre picture [regarding Van der Vyver's guilt]."

When the State was busy presenting evidence in court regarding the alleged murder weapon, for example, *Die Burger* published an article with the heading "Blood on Fred's hammer" (*Bloed aan Fred se hamer*), including the following introductory paragraph (Barnard, 2007:1. See Appendix C):

> "The decorative hammer of the accused in the Inge Lotz murder trial, Mr. Fred van der Vyver, tested positive for blood."

Whereas Van der Vijver admits that the heading is sensational, he notes that the article contained the correct facts (based on the previous day's evidence). The problems with the article only become apparent when one compares the evidence that Barnard was basing her article on, to the evidence presented on subsequent days in court. Such evidence showed that the "limited amount of genetic material isolated from the hammer indicated male genetic material", and that such material was not even necessarily blood (*State v Van der Vyver*, 2007:19).

The opposing party can, however, be equally affected by the fact that "the newspaper can only report on what happened in court that day" (Van der Vijver, 2009). As Van der Vijver notes (2009), "A state witness can also be pulled apart by the defence, which means that a reader's perception of the strength of the State's case can be changed."

4.3.3 Absenteeism

Various problems with piecemeal coverage are amplified when journalists are unable to cover the entire trial. "Some journalists only come to court from time to time, every now and then," notes Judge Van Zyl (2007). "It cannot work like that – you need deeper background to a case!"

Teunissen adds that some journalists borrow notes from other journalists when they are unable to attend court (2009), something that frequently leads to misunderstandings and inaccuracies in articles.

Estelle Ellis, a *Cape Argus* reporter who also covered parts of the Van der Vyver case, explains that pressure in newsrooms often mean that journalists are simply unable to follow a case from beginning to end. "They then report the judge's findings with big sensation while there is a clearly-definable and rational basis that they had missed," she explains (2009).

Teunissen thinks some journalists also "become bored" in court and therefore forget to pay attention (2009). Altbeker remembers that on one of the days that Van der Vyver was testifying in court, a journalist was sitting next to him and started talking to him (2009):

> "She says to me, 'He [Van der Vyver] really is very cold.' My mouth hung open – this was just after Fred had been crying, and she didn't even see it – a couple of meters in front of her!"

4.3.4 Lack of legal knowledge and the age of journalists

Judge Van Zyl notes that the lack of accuracy was perhaps partly caused by the fact that the trial involved a lot of circumstantial evidence (evidence attempting to prove a fact by inference). Especially with this type of evidence, the Judge stresses the importance of "not speculating over what *maybe* happened" (2007).

The ability to determine whether circumstantial evidence actually has value is difficult – Judge Van Zyl feels that every court reporter should in fact have a legal degree in order to manage this task (2007). Whereas requiring that every court reporter have a legal degree is highly impractical and improbable, Judge Van Zyl is not the only one that is concerned about journalists' apparent lack of legal knowledge. As noted by Louis van der Vyver (2009a):

> "My opinion is that the reporters of our case just did not have the ability to follow the fine line of cross examination. They only reported about the evidence of state witnesses, but without legal background, and they were totally incapable during the cross-examination."

Not only does Van der Vyver senior's concern resound with problems mentioned earlier in this dissertation and confirmed by national research in Sanef's 2002 Skills Audit (see 2.6), but it also echoes the worries of other people involved with the Van der Vyver case (including Ellis, 2009; Cohen, 2009; and Van Zyl, 2007).

Ellis writes that problems in court reporting happen as result of "the immense, gross negligence and ignorance of journalists who are sent to court". She argues that journalists may appear to be biased and unbalanced in their reporting when, in fact, a lack of knowledge is the actual problem. In the Van der Vyver case, there was apparently "a lot of cross-examination that, due to the technical nature thereof, was not reported accurately" (Ellis, 2009).

As Judge Van Zyl however notes, "it is not always the journalist's fault" (2007), as articles and headings are often changed in the editing process. Ellis explains that the

apparent knowledge gap "extends beyond journalists to sub-editors and editors who, due to their inability to comprehend court proceedings and therefore misunderstand a story, *subs* headings and shortens stories unreasonably" (2009).

The age of journalists also seems to contribute to the problem. Cohen expresses concern over the fact that younger journalists have "no or little experience or context to what they are writing", and are as result more easily manipulated by parties to a trial (2009).

Adriaan Basson, a journalist at the weekly English newspaper *Mail & Guardian*, explains that whereas the media landscape may have changed, with an increasing amount of young journalists and fewer experienced journalists in newsrooms, this trend does not only have negative consequences. "Young journalists don't always know the basic court procedures and legal principles. On the other side they tend to be more creative with angles and ideas," he argues (2007).

Katrien Smit, a court reporter at the Afrikaans daily newspaper *Beeld*, also notes that "court reporting is a bit of a double-edged sword: it is a very good beat to learn if you are young as it teaches you discipline, accuracy, to be certain of your facts and to write selectively, but these things are also difficult if you are new to journalism" (2007).

It would also seem that journalists have little excuse for inaccurate court reporting – all they arguably need to do is ask. As noted by Judge van Zyl (2009), "I have always been open to journalists. If they contact me to clarify something, I will be more than happy to help." Teunissen adds (2009):

> "Journalists are welcome to phone me and ask if they are uncertain – I prefer it if they get their facts straight. I don't tell them what to write. I just believe that it is important that the public is informed – and kept informed."

4.3.5 Journalists' education role

Keeping the public informed is something the media readily does – but *educating* the public is an altogether different story. As noted by Judge Van Zyl (2007), "The press has a determined function to inform the public of things that are in the public interest. Now and then the media keep on hitting a dead horse [*sic*] if the case has the potential of selling newspapers."

Judge Van Zyl is particularly concerned about citizens' apparent lack of legal knowledge (2007):

> "It's scary how little people know of what their rights are; how few people have copies of the constitution in their homes... You have to stand up for your rights, but how can you do so if you don't know what they are?"

Journalists can play an important role in this education progress (see 2.4.1), but whether this duty is fulfilled with cases like Van der Vyver's, is questionable. As Teunissen notes (2009), "I believe with passion that journalists should educate the public, but not a lot of journalists fulfil this educating role – they are simply too lazy to do the research."

Although the media's educating role should arguably not be stretched too far, the theory of the Fourth Estate demands that the media should at least fulfil some duties (see 2.2). As noted by Gies (2007:99):

> "The media never set out to be a law school for the masses, although it is not inconsistent with the watchdog philosophy that media organisations should perform some educating role."

4.4 Possible reasons for unbalanced coverage

Whereas it would be nigh impossible to determine why the majority of the media arguably acted unreasonably and in an unbalanced manner towards Fred van der Vyver, it remains important to understand the underlying causes of bad coverage – as will be attempted in this section.

4.4.1 The innocent victim *versus* evil villain narrative

Altbeker feels that the media's apparent tendency to be less empathetic towards Van der Vyver might be because "it's not easy taking on the parents of a dead girl" (2007). Taking on Lotz's parents would require taking on the police, something else that Altbeker feels the press is reluctant to do (2009): "It is harder to say the police are lying, or to betray the police: you might need them for stories next week or next month."

Altbeker's concern perhaps resounds with that of Shapiro, mentioned in 2.5.4 and 4.3 a). Shapiro notes that state prosecutors and police officers normally have good standing relationships with the media, and are able to have the first say in the media (1994). This factor arguably adds to what Altbeker is saying – i.e. the media are perhaps hesitant to contradict the police or prosecuting authorities' cases. As noted by Day (2008:16):

> "Failed prosecutions are a touchy subject because the state's evidence and expert testimony in support of it must always be beyond reproach."

Cohen believes that people were naturally inclined to be more empathic towards the Lotz family because of the immense loss they continue to suffer (2007). On the other hand, she also blames the media's apparent unbalanced coverage on the Van der Vyver family: "Fred and his family came across as very icy during the trial, which contributed to the fact that people were more empathic towards the Lotzes," she argues (2009).

Louis van der Vyver explains that *not* talking to the press was a conscious decision (2009a):

> "Right at the beginning of the trial Fred and I spoke to the media a little, until our legal representatives suggested that we refrain from doing so in the future".

Looking at what Shapiro, Giles and Alexander say regarding the vital importance of managing pre-trial and trial publicity (see 2.5.4) and not just remaining silent, this approach was arguably detrimental to Van der Vyver's case in the court of public opinion.

4.4.2 The use (and abuse) of the media

Another downside of this silent approach, as Van der Vyver senior also admits, was that other parties would continue having their stories told by the press (2009a):

> "Unfortunately the police in our case did not follow the same approach and by abusing the media, they created such an immense public perception that today there are still people, including the Lotzes and their supporters, who believe that he [Fred van der Vyver] is guilty."

Van der Vyver senior is not the only person who believes that the media may have been susceptible to manipulation. "Some parties to the case were very good at playing the media," notes Altbeker (2009). Teunissen adds that "parties to a case often use and abuse journalists, trying to sell as much information as possible" (2009).

a) State prosecutors and the media

Although she believes state prosecutors can and do develop good relationships with journalists, Teunissen notes that they "tend to prefer not to speak to the media, as things are often taken out of context" (2009). Van der Vijver agrees with her, noting that "state prosecutors are generally very cynical about newspapers' court reporting". He feels that objective reporting is the exception to the rule, and he consequently only trusts a "handful" of journalists (2009).

b) Litigation experts and the media

Cohen, who acted as Jan and Juanita Lotz's spokesperson after the criminal trial, explains that spokespersons and public relations experts are increasingly popular in South Africa as litigation support, "based on the premise that judges are influenced by what they read in the media" (2009).

This practice coincides with what was mentioned in 2.5.4 – i.e. the need to either manage publicity as a lawyer, or to appoint someone else to do it, as it may have a significant effect on the outcome of a case. As noted by Sherwin (2004:104-5):

> "Publicity via mass media communication, it turns out, is but one more tool in the contemporary advocate's toolbox."

Cohen, who is often hired as the spokesperson of certain parties to a trial, says she helped to protect the Lotz family *in casu* and acted as "a conduit of information" to the media (2009). "We realised that the media can help to support or drive the case, that is why it is important to be on good terms with the media" she explains (2009). With the Lotz case her job was relatively easy: "The media printed whatever they were given. It's like a game I suppose," she notes (2009).

Whereas litigation support might seem to others like attempts at manipulating the press in favour of a client, Cohen believes that she is helping to educate and prepare journalists – especially in difficult or unique cases. She stresses the need to remain ethical, however (2009):

> "I don't believe that what I do is spin doctoring. I will never lie on behalf of a client. If I realise a client is lying or hiding something, or talking crap, I won't represent them."

She alleges that especially after the criminal trial, the Van der Vyver family "ran a massive media campaign", and says that part of her job description was to respond to this "information barrage" (Cohen, 2009):

> "My job was to provide enough information to the media, something new every now and then so that journalists could keep on writing and asking questions."

c) Police and the media

Van Heerden's concern regarding police-media relations echo other concerns regarding this relationship, noted earlier in this chapter (see 4.4.1 and 4.3a)). He is of the opinion that police officers also succeeded in misleading the majority of the media: "Journalists are fed information by the SAPS and they swallow it hook, line and sinker" (2009).

Louis van der Vyver agrees that "legally-illiterate journalists" were "fed" information about "one-sided, corrupt and fraudulent 'evidence'" in a police attempt "to have the case tried by the media before the trial had even started" (2009a).

Van Heerden and Van der Vyver senior are not the only persons interviewed who feel that certain journalists might have been manipulated by the likes of Trollip, who, in Van Heerden's opinion, "knows exactly how to manipulate the media" (2009). Van der Vijver, however, feels that many parties may have launched an "orchestrated attack" on Trollip's integrity, and notes that he is unaware of "so-called inaccurate evidence" that was "fed" to the press by the police.

4.5 Consequences of unbalanced reporting in *State v Van der Vyver* (2007)

The publicity involved in a trial like that of *State v Van der Vyver* has dire personal consequences on all of the parties involved. Besides the influences it could arguably have on citizens' legal consciousness (as will be addressed in subsequent chapters); Van der Vyver has to deal with the prospect that many will continue to doubt his innocence (Altbeker, 2009; Cohen, 2009; Van Zyl, 2007; Van Heerden, 2009; Van der Vyver, 2009a and 2009b). On the other hand the Lotz family were exposed to speculation and gory details regarding their daughter that no parent should have to endure.

4.5.1 Personal consequences

In Chapter 2 some of the personal repercussions that extensive media coverage might have on the parties involved with a case were investigated (see 2.5.5.b)). The overview focused mainly on the effects experienced by the person accused of the crime, and did not investigate the personal effects on other parties – like the victim's families and friends.

In the Lotz case, however, one can at least refer to one example that illustrates the challenges victims' close relations have to face as a result of media coverage.

Teunissen explains that the police and state prosecutors had an agreement with the media to not publish or display photographs of the Lotz murder scene because Jan and Juanita Lotz "had not seen it, and never wanted to see it". For this reason the Lotz couple also chose not to be in court during the days that evidence regarding the wounds on their daughter's body was presented (Teunissen, 2009).

In September 2008, however, the television actuality programme *Carte Blanche* broadcast an insert on the case, including footage of the murder scene and Inge Lotz's body (*Carte Blanche: Forensics Investigated*, 2008) – allegedly without any warning to the family or anyone else. "That, to me, is an abuse of sensation to the utter extreme," comments Teunissen (2009).

Whereas the Lotz family have laid a complaint (that is as yet unresolved) with the South African Human Rights Commission (Oosthuizen, 2009:4), the damage is arguably done. "Juanita told me that she never had a picture in her mind of her daughter otherwise than alive and healthy," notes Teunissen (2009). "Now there is not a living moment that passes without her seeing her daughter's bloodied body."

In a letter quoted in *Rapport* (Malan, 2009), Jan Lotz comments to a friend:

> "It [the *Carte Blanche* documentary] is the most blatant abuse of human rights and *that* in the pursuit of sick sensationalism. Without any permission and not with the least consideration of our feelings was our child's body displayed on national television. I have often prayed to God that I never want to see her like that, but indeed, not even that was granted to me."

The Lotz couple were not the only ones to suffer, however. As noted by Van Heerden, "His [Van der Vyver's] defence was achieved with great financial and personal cost. Both Prof Lotz and Juanita and the entire Van der Vyver family went through hell" (2009).

Another major personal consequence can be found in the fact that, besides the loss of a beloved girlfriend, Van der Vyver's life will never be the same again. As De Bruyn (2007) explains:

> "The damage is immense and irrevocable. Not only does it affect the vast public's perception of the accused, but the pressure on the accused, his legal team, family and the rest becomes unbearable at times."

Fred van der Vyver also explains that some of the media coverage of the trial was "awful" to him and had adverse influences on him, his family and legal representation during the trial. He notes (2009c):

> "Sometimes it felt to me like I had to convince the public of my innocence as well, instead of just having to defend myself in court and trust that the media would inform the public with their reporting."

On a more personal note, Van der Vyver feels that the way in which the media's influence will still affect his life in the future is unknown. At least some effects are, however, already discernable (2009c):

> "When I meet people for the first time, they may have certain preconceptions about me as result of what they read in the media. In such a case I would have to first try to change such perceptions that they might have of me."

4.5.2 Undue influences and courts of law

Louis van der Vyver argues that a combination of "the use and abuse of the media by the police" and "pathetic court reporting" had dire results for his son (2009a):

> "The result of both was that Fred was regarded as guilty as death in the eyes of the public. Worse than that even, was that these perceptions and prejudices also

established themselves in the minds of the judge and two assessors before the case started and before they even knew that they would be trying the case."

Despite Van der Vyver senior's concerns, Swanepoel explains that "the perspective generally taken in South Africa is that our judiciary are immune to external influences for they are well schooled and mature enough to ignore media reports" (2006:9). In his judgment of the case Judge Van Zyl also stresses that judges cannot be influenced by mere speculation in the judgment (*State v Van der Vyver*, 2007:39):

> "Due to the wide media coverage that this case received, with the unavoidable speculation as result, it has to be pointed out that no matter how strong a suspicion against an accused may be no court may ever rule on the basis of a suspicion."

Whereas Judge Van Zyl seems to argue that courts (including judges, assessors and witnesses) are impenetrable to alleged media influences, other interviewed parties agree with Van der Vyver senior that there is at least *a possibility* that courts may be influenced by the media. The same has been suggested by authors and South African judges, as was discussed in the literature review (see 2.5.5 a). Teunissen points out (2009), "Judges are not meant to be influenced by the media, but they are just human."

Litigation supporters in fact have an occupation based on the premise that judges and assessors may be influenced by what they read in the media (see 4.4.2 b)). Cohen believes that despite the fact that "judges would never admit that they are influenced by the media", the media play a fundamental role in court cases (2009).

Whether or not they are influenced thereby, it is clear that judicial officers are at least aware of what the media report about a case. In the Van der Vyver case Judge Van Zyl apparently kept a close eye on media, and readily admits that he is "very critical about incorrect or unfair reporting" (Van Zyl, 2007). As noted by Karen Breytenbach, a *Cape Times* reporter who also covered the case (2007):

> "In the Lotz case all the media from different mediums (radio, daily newspapers, Sunday newspapers etc.) were chastised at least once – either by criticism from the defence or state because of an article, or by the judge."

Judges are in fact *required* to be aware of public sentiment or community *mores* surrounding a case (as can often be deduced from the media) – especially for sentencing purposes. As noted by Van der Vijver (2009):

> "We perhaps have to accept that judges are only human and can be influenced by the community's opinion, but the law always tries to look at the interests of the community and not the wishes of the community. That is a very important difference."

4.5.3 Undue influences and the court of public opinion

Apparently-unbalanced and ill-informed reporting not only has potential effects on the various parties involved (as investigated *supra*); but also on society and the perceptions people have of courts specifically and the law in general (see 2.5.1).

Such potential influences cause a lot of pressure on the parties involved in especially high-profile cases. Van der Vyver explains that the pressure to cater to the interests of

community affected him and his legal representatives, and also has the potential to influence the outcome or judgment of a case (2009c).

He warns that such pressure may lead to defendants and their legal representatives opting to defend a case in the media and public domain (or court of public opinion) instead of acting in the best interest of the case in the criminal court (Van der Vyver, 2009c):

> "Fortunately I had a very strong legal team that were focused on what was important to the trial and what should be said in court (and did not care primarily about the media's reporting). I think it is a huge danger – that the media's role may at times influence people's approach during a trial and lead to them not acting in the best interest of the case, but rather to try to convince the media and the public."

Whereas Fred van der Vyver's strong (and very expensive) legal team may have helped him to win an acquittal in the Cape High Court, the question that therefore remains to be answered is what the ruling on Van der Vyver's guilt or innocence was in the court of public opinion.

Whereas it is certainly interesting to hear what parties closely involved or interested in the case say regarding Van der Vyver's innocence or guilt; that is not the primary concern of this case study. It is arguably of more importance to investigate what a lay audience thinks of the case in order to learn whether concerns regarding coverage are warranted; whether a lot of people are actually aware of the case; what people think of the trial's outcome; and what people think of the media's coverage of the case.

These questions were all investigated as part of the questionnaires aimed at determining citizens' perceptions of the law, and will be discussed in Chapter 6.

4.6 *State v Van der Vyver* (2007): The aftermath

As noted earlier in this chapter, part of the media and society's interest and fascination with the story of Fred van der Vyver and Inge Lotz was their apparent fairytale-like life. The ending to their fairytale, however, was as neither Lotz nor Van der Vyver could ever have imagined it.

Although the focus of this case study was media coverage of the criminal case of *State v Fred van der Vyver* (2007) and the preceding publicity, it is important to look at the criminal case's aftermath in brief before investigating what the way forward for Lotz and Van der Vyver will be.

Neither the Van der Vyver nor Lotz's families' suffering was even close to over at the end of the criminal trial. In January 2008, Van der Vyver's legal team sued the minister of safety and security for R46 million, claiming (among other things) wrongful and malicious arrest (Breytenbach, 2008:1).

On the three year anniversary to Inge Lotz's death, 16 March 2008, her parents, Jan and Juanita Lotz, in turn sued Fred van der Vyver for R8.5 million for the emotional damage that they allegedly suffered because of their daughter's death. The basis of the claim

against Van der Vyver was their unfaltering belief that he had murdered their daughter (Williams, 2008:1).

At the time, Cohen (the Lotzes' spokesperson) issued a press statement saying that the Lotzes' move was "the same as the OJ Simpson murder trial in principle" (cited in Williams, 2008:1).

This claim was substantial, especially if one considers the facts of the Simpson case: Whereas Simpson had been found not guilty of the murders of his ex-wife Nicole Brown Simpson and her friend Ron Goldman in a criminal court – where the burden of proof for guilt is beyond reasonable doubt – he was subsequently found guilty in a civil court – where the burden of proof is only a balance of probabilities – in a case filed by the victims' families (Alexander, 2003:3).

Cohen's reference to the Simpson case was ironic (although most probably unintended so): as mentioned in 2.5.1, the Simpson case has often been used as the ultimate case study of how the media can negatively influence trial proceedings. As noted by Alexander (2003:7):

> "With thousands of journalists and media personnel spending so much time covering the case out in Camp OJ, the general impression of the coverage of the case was of a media circus... at the least, some of the media harassed the principals in the case; interfered with witnesses; disclosed information prematurely or, in the worst cases, published incorrect speculation."

On 21 August 2008, Fred van der Vyver, Louis van der Vyver, Dup de Bruyn, Arie Zeelenberg (fingerprint expert in trial), Bill Bodziak (footwear expert in trial), Mike Grimm (an injuries and wounds expert) presented a paper titled "The Fred van der Vyver Story" at the International Association for Identification, in Kentucky, USA – despite alleged SAPS attempts to block the talk (Swart, 2008).

Following the presentation, current affairs programme *Carte Blanche* did a story on the Fred van der Vyver case and the alleged evidence fabrication involved with the case. The insert, which was aired on 14 September 2009, included footage of the murder scene and Lotz's body (*Carte Blanche: Forensics Investigated*, 2008).

This programme was one of very few investigative pieces done regarding the Inge Lotz/Fred van der Vyver story, but the ethicality of the programme was disputed by many. To add to concerns regarding sensationalism and a lack of respect shown to the Lotz family (see 4.5.1); many interviewees question the biased nature of the programme: "Carte Blanche only showed one side of the story", says Altbeker (2009). Teunissen agrees, noting that the producers failed to even interview or talk to the investigating officers (like insp. Trollip). "Is that responsible journalism? I don't think so," she notes (2009).

Van Heerden feels that the *Carte Blanche* story, whereas it might have offered a good portrayal regarding the inadequacy (and perhaps fraudulency) of the evidence offered by the state prosecutors and the SAPD, came too late. He notes,

> "To me personally it was like mustard after the meal [*sic*]. It's easy to report on something once there is a court ruling on it – all the facts are then easily accessible and in the public domain" (2009).

Van der Vyver is positive about current (less negative) media coverage of the case (2009c):

> "I am thankful that a lot of articles about the eventual verdict of the case are appearing. It, of course, helps that people can read about the ending of the story and it can also place things in a more positive perspective for me."

In May 2009 the Lotz family withdrew their civil suit against Van der Vyver (Nel, 2009:1). Although no official reasons were given for the withdrawal of the case by the Lotzes, media reports at the time alleged that professor Lotz's health was suffering too much as result of the court trials (Malan, 2009).

The agreement, signed in Cape Town on 22 May 2009 (Van der Vyver, cited in Wertheim, 2009:23), includes an agreement from both parties to refrain from talking to the media about the case.

The agreement essentially means that Van der Vyver cannot be tried again for the murder of Inge Lotz, unless substantial new evidence to prove his guilt is found. The civil case that he brought against the minister of safety and security, however, is expected to commence in the Cape High Court in late 2010 (Van der Vyver, cited in Wertheim, 2009:23) – if a settlement is not reached out-of-court before the time.

4.7 Concluding remarks: A tragic ending for the fairytale couple

In medieval Europe dogs were at times judicially prosecuted and even sentenced to death. The saying "hanging a dog" therefore refers to a situation where, *in lieu* of being able to watch a public human hanging (a very popular happening at the time), people would flock to the town square to watch a dog being hung (Dennis, 2006).

The phrase (although appalling) is also ironic *in casu*: The media (often correlated to watchdog, guard dog or lapdog, as noted in 2.2) are frequently the scapegoat for many when things go wrong and someone inevitably needs to be blamed. Although one would therefore prefer to avoid "hanging the dog" and blaming the media for much that arguably went wrong with the story of Inge Lotz and Fred van der Vyver, some introspection is of paramount importance.

The way in which the Inge Lotz/ Fred van der Vyver case was covered by the majority of news institutions (and here it should be stressed that not all journalists were unfair, biased or unbalanced), leads one to wonder what the average person must think of Fred van der Vyver's innocence or guilt. Whereas this question will be addressed in Chapter 6, it also remains important to determine if the media really are important in allowing people to form opinions of legal matters – as will be investigated in the following chapter.

In the meanwhile, the urgent concern that remains at hand is ensuring that justice for both Inge Lotz and Fred van der Vyver is achieved. Day, mentioned in the introduction to this chapter, feels that there is little chance that Lotz will ever get the justice she deserves (2008:16):

> "We live in an adversarial system, and so when a headline-grabbing prosecution is shamed as publicly as this one, the wounds cut deep and reopening the murder inquiry is not part of the healing process – even if it means allowing the killer to get

> away with it. Police and prosecutors have a way of dealing with this. It's called denial."

For a story that, it is submitted, has the potential of a South African Watergate for investigative journalism, the investigation into Lotz's murder subsequent to Van der Vyver's acquittal (and media coverage thereof) *has* been quiet. Van Heerden feels that the SAPS have done little to investigate leads or information, but that they also have real motive *not* to find Lotz's killer (2009):

> "If they arrest the real murderer, they will have to pay the R46 million [that Van der Vyver has sued the minister of safety and security for] to the Van der Vyvers."

With interest in the case ebbing, the danger is that people might forget to demand the necessary answers from the SAPS. As Van der Vyver notes (2009c), "I think that as time passes, the emotions surrounding a case become lessened and people start thinking about something else."

The media fortunately have the potential to play a vital role in preventing or exposing the injustices of the system illustrated so well in the Inge Lotz/ Fred van der Vyver case. As noted by Day (2009):

> "The SAPS are at the coal-face, underpaid, under-resourced and overwhelmed by the inexorably escalating volume of dockets that they are required to deal with on a daily basis. If objective and constructive criticism on day-to-day police performance can be effectively targeted by the media at the decision-makers within government then everyone benefits."

In this light it remains crucial for the media – the watchdogs – to be vigilant in their investigations. And in a country where the average murderer apparently has an 80% chance of not being prosecuted successfully (Day, 2009), the need is for such vigilance to be continuous and never-ending.

CHAPTER 5: THE MEDIA AND PERCEPTIONS OF THE LAW

5.1 Introduction

In Chapter 4 the possible influences of the news media not only on parties personally involved with a high-profile case, but also on citizens and their perceptions of a case (as will be looked at in greater detail in Chapter 6) were considered.

Linking to the latter, this chapter will look more specifically at legal consciousness, and the research concerns regarding the topic. Questions that are pertinent to the topic and this chapter include:

- What are people's perceptions of the law?
- How positive or negative are these perceptions?
- What are the different sources of these perceptions of the law?
- How important are news and popular media (respectively) as sources of legal awareness?
- What specific news and popular media sources are important as sources? and
- Do certain personal circumstances affect the way in which audiences perceive the law?

These perceptions were investigated by making use of a questionnaire described in Chapter 3. Before going into more detail regarding the perceptions participants harbour with regard to lawyers, judicial officers and the South African legal system; the variables involved with the sample will be discussed in more detail.

The summary results depicting the opinions participants have will thereafter be listed, discussed and compared; followed by an overview of the sources that participants find helpful. Popular and news media will also be focused on (respectively); concluded by a discussion regarding the correlations between opinions and sources (where applicable). The findings made will be reflected upon in the last section of this chapter.

5.2 Profile of participants

Demographical details were not only deemed important in order to describe the subjects, but also because some of it may (it was hypothesised) have an influence on perceptions of the law.

Although time and ethical restraints prevented the compilation of an exhaustive list of such details, at least a few of the variations in results can possibly be accounted for by taking account of both conventional and more unconventional demographical particulars collected by the questionnaires. These will be discussed below, but the relevant histograms can be found in Appendix D (i).

5.2.1 Traditional variables

a) Universities

The participants, who were asked to complete the questionnaires during specific lectures at the beginning of the academic year, came from two different universities – the

University of Stellenbosch (henceforth US) and the University of the Western Cape (hereafter UWC).

A total number of 496 participants took part in the questionnaire. Whereas 43% (or 215) of the participants came from the US, 57% (or 281) participants were UWC students.

The difference in opinions of participants from these tertiary institutions will be compared later in this chapter (5.4).

b) Nationality

As the study was concerned with the ways in which specifically South Africans perceive the law, nationality served as an exclusionary variable. The nine (9) replies received from participants from other countries (including Zimbabwe, Namibia, Canada and Botswana) were therefore disregarded.

c) Sex

With regard to sex, it may be noted that of the 496 participants, 63% (309) were female and 37% (183) were male.

Although this difference indicates a gender imbalance, it was decided not to differentiate results according to sex as, it is respectfully submitted, the subject matter does not lend itself intuitively to differences along these lines.

d) Age

While the median age was between 18 and 19 years old (born in 1990); the mean was higher at between 19 and 20 years old (born in 1989). The majority of the participants must therefore be studying law immediately or one to two years after leaving high school. As the parameters of the sample were set to include students with little to no real exposure to the law (in terms of studying law, for example), fortunately most of the participants met this requirement.

Although it may seem that the difference in the students' ages serve as a limitation, thus reducing the ability to compare results, it is important to remember that the aim of the study was to target participants who are embarking upon a law education and to determine how and what they think about the law. Differences in age were therefore regarded as irrelevant during the process of comparing and correlating the results.

e) Race

Combining the two universities' participants, it was found that most of the participants were coloured (43%), followed by white participants (37%) and far fewer black participants (16%). Very few Asian participants took part in the questionnaire (1%), with a further 3% of participants selecting the option "other".

The total racial composition of the sample was quite interesting, and arguably showed characteristics that should – to an extent – have been expected from two universities located in the Western Cape (see Table 5.1).

	Coloured	White	Black	Asian
Survey participants	43%	37%	16%	1%
2001 South African Census: Western Cape population	53.9%	18.4%	26.7%	1%

Table 5.1: The racial composition of participants viewed in provincial context.

Whereas the high amount of coloured participants reflect the fact that the Western Cape's population is made up of 53.9% coloured people, and the amount of Asian participants (1%) reflected the small amount of Asian people in the Western Cape (1%), the percentages of black and white participants did not reflect the reality of the Western Cape. The South African Census of 2001 established that the Western Cape is inhabited by 26.7% black people and 18.4% white people (Punt, 2005:2), whereas the questionnaire had 37% white participants and only 18% black participants (see Table 5.1).

The racial differences between the UWC and US were also substantial – as can be seen in Table 5.2. The histogram, which disregards the 1% Asian and 3% "other" participates, clearly illustrates the perturbing lack of diversity at these universities. Fortunately the combination of UWC and US in this study to an extent addresses the issue of how representative the sample is.

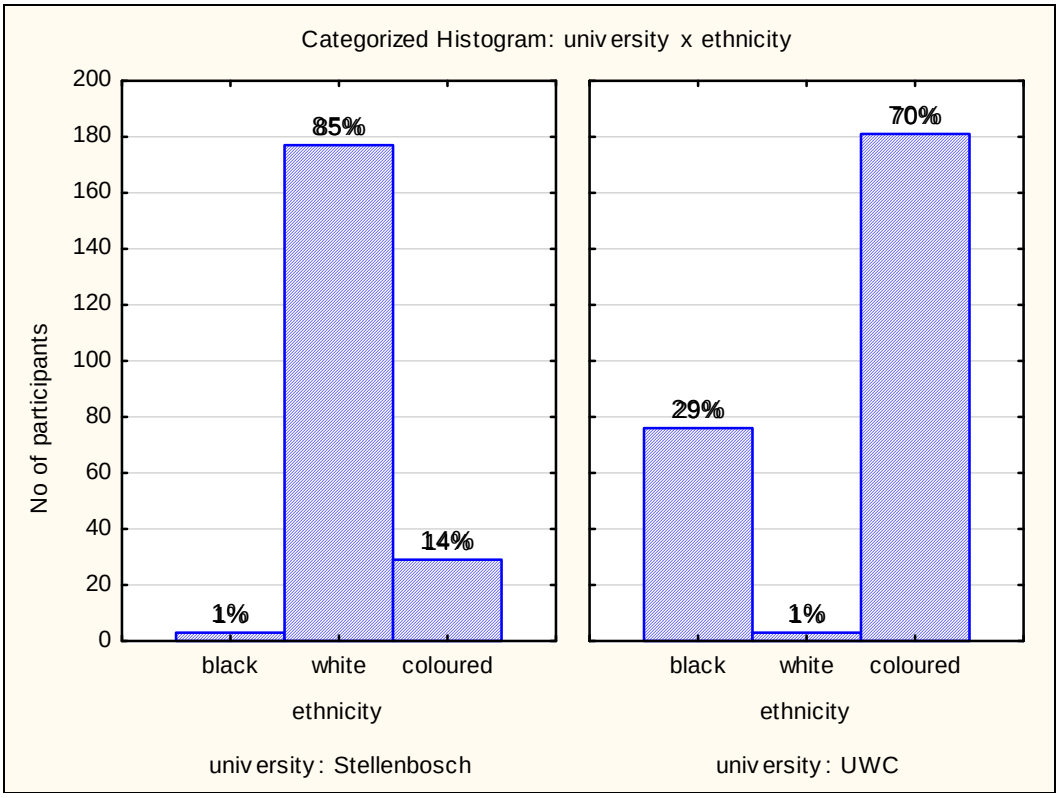

Table 5.2: The racial composition of the universities' participants.

Differences in the opinions that diverse racial groups have regarding the law were not assessed by the study, but divergences in the ways that UWC and US participants respectively answered the questions were investigated (as noted in 5.2.1 a)).

It is therefore important to keep in mind the vast diversity of the racial composition of the first year law students at these different universities when interpreting the results.

5.2.2 Other variables

Other (more unconventional) variables were included to determine whether the participants had studied law before and whether the participants had any judicial officers or lawyers in the family.

f) Law studies

As the sample was supposed to include first year law students, we needed to distinguish between the participants who had studied law before *versus* the participants who were being exposed to law studies for the first time. It was proposed that participants who had studied law before might have a different opinion of the law, whereas participants who had not studied law before might be more susceptible to having their opinions influenced by sources like news and popular media (see 3.3.2 a)).

Only 3% of the participants indicated that they had studied law before. Whereas it would certainly have been worthwhile to determine whether a prior legal education has any effect on the way in which students perceive the law, 3% is such a small percentage that it was considered statistically insignificant for the purposes of the study. In other words, no comparative studies were done on the difference in opinions between these two groups of participants.

g) Lawyers and judicial officers in the family

The questionnaire also sought to determine whether participants have lawyers (advocates and/or attorneys) or judicial officers (judges and/or magistrates) in the family (specified as including siblings, spouse, significant other, parents, aunts or uncles, and cousins). Whereas 36% of the participants do have one or more lawyers in the family, only 10% of the participants indicated that they have (a) judicial officer(s) in the family.

Coming from a legal culture (having lawyers or judicial officers in the family) might arguably have an effect on the opinions and perceptions participants harbour with regard to the law (see 3.3.2 a)). The data will therefore be analysed in order to determine whether this variable has an influence on the opinions participants have of the law.

5.3 Summary findings: Perceptions of the law

Whereas it would of course be nigh impossible to measure legal consciousness, participants' opinions with regard to at least certain aspects related to the law was measured using the questionnaire – as explained in 3.3.2 b).

These different aspects, related to opinions of (respectively) lawyers, judicial officers and the legal system, will be discussed separately below. Please refer to Appendix D (ii) for more detailed results and histograms related to these findings on legal consciousness.

5.3.1 Opinions with regard to the character of lawyers

To determine what students think of lawyers, the participants were asked to rate four statements according to whether they agreed or disagreed with what the statement proposed. Participants were also asked to write down additional comments regarding lawyers in general in a provided space (see 3.3.2 b)). The rating of these statements and the comments given will be discussed separately below.

a) Close-ended questions: Opinions regarding provided statements

In general it seemed that the participants think that lawyers enjoy high prestige; that they deserve the income they earn and that they are regarded as role models in society. On the other hand, participants do not really think that lawyers are that trustworthy or ethical.

Lawyers have a lot of prestige:

An overwhelming majority of 71% of the participants agreed with the statement that lawyers have a lot of prestige, whereas 26% remained neutral and only 3% of the participants do not believe that lawyers have a lot of prestige.

Lawyers are trustworthy and ethical:

Participants are clearly more uncertain about whether lawyers are trustworthy and ethical: Only 37% of the participants agreed with the statement, whilst 50% chose to remain neutral and 12% of the participants believe lawyers to be unethical and untrustworthy.

Lawyers deserve the income they earn:

Most of the participants (85%) believe that lawyers deserve the income they earn; whilst 11% remained neutral and only 3% of the participants do not believe that lawyers deserve what they earn.

Lawyers are role models in society:

A majority of 61% participants think that lawyers are role models in society; whilst 40% of the participants remained neutral and only 6% do not think lawyers are role models in society.

b) Open-ended question: Comments regarding lawyers in general

As explained in 3.3.2 b), it was decided to classify participants' comments in this section according to whether comments were positive, neutral or negative. The generally-positive feedback regarding the statements above were reflected in these results: a majority of 64% of the comments regarding lawyers were positive, whilst only 9% of the comments were negative and 26% of the participants' comments were neutral (161 comments were rated).

Note that comments regarding what lawyers *should be*, or prescriptive answers, were disregarded. Examples of prescriptive comments include "Lawyers have to interpret the law to their best advantage" and "Lawyers should rule fairly to their best understanding of legal cases" [*sic*].

5.3.2 Opinions with regard to the character of judicial officers

Three statements with regard to judicial officers' characters in general were listed, and participants were again asked to what extent they agreed or disagreed with the respective statements (see 3.3.2 b)). Participants were thereafter asked to supply additional comments regarding judicial officers in general. The rating of these statements and the comments given will again be discussed separately below.

a) Close-ended questions: Opinions regarding provided statements

In general it seems that judicial officers are also considered by the participants as having high prestige and being role models in society; whereas their trustworthiness and ethicality are only accepted by a slight majority of the participants.

Judicial officers have a lot of prestige

A majority of 72% of the participants believe that judicial officers have a lot of prestige. Whereas 24% remained neutral on the matter, only 3% of the participants think that judicial officers do not have a lot of prestige.

Judicial officers are trustworthy and ethical

A slight majority (56%) of the participants believe that judicial officers are trustworthy and ethical, with 37% of participants remaining neutral and 6% of the participants disagreeing with the statement.

Judges are role models in society

In total, 63% of the participants believe that judicial officers are role models in society, whilst 6% do not think judges are role models and 30% of the participants remained neutral.

b) Open-ended question: Comments regarding judicial officers in general

Participants' answers were again divided into those that were positive, negative or neutral. The positive perspectives of judicial officers (gathered from the close-ended statements) were reflected in the open-ended comments, although fewer participants filled in comments about judicial officers than of lawyers. Of the 124 rated comments, 58.5% were positive, 18.7% negative and 18.7% neutral.

5.3.3 Opinions with regard to efficiency of the South African legal system

A clear shift occurred from generally positive remarks with regard to lawyers and judicial officers (except with regard to their ethical dispositions and trustworthiness) to more negative perceptions of courts and the South African legal system. Many of the participants furthermore chose to remain neutral with these questions.

a) Close-ended questions: Opinions regarding provided statements

Courts operate to the best of their abilities

Only 32% of participants agree that courts operate to the best of their abilities, with 25% of the participants thinking that courts do not operate to the best of their abilities and 43% of participants remaining neutral.

The South African legal system is fair (US only)*

Whereas 35% of the participants agreed with the statement that the South African legal system is fair, 25% do not perceive the legal system to be fair, and 39% of the participants remained neutral.

The South African legal system is effective (US only)*

Only 17% of participants believe that the South African legal system is effective, and more than double that amount of participants (39%) think that the legal system is ineffective. Participants choosing to remain neutral totalled 44%.

The South African legal system has many shortcomings

68% of the participants agree that the South African legal system has many shortcomings, whilst only 10% believe that the South African legal system does not have shortcomings, and 23% of the participants remained neutral.

The South African legal system is corrupt

More than a third (35%) of the participants believe that the South African legal system is corrupt, whereas 39% of the participants remained neutral and 25% of the participants do not think that the South African legal system is corrupt.

* *Notable limitation:*

It should be noted that due to an amendment in the questionnaires after UWC students had already participated, a slight difference between some of the questions asked of UWC students and of US students (respectively) with regard to courts and the legal system resulted.

Whereas UWC students were asked to rate four statements according to whether they agree or disagree, US students were asked to rate five statements. The particular statement that UWC students were asked to rate was: “The South African legal system is fair and effective.” US students, however, had the statement divided into two phrases that they had to rate separately: “The South African legal system is fair” and “The South African legal system is effective”.

This limitation was addressed by only using the US participants’ answers for the purposes of the analysis of the particular statement. The reason for this choice was that the words “fair” and “effective” are not the same and could be interpreted in a variety of ways when used in conjunction – therefore UWC participants’ results were ignored in this instance.

By ignoring the UWC participants’ results in this instance, the results (from the UWC and US respectively) are not contradictory and remain reliable for the purposes of this research.

b) Open-ended question: Comments regarding judicial officers in general

Most comments regarding courts and the South African legal system were very negative. Whereas the comments about judicial officers and lawyers were subdivided into positive, negative and neutral comments, for this section a fourth category was added: those comments suggesting that there is room for improvement in the legal system.

48.2% of the participants’ comments about the South African legal system were negative, whilst only 9% of the comments were positive and 7% of the comments were neutral. Although the comments suggesting room for improvement tended to slant to the negative side, one can still note that 34% of the participants’ comments begged for change or improvement to the South African legal system (164 comments were rated for this question).

5.4 Comparing summary results

5.4.1 Opinions of lawyers *versus* opinions of judicial officers

Whereas judicial officers are perceived to be quite substantially more trustworthy and ethical than lawyers, they are regarded similarly to lawyers in terms of prestige, and as equally important role models in society (see Table 5.3).

(% agreed)	Have a lot of prestige	Are trustworthy and ethical	Are role models in society
Lawyers	71%	37%	61%
Judicial officers	72%	56%	63%

Table 5.3: Differences in opinions regarding lawyers and judicial officers.

5.4.2 UWC *versus* US participants

Due to the fact that UWC and US participants differed quite significantly (see 5.2), especially on a racial front, it was thought important to determine whether participants from these different universities have similar opinions regarding the law. Please see Appendix D (iv) for more detailed results and relevant histograms in this regard.

Although UWC and US participants harboured more or less the same opinions with regard to judicial officers, it seemed that UWC and US participants' opinions differed on some of the statements related to lawyers.

With the statements asking about prestige and how trustworthy and ethical lawyers are, US participants had a slight tendency to hold higher opinions of lawyers. The probability value was, however, of such a nature that the difference seemed statistically insignificant (for both, $p=0.39$).

With regard to whether lawyers are role models in society and deserve the income they earn, there was a statistically significant difference between UWC students (who felt more strongly than US students regarding whether lawyers deserve their income) and US students (who were more likely to think lawyers are role models in society).

Although the US and UWC participants' opinions with regard to whether courts are fair and whether courts are effective cannot be measured (see limitation *supra*), it should be noted that, in general, UWC and US participants' opinions of courts and the South African legal system were statistically similar. US participants were however more critical than UWC participants about whether courts operate to best of their abilities.

5.4.3 Coming from a legal culture

As noted earlier, another of the hypotheses was that students coming from a legal culture might have a different opinion of lawyers, judicial officers and the South African legal system than students not having judges and/or lawyers in the family. This hypothesis was proven false however – it seemed that having either lawyers and/or judges in the family did not make a statistically significant difference in the opinions students had on these topics. Please see Appendix D (iii) for the histograms relating to this statement.

One exception should however be noted: Students who have judicial officers and/or lawyers in the family were more likely to think of judicial officers as role models than students who do not come from a legal culture, as can be seen in Appendix D (iii).

5.4.4 UWC/ US data *versus* the Asimow *et al.* study (2005)

As some of the questions with regard to lawyers were based on the Asimow *et al.* study, taking note of similarities and differences between the data collected by these two studies is worthwhile for reliability and validity purposes (see 3.3.2 a)). Take note that the Asimow *et al.* study did not measure opinions with regard to judicial officers or legal systems, and as such only comparisons with regard to opinions of lawyers can be made.

The "prestige" question

In the Asimow *et al.* study, students at five out of the six participating law schools (the exception being Argentina) believed that lawyers have high prestige (2004:421). The results obtained at UWC and the US (71% agreed) correlates precisely to that of the USA, where 71% of students also agreed that lawyers have a lot of prestige.

Although this figure of 71% may seem high, the authors in the Asimow *et al.* study regard it as "relatively low" (in comparison to other participant law schools' ratings). The researchers write that results in the USA "reflects the negative feelings toward lawyers that have become deeply embedded in American culture" (2005:422).

Whether this is also the case in South Africa is debatable – but the fact that American culture (in the form of at least popular television series, films and books) permeates South African culture (see 2.4.3) must arguably have its effect – as evidenced by the (only) 71% of participants who believe lawyers have high prestige.

The "trustworthy and ethical" question

The results obtained by the questionnaire correspond to those in the Asimow *et al.* study; as participants in both studies held generally low opinions with regard to the honour of lawyers.

The highest rating from the six law schools participating in the Asimow *et al.* study with regard to the question was 37% – the same as the findings at the UWC and US. It would thus seem that the participants' opinions, although it appears very negative at face value, are not that low in comparison to other countries' participants, who thought even less of the honour of lawyers (Asimow *et al.*, 2005:422).

The "income" question

Participants from the US and UWC were more convinced that lawyers deserve the income they earn than the participants in the Asimow *et al.* study (2005:423).

At least some of the students would have chosen to study law because of what they will earn in the future. It therefore comes as little surprise that they should agree that lawyers deserve what they earn.

It is interesting to note that only 55% of students in the USA agreed that lawyers deserve the income they earn. Asimow *et al.* explain this by noting that the very high incomes of lawyers in the USA are well publicised in generally-negative terms (2005:423).

Arguably the incomes of South African lawyers are perhaps either not as exorbitant, or not as well publicised as their American counterparts'.

The "role model" question

As this question was not asked in the Asimow *et al.* study, no comparison can be made.

5.5 Sub-conclusion: Legal consciousness

The findings show that participants have generally high opinions with regard to the prestige of lawyers and judicial officers and consider both as role models in society. Students, however, have less faith in the ethicality and trustworthiness of lawyers and judicial officers – although the latter are regarded in slightly higher esteem in this regard.

The similarities of findings (with regard to lawyers) to those of the Asimow *et al.* study (2005) were encouraging from a reliability point of view. In terms of the little faith participants have of lawyers' trustworthiness and ethical natures, it is interesting to therefore take note of Asimow *et al.*'s comments in this regard. They ask (2005:427):

> "Why would students pursue a profession that they believe consists of so many unethical practitioners? Is it just the money? Are they prepared to be as dishonourable as many of their future colleagues if that's what it takes to succeed? Do they believe they will be among the relatively scarce honourable members?"

It should be noted that South African participants' opinions with regard to ethicality and trustworthiness were relatively high in comparison with the countries that took part in the Asimow *et al.* study. In the same breath, one should also point out that South African participants were more likely to think that lawyers earn their income than any of the countries' participants in the Asimow *et al.* study.

The research also showed participants' opinions of courts and the South African legal system are much lower than their opinions of lawyers and judicial officers. The majority of students think there is clear room for improvement in South Africa's legal system, with only a third of participants thinking courts are fair and only 17% thinking courts are effective. More than a third of participants also think the system is corrupt – a worrying statistic (see 2.4.3 *supra*).

These findings inevitably lead one to the next part of the findings from the study: Where do these opinions come from? This question will be investigated in the following section.

5.6 Sources of perceptions relating to the law

5.6.1 General sources

In order to determine where participants get the information that allow them to form opinions or perceptions about the law (legal consciousness), participants were asked to rate how helpful or unhelpful a variety of sources are as sources of legal perceptions (see 3.3.2 c) for an explanation).

A list of six general sources was compiled, including:

- Having lawyers as friends, or having lawyers in the family;
- Personal experience with hiring a lawyer or being in court;
- Classes in school, or other courses;
- Discussions with friend(s);
- News coverage about lawyers, judges or trials [i.e. news media]; and
- Novels, television shows or movies about legal matters [i.e. popular media].

Adding media sources (the latter two) as part of the list was vital to the study, as one of the hypotheses of this research is that both popular and news media play an important role in allowing people to form opinions or a consciousness of the law.

This hypothesis seems to have been strongly confirmed by the study. The most helpful source in forming participants' opinions is news media (73%), with popular media also being quite helpful (64%). Having lawyers in the family, or as friends, are thought helpful by 58% of the participants, whereas discussions with friends ranked as the fourth most important source (55%). Classes in school (and other courses) are less important (47%), and personal experience (45%) ranks as the least important source.

Please refer to see Appendix D (v) for the histograms and graph depicting these results.

5.6.2 Specific sources of news media

To determine where participants learn about the news, they were asked to state how often they make use of a variety of different sources for news (see 3.3.2 c)). Participants had to indicate their opinion on a scale from using the source "never" (1), "rarely" (2), "sometimes" (3), "regularly" (4) or "often" (5) – see Table 5.4. Students who marked the last two ("regularly" and "often") were regarded as finding the particular source helpful.

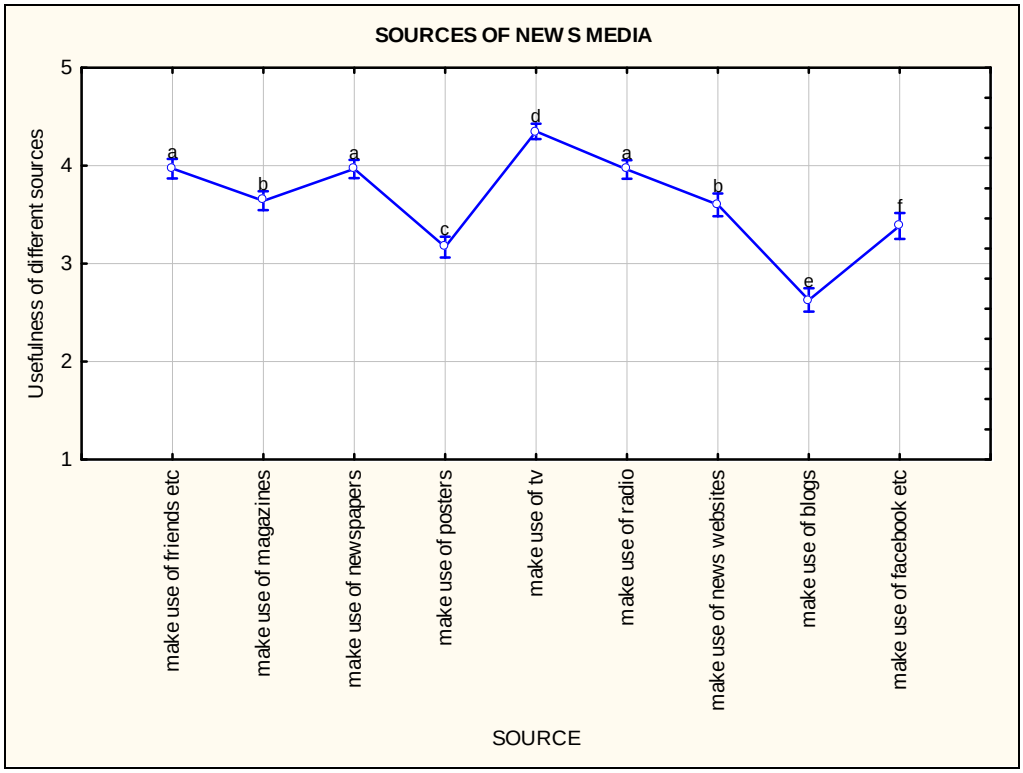

Table 5.4: A depiction of the usefulness of a variety of news sources to participants.

Television seems to be the most important source of news to the participants (85%), with friends and newspapers being close behind (both 71%). Radio follows (68%), and both magazines and news websites are regarded as useful by 58% of the participants.

With regard to new media sources, social networking sites (like *facebook*) are less helpful (51%), but Internet weblogs are regarded as quite unhelpful (24%). Newspaper posters on lampposts serve as an important source to 38% of the participants.

5.6.3 Specific sources of popular media

In order to see whether particular popular media sources are important, participants were asked whether they watch certain television series' (that appear or have appeared on South African television – see 3.3.2 c)) "frequently", "rarely" or "never".

Legally-themed television series do not seem to be as important to participants. Judge Judy is the most frequently watched series (38%), followed by *Law & Order* (28%) and *Boston Legal* (27%). *The Practice* (23%), *Ally McBeal* (21%) and *Shark* (20%) follow, with *Damages* only being watched frequently by 5% of the participants.

In terms of films (see 3.3.2 c) regarding the selection), it is perhaps easiest to portray the amount of films watched using a table:

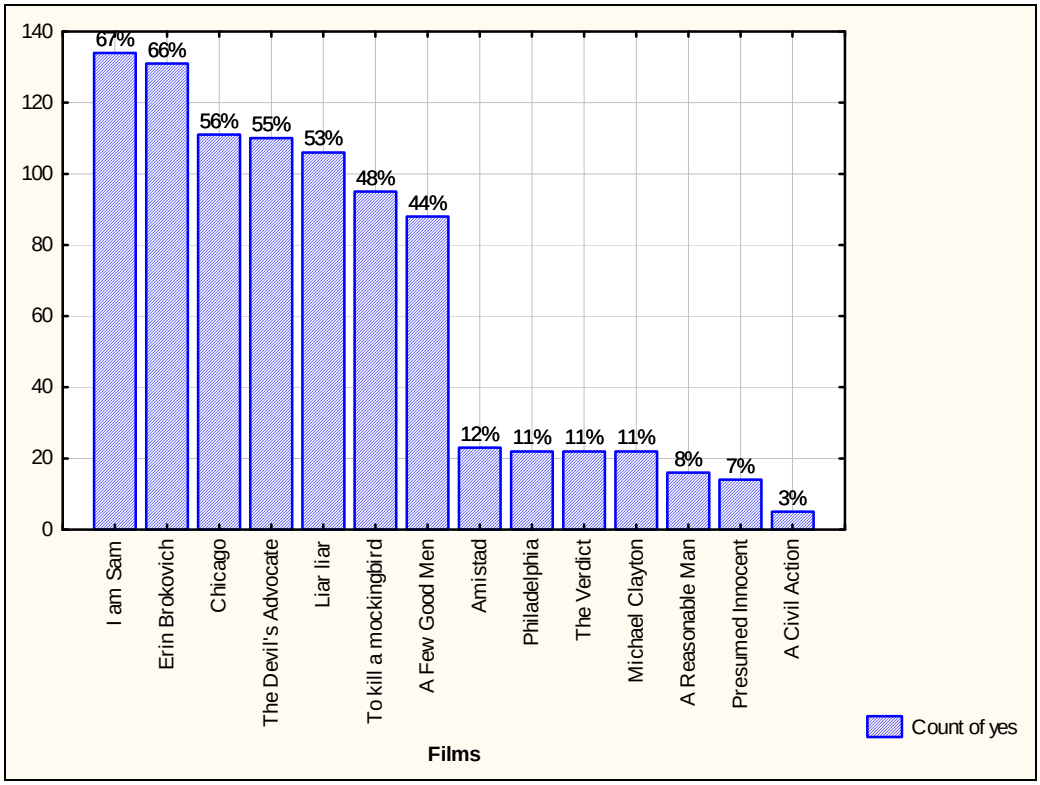

Table 5.5: A depiction of the legally-themed films that participants have watched.

Although the graph mostly speaks for itself, it is interesting to note that *A Reasonable Man* (1999), a South African legal film directed by Gavin Hood, has not really been watched much by participants. Again the inundation of American culture in South Africa is thus indicated preliminarily by these results.

5.7 Sub-conclusion: Sources of legal consciousness

The study found that news and popular media rank respectively as the most and second-most useful sources for opinions of the law. The fact that personal experience ranks lowest is perhaps a reflection of the fact that very few participants would have been exposed to (for example) hiring a lawyer or being in court at such a relatively young age (the median age of participants being between 18 and 19 years old).

Whereas having lawyers in the family or as friends, as well as discussions with friends, is reasonably helpful, it would seem that secondary education does not play a large role in informing opinions of the law – only being useful to 45% of participants.

Due to the importance of news and popular media as sources, these two topics deserve individual attention that follow in the next section.

5.7.1 News media

The research has established that news media are fundamentally important sources in helping students form opinions of the law. From the sources listed, news media were found to be helpful in forming opinions most frequently amongst the other sources.

As noted in 2.4.4 and 4.3.1 b), audiences – and particularly lay citizens – tend to think that news portrayals are based on fact, which means they often accept even blatantly biased and inaccurate news portrayals of the law as a reflection of reality.

The fact that participants find news media so important in helping them form opinions of the law again emphasises the need to ensure that the news media portray the law correctly and responsibly (as also stressed in other literature discussed in 2.4.1) – especially if citizens think and accept everything offered by news portrayals as factual representations of reality.

The particular sources of news media that participants make use of were also interesting – especially considering global panic surrounding the future of traditional media sources and especially newspapers (Shevel, 2009:4).

Television is the most useful source for keeping participants informed about current affairs, followed by newspapers and discussions with friends. Other traditional news sources (radio and magazines) are also classified as useful by participants.

Whereas news websites are equally important to magazines (58% of participants found it useful), it still lags behind traditional sources of news like television (85%), newspapers (71%) and radio (68%). Social networking sites are even less important, with weblogs only being useful to 24% of participants.

The findings therefore also point out that fears regarding the demise of traditional news media may be overstressed – at least with regard to this (student) market.

It was furthermore found that posters on lampposts (advertising daily stories in newspapers) serve as useful source to a surprisingly-high 38% of participants. Opinions, it would seem, can also be influenced by merely taking note of (often misleading and sensational) headings plastered on lampposts.

5.7.2 Popular media

Popular media ranks second-highest in terms of useful sources – an interesting and worrying finding. Scholars have pointed out the concerns surrounding the effect that popular portrayals of the law might have on legal consciousness (see 2.4.4).

A reason for concern is that one cannot be sure of how effectively people are able to distinguish between fact and fiction when it concerns popular media. In forming opinions, at least one of the media effects models (the cultivation theory, see 2.4.3) suggests that people forget which stories or opinions were derived from news media (that should be more factual) and which from popular media (Asimow *et al.* 2005:410).

The fact that the findings show that after news media, popular media are the most useful source for informing opinions, leads one to worry about the basis of such opinions; and how accurate these perceptions truly are.

Another concern relates to the fact that South African popular media are largely composed of American legal culture, or what Gies (2007:66) terms a “Hollywood diet” (also see 2.4.3). What influences such exposure to a legal system very different from our own (like the American legal system, which for example has a jury system) can have on citizens, is something that cannot easily be measured. Misconceptions and incorrect expectations of the law are arguably only some of the consequences of the process of the Hollywoodization of the law.

Although popular media were found to be useful, the research also showed that the television series’ listed in the questionnaire are watched relatively little – the programme most watched was Judge Judy, and it was watched by only 38% of the participants.

Films are clearly more popular – although one could argue that the existence of countless television series could detract from the amount of participants who watch specifically legally-themed series. Perhaps participants prefer television programmes without a legal theme above the ones listed in the questionnaire. The popularity of some other popular media sources, like books for example, were unfortunately not measured by the study.

5.8 Correlations between legal consciousness and sources of opinions

Analysing the study’s findings leads one to some interesting correlations between the participants’ opinions of lawyers, judicial officers and the South African legal system, and the sources of information that they find helpful.

With regard to the statistical analysis of this section, it should be noted that the null hypothesis was that there is no relationship between the sources participants found helpful and the various opinions participants had regarding the statements defining judicial officers, lawyers and the South African legal system.

Where the p-value was more than 0.05, the null hypothesis was accepted – in other words, it was accepted that there is no significant correlation between the fact that participants found a particular source to be helpful and had a more positive or more negative opinion. On the other hand, where the p-value was less than 0.05, it was accepted that there is a statistically significant correlation between the source and the opinion.

The correlations that were statistically significant were all positive. In other words if a participant, for example, found a particular source more helpful, he or she was also likely to agree more strongly (on the scale from one to five; where one is strongly disagree and five is strongly agree) with a certain statement relating to the character of lawyers or judicial officers; or the efficiency of the South African legal system.

Please refer to Appendix D (vi) for a table depicting specific correlation- and p-values.

5.8.1 Opinions of lawyers

News coverage has a statistically significant effect on the perceptions that participants have of lawyers having a lot of prestige; deserving the income they earn and being role

models in society. Interestingly enough there was no correlation between the (generally bad) impressions participants have with regard to the ethicality and trustworthiness of lawyers and news coverage as important source.

Popular media, in turn, could be positively correlated to all the statements with regard to lawyers, except whether or not lawyers have a lot of prestige.

It seemed that those participants who noted that having lawyers in the family or as friends is a helpful source, are more likely to agree that lawyers have prestige, are trustworthy and ethical and deserve the income they earn, but not that they consider lawyers to be role models in society.

There was also a statistically relevant relationship between participants to whom personal experience is an important source and the opinions these participants have of lawyers – on all accounts.

Classes in school or other courses, as well as discussions with friends, have a significant effect on whether participants think lawyers have prestige and are role models, but not the other statements.

5.8.2 Opinions of judicial officers

Whilst having lawyers in the family or as friends have no influence on perceptions of judicial officers, those students who find personal experience and classes in schools (or other courses) as helpful are more likely to think of judicial officers as role models in societies than the students who do not find the source helpful.

Discussions with friends and perceptions of judicial officers are not correlated; whilst news coverage does have a statistically significant effect on whether participants think judicial officers have prestige and are role models in society. Popular media, in turn, have a positive and significant effect on the (negative) perceptions participants have of the ethicality and trustworthiness of judicial officers.

5.8.3 Opinions of the South African legal system

Neither having lawyers in the family or as friends, nor personal experiences, have any statistically significant effects on the perceptions participants have of courts and the South African legal system.

Classes in school, or other courses, do have an influence on these perceptions. Students are more likely to agree that courts operate to the best of their abilities; that the South African legal system is fair and effective (respectively) and, also, corrupt if they find classes useful.

Whereas discussions with friends have no correlation to perceptions, news coverage has a statistically significant effect on whether participants think there are shortcomings in the South African legal system. Popular media, in turn, have a significant influence on whether courts are perceived to operate to the best of their abilities.

5.9 Sub-conclusion: Relationship between sources and legal consciousness

The correlations found between the sources participants use and opinions participants have of the law emphasise the possibility that the media (both popular and news) play an important role in creating legal consciousness.

With regard to specifically popular and news media's portrayal of the law, it is important to briefly look at the correlation findings and refer back to Chapter 2.

As noted, Papke argues that judicial officers are, of late, portrayed by popular media in a "non-flat" manner – that they have arguably stepped down from their moral pedestals (see 2.4.3). Correlation values seem to confirm Papke's argument, showing that the negative views participants have with regard to the ethicality and trustworthiness of judicial officers (only 56% of participants think judicial officers are trustworthy and ethical), are correlated to their use of popular media as source for perceptions.

Papke also argues that public distrust in the legal system is reflected in popular media (2006:2). Findings in the current study suggest that popular media do indeed have an effect on whether or not participants think courts operate to the best of their abilities, thus also seeming to confirm Papke's suspicions.

The important role that news coverage plays in influencing perceptions is also stressed by correlation values, but it was interesting to note that negative views with regard to lawyers' ethicality and trustworthiness do not have a statistically significant correlation to news media as source.

That news coverage has an influence on what participants think of shortcomings in the South African legal system was perhaps to be expected – news media often reflect the duration of trials, postponements, long or short sentences (all reflecting shortcomings), etc.

Whereas this study does not aim to render findings related to media effects, these correlations at least suggest that both popular and news media play an important role in the perceptions students have of (at least some aspects related to) lawyers, judicial officers and the South African legal system.

It should be kept in mind that the participants most probably came from very different backgrounds – although the study did not set out to determine the socio-economic backgrounds of the students, at least some of the demographical details gleaned from the questionnaires indicate vast differences – especially between the two participating universities.

As pointed out in 2.4.2 c), personal circumstances influence people's legal consciousness. Gies, for instance, argues that personal experiences with the law tend to overshadow media influences (2007:32). *In casu* this was not the case – perhaps because of the relative young age of participants. Another circumstance that did not have statistically significant effect on perceptions was having lawyers and/or judicial officers in the family.

The fact that significant correlations were not found between all the statements and all the sources is not surprising. As noted *supra* in 2.4.3 b) and c), and also suggested by Asimow *et al.* (2005), various things have an influence on perceptions:

> "How people respond to media with respect to a particular issue depends critically on their prior level of general knowledge about the issue as well as their predispositions about the issue" (Asimow *et al.*, 2005:428).

5.10 Concluding remarks

In this chapter legal consciousness was investigated whilst focusing on what people's perceptions of the law are; and determining where these perceptions derive from or what it is based upon.

The findings suggest that whereas people have generally positive perceptions of lawyers and judicial officers, they are not too convinced of the ethicality and trustworthiness of judicial officers and lawyers. People are also a lot more negative about the South African legal system than they are about lawyers and judicial officers.

The sources of these opinions were also measured – and the findings stress the importance of news and popular media as sources of legal consciousness. The fact that various statistically significant correlations between these sources and the opinions participants have of judicial officers, lawyers and the South African legal system exist, again emphasises the importance of popular and news media as sources of legal consciousness in society.

Taking a step back, one is reminded of Chapter 4, wherein it was noted that various interviewees express concern over the (lack of) an educating role that the media played in covering specifically the story used for the case study; and also about apparently biased, unbalanced and sensational reportage of at least the concerned matter.

If news and popular media are so important in forming opinions related to the law (as found in this chapter), one is consequently led to wonder what effects such (possibly biased, unbalanced and sensational) media portrayals of legally-themed stories have on the law and people's perceptions of the law.

In the following chapter, the case study will be used in an attempt to address the question about the possible consequences of media portrayals on people's perceptions of a particular case specifically and the law in general. Looking at the Fred van der Vyver/ Inge Lotz story, participants' perceptions of the case will be investigated, as will the sources and consequences of such perceptions.

CHAPTER 6: THE COURT OF PUBLIC OPINION vs. FRED VAN DER VYVER

> *The media's the most powerful entity on earth. They have the power to make the innocent guilty and to make the guilty innocent, and that's power. Because they control the minds of the masses.*
>
> - Malcolm X (unknown date)

6.1 Introduction

On 29 November 2007, Fred van der Vyver was acquitted in the Cape High Court on charges of murdering his girlfriend, Inge Lotz. On the same day more than 40 people posted comments on the website of the Afrikaans daily newspaper *Die Burger* regarding the case. Whereas many of these commentators congratulated Van der Vyver; many also commiserated with Lotz's parents and proclaimed their beliefs regarding Van der Vyver's guilt.

If nothing else, these comments are at least an indication of how mixed people's perceptions of the case are. One commentator ("Tom"), for example, notes (2007):

> "Newspaper articles are not objective and do not reflect all the facts. Those who can still believe that Fred is guilty [should] do the effort and get the court record and read. Then play the judge and see how good your decision is [*sic*]."

Whatever citizens' verdicts are regarding Van der Vyver's guilt or innocence, unfortunately most of them never read the judgment (as "Tom" proposes) or attended the Cape High Court during the trial. Their perceptions are based upon second-hand sources (like the media); and shaped by their own personal circumstances and previous experiences (as noted in 2.4.4). As found in the previous chapter, news media are a very (if not *the* most) important source of such perceptions.

Whereas the story of Inge Lotz and Fred van der Vyver was investigated in Chapter 4 from two different points of view – the point of view offered and accepted in the Cape High Court; and the point of view offered by the media to the court of public opinion; in this chapter the point of view *accepted* by the court of public opinion will be the focus.

Whilst adding a real world dimension to the findings of the previous chapter (see 3.3.3), the researcher will determine what participants' perceptions of the case are; and what the sources of such perceptions are. The aim of the chapter is therefore to address a question asked in 4.5.3: What did the court of public opinion find regarding Van der Vyver's innocence or guilt?

6.2 Summary findings: Awareness of the case

The section of the questionnaire related to the Fred van der Vyver/ Inge Lotz story consisted of only open-ended questions (see 3.3.3). Where possible, participants' answers were categorized according to quantifiably similar responses. For the purpose of this section, differences in demographics will not be taken into consideration, but where relevant, comparisons between UWC and US responses will be made (for information regarding the profile of the participants, see 5.2 and Appendix D (i)).

6.2.1 Awareness of the Fred van der Vyver/ Inge Lotz case

In total, 33% of the participants have heard of the Fred van der Vyver/ Inge Lotz case.

It seemed that US students are much more aware of the case than their UWC counterparts: Whereas 53% of US participants have heard of the case, only 17% of the UWC participants are aware of the case.

6.2.2 Sources of awareness of the case

The findings illustrate that newspapers are the most popular source for awareness of the case; with 45.3% of the participants saying they heard of the case by reading newspapers. Television is also important (32.9%), whilst fewer participants heard about the case from the radio (7.6%) or from friends and family (12.4%). Only 1.8% of the participants know about the case because of personal contact (for example: one of the participants was apparently in the same church community as the victim).

6.2.3 Accuracy of awareness: Convicted or acquitted?

In order to ascertain whether participants have the correct perceptions of *State v Van der Vyver* (2007), they were asked whether Van der Vyver was convicted or acquitted of the murder.

Fortunately an overwhelming majority of the participants are aware of the fact that Van der Vyver was acquitted (81.2%), whilst 18.9% of the participants are under the mistaken impression that Van der Vyver was convicted.

UWC participants were more likely to be misinformed in this instance: 41.2% of UWC participants believe Van der Vyver was convicted, whilst only 10.2% of US participants believe he was convicted.

6.3 Fairness of the judgment

As the Van der Vyver case is a case that is still surrounded by much speculation about the allegedly incompetent (*State v Van der Vyver*, 2007:39) – if not fraudulent (*Carte Blanche: Forensics Investigated*, 2008) – investigation by the SAPS and prosecution by the NPA, it was thought important to see what participants think of the fairness of the (criminal) trial's conclusion.

UWC and US participants' responses were very similar, with a total of 64.4% of the participants believing the judgment was fair, and 36% of the participants believing it was unfair.

Reasons for belief

Participants were asked to supply reasons for their opinion, and in general their responses can be divided into the following categories (where further clarification is necessary, examples of the types of statements that fell into these categories are also listed):

- The corrupt nature of the forensic evidence, including the fabrication thereof – and therefore the judgment was *fair* (14.4%). Example: “The forensic team made a lot of mistakes.”
- The corrupt nature of the forensic evidence, including the fabrication thereof – and therefore the judgment was *unfair* (4.3%).
- There was a lack of evidence and therefore the judgment was *fair* (32.6%).
- There was a lack of evidence and therefore the judgment was *unfair* (14.29%). Example: “Everyone thinks he’s guilty, but the verdict could ten to one not have been otherwise, as he had an alibi” [*sic*].
- Van der Vyver is actually guilty, and therefore the judgment was *unfair* (11.4%). Example: “I feel he was guilty, but his money played a big role in the legal advice he could acquire.”
- Van der Vyver was freed due to a technicality or legal loophole (4.3%). Example: “He was freed on a technicality.”
- Incorrect statements (14.3%). Examples of incorrect statements include: “There was, according to me, too little proof of his innocence” (presumption of innocence, not guilt); “He should have gotten a longer sentence” (he was not even convicted); and “Yes, because even Inge Lotz’s parents believed that he was innocent” (Lotz’s parents have, to date, been very vocal about their belief in Van der Vyver’s guilt).

6.4 Participants’ opinions of how the media covered the case

An overwhelming majority (78.5%) of the participants are negative about the way in which the media covered the Van der Vyver case, with only 21.6% having positive recollections of the media’s coverage of the case.

Examples of positive opinions regarding the media’s coverage include: “I think the media did a good job by informing the public of what was happening;” and “It was a well-covered case”.

Many of the participants who think the media did not cover the case well are concerned about the alleged theatricity of coverage. A number of the participants used the word “circus” in defining the media’s coverage. One participant, for example, wrote: “It was a circus, and this interfered with the legal process.” Another participant wrote, “It was treated like a reality show and used to sell newspapers and for entertainment.”

Interestingly 20% of the participants who reacted negatively to the questions, had explanations for their opinions that allude to trial by media – saying that the media found Van der Vyver to be guilty and/or prejudged him. One participant, for example, wrote: “The media found him guilty before the case started, which is why everyone else thought he was guilty.”

6.5 The ruling in the court of public opinion

In total, a majority of 57.14% of the participants think that Fred van der Vyver is actually guilty of the murder of Inge Lotz, whilst only 37.4% of the participants believe in his innocence and 5.5% of the participants chose not to comment on the matter.

UWC participants tended to be more suspicious of Van der Vyver's guilt: whereas 75% of UWC students still believe Van der Vyver is guilty, 45% of US students believe he is guilty.

Reasons for belief

Participants were again asked to give reasons for their opinions, but these were harder to classify. A lot of participants who believe Van der Vyver to be guilty, however, base their opinions on evidence, motive or forensics (35.14%). Examples include: "He had motive", "No sign of a break-in, so person had to have a key"; and "There were small technicalities that were ruled out".

Likewise evidence, motive or forensics were also the reasons for participants believing Van der Vyver to be innocent. Examples include: "Video said he was at work" and "Evidence does not lie, officials do".

One very interesting and unintended finding follows from the participants who thought Van der Vyver was guilty simply because of how he looks – something that is mostly portrayed by the media. 8.1% of the participants said that Van der Vyver *looks* guilty.

A picture collage (see figure 3.1) was reprinted in this section of the questionnaire in order to remind participants of the case. This collage was one of many similar collages used by *Die Burger* during the trial. A few of the participants who noted that Van der Vyver looks guilty stipulated that this particular picture collage – one that was chosen at random – made them think he was guilty.

Examples include: "The images on the previous page [the collage] show things that seem like evidence and that creates the impression of guilt" and "He is guilty, because all the evidence brought in court or what is seen in the picture indicates that he is the murderer".

6.6 Concluding remarks

In this chapter the subject of legal consciousness was investigated whilst utilising the topic for the case study – the Inge Lotz/ Fred van der Vyver case.

It was found that a substantial amount of participants are aware of the case, and that there is quite a large difference in the awareness of UWC students *versus* the awareness of US students, the latter also being more accurately informed about the case.

The fact that the murder occurred in Stellenbosch (also the location of Stellenbosch University) and that a US student was the victim and an US-alumni student the defendant, might arguably have had an effect on the interest US participants showed in the case – although the criminal case was concluded before most (if not all) of these students were attending Stellenbosch University.

Whereas it would furthermore be interesting to investigate whether certain demographical details (like income level, social class and race etc.) also played a role in

whether or not participants were interested in or aware of the case, the questionnaire unfortunately did not have the scope for measuring such variables in detail.

The sources of participants' awareness of the case were also measured, again confirming the importance of traditional media to a generation of participants whom one would have presumed would make more use of new media sources. Not one of the participants who knew of the case said they heard about it or read about it through a source like the Internet, for instance. These findings therefore confirm similar conclusions regarding the importance of traditional news media sources made in other sections of the questionnaire (see 5.7.1).

The general discontent with the South African legal system, as found and described in 5.3.3, was reflected in the findings related to the participants' view of the case study topic. With more than a third of participants believing the judgment in the case to be unfair, it is clear that participants are quite disillusioned with the South African legal system, NPA and/or SAPS.

Such perceived injustices in the South African legal system may, as proposed by Nadler (see 2.4.4), have subtle but pervasive influences on people's deference to and respect for the law. Nadler writes (2002:3):

> "A portrayal of injustice in the legal system may cause people to question the integrity of not only the particular law, or judge, or jury, or attorney portrayed, but may also cause people to call into question the integrity of the legal system itself."

It was furthermore remarkable to note that the vast majority of participants are negative about the way in which the media portrayed the case (78.5%), and had reasons that alluded to trial by media.

On the other hand, it was profoundly interesting to see that the majority of the participants still believe Van der Vyver to be guilty of murdering Inge Lotz. The fact that quite a few of the participants admitted that they thought Van der Vyver to be guilty as result of a mere picture collage used by a newspaper, emphasises the urgent need for more care to be taken in the way in which the media portray a case.

It can therefore be concluded that participants' perception of the Fred van der Vyver/ Inge Lotz case reflect that many of them still believe he is guilty even though he was acquitted of criminal charges in the Cape High Court. With the source of their awareness of this trial being primarily the news media (as found in Chapter 5), one has to wonder what influences the media's portrayal of the case (as investigated in Chapter 4) had on their generally-negative perceptions of Van der Vyver and the case.

CHAPTER 7: CONCLUSION

7.1 Introduction

As a conclusion to the research, the main findings are summarised in this chapter in order to address the research questions posed and the objectives outlined in the first chapter.

The study commenced with a detailed **literature review** (Chapter 2), wherein the relationship between the media and the law was investigated by reference to secondary sources; taking careful consideration of the various themes and elements involved with the topic. The review also illustrated a variety of gaps within the field that were addressed in the subsequent chapters.

A **case study** (Chapter 4 and Chapter 6 in part) was used to contextualise the issues mentioned in the literature review in a real-world context. The way in which the news media cover cases and trials by focusing on one particular court case, was investigated. The chapter showed how the news media can cause the constitutionally-guaranteed rights to freedom of expression and a fair trial to clash on vast proportions; having potentially devastating influences on the South African legal system.

A **questionnaire** (Chapter 5 and Chapter 6 in part) was furthermore used to define the nature of citizens' opinions and perceptions of the law and to evaluate the importance of both popular and news media as sources of these perceptions (termed legal consciousness).

To conclude, the case study and questionnaire were used in **combination** (Chapter 6) in order to investigate the public's perception of the case study – thereby emphasizing the role that the news media (as the most important source of legal consciousness) can play on the perceptions citizens have of one case and how it potentially impacts perceptions of the law in general.

7.2 Summary of findings

Before concluding this study, it is important to briefly recap the findings that the research presents. Although the study has addressed more than was proposed by the research objectives, this phenomenon was arguably to be expected from the complexity of the topic. Whilst keeping this in mind, the pre-defined research objectives, listed in 1.7, will be assessed briefly below with reference to the findings (respectively):

- *To evaluate the nature of the relationship between the media and the law in a South African context*

The antagonistic relationship between the media and the law in South Africa was investigated in detail by reference to secondary literature (Chapter 2), and indirectly in subsequent research chapters.

It was established that whereas the relationship between the media and the law is vitally important to democracy, at least some of the tensions in the relationship are inherent to

the nature of the roles that both the media and the law are expected to perform in a democratic society (as will be discussed *infra*).

It was submitted, however, that not all tensions are natural to the relationship; and that there is therefore room for improvement in the relations between media and the law.

- *To investigate the media's contemporary role (specifically with regard to the law) in democracy and development;*

Perceptions of what the relationship between the media and the law should ideally be like are informed by the ideology of the media as Fourth Estate. In the literature review secondary research regarding the media's role in terms of Fourth Estate criteria was assessed – including the fact that media are supposed to act as watchdogs in society.

The need to perhaps rethink the roles ascribed to the media in terms of the Fourth Estate ideology was noted, particularly with reference to contemporary trends (including big business, the rise of sensationalism and the alleged decline of traditional media sources).

Despite such modern trends and in the light of the guiding normative tenet of the study, it was concluded that the media can still be expected to fulfil at least *some* democratic duties. Relevant literature and legislation with regard to the media's developmental role in a young, developing democratic country such as South Africa was discussed, emphasising the role that the media should also play in educating citizens with regard to the law.

The importance of communication in encouraging development – something that includes an awareness of the law and human rights (which is part of the concept of legal consciousness) – was also emphasised. Taking note of media effects theories, the need to study indirect and long term effects of media portrayals of the law (as opposed to direct or short term media effects) was stressed.

- *To explore what the nature of people's perceptions of the law are*

By making use of a questionnaire, citizens' perceptions of certain legal matters were measured in order to ascertain how positive or negative perceptions of the law (or legal consciousness) are. Whereas legal consciousness could of course not be measured holistically, participants' opinions regarding aspects that form part of legal consciousness were measured; including their opinions of lawyers, judicial officers and the efficacy of the South African legal system and courts.

The questionnaire findings established that the participants (496 first year law students at two Western Cape universities) have generally high opinions with regard to lawyers and judicial officers. They have notably less faith in the ethicality and trustworthiness of both judicial officers and (to an even greater extent) lawyers, however.

Participants' opinions with regard to courts and the South African legal system were found to be much worse than their opinions of lawyers or judicial officers. More than a third of the participants think that the South African legal system is corrupt; only 17% of

participants think courts are effective and 35% of participants deem courts to be fair. The majority of participants think there is room for improvement in the South African legal system.

- *To investigate if and how both popular and news media as sources (respectively) influence these perceptions, or legal consciousness*

Making use of the questionnaire, participants were asked to rate the importance of a variety of sources to them in forming opinions of the law (including their opinions of lawyers, judicial officers and the South African legal system).

It was established that both news and popular media are of vital importance in forming legal consciousness: The most helpful source in forming participants' opinions is news media (73%), with popular media ranking as the second-most important source (64%).

Other sources were deemed less important to participants: Having lawyers in the family, or as friends, were thought helpful by 58% of the participants; whereas discussions with friends ranked as the fourth most important source (55%). Classes in school (and other courses) were less important (47%); and personal experience (45%) ranked the lowest in terms of usefulness.

- *To determine to what extent both popular and news media as sources (respectively) influence legal consciousness and the law*

As noted *supra*, the findings from the questionnaire (discussed in Chapter 5), illustrated that news media are *the* most important source of perceptions of the legal matters to participants (with 73% of participants deeming it to be very helpful); whilst popular media is the second most important source (with 64% of participants deeming it to be very helpful).

The fact that various statistically significant correlations exist between news media and popular media as sources and the opinions participants had of judicial officers, lawyers and the South African legal system, re-emphasises the importance of popular and news media in contributing to legal consciousness.

- *To evaluate what particular media sources have an effect on legal consciousness*

With regard to news media, the findings from the questionnaire (defined in Chapter 5) established that traditional sources of news are still very important to participants.

Television was the most important source of current events to participants, followed by newspapers. In Chapter 6, which focused specifically on participants' perceptions of the case study topic, it was also noted that participants' opinions of the concerned case mostly derived from traditional media sources (newspapers, television and radio). In both Chapter 5 and 6 it was found that new media (e.g. the Internet – including weblogs, news websites, social networking websites, etc.) are clearly not as useful to participants as traditional news sources.

Popular media sources were more difficult to define, but the extent to which participants viewed law-themed television series' and films were measured. Most of these films and television series' derived from the USA.

The danger inherent in this "Hollywoodized" account of the law was stressed in both the literature review and Chapter 5. The risk that citizens might be basing their opinions of legal matters on factually incorrect popular media accounts (that often derive from the North American legal system that is starkly different to our own) was also pointed out.

- *To investigate the possible personal circumstances that might have an effect on the way in which audiences perceive the law*

For the purposes of the questionnaire, participants were asked to answer certain questions that would help define their personal circumstances to a very limited extent. These included sex; age; race; the University they attend; whether they have studied law before; and whether they come from a legal culture (i.e. whether they have judicial officers and/or lawyers in their families).

Whereas limited comparisons were made between the opinions of participants at different (and very diverse) universities, no distinctions were made along the lines of sex or race. Whereas interesting, it was not deemed immediately relevant to the purpose of this study (especially because of limitations in scope).

Although it was hypothesised that certain personal circumstances – like coming from a legal culture or having studied law before – might have an influence on the way in which participants viewed the law, this hypothesis was proven immeasurable and largely false (respectively).

The study could not measure whether a legal education has an influence on such perceptions as only 3% of participants had studied law before (a statistically insignificant amount). It was furthermore found that having lawyers and/or judicial officers in the family did not have a statistically significant influence on perceptions of the law in the vast majority of instances.

In conclusion it should be noted that whereas the researcher accepted the fact that certain factors make some members of an audience more susceptible to media influence (as noted in the literature review), these factors could not be clearly identified by the study.

- *To look more closely at news media as source whilst focusing on the media's portrayal of specifically court cases*

In order to evaluate the way in which specifically news media cover the law and to place the concerns mentioned in the literature review in the context of the real world, the case study made use of one particular court case (the story of Inge Lotz and Fred van der Vyver) to address a variety of research objectives related to news coverage as a source of legal consciousness.

In general the concern that media reports – especially the ones that cover the investigations period of a criminal case – may disclose too much information to the public, thereby obstructing the ends of justice, was stressed. The fact that such reports may also place pressure on investigating authorities was noted – as was the danger connected to such pressure (it could arguably contribute to wrongful arrests, as alleged in the Van der Vyver case).

Specific concerns with the way in which the majority of the media covered the case both pre-trial and during the trial were listed and investigated, including the lack of accuracy and balance; the way in which stories were framed; absenteeism of journalists; and journalists' apparent lack of legal knowledge.

Particular research objectives with regard to news media as a source will be discussed respectively below.

- *To look at the legal issues and principles involved with the reporting of court cases (both pre-trial and during the trial);*

In the literature review the need for court reporting was emphasised in the light of the constitutional guarantee of an open court. The closely-related need to balance the right to a fair trial with the right to freedom of expression was stressed, as was the need to limit these rights in certain situations.

Some instances when limitations to constitutional rights are justified were listed (including the disclosure of identities and judicial officers' capacity to correspond with the media, for instance); as were the section 36 criteria (Constitution, 1996) that need to be satisfied before limiting the constitutional right to freedom of expression.

Another important legal principle involved in the coverage of court cases is that of contempt of court – as will be discussed below. Importantly, however, it was stressed in the literature review that fair and legitimate criticism of legal matters is justified. The problem, as noted, is for journalists to distinguish what is fair and legitimate to what is unfair and (in fact) illegal.

- *To look at factors that make certain cases more susceptible to media interest;*

A variety of factors that make certain cases more appealing to society and the media were investigated in the literature review and again, with specific relevance to the case study, in Chapter 4.

It was established that not all cases will tempt and entice the media and society to a large – and worrying – extent. Unusual cases or situations are more likely to attract attention – whether due to an untypical or high-profile victim or defendant; or because of the nature of the crime itself and the subsequent events. Authors (investigated in Chapter 2) have also pointed out that when the outcome of a case is "close" or when pre-trial publicity is probative in nature, media and society will be more interested in the case.

- *To look at how the various parties involved with a case may be influenced by the media or may influence the media themselves;*

As investigated in Chapters 2, 4 and 6; news media have potentially vast influences on various parties involved in a trial specifically, and the law and legal consciousness in general.

The news media's potential impact on the parties directly involved in cases – the victim's family and/or close relations and the defendant (including his future prospects) – were evaluated in Chapters 2, 4 and 6. On the one hand the emotional impact experienced by the victim's family and friends was investigated in brief in Chapter 4; whilst focusing on the potential harm done by the exposure of traumatising details (including explicit photographs) of the victim.

On the other hand the effect of news coverage on the defendant, his family and legal representatives was also investigated; as was the role that the news media could play in the perceptions people have of a certain defendant even after he has been acquitted.

In the literature review (Chapter 2) the possibility that a suspect's presumption of innocence is lost upon the advent of vast media exposure was presented. The notion was also investigated in Chapter 6, for example, where it was noted that even after Van der Vyver's acquittal the majority of participants still think that he is guilty of Inge Lotz's murder.

Such perceptions regarding Van der Vyver's guilt will resonate and impact his entire life (from applying for jobs to meeting friends and potential partners, for example) – whether he is in fact guilty or innocent. The possibility that adverse publicity before and during a trial severely hampers the constitutional right to be presumed innocent until found guilty was therefore stressed by the findings.

The way in which the media may be influenced by other parties was furthermore assessed. In the literature review the need for lawyers and advocates to learn how to "handle" the press was emphasised; as were the tactics employed by some high-profile defence lawyers to ensure that the media report favourably on a particular case.

In Chapter 4, with specific reference to the case study, the possibility that a variety of parties used (or abused) the media for their own benefit was also investigated. It was noted that due to long-standing relationships between journalists and investigating authorities, the SAPS could possibly be in the position to influence media (and thus society) in favour of their cases.

The ways in which other parties to a case may also make use of the media was noted; as was the contemporary notion of appointing a public liaison/ litigation support (or spin doctor) in order to make sure that the media are properly informed (in favour of a particular side, naturally).

- *To look at the possible influences that news media may have on judicial officers and assessors involved with a certain case;*

Whereas it was pointed out in the literature review that South African assessors and judicial officers operate very differently to juries (and are thus arguably less susceptible

to media influences); the possibility that judicial officers and/or assessors may be influenced by the media was also addressed.

In Chapter 4, with specific reference to the case study, the possibility of such influences was again emphasised, although it is a matter that is inherently sensitive. It was thus difficult to stress definite effects instead of possible effects, as found *in casu*.

- *To look at the possible influences that news media may have on the perceptions ordinary citizens maintain with regard to a certain case;*

The issue of the media's possible influence on judicial officers and assessors and society's perceptions of a case essentially involves the media effects theory. Whereas it was stressed in the literature review that media effects with regard to the law (as with everything else) is a difficult influence to calibrate (especially if one supports long-term and indirect media effects as opposed to short-term effects), the possibility thereof was emphasised.

In Chapter 6, where the questionnaire was used to determine participants' perceptions of the Van der Vyver case, it was found that a substantial amount of the participants were aware of the case; and more than a third of the participants thought the judgment to be unfair.

As stressed in both the literature review and Chapter 6, the negative perceptions that people have of a certain case have the potential to adversely impact not only their perceptions of the persons involved (including for example Van der Vyver's guilt); but also their impressions of the legal system and the law as a whole. As pointed out, such opinions may lead to a lack of deference for the law in general.

- *To look at the legal remedies that should curtail the effects of negative and unbalanced coverage of a case;*

One of the ways in which unfair coverage of a case – and the possible effects on judicial officers; the public and society's respect for the law – is contained, is contempt of court proceedings. The exact nature of this common law remedy was discussed in detail in the literature review, but as it is essentially a legal topic it was not evaluated beyond secondary literature.

Constitutional challenges to the crime were assessed, including the 2007 Supreme Court of Appeal case of *Midi Television (Pty) Ltd t/a e-TV v Director of Public Prosecutions (Western Cape)*. Whereas Sanef and a variety of other media institutions reacted to the judgment and interpreted it as meaning that the controversial *sub judice* rule has effectively been abrogated, it was submitted that this is not the case.

The judgment merely means that a stricter (real) risk of prejudice will be required to establish fault and that the limitation of freedom of expression must be *truly* necessary in order to protect the dignity of the courts. The *sub judice* rule is therefore still very much part of South African law, although more fairly so.

- *To explore the level of expertise of journalists responsible for the court reporting beat.*

In the 2002 Sanef Skills Audit report, De Beer & Steyn pointed out that journalists lack sufficient legal knowledge to distinguish legal boundaries – something that is arguably difficult due to the inherent complexity of the law. Many of the interviewees connected to the case study expressed the same concern, noting that insufficient legal knowledge is a major problem that causes numerous problems in the way in which news media portray the law.

In both the literature review and Chapter 4, therefore, the need to ensure that journalists are better educated with regard to the law was stressed.

In the literature review the notion that journalists are perhaps incapable of portraying the law in a more accurate manner (according to the theory of autopoiesis) was also discussed. Whereas it is certainly a fascinating topic, it was also noted that autopoiesis cannot suffice as an excuse for journalists not knowing enough about the law.

7.4 Conclusion

In this study the antagonistic relationship between the media and the law was assessed whilst focusing on the media's contribution to possible tensions. The way in which both news and popular media influence legal consciousness and the law was thus investigated, as were the nature of such portrayals of the law. The research objectives, set out in Chapter 1 and assessed *supra*, have therefore been achieved.

The research was undertaken with the general goal to consider the thesis that **the way in which both popular and news media portray legal matters has a significant effect on legal consciousness and the law.**

The study established that both news and popular media are very important sources of citizens' perceptions of at least certain legal matters. To the population that participated in the research, for example, news and popular media were *the* most important sources for forming opinions of judicial officers, lawyers and the South African legal system. It can therefore be concluded that news and popular media do have a significant effect on legal consciousness.

With specific regard to popular media, its importance in forming perceptions concerning legal matters lead to a variety of concerns. One of these is the fact that citizens struggle to distinguish between fact and fiction when popular media are concerned. In other words, many citizens might think that what they are seeing as part of a legally-themed television series like *Boston Legal*, for example, is a factual reflection of what actually occurs in a courtroom.

Another related problem concerns the effect of what has been termed the Hollywoodization of the law; to be found in the fact that most popular media that are available to South African audiences (including books, television shows and films, for example) are imported from the USA, where the legal system is very different to our own. The concern is that if citizens are deeming popular media as important sources of legal consciousness, and failing to distinguish between fact and fiction, they are basing their opinions on representations of American law instead of South African law – and thus collecting incorrect perceptions of the law.

With regard to news media, the importance of this source of legal consciousness leads one to necessarily wonder and worry about the effects of news media representations of the law. In general the concern arises that many (lay) citizens think that news representations of the law are based purely on facts – forgetting that representations are also driven by perceptions, preconceptions and other influences (including those of police and prosecution authorities, litigation supporters or spin doctors, for instance).

The way in which news media portray especially high-profile court cases (both pre-trial and during the trial) has potentially vast influences on both legal consciousness and the law.

With regard to the latter, the adverse impact that unbalanced or unfair media coverage can have on the parties involved with a court case (including the victim's close relations and the defendant; the investigating officers; and the legal teams involved) is a cause for much concern.

The frightening possibility that the news media might also influence the perceptions of presiding officers, witnesses and assessors is also problematic – whether or not they will be willing to admit as much, or to what limited extent such influences could be defined.

These concerns essentially involve the constitutional rights to a fair trial and freedom of expression. With especially high profile cases, it would seem that the news media are struggling to balance the right to freedom of expression with that of a fair trial – something that could be potentially devastating in a constitutional democracy.

News media clearly also play a role in the court of public opinion, affecting the way in which citizens perceive a particular case and the parties involved therein. Adverse and unfair coverage might therefore also be limiting a defendant's right to be presumed innocent until proven guilty. In other words, extremely negative publicity could be giving birth to the presumption of guilt.

If media portrayals and thus citizens' impressions of a case are very negative, the risk is furthermore that citizens will not only have inaccurate impressions of the particular case and the parties involved, but may also lose their faith in the legal system and their respect for the law – having much broader repercussions in a nation.

To say that the media is influential when it covers topics related to the law is thus not only a cliché, but also an enormous understatement. The Chief Justice of the South African Constitutional Court, Pius Langa, has described the media and the law as "two of the pillars of an open and democratic society" (cited in Harber, 2006), thereby emphasizing how important the two are as the foundations of our young democracy.

To conclude one may point out that whereas these pillars may never stand too close together (arguably due to what is required of the media by the watchdog and Fourth Estate ideology), they should also not be allowed to venture too far apart. The challenge and need is to generate more critical awareness surrounding the role that the media can play in creating legal consciousness and therefore contributing (or not) to democracy and development in South Africa.

7.5 Suggestions for future research

As this study essentially investigated quite a vast topic, many recommendations for future research could be pointed out. Only the most pertinent of these will be discussed:

- The study was able to confirm the findings of an international study undertaken by Asimow *et al.*, namely that news and popular media are vitally important in the formation of opinions related to the law.

  The sample population that took part in the questionnaire was composed of 496 first year law students. Whereas this sample was sufficient for the purpose of this research, more research on the matter will arguably be incredibly beneficial to the field, especially if the perceptions of a larger sample population could be measured.

- In the study it was pointed out that there is a possibility that judicial officers and assessors may be susceptible to media influences – thus impacting their decisions in court. There is a need to investigate (and if necessary and possible curtail) the potential effects of pre-trial publicity and court reporting on the (vital) impartiality of judicial officers, assessors and witnesses.

- The study considered a small number of newspaper articles in order to ascertain the ways in which news media might be offering inaccurate portrayals of legal matters to the public. It is submitted that a thorough analysis of news media portrayals of specifically court cases would be beneficial to the field in order to quantify the extent of inaccuracies and misconceptions in court reporting.

- The ways in which certain litigation supporters, advocates or spin doctors make use of the media during court cases were emphasised by the study. From a legal point of view, the ways in which the media can thus be “used” as a tool to advance a case should also be studied, as it could be a very useful aid to any legal team.

  The corollary is also relevant: The ways in which the media can ensure that it is not manipulated by parties to a trial should also be determined.

- Whereas the study was only concerned with the media’s role in contributing to tensions in the relationship between the media and the law, it was also accepted from the outset that the law could arguably also do much to improve the situation.

  Authors like Gies (2007) have explained how the judiciary in countries like the UK and Netherlands have been proactive in the goal of attaining better public relations – appointing press judges, for instance (responsible for explaining legal matters to the media); or ensuring accurate public education by means of informative websites managed by courts in some countries (including information regarding cases, precedents, etc.).

  It is submitted that the South African legal system could also do much to improve ordinary citizens’ perceptions of the law; and to ensure that citizens are also accurately informed and educated with regard to the law. The ways in which such

progress could be achieved could form the basis of a very informative and useful study.

- Lastly, it was stressed throughout the study that many journalists are perhaps incapable of interpreting the law in a more accurate manner because they suffer from a lack of legal knowledge.

  There is therefore a need to undertake a follow-up study to the 2002 Sanef Skills Audit in order to determine whether De Beer & Steyn's recommendations have been addressed and whether more should not be done in order to ensure that journalists are capable of presenting the law in an accurate and fair manner.

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APPENDICES

Appendix A: Examples of Asimow *et al.* survey and current study's English and Afrikaans questionnaires

Example of the questionnaire used in the Asimow *et al.* study (2005:435):

SURVEY OF OPINIONS ABOUT LAWYERS
This survey is voluntary and anonymous. Your answers will be combined with others and not individually identified. You can decline to answer any question or all of the questions. Thanks very much for answering!

A.1 What year were you born? _____.

A.2 What is you gender? M(1) _____
F(2) _____

A.3 How many lawyers are in your family, not counting yourself (siblings, spouse, significant other, parents, aunts-uncles, grandparents, or cousins)?_____

A.4 What is your ethnicity?

White – – – – – – – – – –	____ 1
African-American– – – –	____ 2
Asian – – – – – – – – – –	____ 3
Latino– – – – – – – – – –	____ 4
Native American – – – –	____ 5
Other – – – – – – – – – –	____ 6

B. What is your opinion about lawyers in general (not about any specific lawyer or about yourself). Please indicate your opinion by circling a number between one and five.

	Disagree Strongly				Agree Strongly
1. Lawyers have a lot of prestige. – – – – – – – – – – – – – – – –	1	2	3	4	5
2. Lawyers are trustworthy and ethical. – – – – – – – – – – – –	1	2	3	4	5
3. Lawyers don't deserve the amount of income they earn. –	1	2	3	4	5

Comments about lawyers in general _____

_____

_____

Examples of the English and Afrikaans questionnaires used in the current study:

FIRST YEAR LAW STUDENTS: SURVEY

This survey is voluntary and anonymous. Your answers will be treated as confidential, and you are welcome to answer only those questions that you feel comfortable with or that you have an opinion about. Please try to be as honest as possible, and read the instructions carefully.
Please hand the survey to your lecturer when you are finished.

A. Demographical details

(Please note that the following questions are necessary for statistical purposes)

A.1 What year were you born in? .....

A.2 What sex are you (Tick the relevant choice)? Male .....

Female .....

A.3 What is your ethnicity (Tick the relevant choice)?

Black .....

White .....

Coloured .....

Asian .....

Other .....

A.4 What is your nationality? .....

A.5. Have you ever studied law before (Tick the relevant choice)? Yes .....

No .....

A.6 Do you have any lawyers (advocates or attorneys) in your family (siblings, spouse, significant other, parents, aunts or uncles, cousins), not counting yourself?
No .....
Yes ..... How many? .....

A.7 Do you have any judges or magistrates in your family (siblings, spouse, significant other, parents, aunts or uncles, cousins), not counting yourself?
No .....
Yes ..... How many? .....

B. The legal profession and the efficiency of the South African legal system

B1. What is your opinion about lawyers *in general* (not about any specific lawyer or about yourself)? *Please indicate your opinion by circling a number, where 1 = strongly disagree; 2 = disagree; 3 = neutral; 4 = agree and 5 = strongly agree.*

	Strongly disagree ◄——► **Strongly agree**				
Lawyers have a lot of prestige.	1	2	3	4	5
Lawyers are trustworthy and ethical.	1	2	3	4	5
Lawyers deserve the income they earn.	1	2	3	4	5
Lawyers are role models in society	1	2	3	4	5

Comments about lawyers in general:

.....

.....

.....

.....

.....

B2. What is your opinion about judicial officers (judges and magistrates) *in general* (not about any specific judge or magistrate).
Please indicate your opinion by circling a number, where 1 = strongly disagree; 2 = disagree; 3 = neutral; 4 = agree and 5 = strongly agree.

	Strongly disagree ◄——► **Strongly agree**				
Judicial officers have a lot of prestige.	1	2	3	4	5
Judicial officers are trustworthy and ethical.	1	2	3	4	5
Judicial officers are role models in society.	1	2	3	4	5

Comments about judicial officers in general:

.....

.....

.....

.....

B3. What is your opinion about the efficiency of the South African legal system?
Please indicate your opinion by circling a number, where 1 = strongly disagree; 2 = disagree; 3 = neutral; 4 = agree and 5 = strongly agree.

	Strongly disagree ⟷ **Strongly agree**				
Courts operate to the best of their abilities.	1	2	3	4	5
The South African legal system is fair and effective.	1	2	3	4	5
The South African legal system is effective.	1	2	3	4	5
There are shortcomings in the South African legal system.	1	2	3	4	5
The South African legal system is corrupt.	1	2	3	4	5

Comments about the South African legal system in general:

.....
.....
.....
.....

C. Sources of information

C1. People often form their opinions based on different sources of information. To what degree were your opinions in answering B (the question about lawyers, judges and magistrates, and the South African legal system) influenced by different sources?

Please indicate your opinion by circling a number, where 1 = the source was very unhelpful; 2 = the source was unhelpful; 3 = the source was neither helpful nor unhelpful; 4 = the source was helpful and 5 = the source was very helpful in giving you information about lawyers, judges and magistrates, and the legal system in general.

	Very unhelpful ⟷ **Very helpful**				
Having lawyers in the family, or having lawyers as friends.	1	2	3	4	5
Personal experience with hiring a lawyer or being in court.	1	2	3	4	5
Classes in school, or other courses.	1	2	3	4	5
Discussions with friend(s).	1	2	3	4	5
News coverage about lawyers, judges or trials.	1	2	3	4	5

Novels, television shows, or movies about legal matters.	1	2	3	4	5
Other (Identify .....)	1	2	3	4	5

D3. There are various sources of news. How often do you make use of the different sources in keeping you informed about what is going on in the world?

Please indicate your opinion by circling a number, where 1 = I never make use of the source; 2 = I rarely make use of the source; 3 = I sometimes use the source; 4 = I regularly use the source and 5 = I often use the source.

	Never use source		⟷		**Often use source**
Friends, family, co-workers or people living with you.	1	2	3	4	5
Magazines	1	2	3	4	5
Newspapers	1	2	3	4	5
Posters on lampposts	1	2	3	4	5
Television	1	2	3	4	5
Radio	1	2	3	4	5
The Internet – news websites (e.g. news24.com)	1	2	3	4	5
The Internet – blogs	1	2	3	4	5
The Internet – *facebook*, *myspace*, *youtube* or other.	1	2	3	4	5
Other (Please specify .....)					

E. Specific cases

source: *Die Burger*

E1. Have you heard of the Fred van der Vyver / Inge Lotz case?

Yes .....

No .....

If your answer to E1 was yes, please answer E2 – E5. If your answer was no, proceed to E6.

E2. Where did you hear about the case?

.....

.....

E3. Was Van der Vyver convicted or acquitted of the murder?

.....

.....

E4. Do you think it was a fair judgment? Why?

.....

.....

.....

E5. What did you think of the way in which the media treated and approached the case?

.....

.....

.....

.....

E.6. Do you think Van der Vyver is guilty or innocent of the murder? Why?

.....

.....

.....

.....

Lastly...

Thank you for taking the time to participate in the survey!

EERSTEJAAR REGSSTUDENTE: VRAELYS

Die vraelys is vrywillig en annoniem. Jou antwoorde sal as vertroulik hanteer word en jy is welkom om slegs die vrae waarmee jy gemaklik voel of waaroor jy 'n opinie het, te beantwoord. Probeer asseblief om so eerlik as moontlik te wees. Gee asseblief jou voltooide vraelys aan jou lektor.

A. Demografiese besonderhede

(Die volgende vrae is nodig vir statistiese doeleindes)

A.1 In watter jaar is jy gebore? .....

A.2 Wat is jou geslag *(Beantwoord met 'n kruisie)*? Manlik .....
Vroulik .....

A.3 Wat is jou etnisiteit? *(Beantwoord met 'n kruisie)*?

Swart .....
Wit .....
Kleurling .....
Asiaties .....
Ander .....

A.4 Watter nasionaliteit is jy? .....

A.5. Het jy al voorheen regte studeer *(Beantwoord met 'n kruisie)*?

Ja .....
Nee .....

A.6 Is daar enige advokate of prokureurs in jou nabye familie (broers en susters, eggenoot, ouers, ooms en tannies, niggies en nefies), uitsluitend jyself? .....
Indien ja, hoeveel? .....

A.7 Is daar enige regters en magistrate in jou nabye familie (broers en susters, eggenoot, ouers, ooms en tannies, niggies en nefies)? .....
Indien ja, hoeveel? .....

B. Regslui en die effektiwiteit van die Suid-Afrikaanse regsstelsel

B1. Wat is jou opinie oor advokate en prokureurs *oor die algemeen* (nie oor 'n spesifieke advokaat or prokureur of jouself nie)?
Dui asseblief jou opinie aan deur 'n nommer te sirkel, waar 1 = stem glad nie saam nie; 2 = stem nie saam nie; 3 = neutraal; 4 = stem saam; en 4 = stem baie saam.

	Stem glad nie saam nie ←				→ **Stem baie saam**
Advokate en prokureurs geniet baie aansien.	1	2	3	4	5
Advokate en prokureurs is eties en betroubaar.	1	2	3	4	5
Advokate en prokureurs verdien hul inkomste.	1	2	3	4	5
Advokate en prokureurs is rolmodelle in die samelewing.	1	2	3	4	5

Algemene kommentaar oor advokate en prokureurs:

.....

.....

.....

B2. Wat is jou opinie oor regters en magistrate *oor die algemeen* (nie oor 'n spesifieke regter of magistraat nie)?
Dui asseblief jou opinie aan deur 'n nommer te sirkel, waar 1 = stem glad nie saam nie; 2 = stem nie saam nie; 3 = neutraal; 4 = stem saam; en 4 = stem baie saam.

	Stem glad nie saam nie ←				→ **Stem baie saam**
Regters en magistrate geniet baie aansien.	1	2	3	4	5
Regters en magistrate is eties en betroubaar.	1	2	3	4	5
Regters en magistrate is rolmodelle in die samelewing.	1	2	3	4	5

Algemene kommentaar oor regters en magistrate:

.....

.....

.....

.....

B3. Hoe effektief dink jy is die Suid-Afrikaanse regsstelsel?
Dui asseblief jou opinie aan deur 'n nommer te sirkel, waar 1 = stem glad nie saam nie; 2 = stem nie saam nie; 3 = neutraal; 4 = stem saam; en 4 = stem baie saam.

	Stem glad nie saam nie ⟷ **Stem baie saam**				
Howe word op die beste moontlike wyse bestuur.	1	2	3	4	5
Die Suid-Afrikaanse regsstelsel is regverdig.	1	2	3	4	5
Die Suid-Afrikaanse regsstelsel is effektief.	1	2	3	4	5
Daar is tekortkominge in die Suid-Afrikaanse regsstelsel.	1	2	3	4	5
Die Suid-Afrikaanse regsstelsel is korrup.	1	2	3	4	5

Algemene kommentaar oor die Suid-Afrikaanse regsstelsel:

.....
.....
.....

C. Bronne van inligting

C1. Mense is geneig om hul opinies op 'n wye verskeidenheid van bronne te basseer. Tot watter graad is jou antwoorde in B (die vraag oor regters, advokate en prokureurs, en die Suid-Afrikaanse regsstelsel) beïnvloed deur verskillende bronne?
Dui asseblief jou antwoord aan deur 'n nommer te sirkel, waar 1 = die bron was baie onbehulpsaam; 2 = die bron was onbehulpsaam, 3 = die bron was nie onbehulpsaam of hulpvaardig nie; 4 = die bron was hulpvaardig, 5 = die bron was baie hulpvaardig.

	Baie onbehulpsaam ⟷ **Baie hulp-vaardig**				
Om regters, advokate of prokureurs in die familie te hê.	1	2	3	4	5
Persoonlike ondervinding – die huur van 'n prokureur of advokaat, of 'n ervaring in die hof.	1	2	3	4	5
Klasse in die skool, of ander opleiding of kursusse.	1	2	3	4	5
Gesprekke met vriende.	1	2	3	4	5
Nuusdekking oor regters, advokate of prokureurs, of hofsake.	1	2	3	4	5
Boeke, televisiereekse of films oor regskwessies.	1	2	3	4	5
Ander (Identifiseer.....)	1	2	3	4	5

D. Spesifieke bronne van inligting

D1. Hoe gereeld kyk jy die volgende televisiereekse? Of hoe gereeld het jy dit gekyk?

Trek 'n sirkel om die relevante nommer.

	Gereeld	**Nie gereeld nie**	**Nooit nie**
Law & Order	1	2	3
The Practice	1	2	3
Damages	1	2	3
Boston Legal	1	2	3
Ally McBeal	1	2	3
Shark	1	2	3
Judge Judy	1	2	3
Ander regs-reekse (Identifiseer.....)	1	2	3

D2. Het jy al van die volgende films gesien?

(Maak 'n kruisie in die boksie indien jy die film gesien het)

The Rainmaker	
Primal Fear	
A Civil Action	
The Firm	
Liar Liar	
The Verdict	
Class Action	
I am Sam	
A Reasonable Man	
Jagged Edge	
The Devil's Advocate	
Erin Brokovich	
Presumed Innocent	
The Rules of Engagement	

D3. Verskeie verskillende bronne bestaan waar jy die nuus kan sien of hoor. Tot watter mate gebruik jy die volgende bronne om op hoogte te bly van wat aangaan in die wêreld?

Dui asseblief jou antwoord aan deur 'n nommer te sirkel, waar 1 =ek gebruik geensins die bron nie; 2 = ek gebruik baie min die bron; 3 = ek gebruik soms die bron; 4 = ek gebruik gereeld die bron; 5 = ek gebruik baie gereeld die bron.

	Geensins gebruik nie ⟷				**Baie gereeld gebruik**
Vriende, familie of mense wat saam met jou werk of bly	1	2	3	4	5
Tydskrifte	1	2	3	4	5
Koerante	1	2	3	4	5
Plakkate op lamppale	1	2	3	4	5
Televisie	1	2	3	4	5
Radio	1	2	3	4	5
Internet – nuuswebruimtes (b.v. news24.com)	1	2	3	4	5
Internet – blogs	1	2	3	4	5
Internet – *facebook*, *myspace*, *youtube* ens.	1	2	3	4	5
Ander (Identifiseer.....)	1	2	3	4	5

E. Spesifieke hofsake

source: *Die Burger*

E1. Is jy bewus van Fred van der Vyver / Inge Lotz hofsaak?

Ja .....

Nee .....

Indien jou antwoord vir E1 "ja" was, antwoord asseblief E2-E5.

E2. Waar het jy gehoor van die saak?

.....

E3. Is Van der Vyver skuldig of onskuldig bevind van die moord?

.....

.....

.....

.....

E4. Dink jy dit was 'n regverdige uitspraak? Hoekom?

.....

.....

.....

.....

E5. Wat het jy gedink van die wyse waarop die media die saak benader en hanteer het?

.....

.....

.....

.....

E.6. Dink jy Van der Vyver is skuldig of onskuldig van die moord? Hoekom?

.....

.....

.....

.....

Laastens...

Baie dankie dat jy die tyd geneem het om die vraelys te beantwoord!

Appendix B: Application letter and ethical approvals for distributing questionnaires at universities

STUDENT QUESTIONNAIRE PROPOSAL

Background

A vast portion of lay society depend on the media as their major source of legal knowledge. As noted by Lieve Gies (2008:2), "Law is virtually absent from ordinary lay experience, creating ample opportunity for the media to act as a proxy for personal contact with the legal system."

A recent study – conducted by questioning first year law students in order to determine their views of lawyers, the legal system and more – found that both the news media and popular media play a pivotal role in the formation of law students' opinions of the law and lawyers (Asimow, Greenfield, Machura, Osborn, Robson, Sockloskie, Sharp & Jorge, 2005:427).

These findings are quite worrying, for if it can be accepted that both popular and news media play a vital role in the formation of opinions of the legal system, the concern arises as to how accurate these media portrayals of the law are. It is perhaps no wonder that the relationship between the judiciary and media is traditionally a tense one. As noted by Gies (2008:73),

> "The mass media are routinely noted for their problematic relationship with the legal truth and the extent to which they are in the business of embellishing the law as well as consistently distorting it. The most widely studied examples are undoubtedly news reporting of high-profile trials, the ever-popular courtroom drama and crime fiction."

The proposal

Whereas the mentioned questionnaire to determine perceptions of the law was conducted in a variety of countries (Argentina, Australia, England, Germany, Scotland and the USA), no like exercise has ever been performed in South Africa. It is therefore suggested that a similar study should be done in an unique South African setting, as it is vital to have data reflecting the media's influence on legal consciousness in our country.

Focusing on specifically first year law students is important as they all have a supposed interest in the law in common. Distributing such questionnaire to first year law students at the beginning of their study is also necessary, as one can still measure the effect of the media before the students are exposed to (true) information about the legal system in South Africa.

It is respectfully submitted that South Africa, being a relatively young democracy, can benefit from a situation where the media is more responsible in its reporting on the law – where the media in fact accepts the responsibility to also educate citizens. Pointing out that the media fails to educate at the moment (using data gleaned from an exercise such

as the proposed one) could ideally serve as a wake-up call to important institutions in our nation.

The questionnaire

It is important to note that the questionnaire will be completely anonymous. For statistical purposes, the only questions relating to identity will concern the sex and age of the participant, his or her ethnicity and whether or not he or she has people in the legal profession in his or her family.

For a copy of Asimow *et al*.'s North American questionnaire, please see Addendum A. Please note, however, that some of the questions will need to be altered in order to accommodate the South African situation. A few questions will also be added in order to make the questionnaire more suitable to the author's thesis. The completed questionnaire will again be submitted for approval by both the author's own study advisor and the Dean of the law faculty at Stellenbosch University.

UNIVERSITY OF THE WESTERN CAPE APPROVAL

Dear Anri

I have acted for the UWC senate research and ethics committee to register the project and to clear the research ethics. I note that UCT and U Stellenbosch have given prior ethics clearances and I apply the conditions which they set also to your work at UWC, mutatis mutandi.

Your project registration number is 09/3/1. When you are on this campus you may ask Mr Peter Syster in my offices for a letterhead-and-signed ethics clearance, but this email should suffice in the meantime. I also under powers UWC has given me hereby grant you permission to access the
campus, its staff and its students for the research purposes in your application. You may now proceed to conduct the research, negotiating permission with the relevant UWC staff as you go. I am copying this to Professor Sloth- Nielsen as the first step in that process.

With best wishes for your success in this research

Yours sincerely,
Renfrew Christie

Professor Renfrew Christie, B Com Hons (Econ) (SA), BA Hons , MA (Cape Town), D Phil (Oxon),
Fellow of the Royal Society of South Africa,
Member of the Academy of Science of South Africa,
Dean of Research, University of the Western Cape
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E-Mail: rchristie@uwc.ac.za
Phone : 27.21.9592949 (w), Fax : 27.21.9593170 (w)
Mobile : 27.82.457.9186
Home : 2 Glade Road, Rondebosch 7700, South Africa
Phone : 27.21.6864722 [h]

UNIVERSITY OF STELLENBOSCH LAW DEPARTMENT APPROVAL (16 January 2009)

Beste ms van der Spuy

Na oorleg met die Fakulteitskomite is besluit dat daar van ons kant af geen beswaar is teen die beoogde opname onder eerstejaarstudente nie. Dit is op die veronderstelling dat die opname anonym geskied en min of meer van die omvang is soos blyk uit die voorbeeld wat u verstrek het. Klaarblyklik hang dit ook van die studente self af of hulle bereid sou wees om deel te neem.

Die onus is op u om met die eerstejaardosente te skakel en af te spreek vir ‘n geleë tyd.

Groete

Gerhard Lubbe

Dekaan/Dean
Fakulteit Regsgeleerdheid/Faculty of Law
Universiteit van Stellenbosch/University of Stellenbosch
Privaatsak X1/Private Bag X1
Stellenbosch 7600
Suid-Afrika/South Africa
tel +27 21 808 3784
mobile 082 889 4085
fax +27 21 886 6235

Appendix C: Newspaper articles used as examples in case study

Malan, M. 2005b. Vermoorde matie ‘verloek’: Polisie teiken Lotz se vriendekring. *Rapport*, 1 May 2005. p. 1 (layout):

ONS PRAAT JOU TAAL

Rapport

SONDAG, 1 MEI 2005

Jaargang 36, nr. 18

R7,50 (BTW ingesluit) Namibië N$8,50

www.rapport.co.za
epos: rapport@rapport.co.za

HOE VEILIG IS WINKELSENTRUMS – 12

PERSPEKTIEF: WAT IS SKOONHEID TOG?

Vermoorde Matie ‘verloek’

Polisie teiken Lotz se vriendekring

Bul-blydskap

MARLENE MALAN
Kaapstad

Malan, M. 2005b. Vermoorde matie 'verloek': Polisie teiken Lotz se vriendekring. *Rapport*, 1 May 2005. p. 1 (words):

Vermoorde Matie 'vervloek': Polisie teiken Lotz se vriendekring.

Marlene Malan
Kaapstad

'n Nabye vriend van die vermoorde Matie Inge Lotz (21) het kort voor haar dood vergifnis gevra vir 'n vloek wat hy oor haar en haar kêrel uitgespreek het.

Die vloek is in dokumente wat nou 'n belangrike deel uitmaak van die polisie se ondersoek na dié raaiselagtige moord wat speurders ná ses weke steeds laat kopkrap.

Rapport het 'n uittreksel gesien uit 'n dokument waarin die vloek vervat is. "Vergewe my die *curses* wat ek oor Fred en Inge uitgespreek het," lui die uittreksel. Fred van der Vyver was Lotz se vaste mansvriend.

Lotz, wat besig was met 'n meestersgraad in wiskundige statistiek, is op 16 Maart in haar woonstel buite Stellenbosch vermoor.

Roof en diefstal is kort ná die moord uitgesluit as motiewe. Private ondersoekers het dit bestempel as 'n "passiemoord".

Die naam van die vriend wat glo die vloek uitgespreek het, is aan Rapport bekend, maar word op regsadvies weerhou.

In ander stukke wat Rapport ook gesien het, skryf die vriend hy kom "uit 'n familie met 'n lang geskiedenis van emosionele wanfunksie".

Hy sê voorts hy "vrees mislukking en verwerping", voel "minderwaardig" en is dikwels "agterdogtig en bitter". Volgens hom kan dit dui op 'n "vervloeking" wat oor geslagte heen aan hom oorgedra is.

Die polisie het bevestig dat die geskrewe stukke, asook ander geskrifte uit die vriend se pen, deel van die ondersoek uitmaak.

Die moontlikheid dat 'n lid van haar intieme vriendekring Lotz vermoor het, word elke dag groter. Ondersoekbeamptes glo sekere briefwisseling kort voor en op die dag van haar dood tussen haar en haar vriende kan hulle nader aan die moordenaar bring. Hulle hoop dat sekere openbarings daarin, asook 'n emosionele en moontlik homoseksuele vriendskapsdriehoek tussen van haar mansvriende, die ondersoekspan na die skuldige sal lei.

Maar dit is Lotz se woonstel – waarin sy en nog iemand op die middag van haar dood 'n DVD gekyk en geëet het – wat waarskynlik die sleutel hou vir die oplossing.

Ondersoeke toon sy is herhaaldelik van agter met 'n stomp voorwerp oor die kop geslaan en, oomblikke ná haar dood, met 'n mes of skêr in die hart en nek gesteek.

Bloedstrepe in die woonstel dui daarop dat hy toe eers sy hande gewas het in die gastebadkamer en toe in Lotz se en suite-badkamer waar hy sy handpalm teen die wasbak gedruk het. Toetse om die identiteit van dié handafdruk vas te stel, word gedoen.

Die moordwapen en die afstandbeheertoestel wat die moordenaar gebruik het om die veiligheidshek van die woonstelkompleks oop te maak, is steeds soek.

Semenkolle op die sitkamerbank in Lotz se woonstel maak ook deel uit van die ondersoek. Daar word vermoed dat die semen ná haar dood op die bank beland het.

- In nog ’n verwikkeling is die span privaatspeurders wat op versoek van die Lotz-familie betrek is, gevra om hulle te onttrek.

’n Woordvoerder van George Fivaz & Gennote het aan Rapport gesê hulle is in ’n prokureursbrief gevra om nie langer by die saak betrokke te wees nie – “omdat ons nie met die polisie saamstem nie en ernstig met hulle verskil oor die benadering tot die ondersoek en die bepaling van verdagtes”.

Dié brief is ’n opdrag van Lotz se ouers, prof. Jan en mev. Juanita Lotz van Bellville, onder druk van die polisie geskryf.

Die eerste ondersoekspan van die polisie was onder leiding van ’n junior ondersoekbeampte, wat later weens ’n gebrek aan vordering met die saak afgehaal is ná ingryping deur die Wes-Kaapse polisiehoof, komm. Mzwandile Petros.

Die nuwe ondersoekspan staan onder leiding van sr. supt. Attie Trollip van die plaaslike misdaadgeskiedenissentrum. Speurders van Pretoria het glo ook by hulle aangesluit.

Gister het mnr. William Booth, Fred van der Vyver se prokureur, gesê sy kliënt gee sy volle samewerking aan die polisie.

Van der Vyver het reeds bloed-en haarmonsters op versoek van die polisie verskaf sodat DNS-toetse gedoen kon word.

Hy het ook ’n leuenverklikkertoets geslaag.

Smith, C & Ekron, Z. 2005. Hamer van die dood: Verdagte is reeds geïdentifiseer. *Die Burger*, 4 June 2005. p. 1. Note that on the side, next to the hammer, words were unfortunately cut off as result of the scanning process. On the following page a close-up of the graphics appear.

DIE BURGER

Negentigste jaargang Heerengracht 40 Kaapstad Saterdag 4 Junie 2005 Prys R4,90 (BTW ingesluit)

INNE

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es of Penzance nden met Ted-isseur – bl. 12.

trorail gaan dag tot stil-S1.

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Besoek ook ons webwerf vir die jongste nuus http://www.dieburger.com

Lotz-moord: Nuwe getuienis

Hamer van die dood

Verdagte is reeds geïdentifiseer

CARIN SMITH EN ZIEGFRIED EKRON

KAAPSTAD. – 'n Ornamentele hamer, die vermeende moordwapen en jongste leidraad in die raaiselmoord op die jong uitblinker-Matie Inge Lotz (22), was glo 'n Kersgeskenk van haar ouers aan 'n moordverdagte.

Die polisie het gister 'n foto aan die media beskikbaar gestel van die hamer wat vermoedelik gebruik is om die kopwonde toe te dien waaraan Lotz gesterf het.

Sake beweeg na verneem word na 'n punt toe. Die polisie het gesê die ondersoekspan maak goeie vordering.

Lotz se bebloede lyk is op 16 Maart in haar woonstel in die buitewyke van Stellenbosch gevind. Geen teken van gedwonge toegang kon op die toneel gevind word nie.

Supt. Riaan Pool, provinsiale polisiewoordvoerder, het gister gesê speurders het reeds in April op die hamer beslag gelê "nadat hulle dit in 'n verdagte se besit en beheer gevind het".

Dit is die eerste nuwe leidraad wat die polisie bekend gemaak het nadat hulle vroeër gesê het hulle wag op die uitslae van forensiese toetse. "Wanneer die uitslae van al die forensiese toetse beskikbaar is en die ondersoek afgehandel is, sal die verdagte – wat reeds geïdentifiseer is – in hegtenis geneem word," het Pool gesê.

Hy het die hamer beskryf as " 'n ornament of hamerbotteloopmaker". Dit is sowat 30 cm lank en het 'n kop van vlekvrye staal en 'n rubberhandvatsel. Volgens hom is sulke hamers nie volop in Suid-Afrika nie.

Dit kan op die internet bestel word van 'n maatskappy genaamd "Dr Gadget" in Engeland en word ook deur 'n maatskappy in Gauteng ingevoer en aan geskenkwinkels verskaf.

Die Burger het gister betroubaar verneem dat Lotz se ouers, prof. Jan en mev. Juanita Lotz, só 'n hamer as Kersgeskenk aan 'n verdagte in die moordsaak gegee het. Mev. Lotz het gister, nadat sy met prof. Lotz en die polisie beraadslaag het, gesê sy kan die bewering nie bevestig of ontken nie. Sy het wel ontken dat haar dogter ooit só 'n hamer besit het.

Pool het gisteraand bevestig die woonstel van mnr. Fred van der Vyver, Lotz se mansvriend, is een van die persele wat die ondersoekspan in April deursoek het.

"Ondanks al die gissings en ongegronde bewerings oor die ondersoek deur mense in die media die afgelope maande en weke, moet dit genoem word dat die ondersoekspan en die direktoraat van openbare vervolging daagliks met mekaar in kontak is oor die ondersoek."

Die familie van die vermoorde student word ook voortdurend op die hoogte van nuwe ontwikkelings gehou, het Pool gesê.

"Die doel van enige ondersoek is om al die relevante inligting – forensies en andersins – in te samel, 'n verdagte in hegtenis te neem en hom of haar voor die hof te bring. Hier sal al die inligting voorgelê word om te bewys dat 'n sekere individu verantwoordelik was vir die daad waarvan hy of sy beskuldig word."

Vir haar ouers bring dié versekering skrale troos. "Of iemand in hegtenis geneem word of nie, dit gaan nie ons saak verander nie," het mev. Lotz gesê. Inge was hul enigste kind.

Enigiemand met meer inligting oor die hamer of wat 'n soortgelyke hamer besit, word gevra om insp. Diffie de Villiers by ☎ 084 512 0263 te bel.

✉ csmith@dieburger.com

Me. Inge Lotz en haar vriend, mnr. Fred van der Vyver, as 'n verliefde paartjie saam by 'n sosiale geleentheid.

Inlas: Die vermeende moordwapen wat die polisie by 'n verdagte gekonfiskeer het.

Só word hamers soos die een waarmee Inge Lotz vermoor is, op die internet geadverteer.

Kolonel verkoop glo SANW-wapens aan Kaapse

RUSANA PHILANDER

KAAPSTAD. – 'n Kolonel in die weermag wat na bewering van 1999 af vuurwapens, ammunisie en plofstowwe aan bendelede op die Kaapse Vlakte verkoop het, is vasgetrek ná 'n hoëvlakonder-

(SANW), verskyn weer Maandag in die landdroshof in Bellville nadat hy Vrydag by die Tempe-weermagbasis in Bloemfontein in hegtenis geneem is. Hy word aangehou.

Volgens kapt. Randall Stoffels, 'n polisiewoordvoerder, verskyn Moses in

Skiereiland verkoop het.

Die vuurwapens, ammunisie en plofstowwe is na bewering by die Tempeweermagbasis gesteel. Na verneem word, het Moses na bewering in die laat 90's na Kaapstad gereis om die wapens af te lewer. Dit was in die tyd toe bende-

mense wat by transitorooftogte betrokke was, verkoop.

Volgens 'n ingeligte het verskeie vuurwapens wat destyds en ook vandag in bendebedrywighede en transitorooftogte gebruik word, sy oorsprong in die weermag

lege in La steel het.

Volgens hegtenis g aan bewys

"Eers na

Smith, C & Ekron, Z. 2005. Hamer van die dood: Verdagte is reeds geïdentifiseer. *Die Burger*, 4 June 2005. p. 1. Close-up version (graphics).

Lotz-moord: Nuwe getuienis

Hamer van die dood

Verdagte is reeds ïdentifiseer

CARIN SMITH
EN ZIEGFRIED EKRON

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n maak goeie vordering.
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onastel in die buitewyke van Stel-
h gevind. Geen teken van ge-
toegang kon op die toneel ge-
rd nie.
Riaan Pool, provinsiale polisie-
berder, het gister gesê speurders
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ekend gemaak het nadat hulle

Me. Inge Lotz en haar vriend, mnr. Fred van der Vyver, as 'n verliefde paartjie saam by 'n sosiale geleentheid.

Inlas: Die vermeende moordwapen wat die polisie by 'n verdagte gekonfiskeer het.

mev. Juanita Lotz, só 'n hamer as Kers... word ook voortdurend op die hoogte ...

"Of iemand in hegtenis geneem word of nie, dit gaan nie ons saak verander nie."

Mev. Juanita Lotz, Inge se ma.

Smith, C & Ekron, Z. 2005. Hamer van die dood: Verdagte is reeds geïdentifiseer. *Die Burger*, 4 June 2005. p. 1 (words):

Lotz-moord: Nuwe getuienis
Hamer van die dood
Verdagte is reeds geïdentifiseer

Caption: Me. Inge Lotz en haar vriend, mnr. Fred van der Vyver, as 'n verliefde paartjie saam by 'n sosiale geleentheid. Inlas: Die vermeende moordwapen wat die polisie by 'n verdagte gekonfiskeer het. Só word hamers soos die een waarmee Inge Lotz vermoedelik vermoor is, op die internet geadverteer.

Carin Smith en Ziegfried Ekron

"Of iemand in hegtenis geneem word of nie, dit gaan nie ons saak verander nie." Mev. Juanita Lotz, Inge se ma.

KAAPSTAD. -- 'n Ornamentele hamer, die vermeende moordwapen en jongste leidraad in die raaiselmoord op die jong uitblinker-Matie Inge Lotz (22), was glo 'n Kersgeskenk van haar ouers aan 'n moordverdagte.

Die polisie het gister 'n foto aan die media beskikbaar gestel van die hamer wat vermoedelik gebruik is om die kopwonde toe te dien waaraan Lotz gesterf het.

Sake beweeg na verneem word na 'n punt toe. Die polisie het gesê die ondersoekspan maak goeie vordering.

Lotz se bebloede lyk is op 16 Maart in haar woonstel in die buitewyke van Stellenbosch gevind. Geen teken van gedwonge toegang kon op die toneel gevind word nie.

Supt. Riaan Pool, provinsiale polisiewoordvoerder, het gister gesê speurders het reeds in April op die hamer beslag gelê "nadat hulle dit in 'n verdagte se besit en beheer gevind het".

Dit is die eerste nuwe leidraad wat die polisie bekend gemaak het nadat hulle vroeër gesê het hulle wag op die uitslae van forensiese toetse. "Wanneer die uitslae van al die forensiese toetse beskikbaar is en die ondersoek afgehandel is, sal die verdagte -- wat reeds geïdentifiseer is -- in hegtenis geneem word," het Pool gesê.

Hy het die hamer beskryf as " 'n ornament of hamerbotteloopmaker". Dit is sowat 30 cm lank en het 'n kop van vlekvrye staal en 'n rubberhandvatsel. Volgens hom is sulke hamers nie volop in Suid-Afrika nie.

Dit kan op die internet bestel word van 'n maatskappy genaamd "Dr Gadget" in Engeland en word ook deur 'n maatskappy in Gauteng ingevoer en aan geskenkwinkels verskaf.

Die Burger het gister betroubaar verneem dat Lotz se ouers, prof. Jan en mev. Juanita Lotz, sê 'n hamer as Kersgeskenk aan 'n verdagte in die moordsaak gegee het. Mev.

Lotz het gister, nadat sy met prof. Lotz en die polisie beraadslaag het, gesê sy kan die bewering nie bevestig of ontken nie. Sy het wel ontken dat haar dogter ooit só 'n hamer besit het.

Pool het gisteraand bevestig die woonstel van mnr. Fred van der Vyver, Lotz se mansvriend, is een van die persele wat die ondersoekspan in April deursoek het.

"Ondanks al die gissings en ongegronde bewerings oor die ondersoek deur mense in die media die afgelope maande en weke, moet dit genoem word dat die ondersoekspan en die direktoraat van openbare vervolging daagliks met mekaar in kontak is oor die ondersoek."

Die familie van die vermoorde student word ook voortdurend op die hoogte van nuwe ontwikkelings gehou, het Pool gesê.

"Die doel van enige ondersoek is om al die relevante inligting -- forensies en andersins -- in te samel, 'n verdagte in hegtenis te neem en hom of haar voor die hof te bring. Hier sal al die inligting voorgelê word om te bewys dat 'n sekere individu verantwoordelik was vir die daad waarvan hy of sy beskuldig word."

Vir haar ouers bring dié versekering skrale troos. "Of iemand in hegtenis geneem word of nie, dit gaan nie ons saak verander nie," het mev. Lotz gesê. Inge was hul enigste kind.

Enigiemand met meer inligting oor die hamer of wat 'n soortgelyke hamer besit, word gevra om insp. Diffie de Villiers by 0 084 512 0263 te bel. csmith@dieburger.com

Inge Lotz glo vermoor nadat sy haar kêrel afsê

Vriend se hoop op ontslag ná haar dood beskaam

MARLENE MALAN
Stellenbosch

Die vermoorde Matie-student Inge Lotz het die man wat daarvan beskuldig word dat hy haar vermoor het die irrekpas gegee nadat sy die nag in haar woonstel deurgebring het.

Die briljante jong aktuaris Fred van der Vyver, wat saam met haar gestudeer het en sedert November verlede jaar haar vaste vriend was, het haar, volgens die staat se weergawe, kort daarna met 'n stomp voorwerp van agter op die rusbank van haar woonstel in Stellenbosch doodgeslaan en haar lyk daarna met 'n skerp voorwerp geskend.

Van der Vyver het Vrydag vir die derde keer vlugtig in die Stellenbosse landdroshof verskyn nadat hy op 16 Junie aanjaar in hegtenis geneem is.

Rapport het betroubaar verneem Van der Vyver het gehoop hy kan 'n heronderzoek en sy moontlike ontslag vra weens onvoldoende getuienis.

Die staatsaanklaer, mev. Cartne Swanepoel, het egter aan landdros J.J. Swanepoel gesê die polisie-ondersoek, onder leiding van dir. Attie Trollip, is beëindig.

Die polisie meen die saak is só waterdig dat Van der Vyver nie sal hoef te regspan hul sal moes om só 'n aanzoek te rig.

Iede van die Lotz-familie het buite die hof aan Rapport gesê dit is uit die dossier duidelik dat die polisie nié foute in hul ondersoekwerk begaan het nie.

In wat as een van die vaalste tydperke tot nog toe bestempel word, het Lotz se vriende van die Lotz-gesin aan Rapport gesê van haar naaste vriende vertel openlik haar en Van der Vyver se verhouding was op die reise en dat sy hom die oggend voor haar dood in 'n brief afgesê het.

Dié vriende, wat almal deel was van 'n hegte vriendskapskring van Lotz, het sedertdien alle kontak met Van der Vyver verbreek.

Volgens 'n tydsbeskrywing van Van der Vyver se bewegings op dié dag wat deur private speurders saamgestel is, het sy inderdaad om ongeveer 10:00 die oggend vir hom twee handgeskrewe briewe gegee toe die klas wat hy by die Universiteit van Stellenbosch bygewoon het, verdaag het.

Om 08:08 die oggend het sy in 'n SMS aan hom gesê sy wil vir hom iets leen gee sodra die klas klaar is.

Dis bekend dat dié briewe deel van die polisiedossier uitmaak.

Sy het daarna in twee SMS'e haar liefde vir hom verklaar en in haar laaste SMS aan hom om 13:36 op dié dag gesê: "Mis jou al klaar."

Sy is tussen 16:00 en 17:00 vermoor. Haar lyk is om 22:30 ontdek deur past. Christo Prebonias, 'n vriend van Van der Vyver se woonstelmaat, mnr. Marius Botha.

Pretorius, Botha, Van der Vyver en Lotz was almal lidmate van die His People's-gemeente in Stellenbosch.

Van die hangende vrae wat onbeantwoord bly, is:

■ Wie is die geheimsinnige meisie wat, luidens Lotz se ele bekentenis in 'n SMS aan Van der Vyver, haar "so gaskal" en saam met haar op die oggend van haar dood klas gehoop het?

■ Waarom het Botha en Van der Vyver, wat lank boesemvriende was, ná Lotz se dood uitmaakaar gespat?

■ Waarom is daar geen foto's of briewe van Van der Vyver tussen Lotz se besittings gevind nie?

■ Waarom hou Van der Vyver vol dat hul verhouding sowat 'n jaar oud was terwyl haar eerste verwysing na hom in haar dagboeke eers in November verlede jaar was?

Die beskuldigde se pa, mnr. Louis van der Vyver, wou gister geen kommentaar lewer nie "omdat die saak uiters sensitief is".

Sy regsverteenwoordiger, adv. William Booth, het aan Rapport gesê adve. Terry Price en Dup de Bruyn van Port Elizabeth is ook deel van die verdedigingspan.

Twee vingerafdruk-deskundiges, mnre. Nico Kotze en Mike Page, en dr. David Klatzow, 'n forensiese kundige van Kaapstad, meen op hul beurt die saak teen Van der Vyver is yl, dat die polisie talle foute in hul ondersoek begaan het en dat Van der Vyver se vingerafdruk op 'n omslag van 'n DVD waarna Lotz ten tyde van haar dood gekyk het nie genoegsame getuienis is om hom met die moord te verbind nie.

Van der Vyver se verhoor begin op 9 Oktober aanstaande jaar en sy borgtog van R10 000 is verleng.

Vriende van Inge Lotz (heel links) vertel glo openlik dat sy Fred van der Vyver (links) die oggend voor haar dood in 'n brief afgesê het.

Malan, M. 2005c. Inge Lotz glo vermoor nadat sy haar kêrel afsê: Vriend se dood om ontslag ná haar dood beskaam. *Rapport*, 11 Desember 2005. p. 5:

Malan, M. 2005c. Inge Lotz glo vermoor nadat sy haar kêrel afsê: Vriend se dood om ontslag ná haar dood beskaam. *Rapport*, 11 Desember 2005. p. 5 (words):

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Marlene Malan
Stellenbosch

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Die briljante jong aktuaris Fred van der Vyver, wat saam met haar gestudeer het en sedert November verlede jaar haar vaste vriend was, het haar, volgens die staat se weergawe, kort daarna met ’n stomp voorwerp van agter op die rusbank van haar woonstel in Stellenbosch doodgeslaan en haar lyk daarna met ’n skerp voorwerp geskend.

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Rapport het betroubaar verneem Van der Vyver het gehoop hy kan ’n herondersoek en sy moontlike ontslag vra weens onvoldoende getuienis.

Die staatsaanklaer, mev. Carine Theunissen, het egter aan landdros J.J. Lombard gesê die polisie-ondersoek, onder leiding van dir. Attie Trollip, is afgehandel.

Die polisie meen die saak is só waterdig dat Van der Vyver en sy regspan hul tyd sal mors om só ’n aansoek te rig.

Lede van die Lotz-familie het buite die hof aan Rapport gesê dit is uit die dossier duidelik dat die polisie nié foute in hul ondersoekwerk begaan het nie.

In wat as een van die raaiselagtigste moorde tot nog toe bestempel word, het ’n kennis van die Lotz-gesin aan Rapport gesê van haar naaste vriende vertel openlik haar en Van der Vyver se verhouding was op die rotse en dat sy hom die oggend van haar dood in ’n brief afgesê het.

Dié vriende, wat almal deel was van ’n hegte vrienskapskring van Lotz, het sedertdien alle kontak met Van der Vyver verbreek.

Volgens ’n tydsbeskrywing van Van der Vyver se bewegings op dié dag wat deur private speurders saamgestel is, het sy inderdaad om ongeveer 10:00 dié oggend vir hom twee handgeskrewe briewe gegee toe hy die klas wat hy by die Universiteit van Stellenbosch bygewoon het, verdaag het.

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Pretorius, Botha, Van der Vyver en Lotz was almal lidmate van die His People's-gemeente in Stellenbosch.

Van die tergende vrae wat onbeantwoord bly, is:

- Wie is die geheimsinnige meisie wat, luidens Lotz se eie bekentenis in 'n SMS aan Van der Vyver, haar "so geskel" en saam met haar die oggend van haar dood klas geloop het?
- Waarom het Botha en Van der Vyver, wat lank boesemvriende was, ná Lotz se dood uitmekaar gespat?
- Waarom is daar geen foto's of briewe van Van der Vyver tussen Lotz se besittings gevind nie?
- Waarom hou Van der Vyver vol dat hul verhouding sowat 'n jaar oud was terwyl haar eerste verwysings na hom in haar dagboeke eers in November verlede jaar was?

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Barnard, M. 2007. Inge Lotz: Bloed aan Fred se hamer. *Die Burger*, 16 February 2007. p. 1:

Twee-en-negentigste jaargang Heerengracht 40 Kaapstad Vrydag 16 Februarie 2007 Prys R4.20 (BTW ingesluit)

Inge Lotz: Bloed aan Fred se hamer

MARELIZE BARNARD

KAAPSTAD. – Die dekoratiewe hamer van die beskuldigde in die Inge Lotz-moordverhoor, mnr. Fred van der Vyver, is positief getoets vir bloed.

'n Forensiese deskundige van die polisie, sers. Peta Davitsz, het gister in die moordsaak van me. Lotz getuig die hamer het positief getoets in 'n voorlopige toets. Dit is nie sigbaar met die blote oog nie, maar die moontlikheid van bloed is deur chemiese toetsing bepaal.

Die moontlikheid van bloed op 'n skêr met 'n oranje hef, asook op 'n Wilkinson Sword-vleismes wat deur Davitsz getoets is, is ook deur haar bevestig.

Die dekoratiewe hamer, 'n ingediende bewysstuk in die hofsaak, is in Desember 2004 deur die Lotz-gesin aan Van der Vyver gegee as 'n geskenk. Dit is gegraveer "Fred 2004".

Die vermoorde me. Inge Lotz. Foto: VERSKAF

Die beskuldigde, mnr. Fred van der Vyver. Foto: ESA ALEXANDER

Dié hamer is op 15 April 2005 deur Van der Vyver agter die bestuursitplek van sy bakkie uitgehaal en aan die polisie gewys toe die polisie aan hom gevra het of daar iets waardevols in die bakkie is.

Intussen is 'n tweede hamer gister op die vierde dag van die moordverhoor as bewysstuk in die hooggeregshof hier ingedien.

Regter Deon van Zyl het vroeër gisteroggend gesê dit is belangrik dat dié hamer, wat ná die moord in Lotz se woonstel gekry is, as bewysstuk ingedien word.

Adv. Dup de Bruyn SC, vir die verdediging, het dit in sy kruisondervraging van supt. Johan Kock, forensiese deskundige van die polisie, gestel dat Kock met sy toetsing van die afdruk wat 'n bebloede hamer maak wanneer dit aan 'n handdoek afgegee word, bepaalde resultate in gedagte gehad het.

Hy het verwys na die bebloede handdoek wat in Lotz se woonstel gevind is.

De Bruyn het dit gestel die vermeende moordwapen het nie unieke kenmerke as dit met 'n ander hamer vergelyk word nie en dat dit maar die vorm van 'n ander hamer het. Hy wou van Kock weet of die vlinderagtige bloedmerke op die handdoek van die "een of ander" hamer kon wees en of dit moeilik is om te bepaal, omdat Kock met sy toetsing Van der Vyver se dekoratiewe hamer in gedagte gehad het.

Kock het hierop bevestig 'n mens sou die vlinderagtige bloedmerke gekry het en dat die vorm van die hamers dieselfde is, maar die vraag sou by toetsing wees of dit unieke patrone sou bied.

Hierop het Van Zyl gesê dit is noodsaaklik dat die hof die ander hamer kry. Nadat die hamer ná middagete ingedien is, het Van Zyl albei hamers in sy hande geneem en gesê dit kan op rekord geplaas word dat die een heelwat groter en swaarder as die ander is.

Adv. Christhénus van der Vijver, vir die staat, het aan die einde van die dag se hofverrigtinge genoem dat die staat wil hê daar moet na dié hamer gekyk en moontlike toetse gedoen word. Die verdediging het ingestem.

De Bruyn wou gister in kruisondervraging van Kock weet of daar bloed op die kiere van Lotz se aanvaller moes wees, waarop Kock geantwoord het enigiets van die middellyf af ondertoe was haalbaar vir spatsels.

Oor die moontlikheid of bloedspatsels in die omgewing van waar Lotz se lyk gekry is, moontlik van 'n ander bron kon wees – sooo dat die aanvaller self beseer is of bloed moontlik van die moordwapen kon afdrup – het Kock onder kruisondervraging gesê dit is sy mening dat al die bloedspatsels om die lyk van stompgeweld afkomstig is.

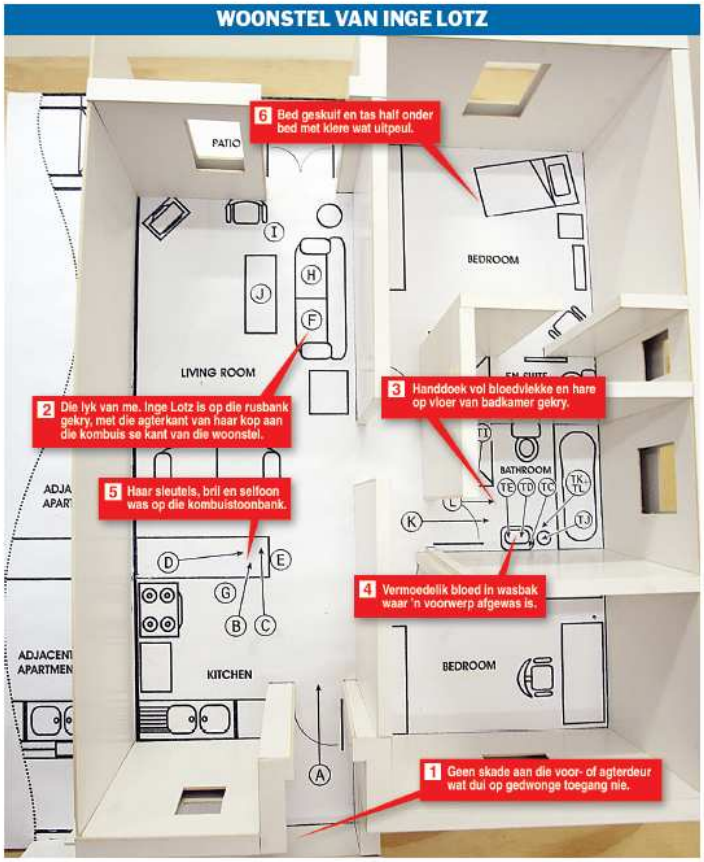
Oor die toestand van die moordtoneel wou Van der Vijver weet in watter konteks Kock die opmerking gemaak het dat die toneel nie onnet was nie.

Die regter het gevra of Kock byvoorbeeld verwys na 'n huis waar ingebreek is. Kock het geantwoord al die waardevolle items was daar en die toneel was "skoon". Hy het weer uitgewys dat daar geen gedwonge toegang was nie.

Lotz is op 16 Maart 2005 in haar woonstel vermoor. Van der Vyver ontken skuld op 'n aanklag van moord.

Die saak is tot Maandag uitgestel.

WOONSTEL VAN INGE LOTZ



'n Foto deur Esa Alexander van die skaalmodel van Lotz se woonstel is deel van die bewysstukke wat ingedien is in die Kaapse hooggeregshof en aangepas is met grafika wat van die kenmerke van die moordtoneel uitwys. GRAFIKA: JACO GROBBELAAR

Sers. Peta Davitsz, forensiese deskundige van die polisie, nadat sy gister getuig het. Foto: ESA ALEXANDER

Barnard, M. 2007. Inge Lotz: Bloed aan Fred se hamer. *Die Burger*, 16 February 2007. p. 1 (words):

Inge Lotz: Bloed aan Fred se hamer

Marelize Barnard

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Die dekoratiewe hamer, 'n ingediende bewysstuk in die hofsaak, is in Desember 2004 deur die Lotz-gesin aan Van der Vyver gegee as 'n geskenk. Dit is gegraveer "Fred 2004".

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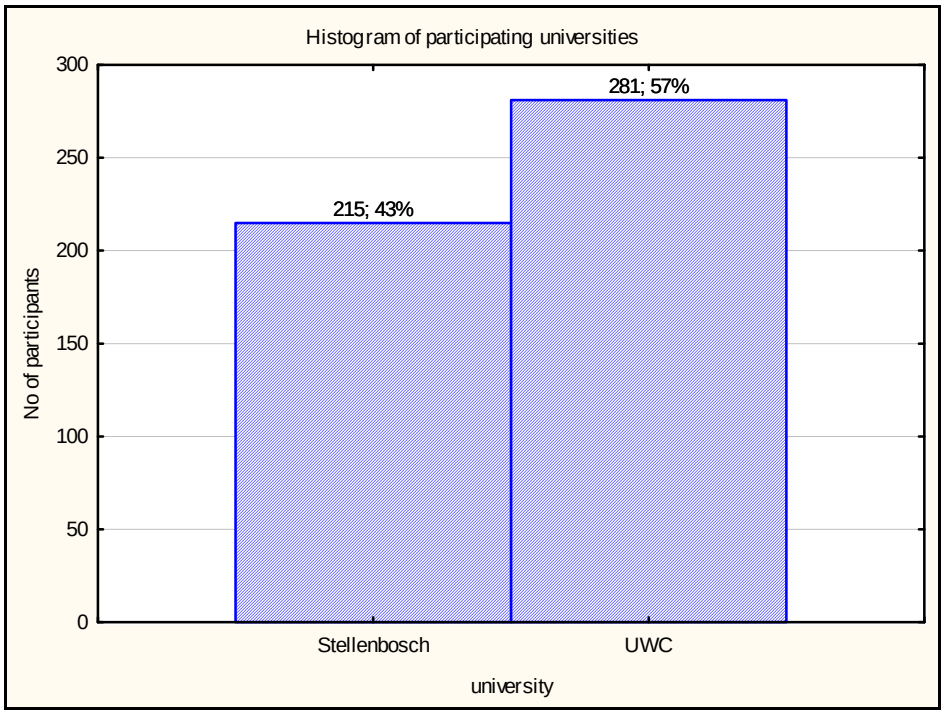
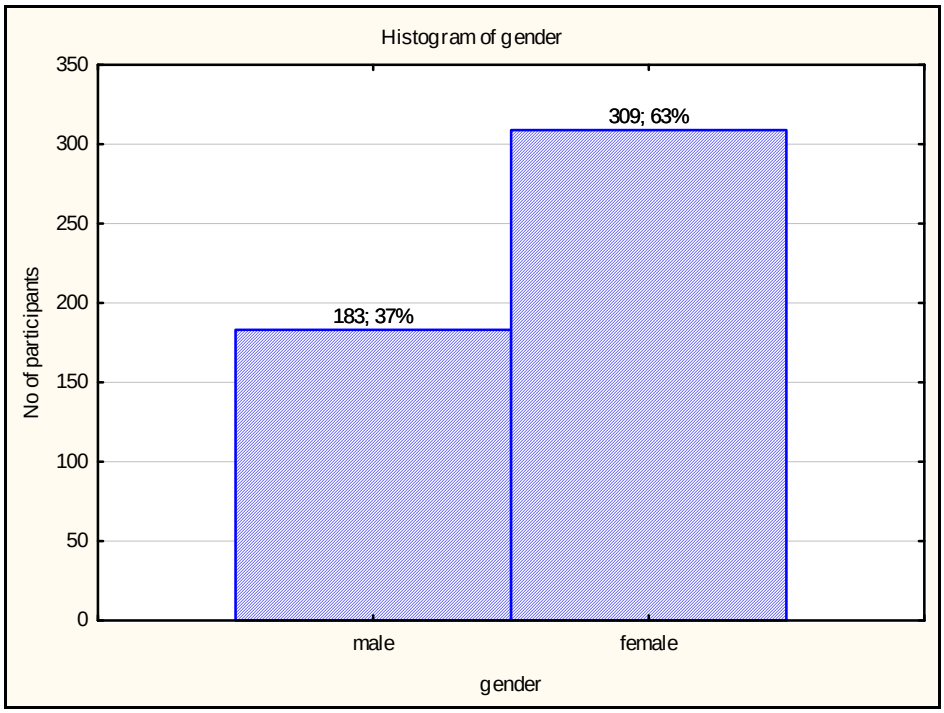
Appendix D (i) Histograms: Demographical details

Traditional variables – except nationality (b)

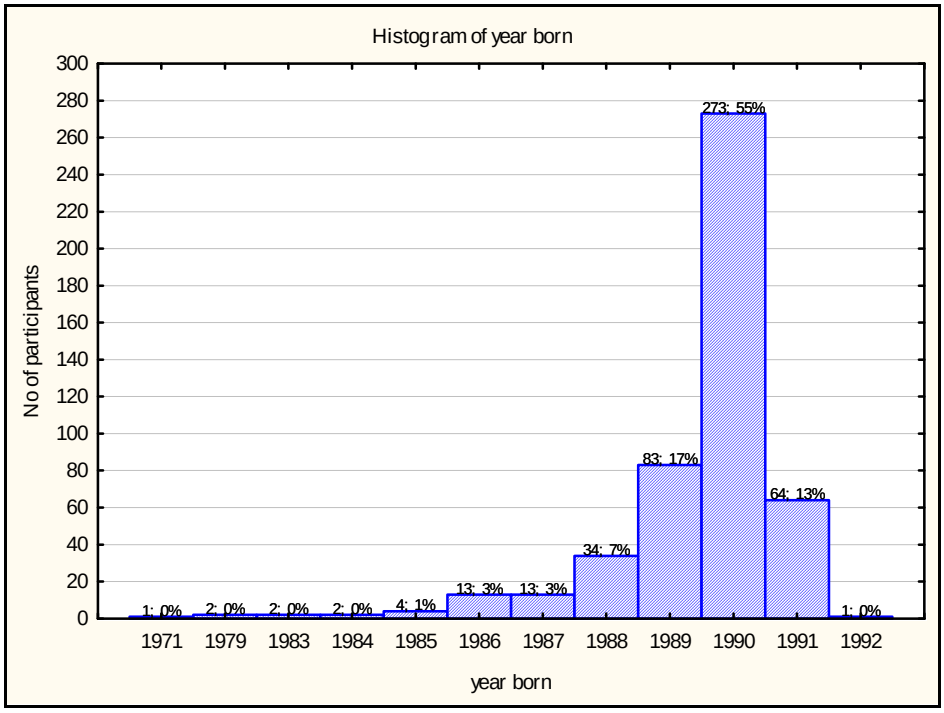
a) Universities



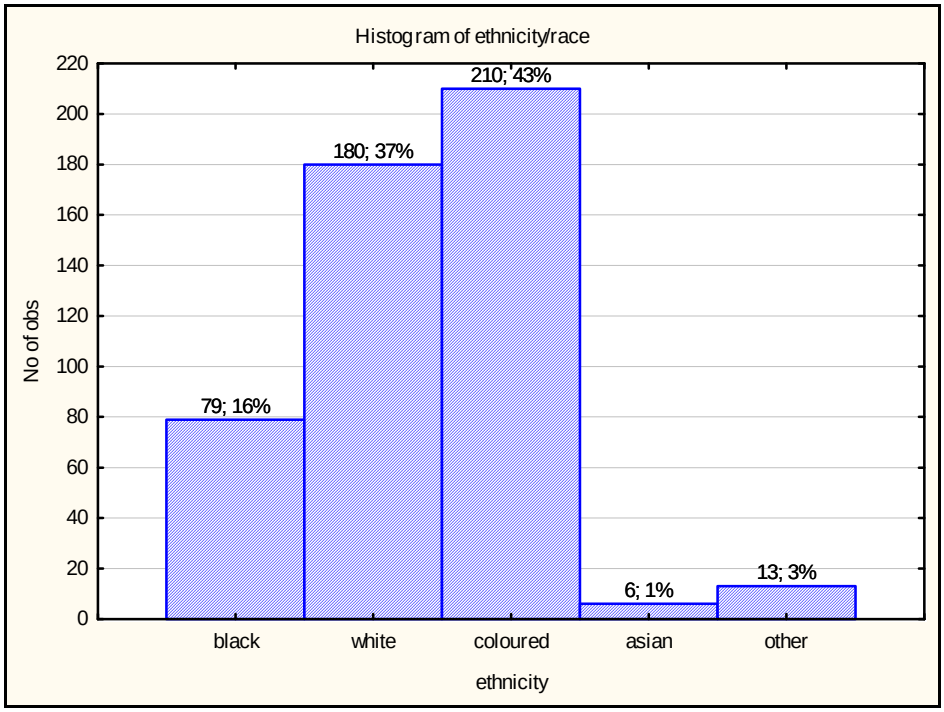
c) Sex



d) Years in which participants were born

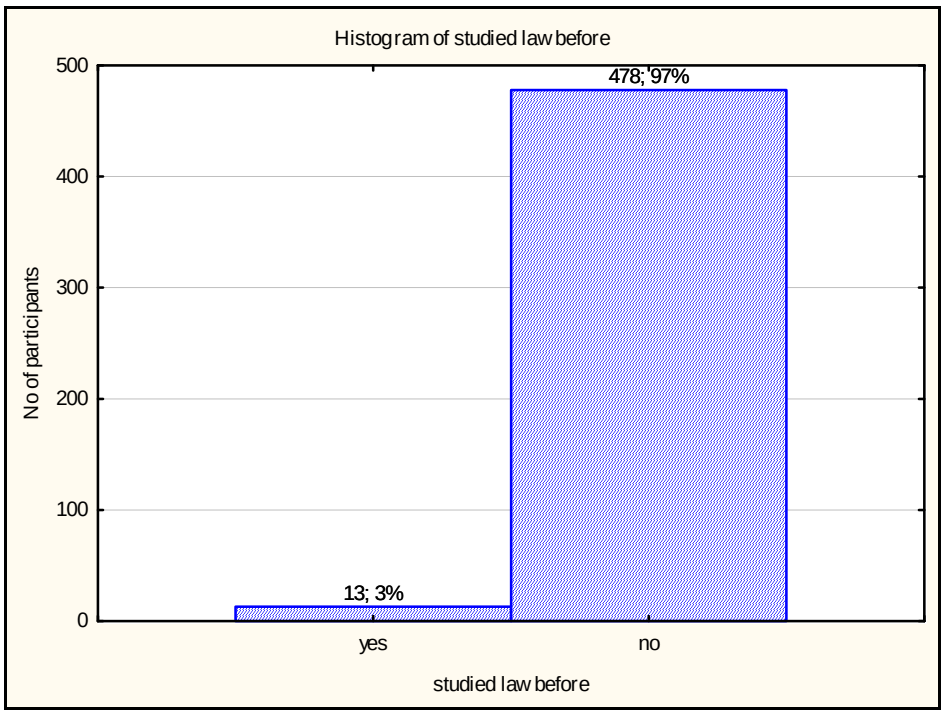


e) Ethnicity/race

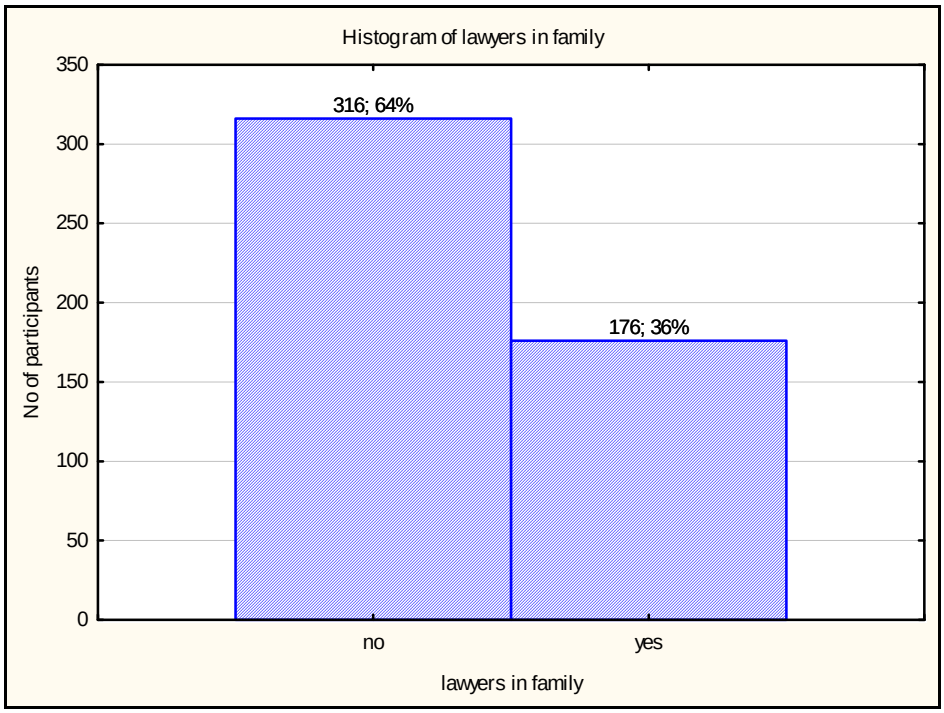


Other variables

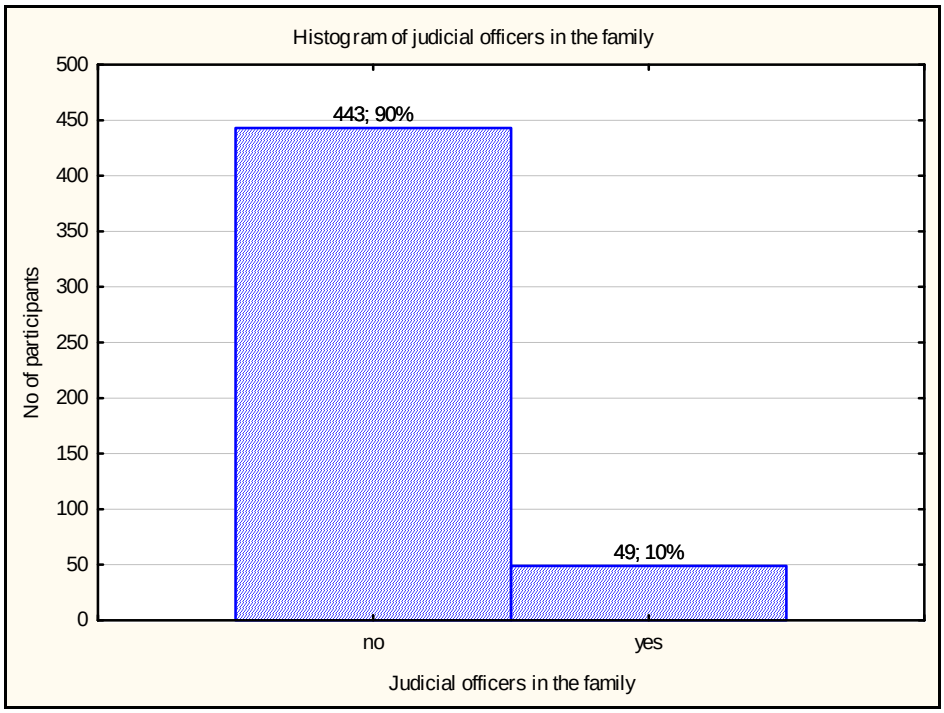
f) Participants who have studied law before



f) Coming from a legal culture: Lawyers in the family



f) Coming from a legal culture: Judicial officers in the family

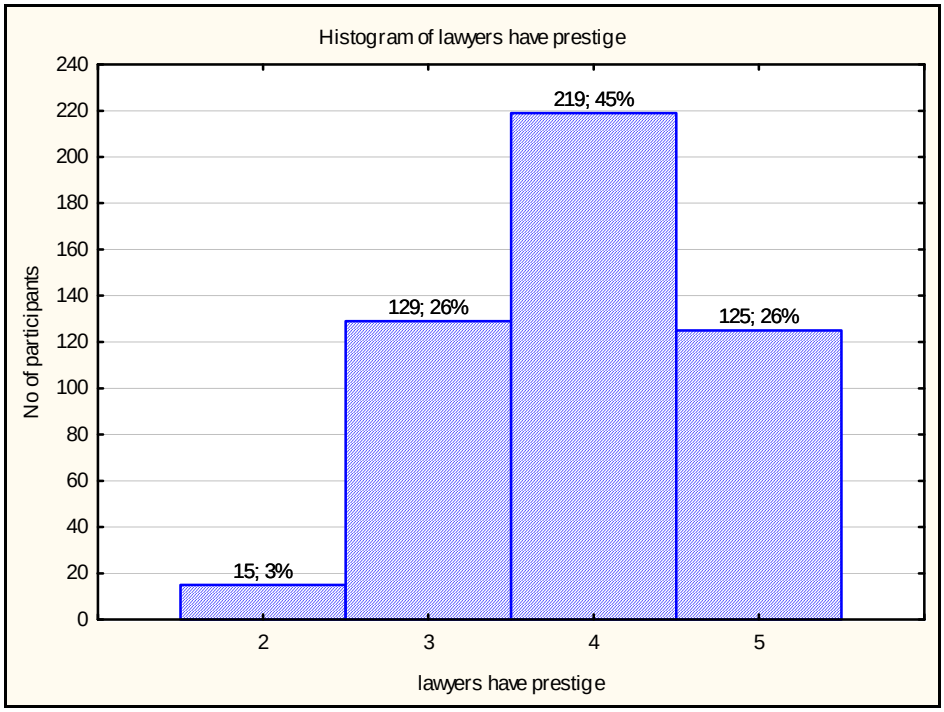


Appendix D (ii) Histograms: Legal consciousness

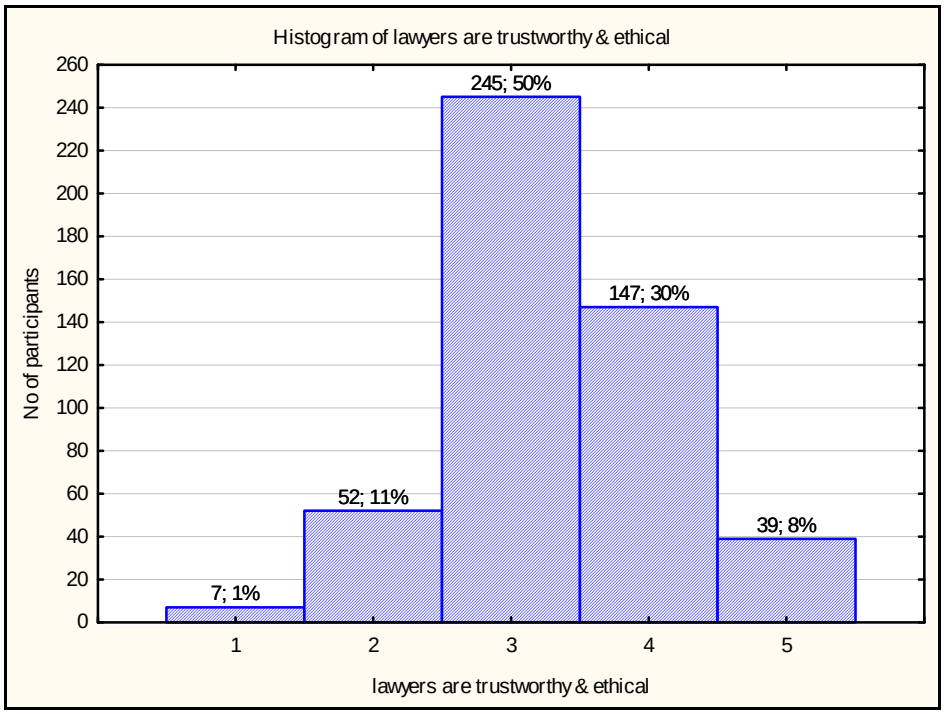
Histograms: Legal consciousness (lawyers)

Take note that on the horizontal bar, 1 = strongly disagree; 2 = disagree; 3 = neutral; 4 = agree; and 5 = strongly agree with the statement.

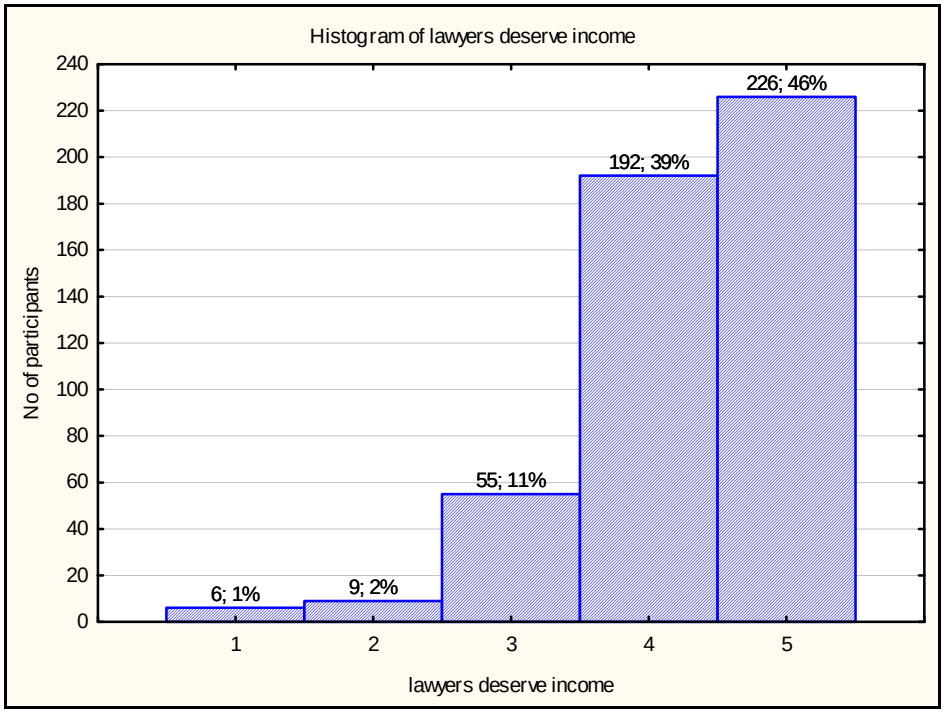
a) Lawyers have a lot of prestige



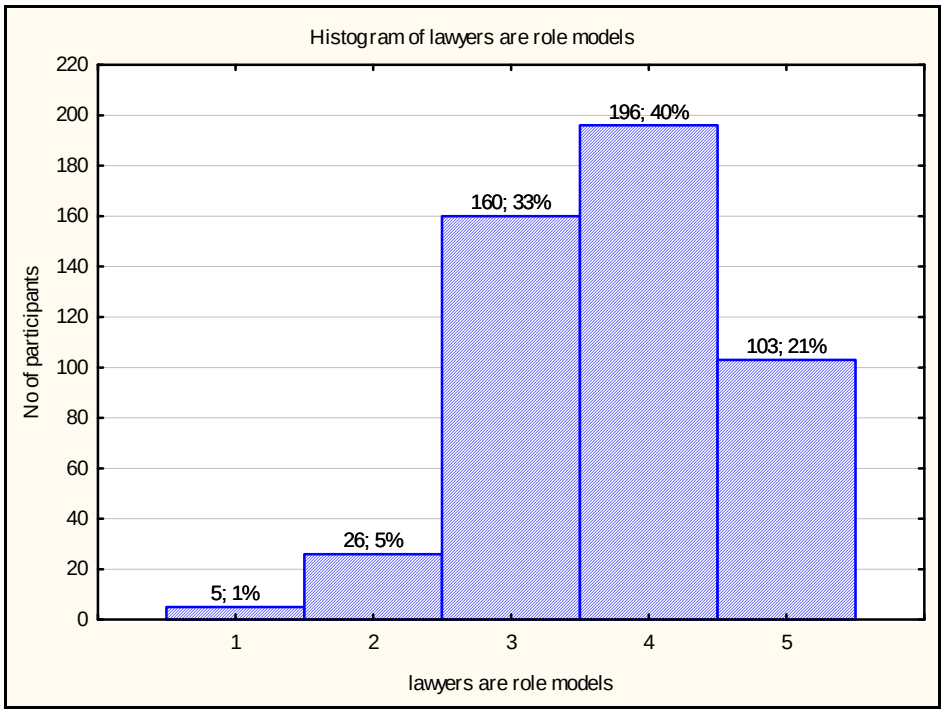
b) Lawyers are trustworthy and ethical



c) Lawyers deserve the income they earn



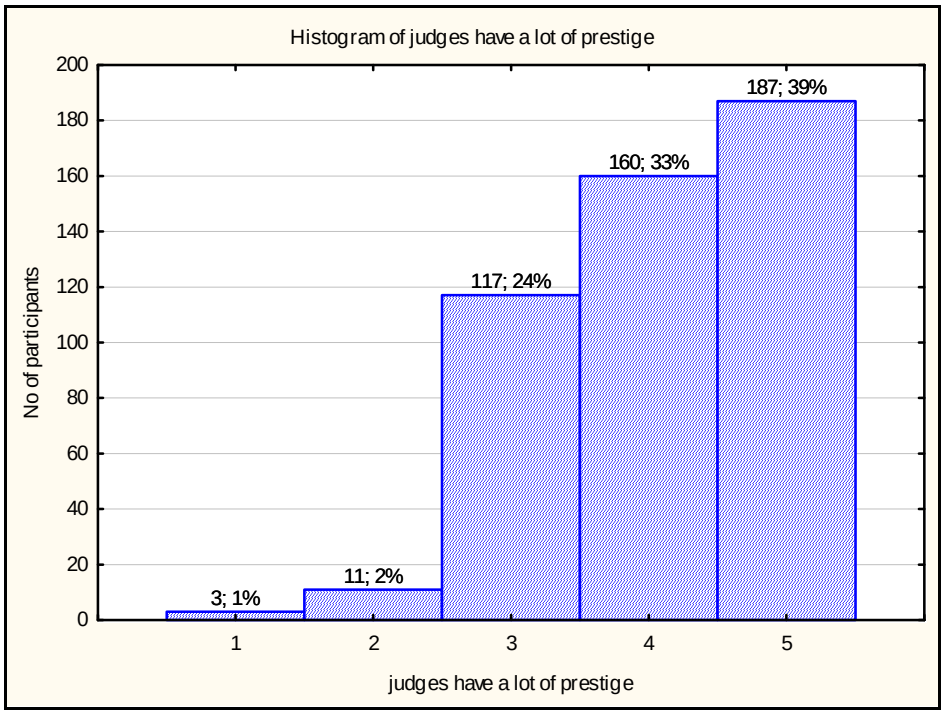
d) Lawyers are role models in society



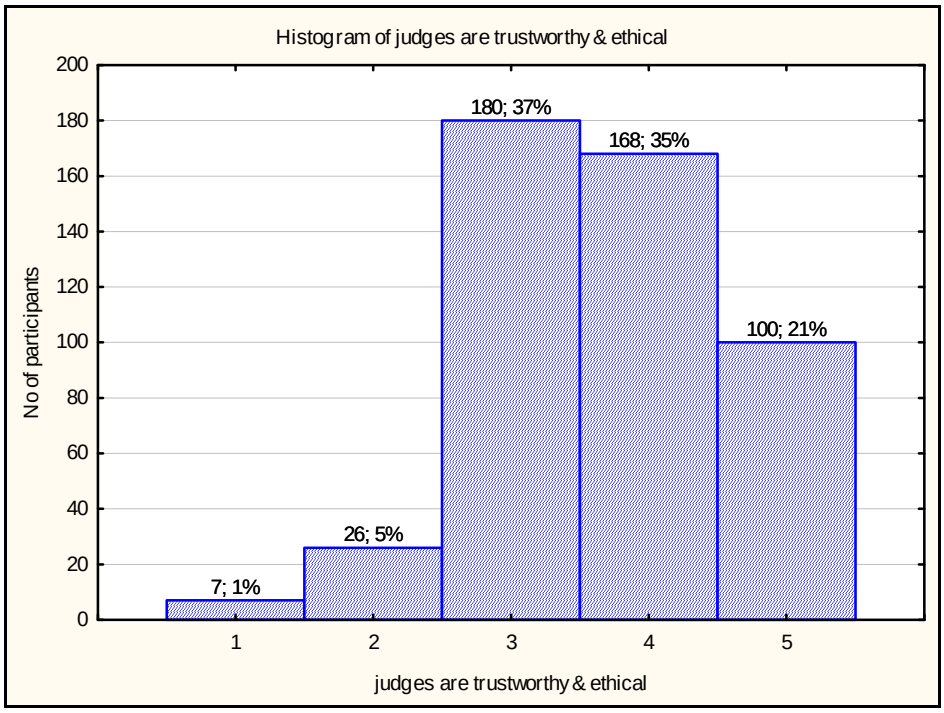
Histograms: Legal consciousness (judicial officers)

Take note that on the horizontal bar, 1 = strongly disagree; 2 = disagree; 3 = neutral; 4 = agree; and 5 = strongly agree with the statement.

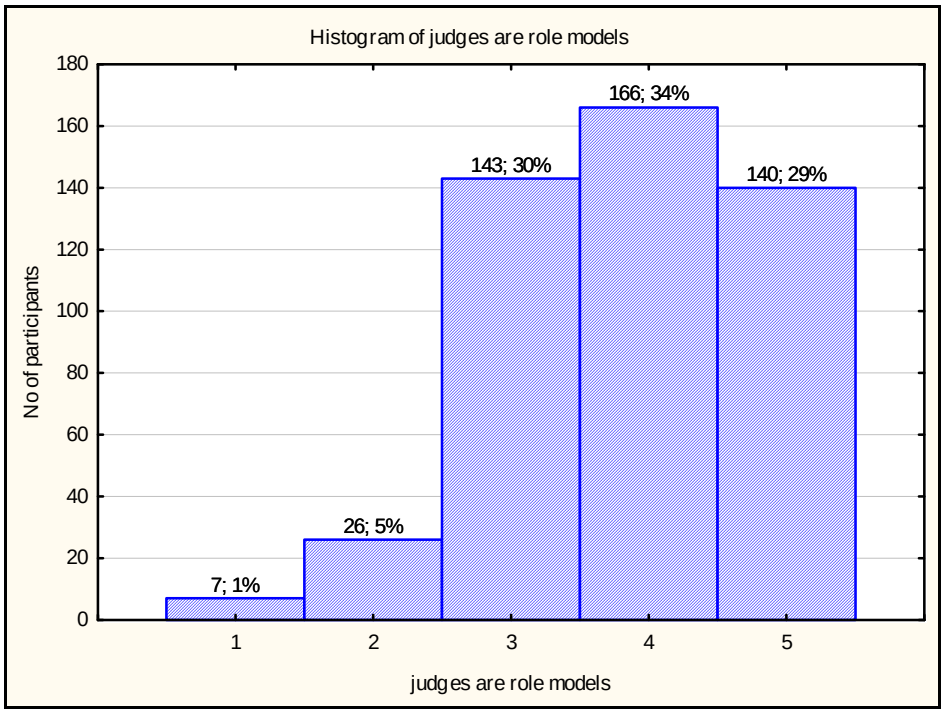
a) Judicial officers have a lot of prestige



b) Judicial officers are trustworthy and ethical



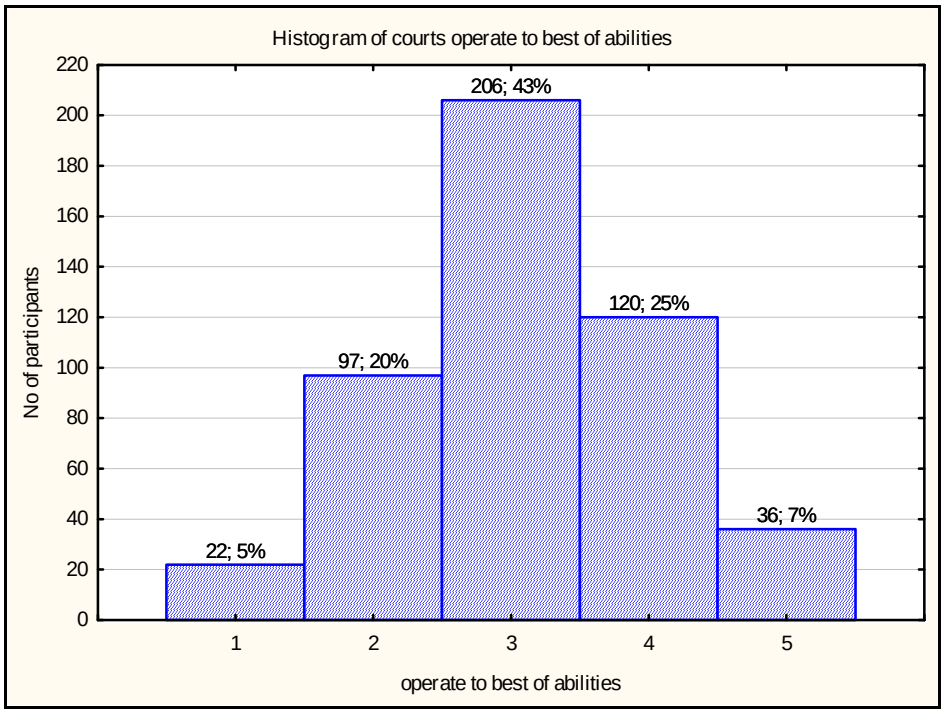
c) Judges are role models in society



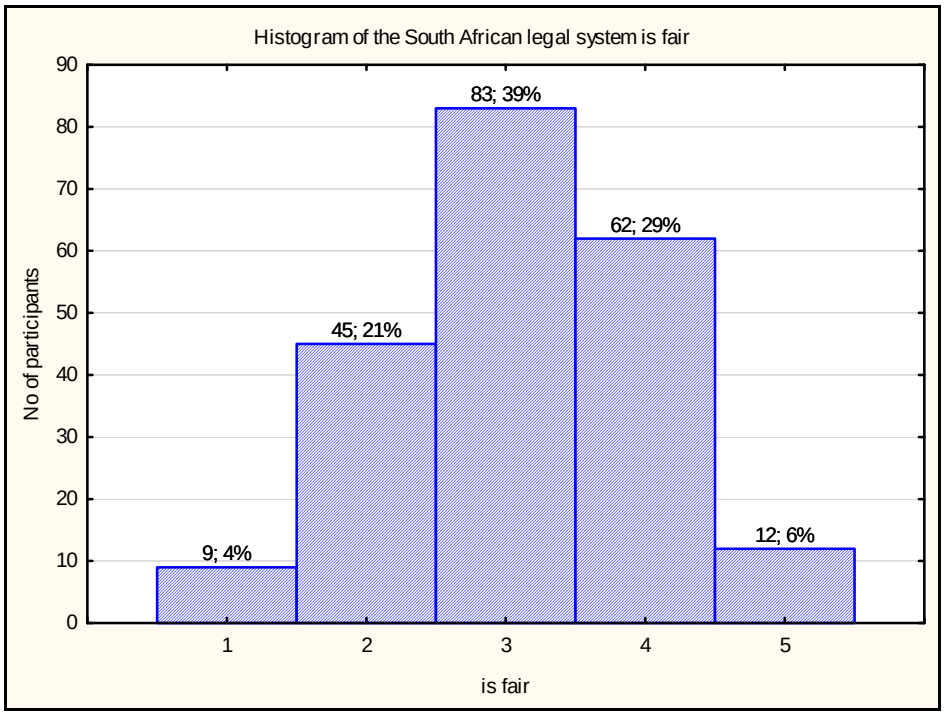
Histograms: Legal consciousness (South African legal system and courts)

Take note that on the horizontal bar, 1 = strongly disagree; 2 = disagree; 3 = neutral; 4 = agree; and 5 = strongly agree with the statement.

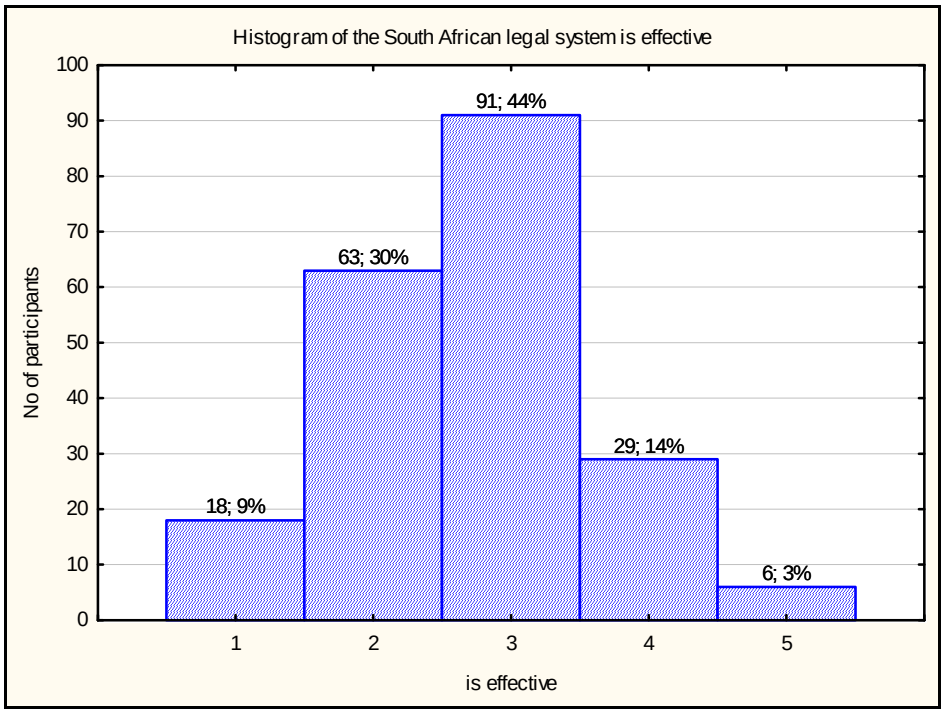
a) Courts operate to the best of their abilities



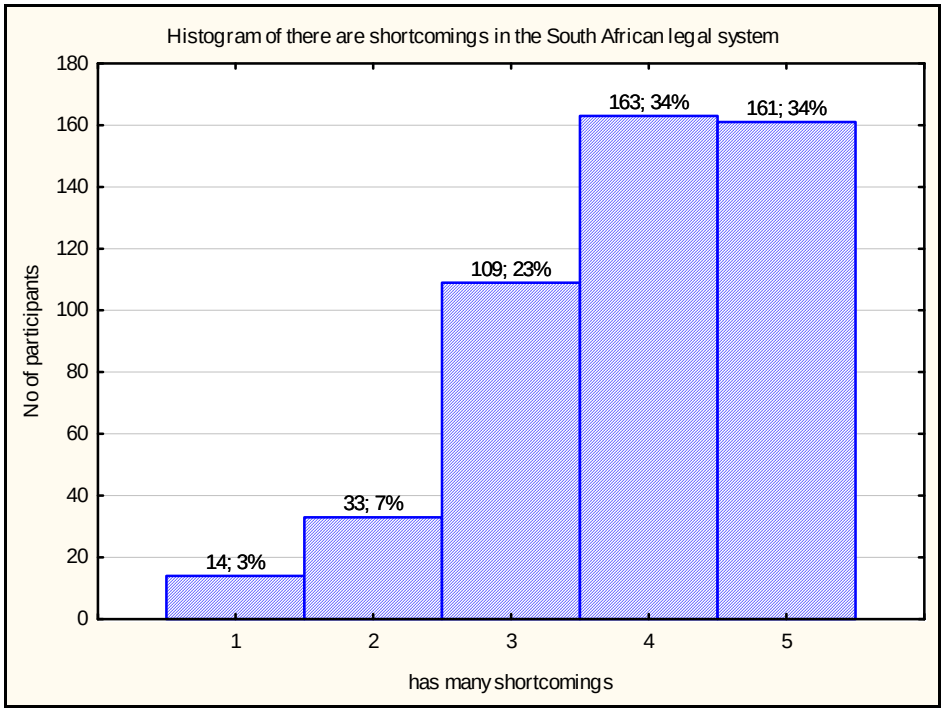
b) The South African legal system is fair (US only*)



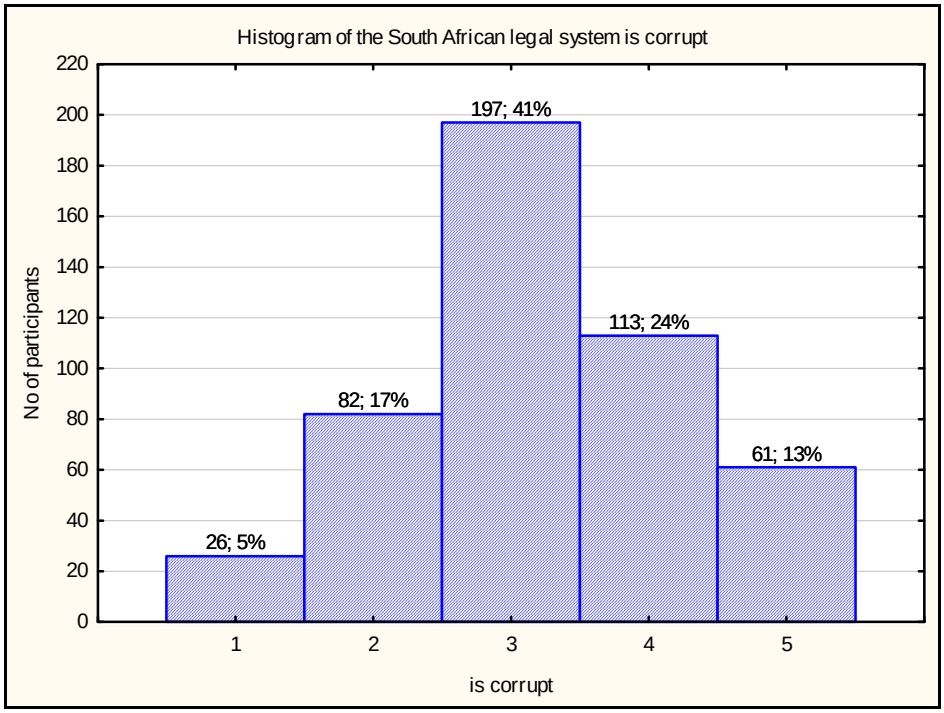
c) The South African legal system is effective (US only*)



d) The South African legal system has many shortcomings



e) The South African legal system is corrupt



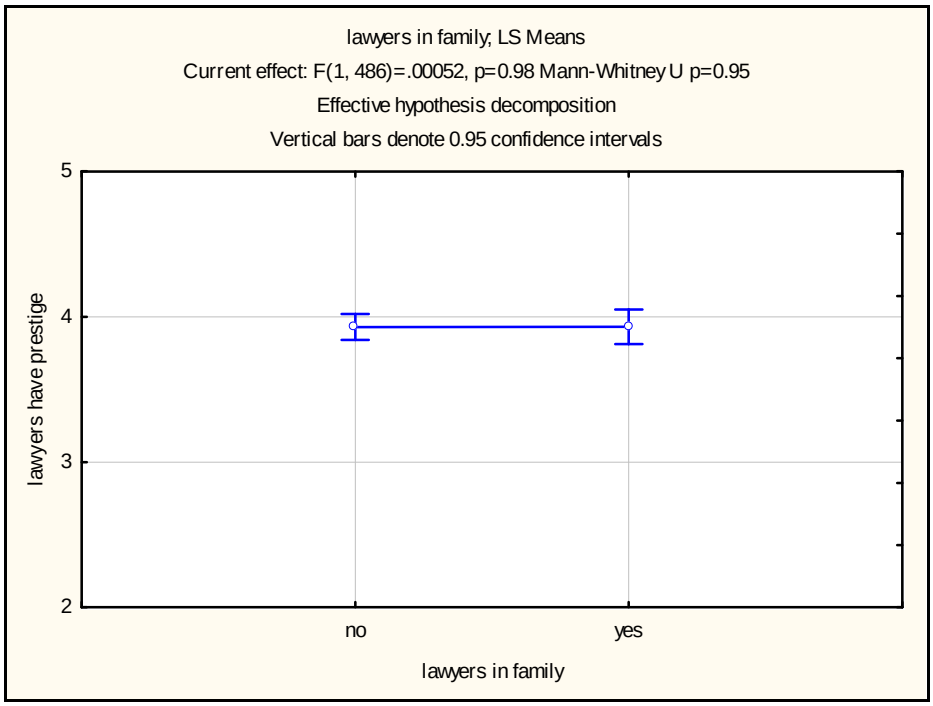
Appendix D (iii): Coming from a legal culture and opinions of lawyers

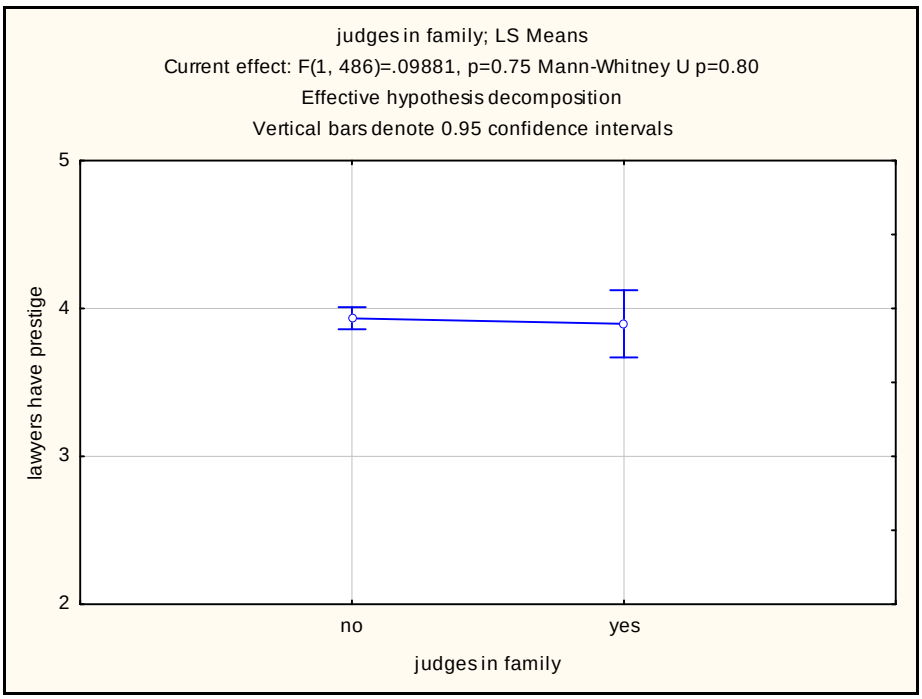
As noted in Chapter 4, one of the hypotheses was that students coming from a legal culture might have a different opinion of lawyers, judicial officers and the South African legal system than students not having judges and/or lawyers in the family.

This hypothesis was proven largely wrong however – as is illustrated below with the following histograms. Every statement was considered and correlated to whether participants had lawyers or judicial officers (respectively) in the family.

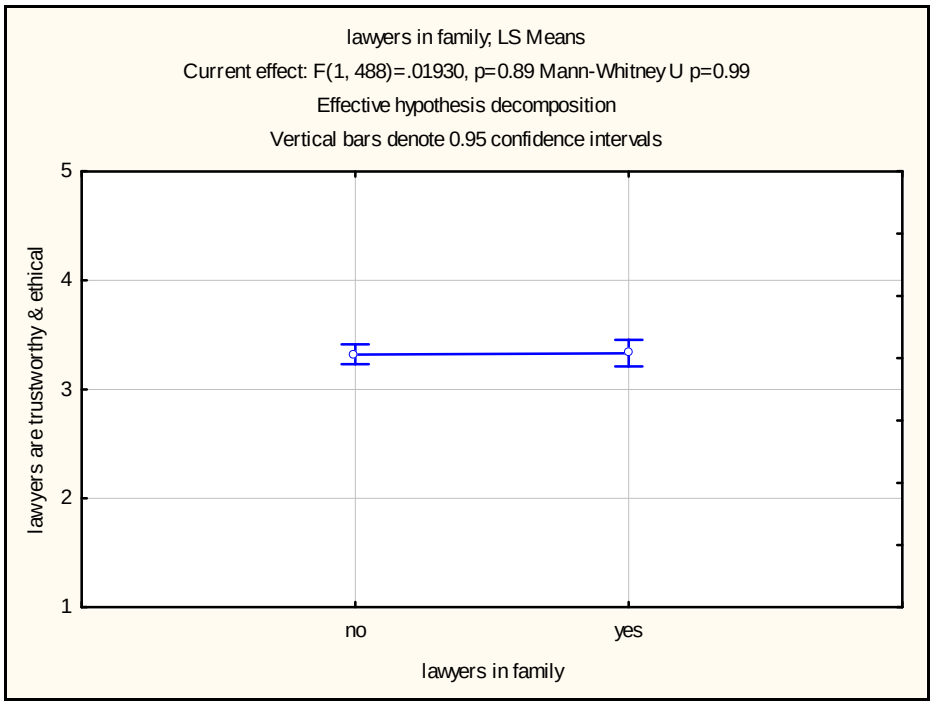
The findings are represented in separate tables below.

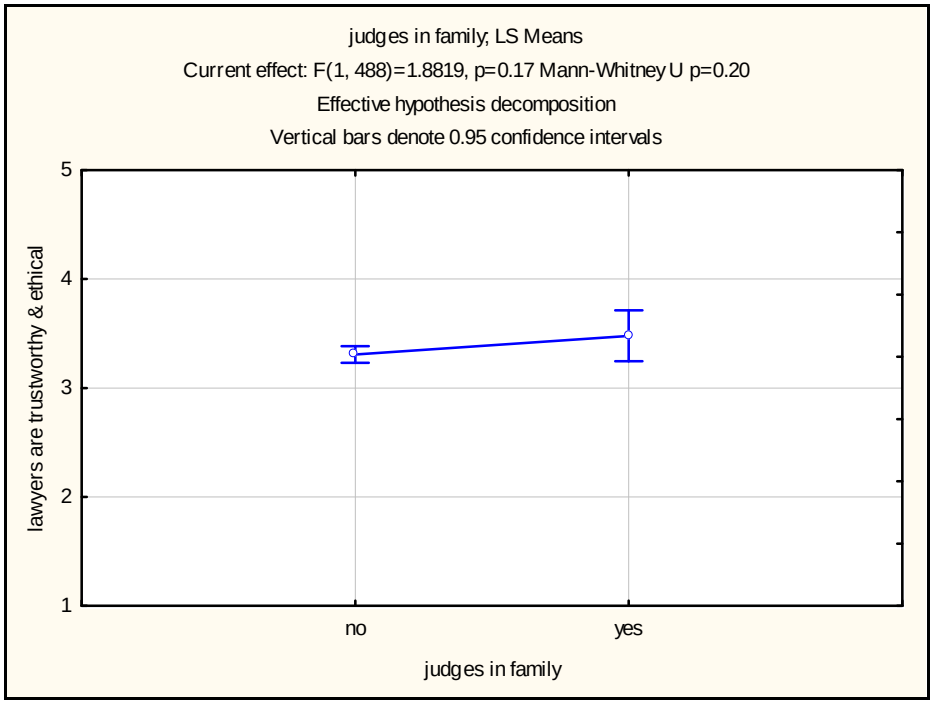
a) Lawyers have a lot of prestige



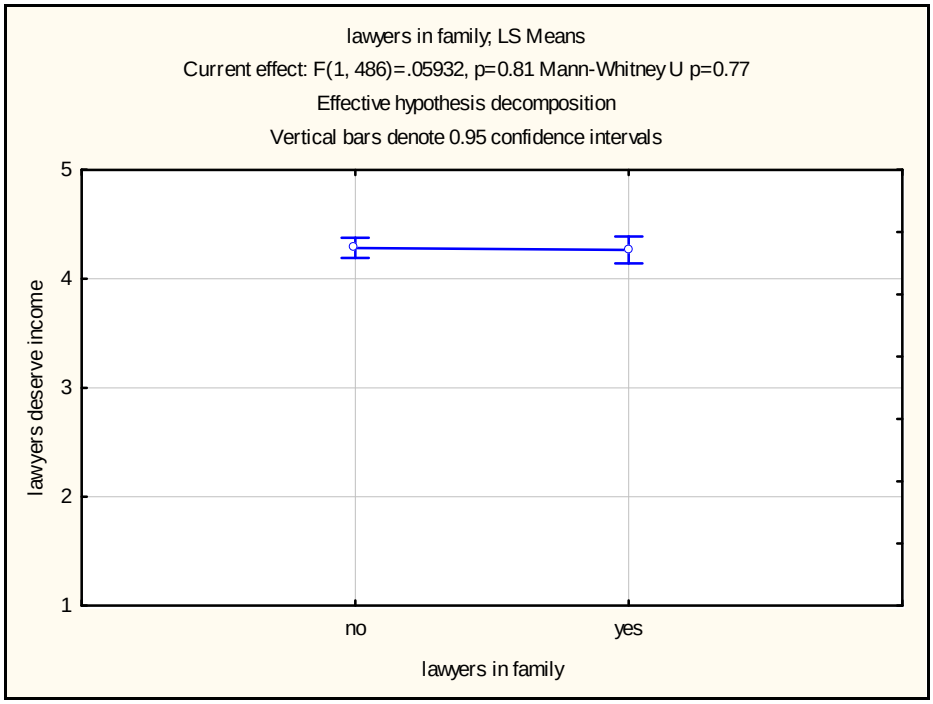


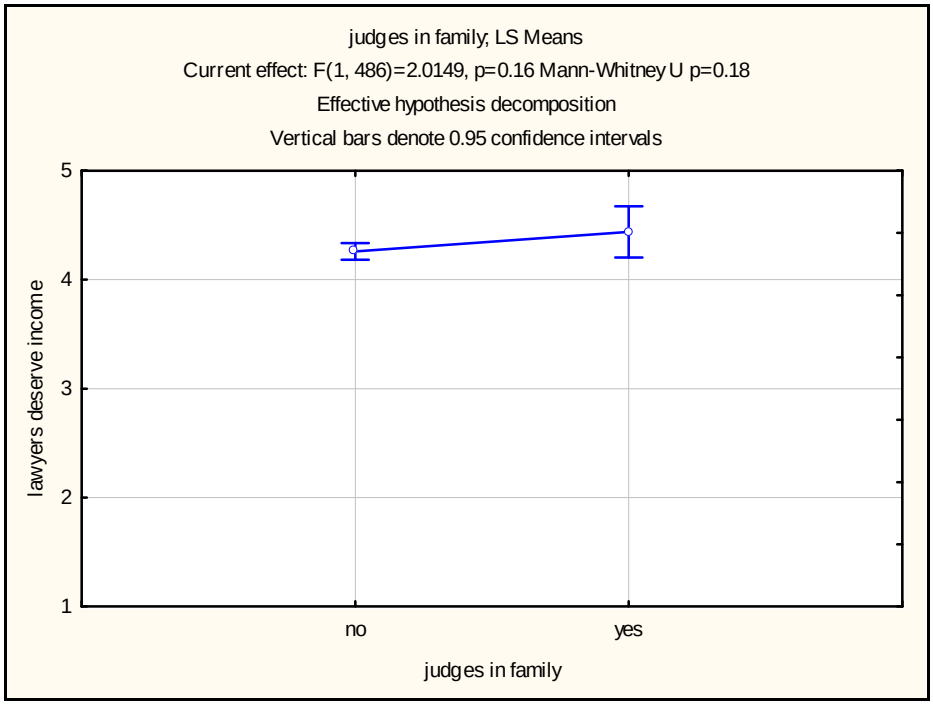
b) Lawyers are trustworthy and ethical



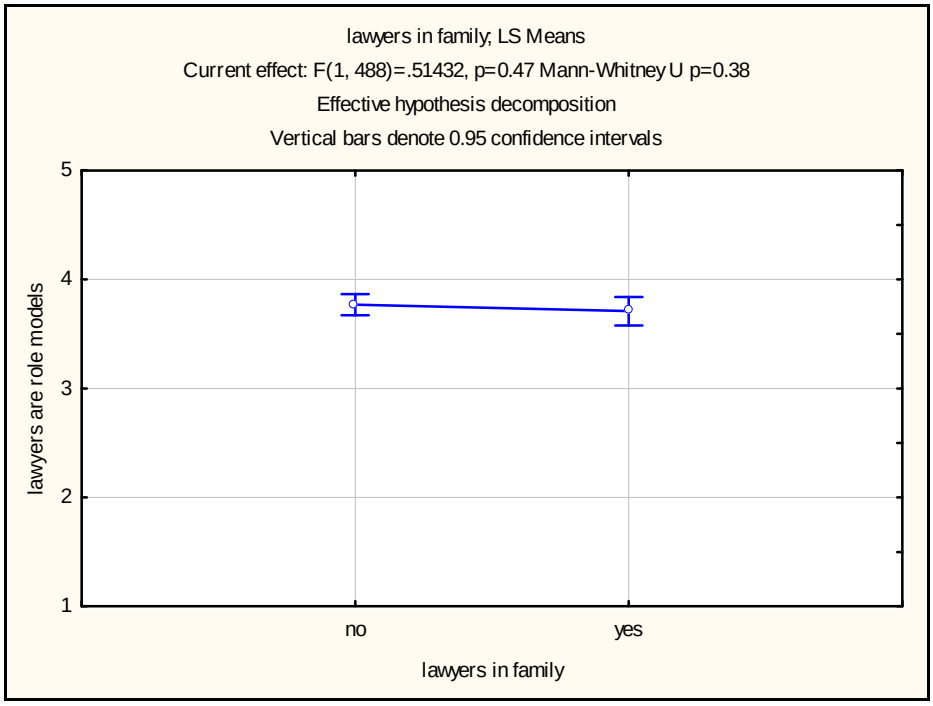


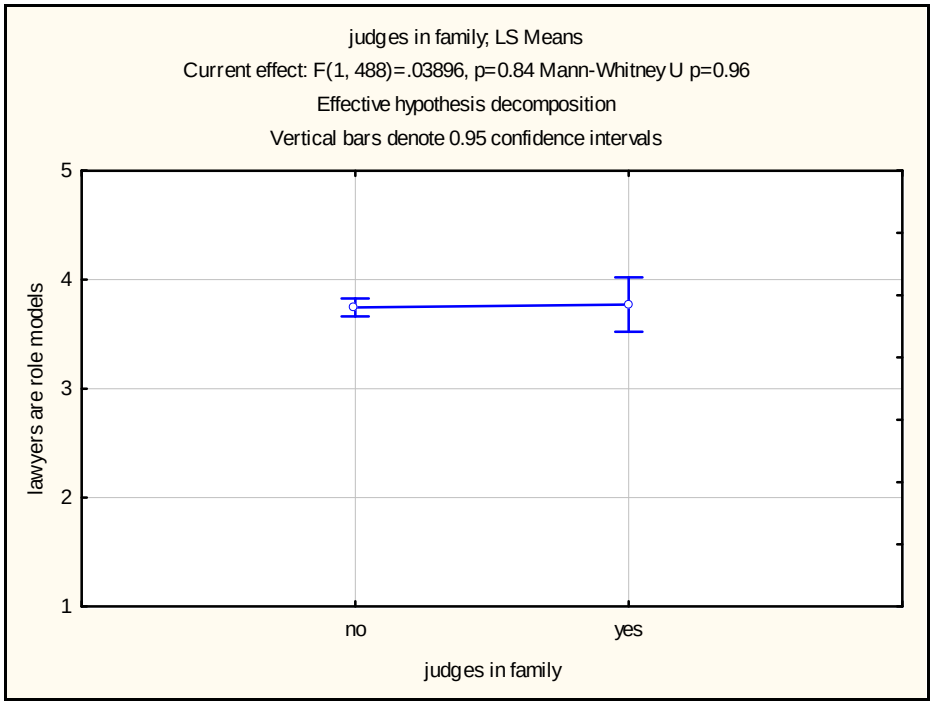
c) Lawyers deserve the income they earn





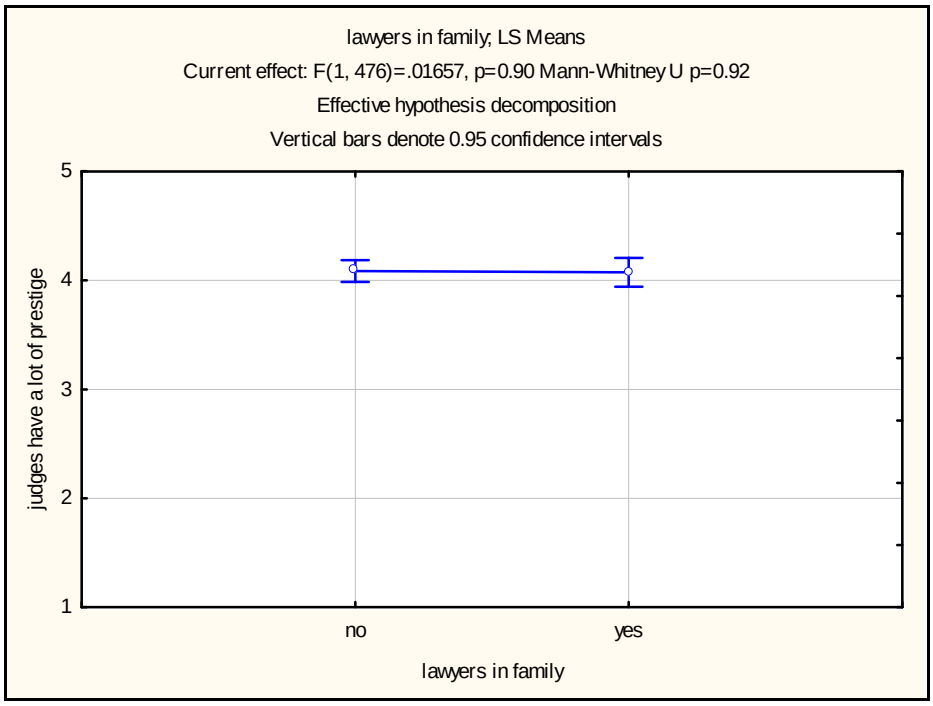
d) Lawyers are role models in society

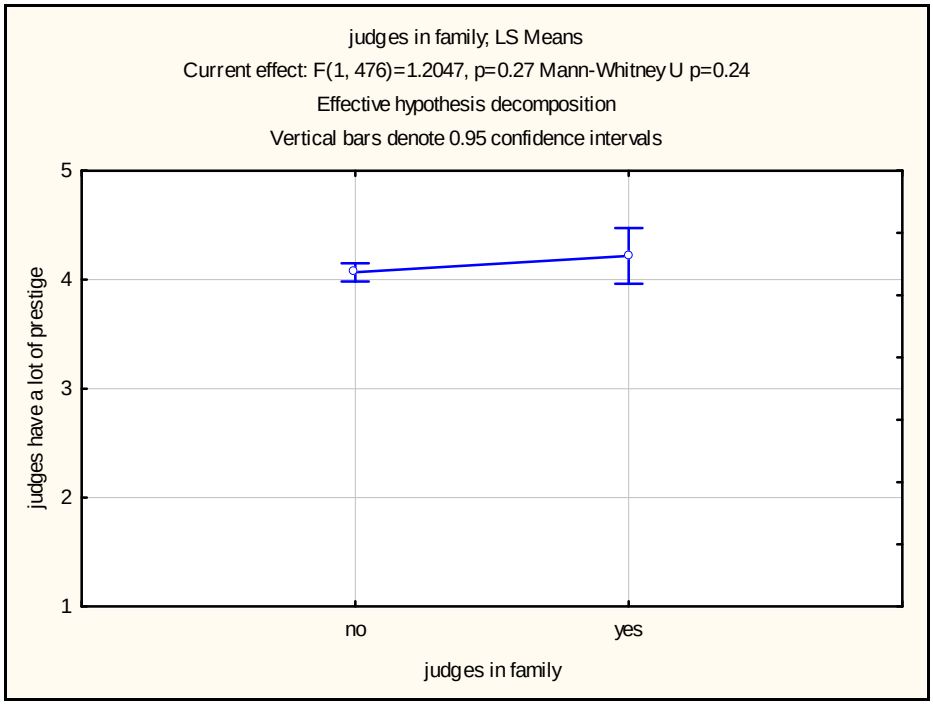




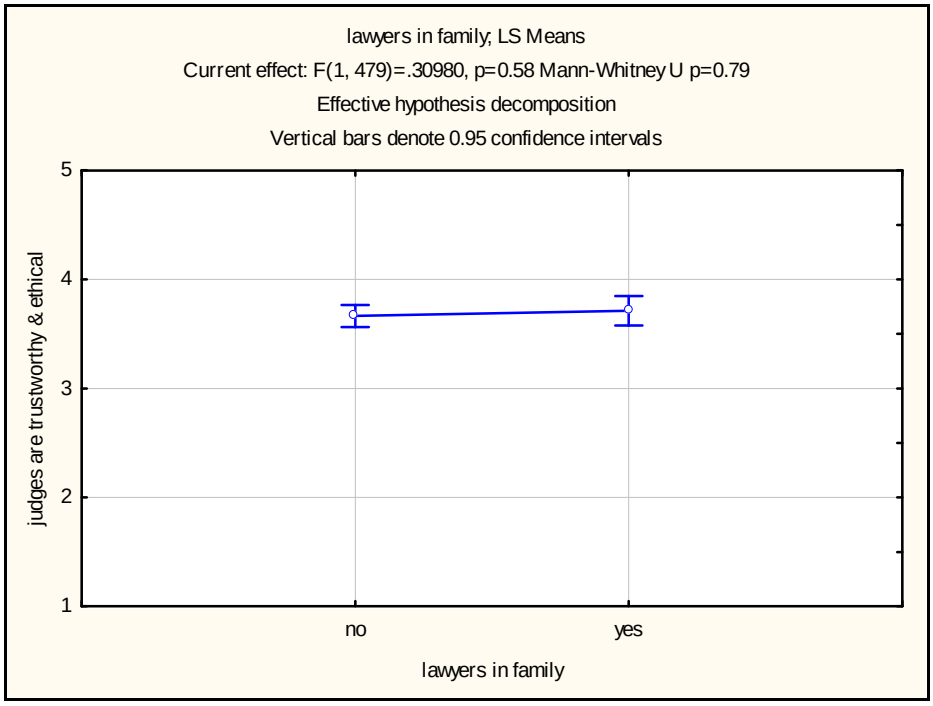
Coming from a legal culture and opinions of judicial officers

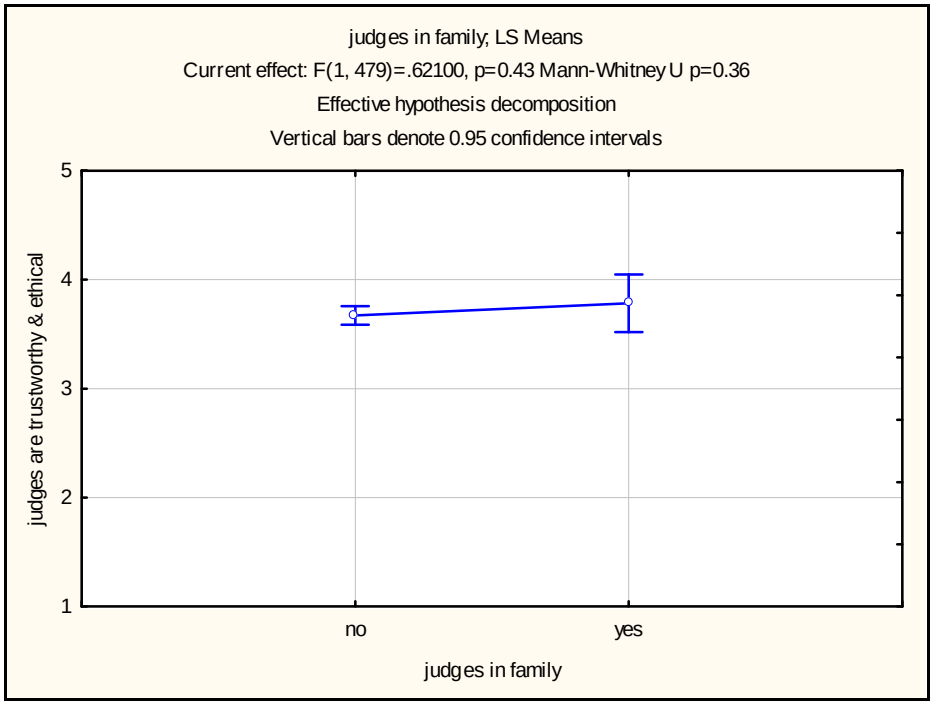
a) Judicial officers have a lot of prestige



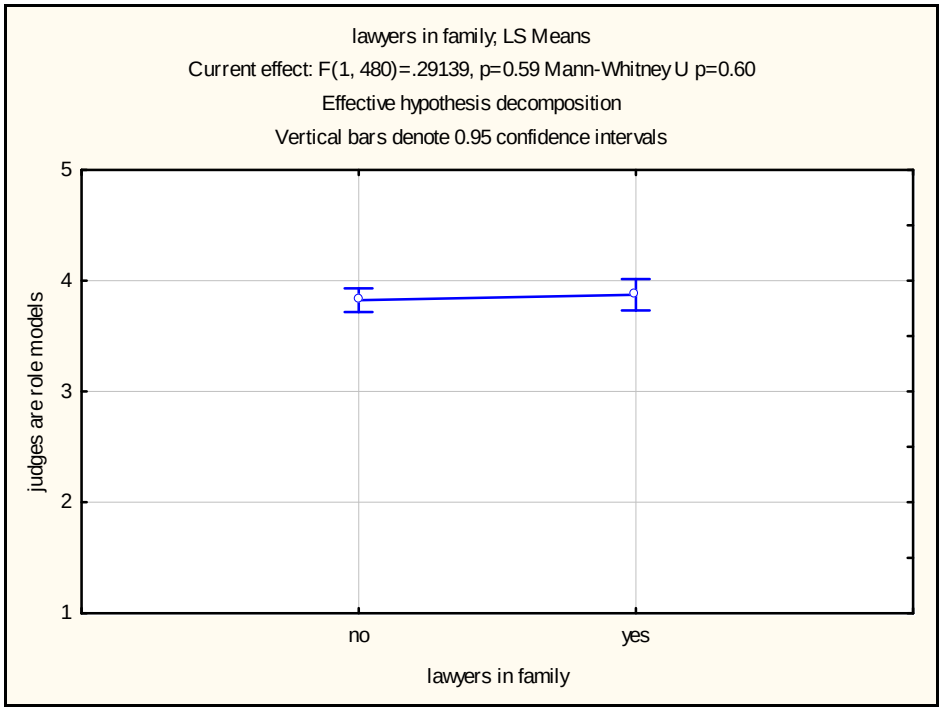


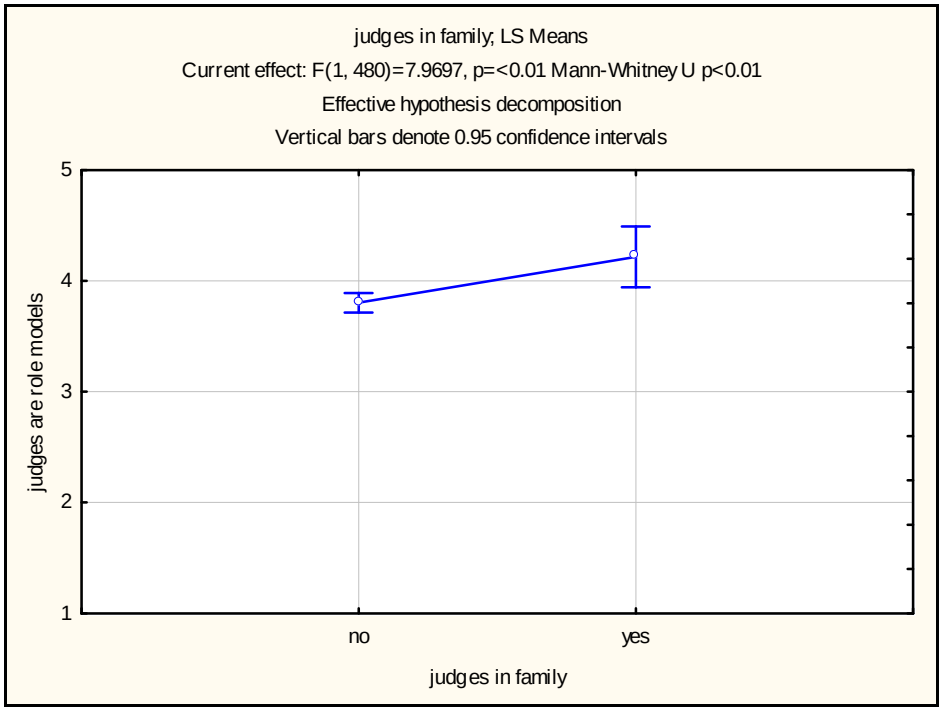
b) Judicial officers are trustworthy and ethical





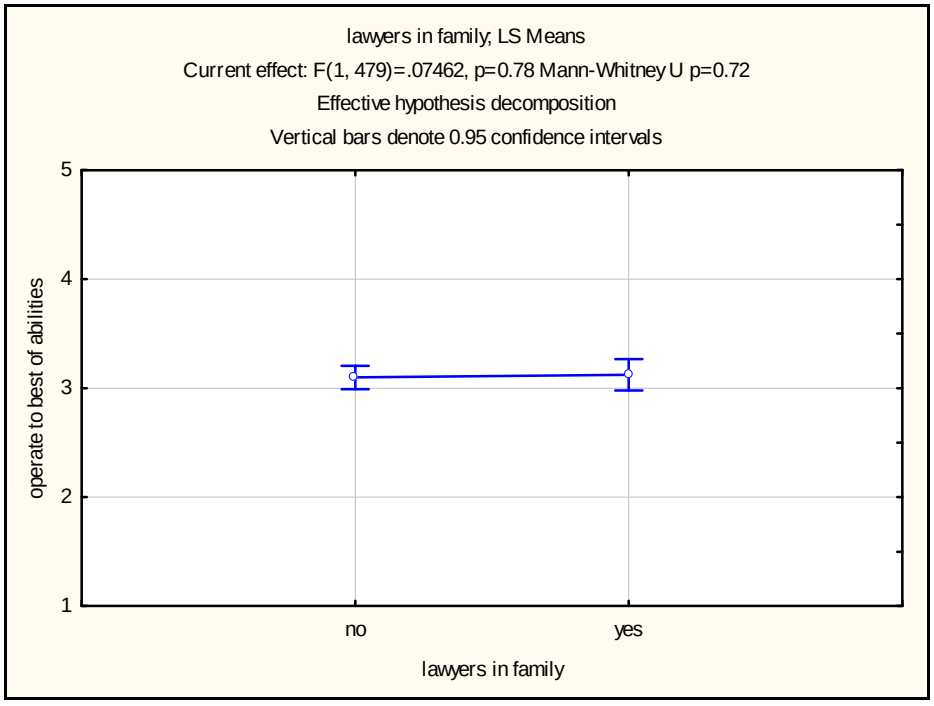
c) Judges are role models in society

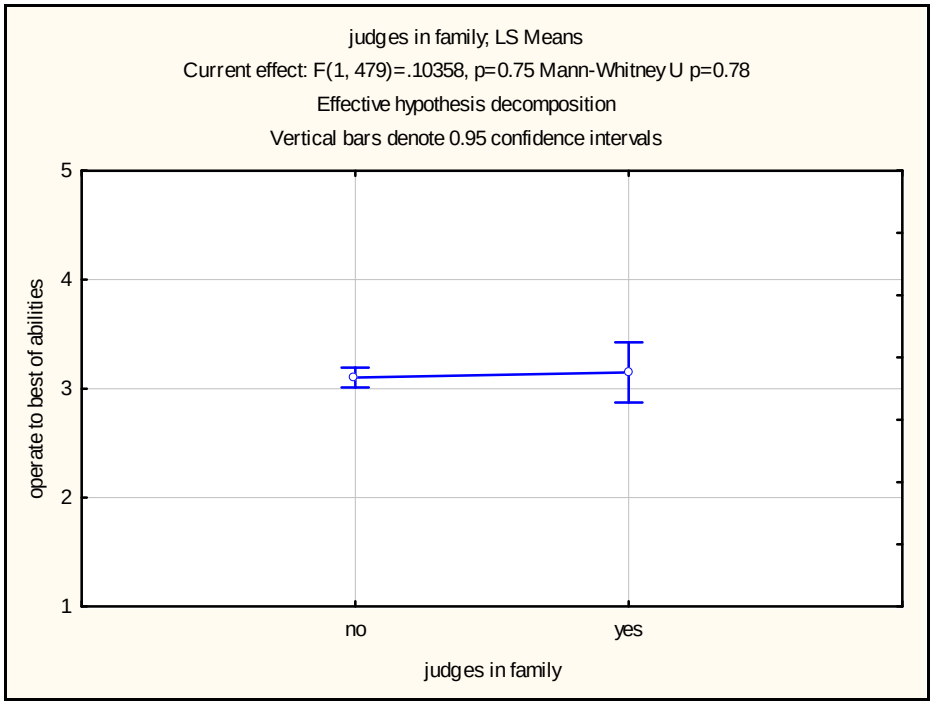




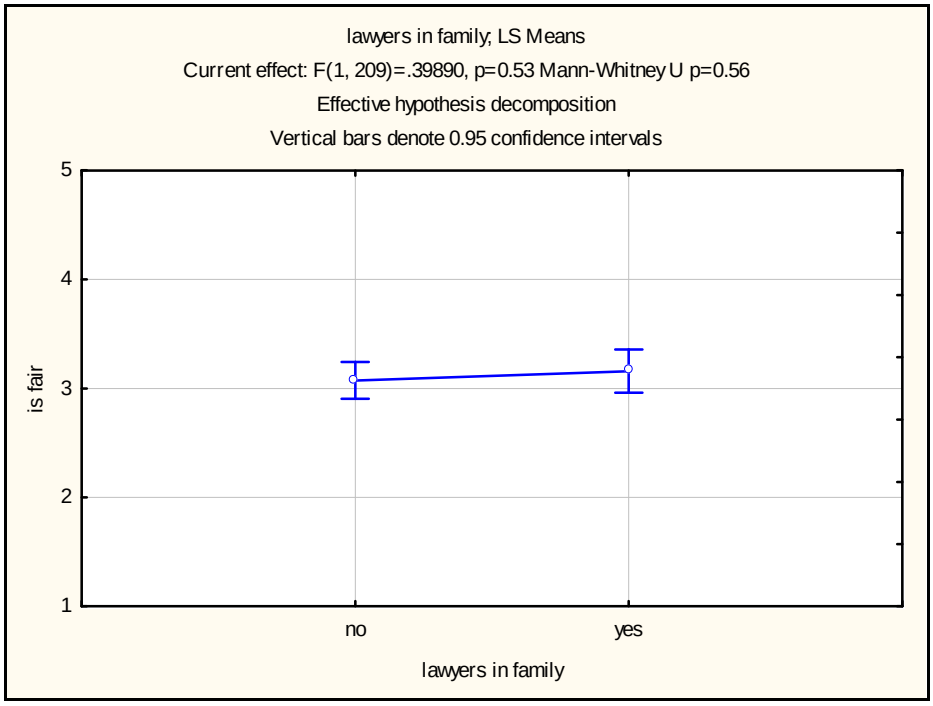
Coming from a legal culture and opinions of the South African legal system

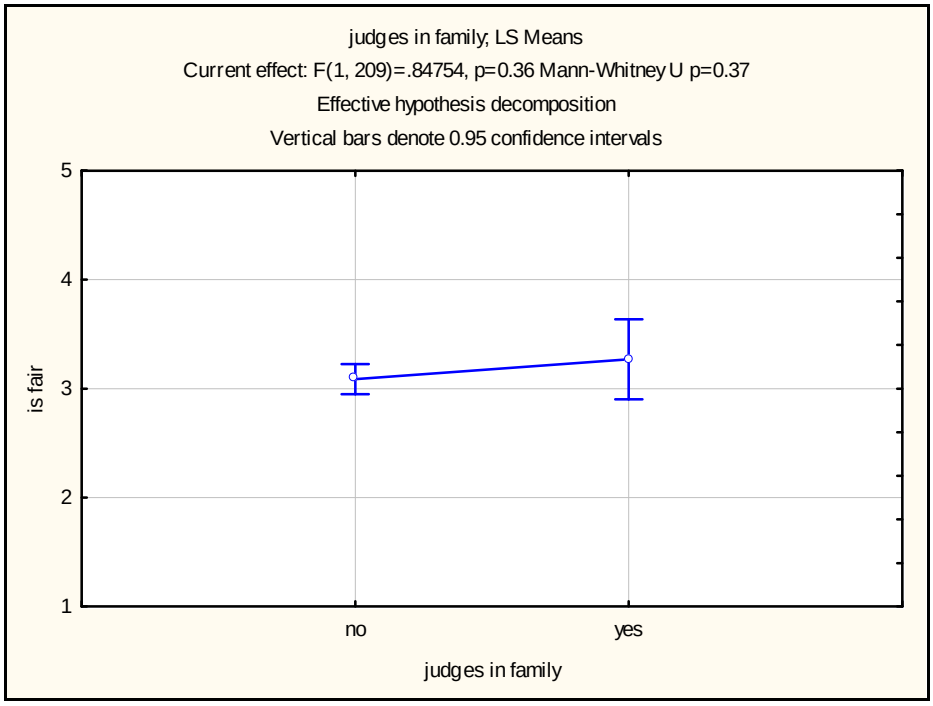
a) Courts operate to the best of their abilities



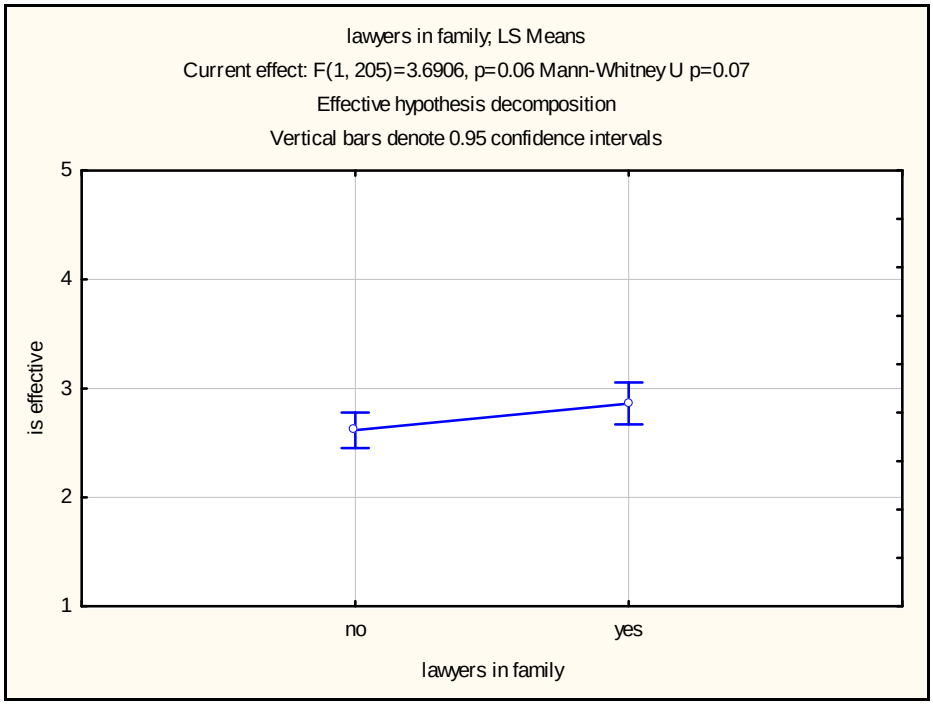


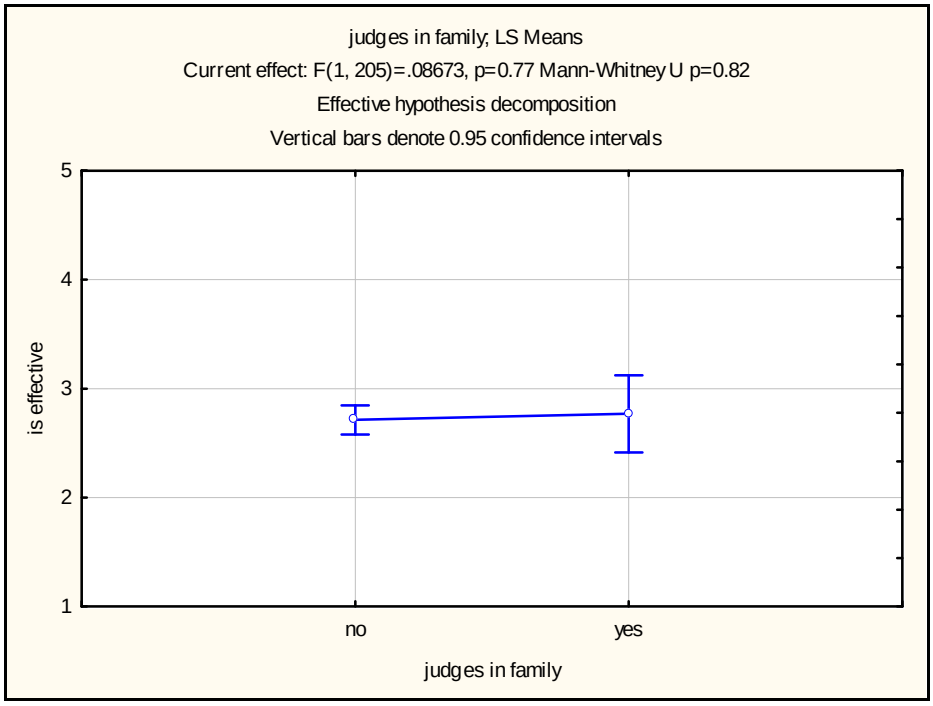
b) The South African legal system is fair (US only*)



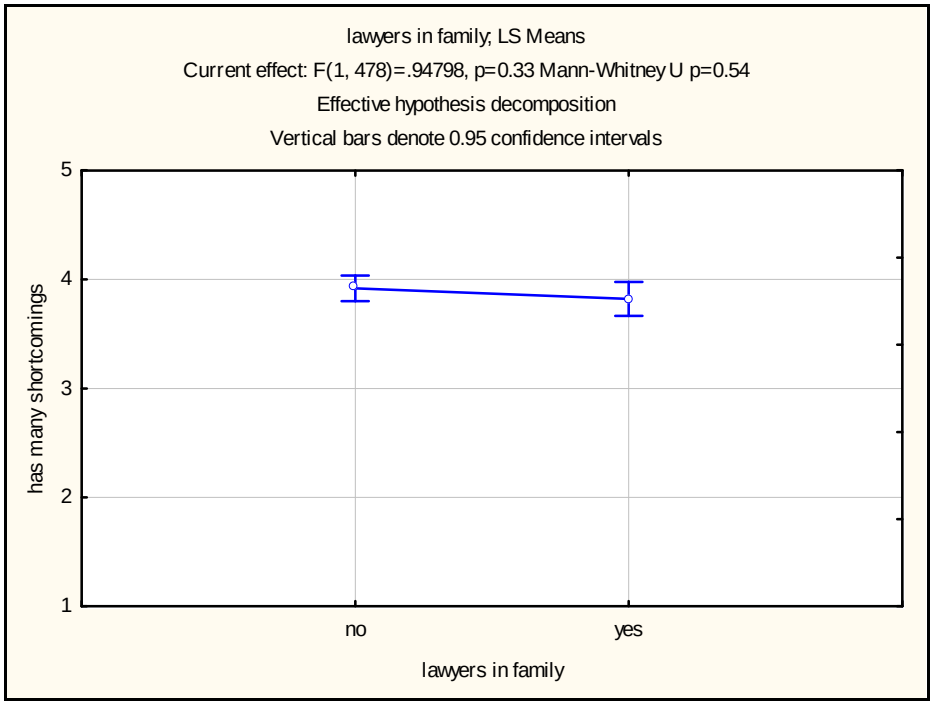


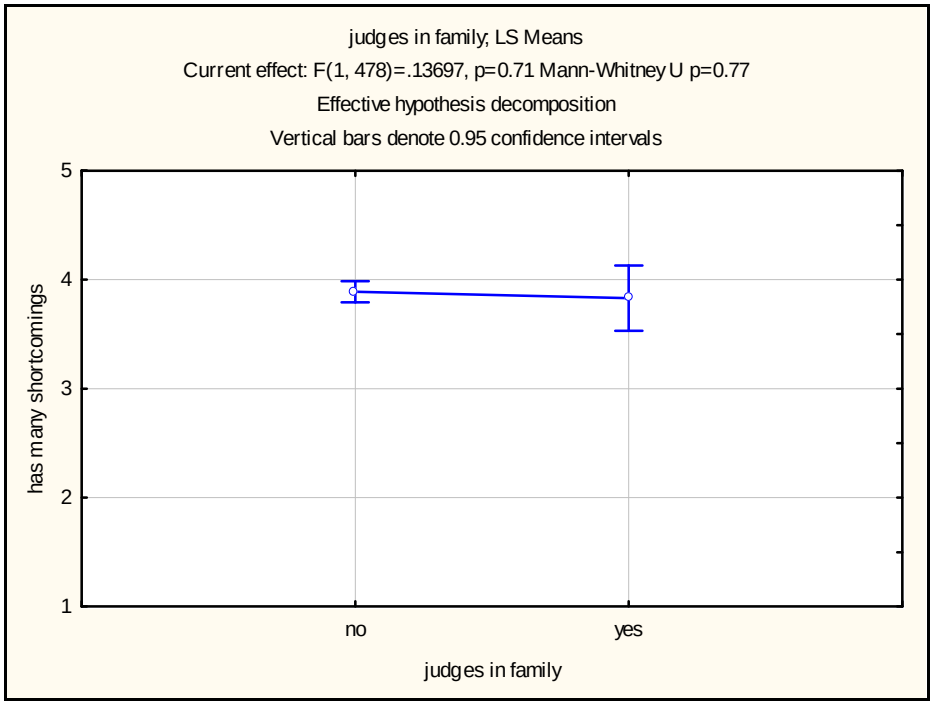
c) The South African legal system is effective (US only*)



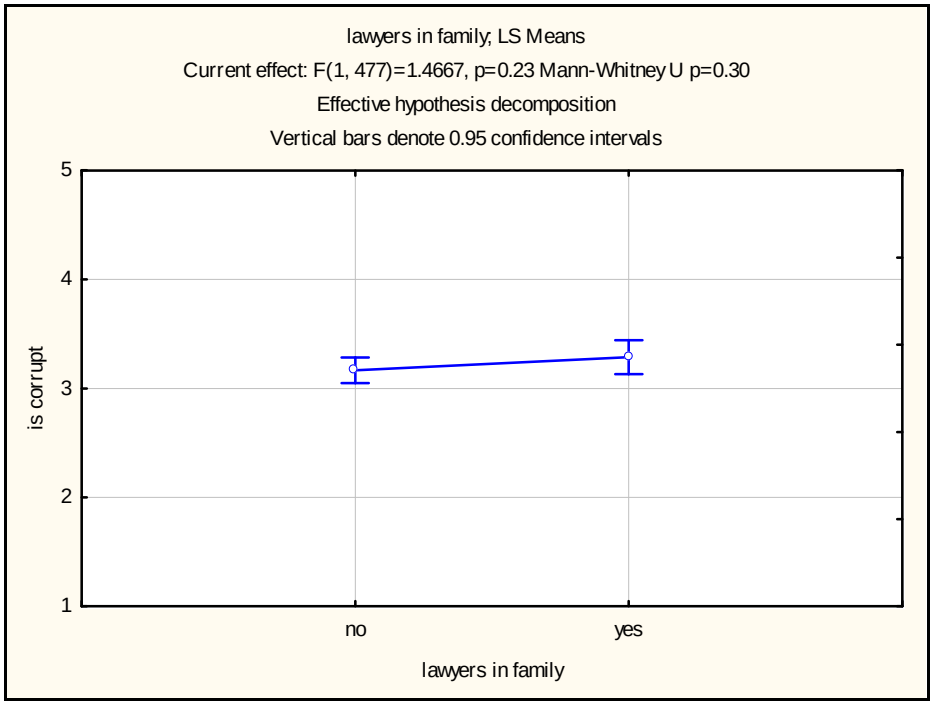


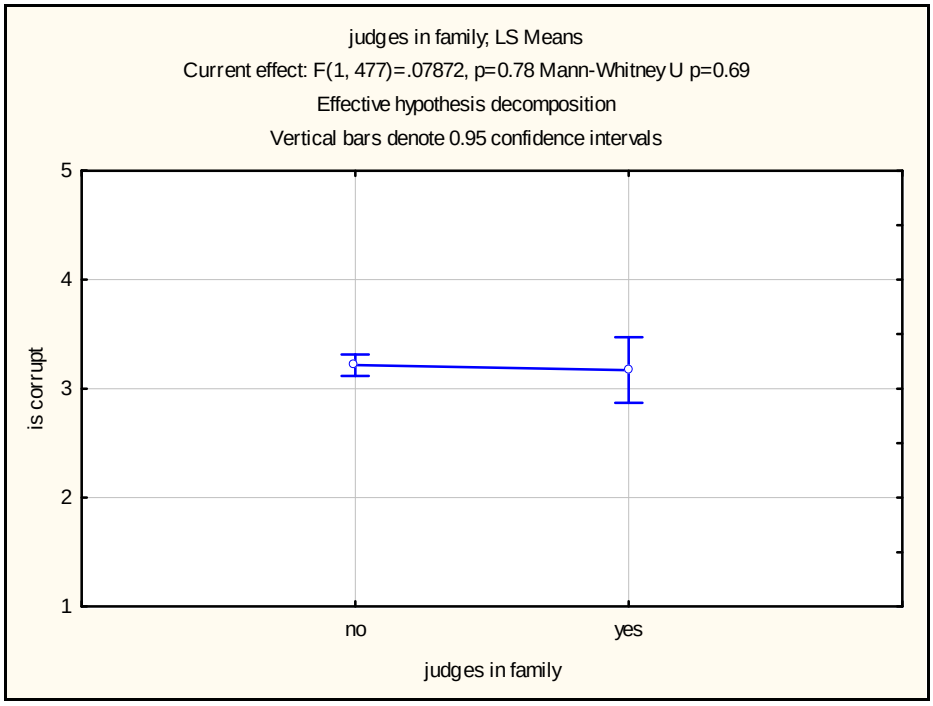
d) The South African legal system has many shortcomings





e) The South African legal system is corrupt

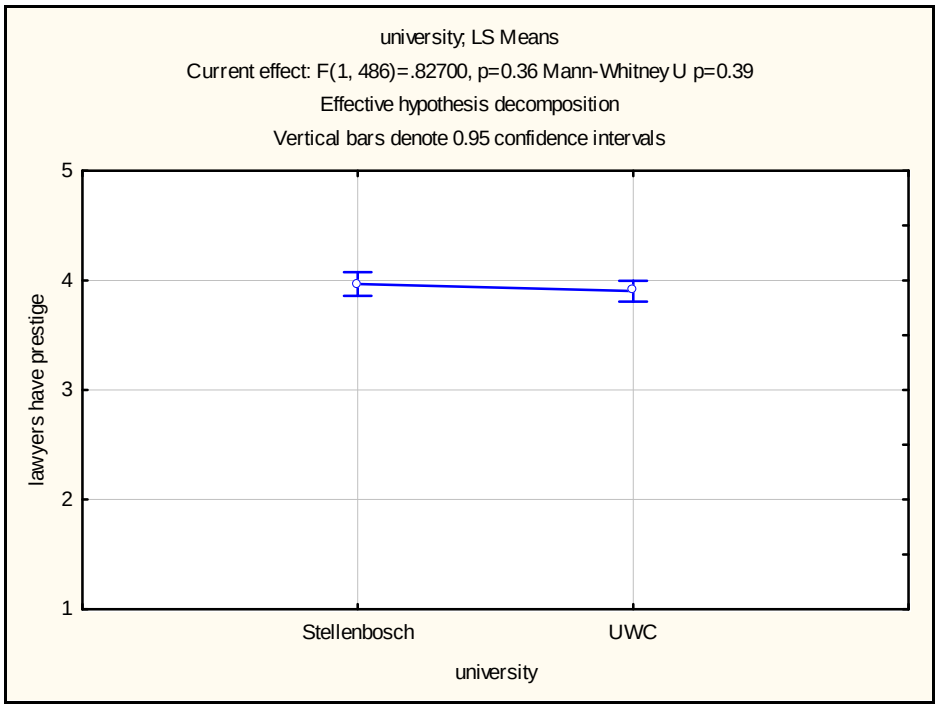



judges in family; LS Means
Current effect: F(1, 477)=.07872, p=0.78 Mann-Whitney U p=0.69
Effective hypothesis decomposition
Vertical bars denote 0.95 confidence intervals
5
4
3
2
1
is corrupt
no
yes
judges in family

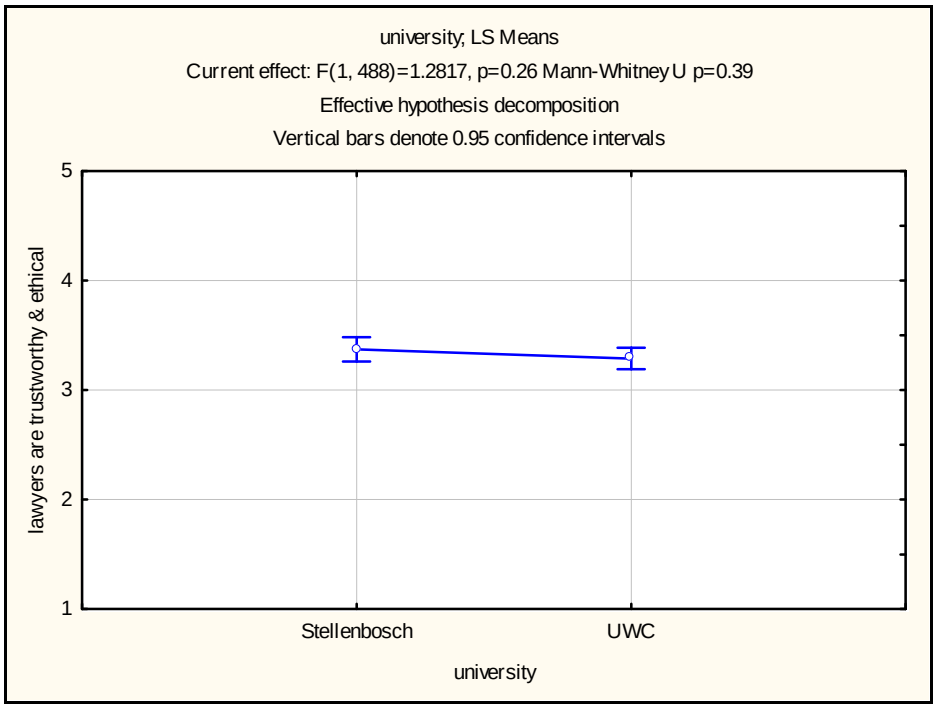
Appendix D (iv) Differences in opinions of UWC and US: Lawyers

With regard to the following histograms, please note that the null hypothesis is that there is no difference in the way UWC versus US participants answered the questions relating to lawyers. Where the p-value was more than 0.05, the null hypothesis was accepted. Where it was less than 0.05, it was rejected – i.e. then the results showed that there is a statistically significant difference.

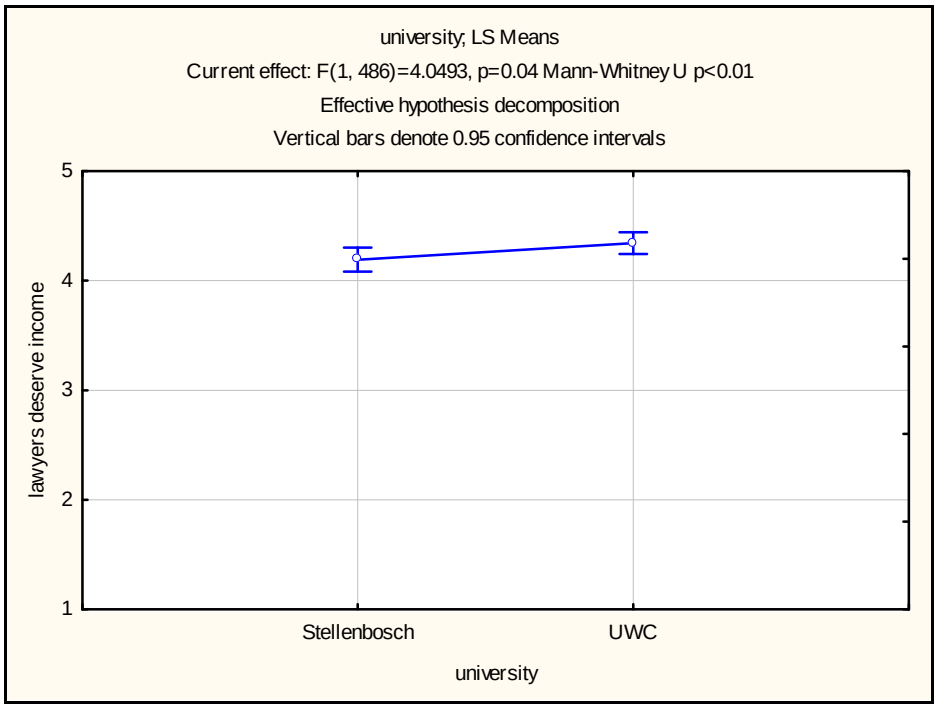
a) Lawyers have a lot of prestige



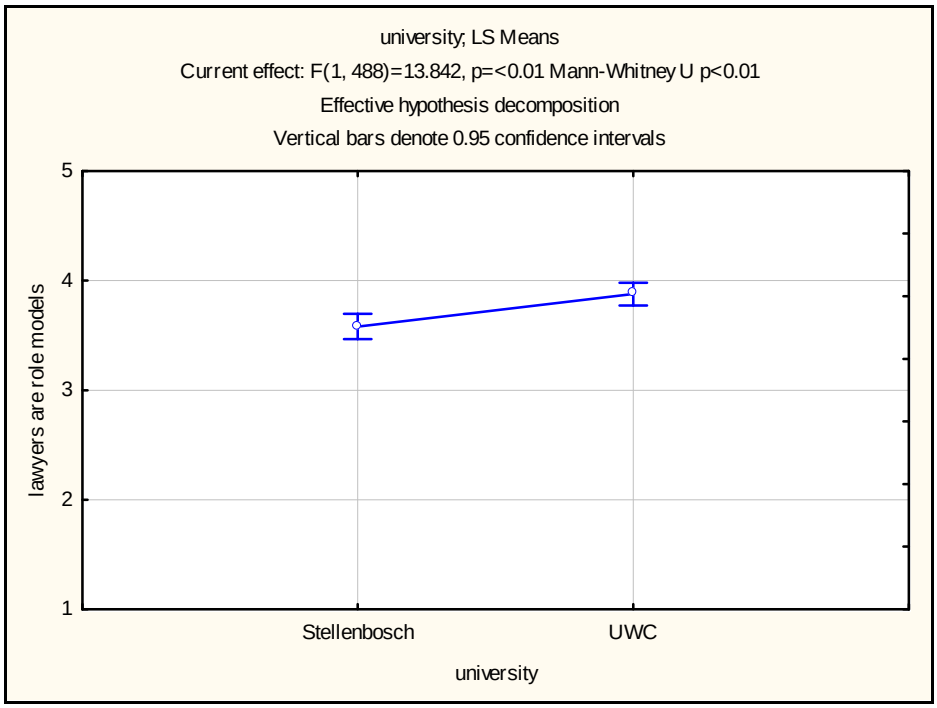
b) Lawyers are trustworthy and ethical



c) Lawyers deserve the income they earn



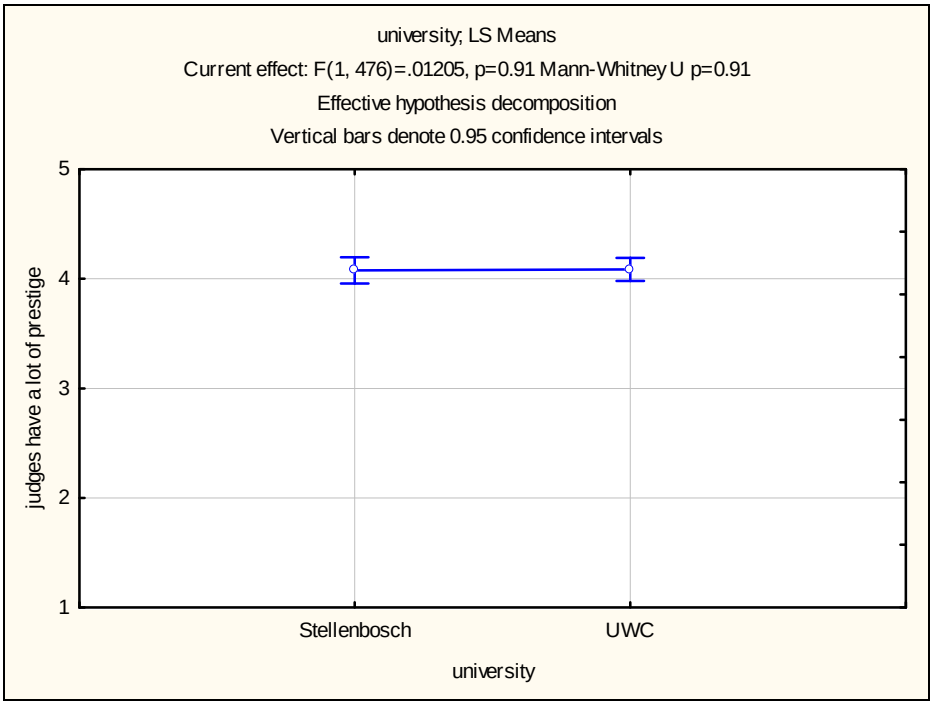
d) Lawyers are role models in society



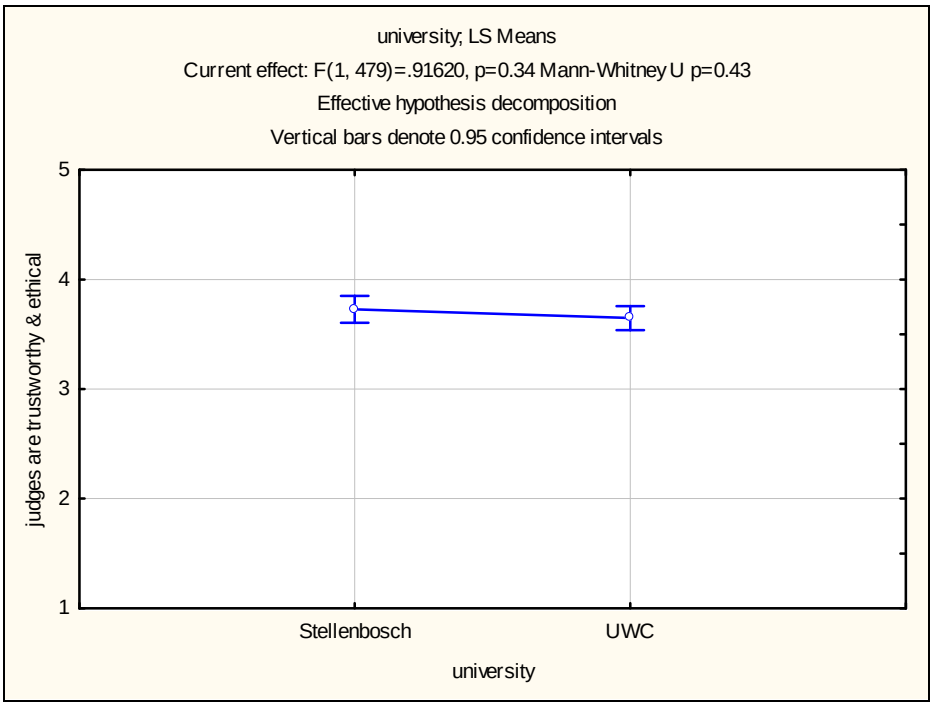
Differences in opinions of UWC and US: Judicial officers

Please note that the null hypothesis is that there is no difference in the way UWC versus US participants answered the questions relating to judicial officers. Where the p-value was more than 0.05, the null hypothesis was accepted. Where it was less than 0.05, it was rejected – i.e. then the results showed that there is a statistically significant difference.

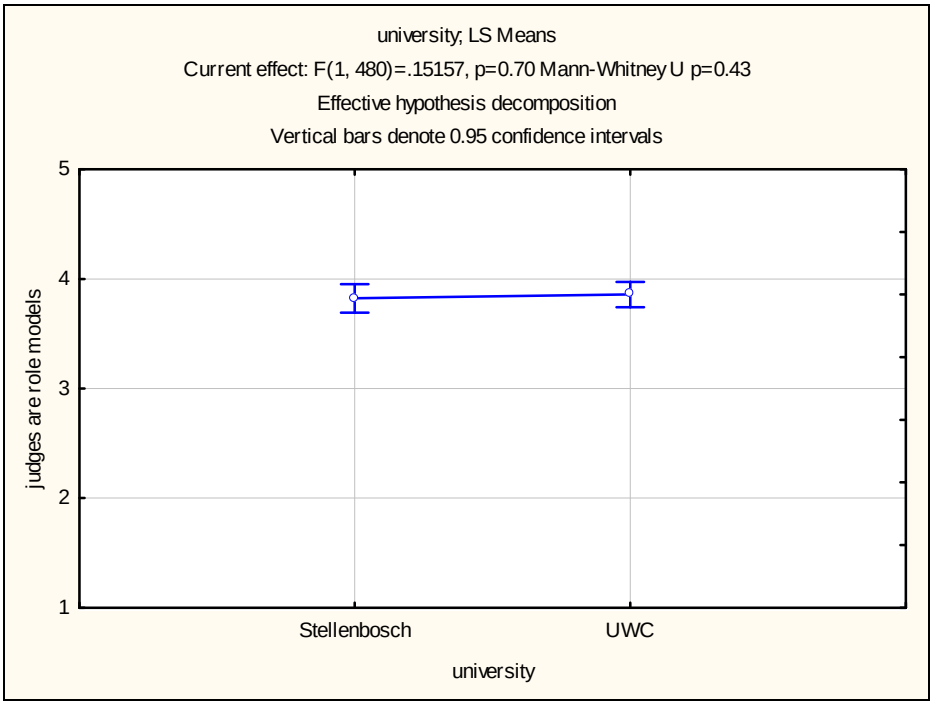
a) Judicial officers have a lot of prestige



b) Judicial officers are trustworthy and ethical



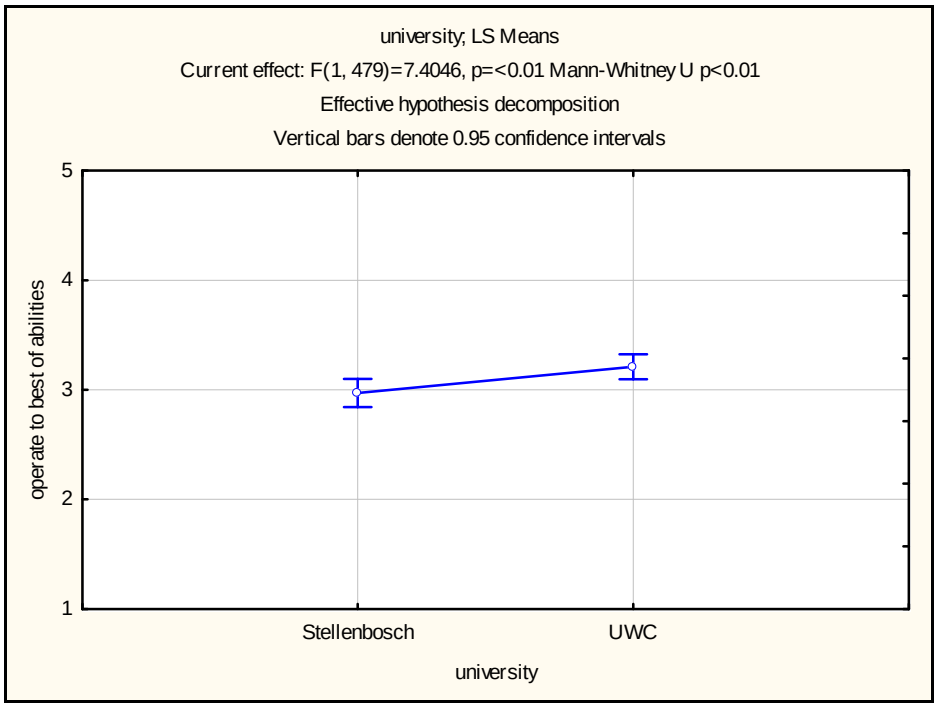
c) Judges are role models in society



Differences in opinions of UWC and US: The South African legal system

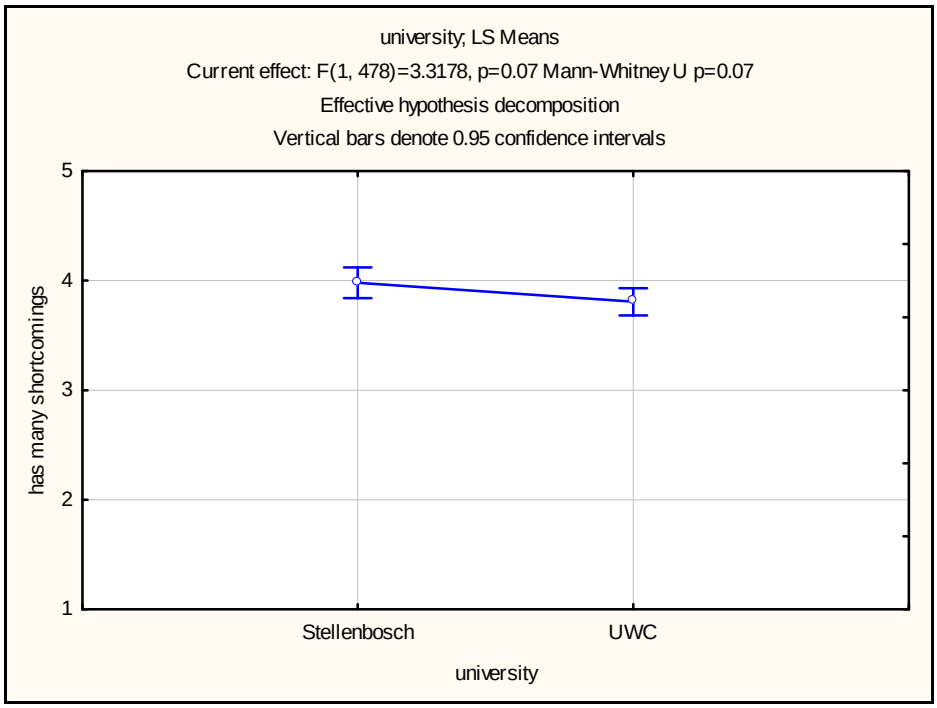
Please note that the null hypothesis is that there is no difference in the way UWC versus US participants answered the questions relating to the South African legal system. Where the p-value was more than 0.05, the null hypothesis was accepted. Where it was less than 0.05, it was rejected – i.e. then the results showed that there is a statistically significant difference.

a) Courts operate to the best of their abilities

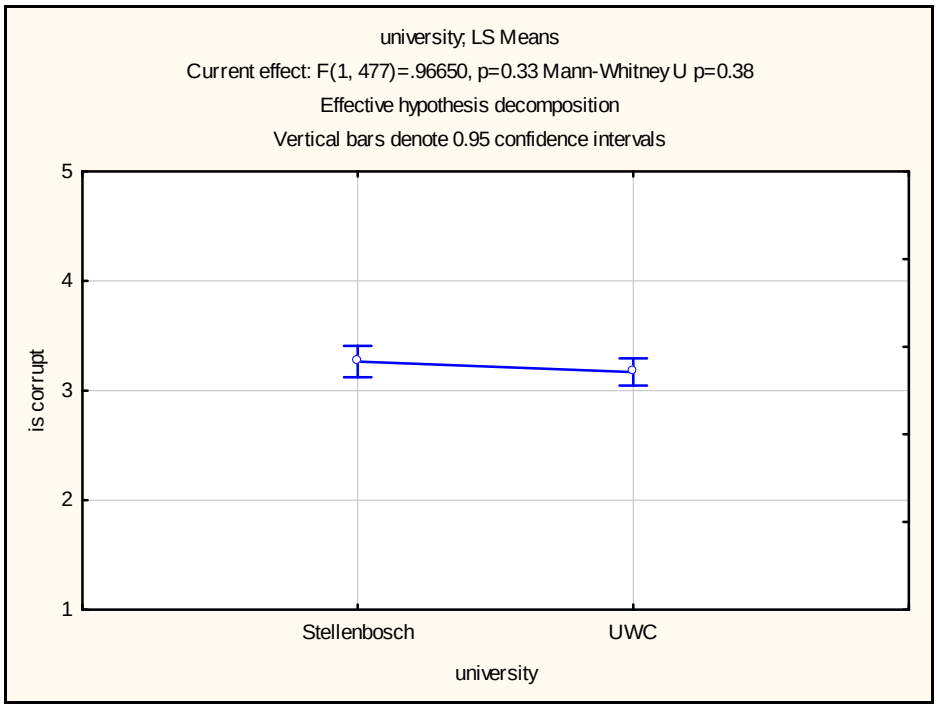


b) & c) N/A (US only*)

d) The South African legal system has many shortcomings



e) The South African legal system is corrupt

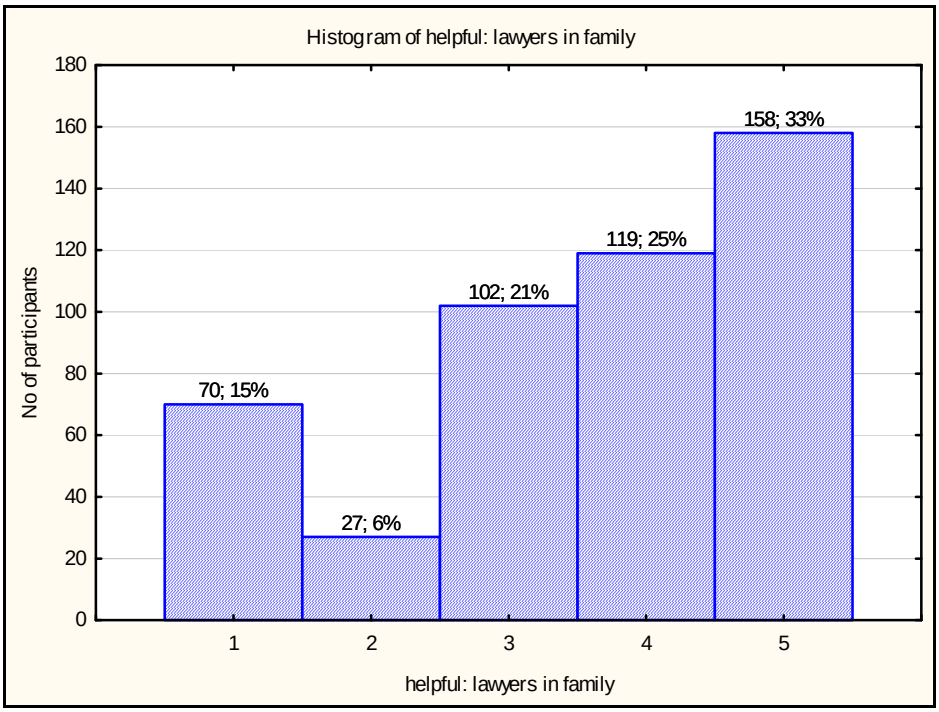


Appendix D (v) Histograms and Bar/Column Plot: Sources of legal consciousness

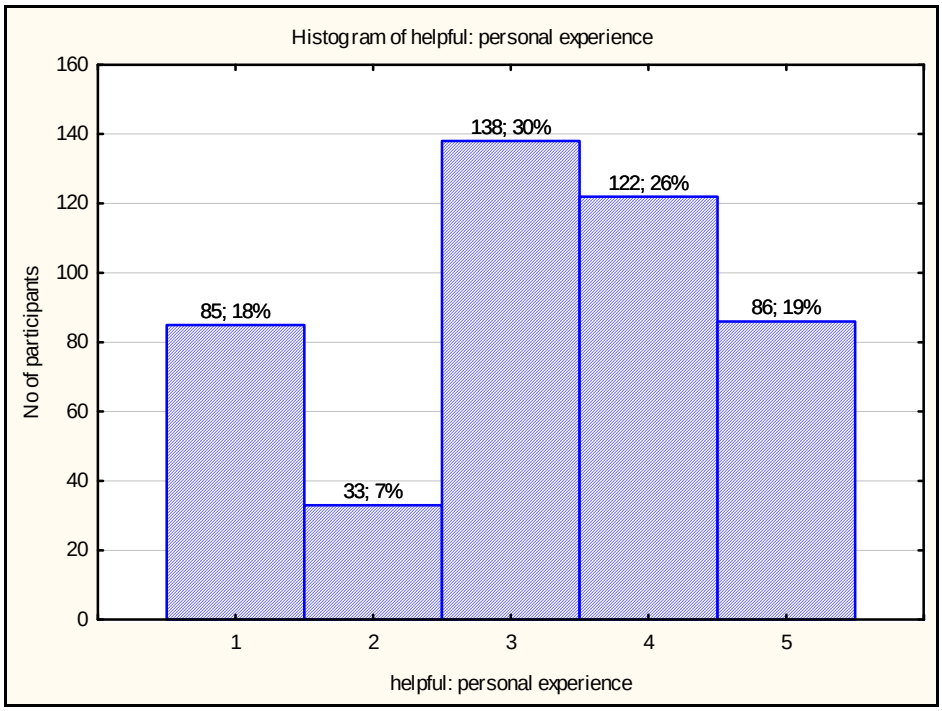
General sources of legal consciousness (usefulness)

Please note that on the horizontal bar, 1 = the source was very unhelpful; 2 = the source was unhelpful; 3 = the source was neither helpful nor unhelpful (neutral); 4 = the source was helpful and 5 = the source was very helpful in giving the participants information about lawyers, judges and magistrates, and the legal system in general.

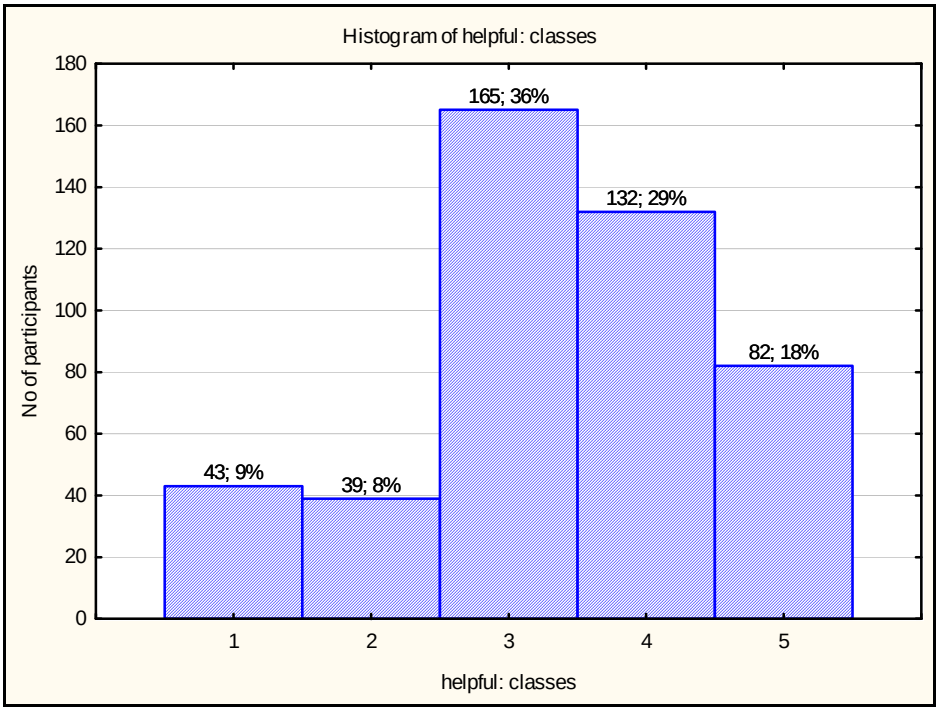
a) Having lawyers in the family, or as friends



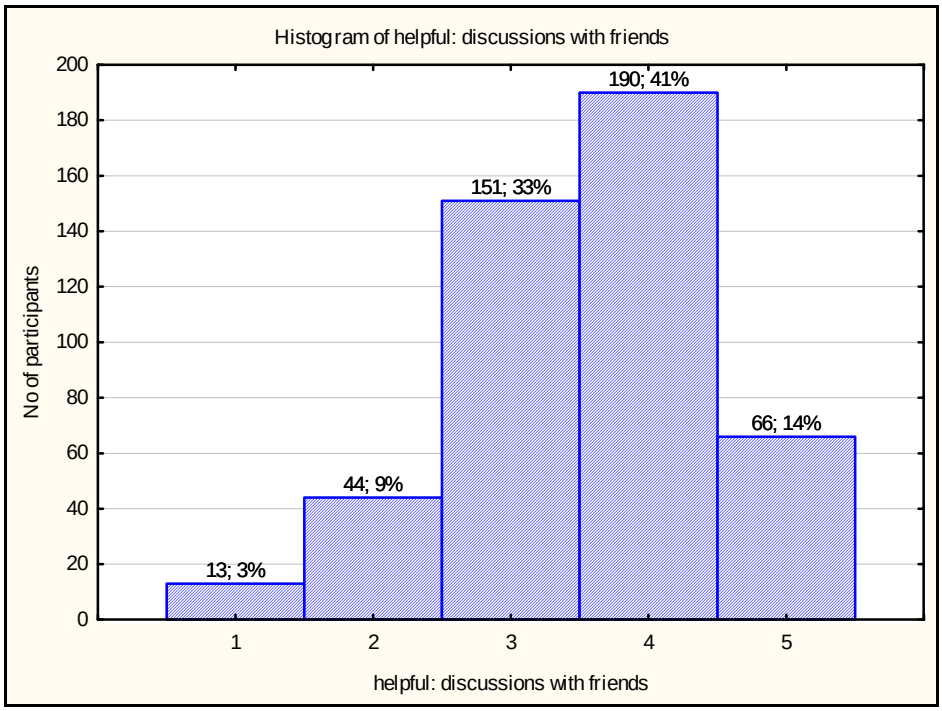
b) Personal experiences – hiring a lawyer or attorney, or an experience in court



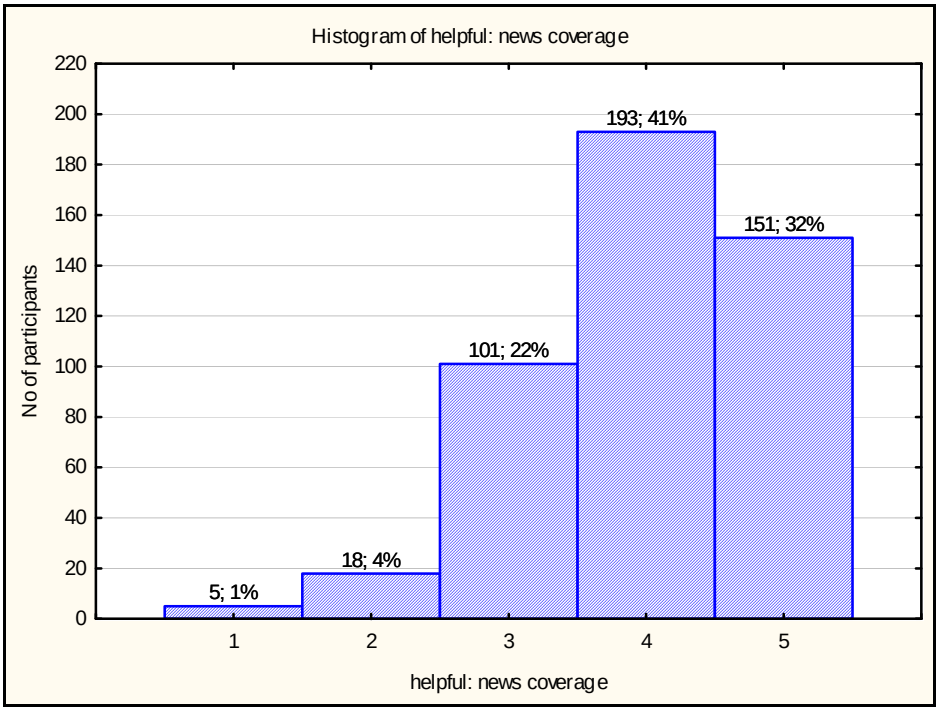
c) Classes in school, or other courses



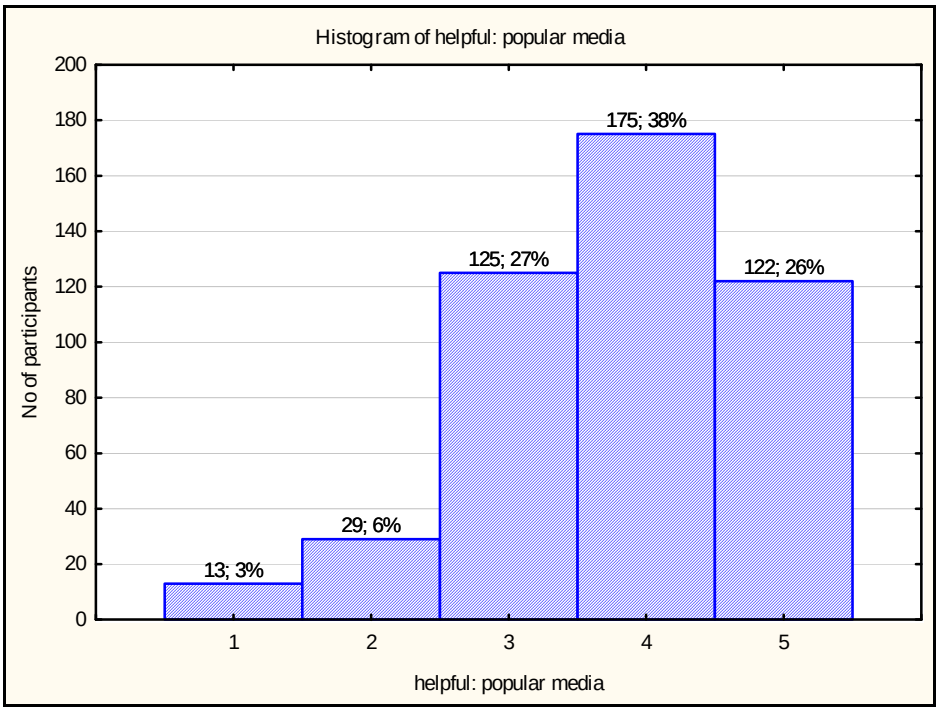
d) Discussions with friends



e) News coverage of lawyers, advocates and attorneys, or court cases



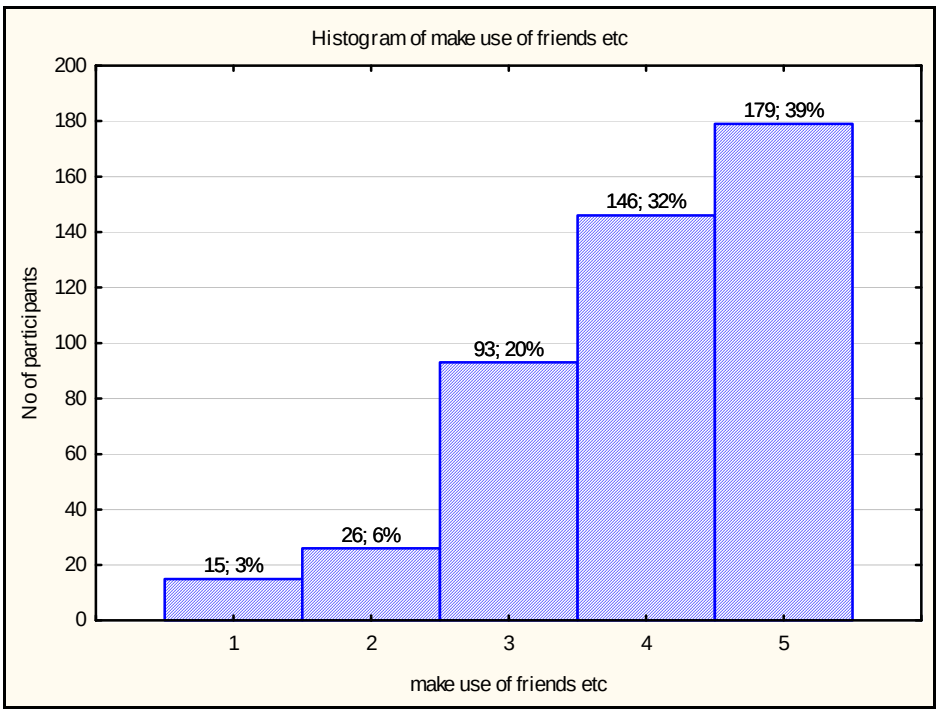
f) Books, television series' or films about legal issues



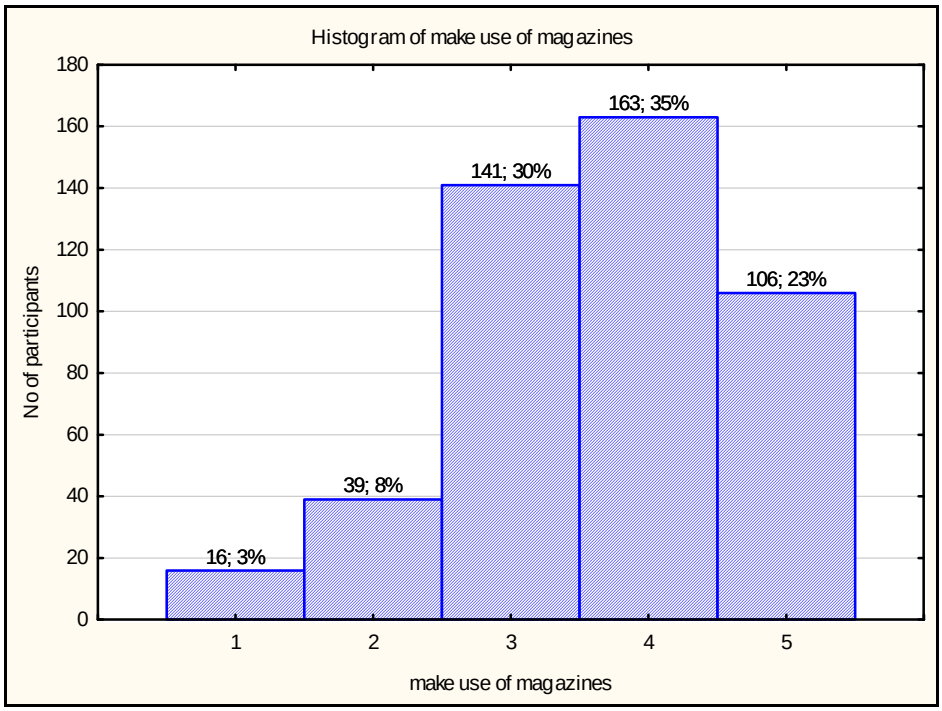
Histograms: News media sources

Please note that on the horizontal scale, 1 = participants never make use of the source; 2 = participants rarely make use of the source; 3 = participants sometimes use the source; 4 = participants regularly use the source and 5 = participants often use the source.

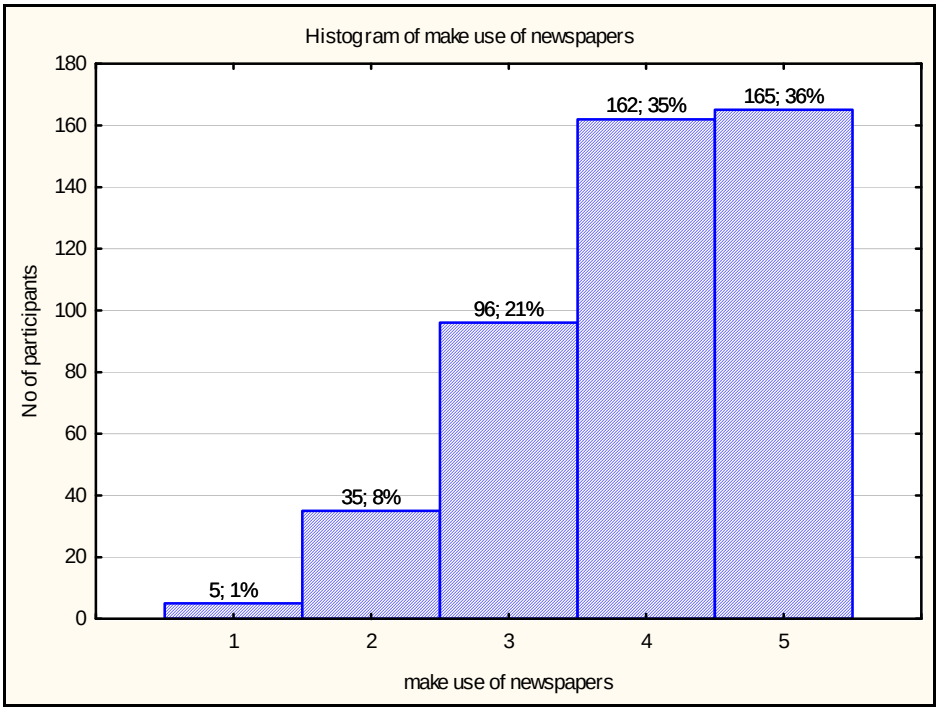
a) Friends, family or people who work or live with you



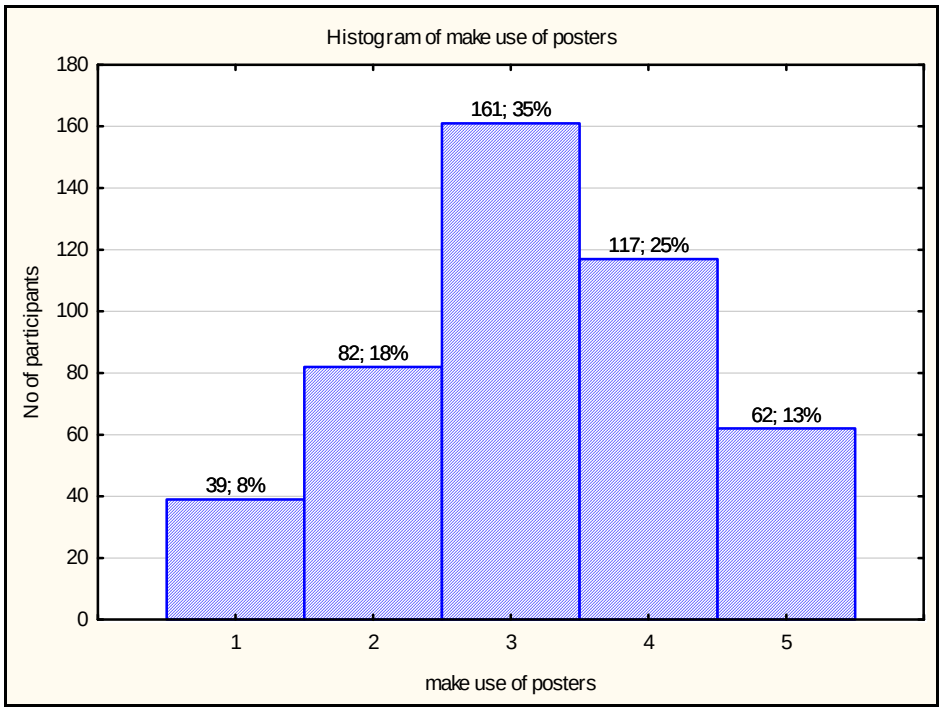
b) Magazines



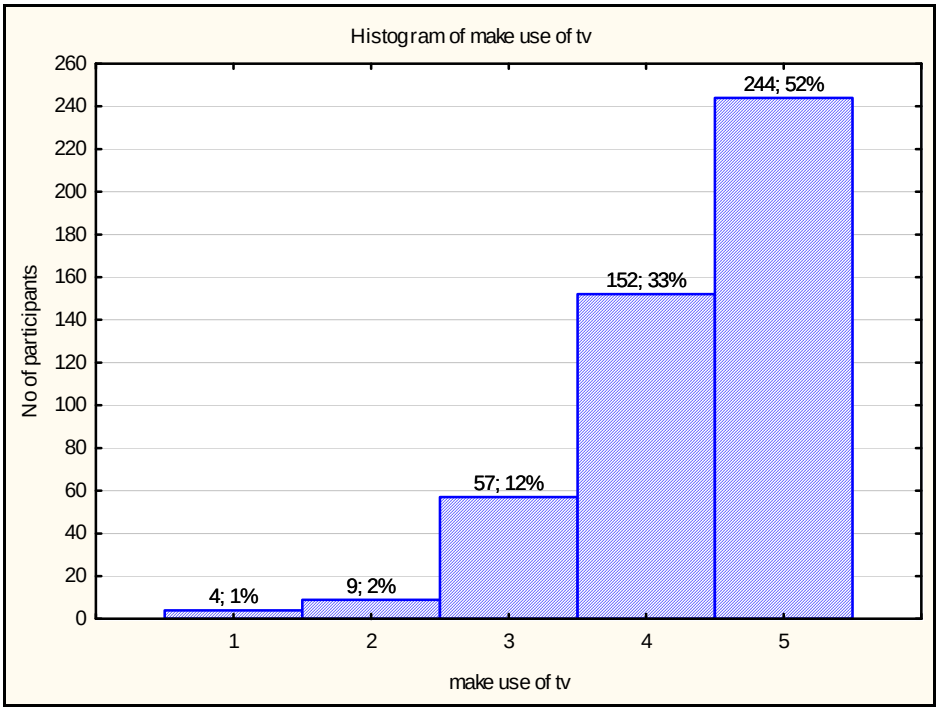
c) Newspapers



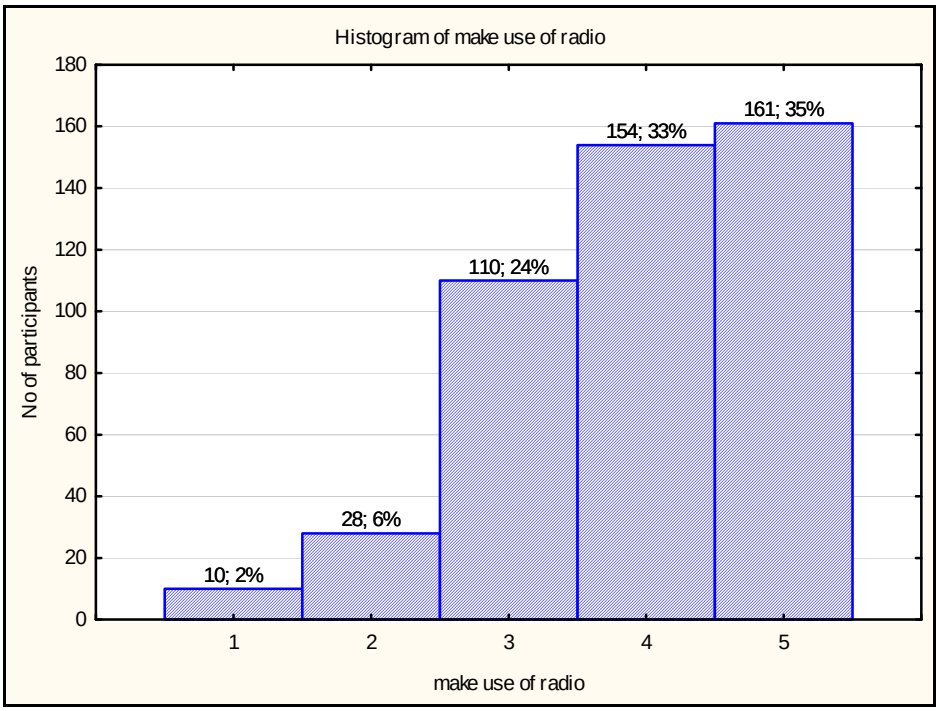
d) Posters on lampposts



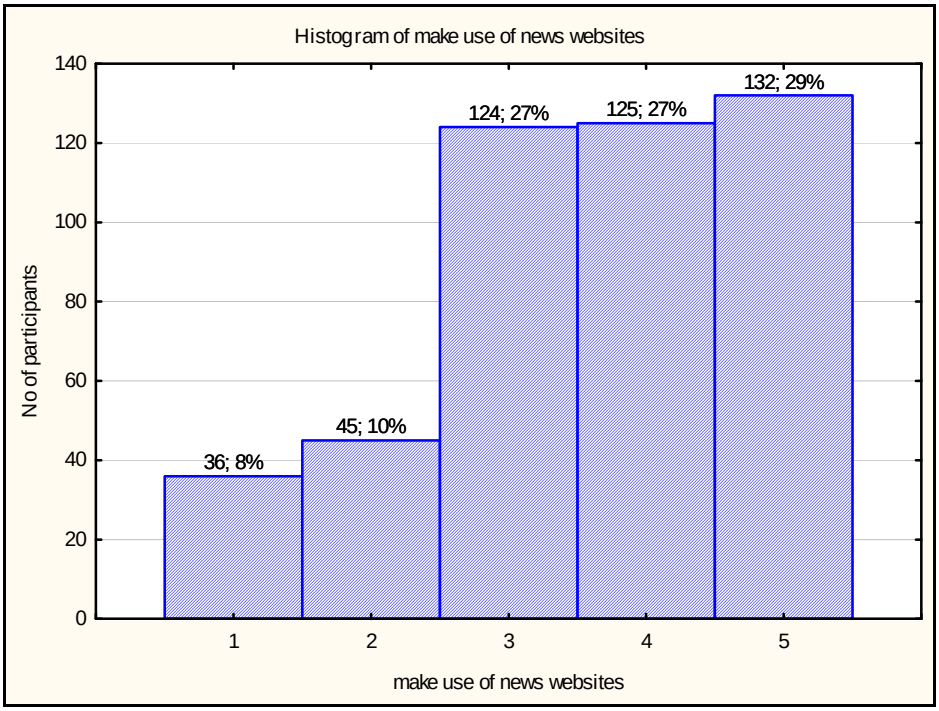
e) Television



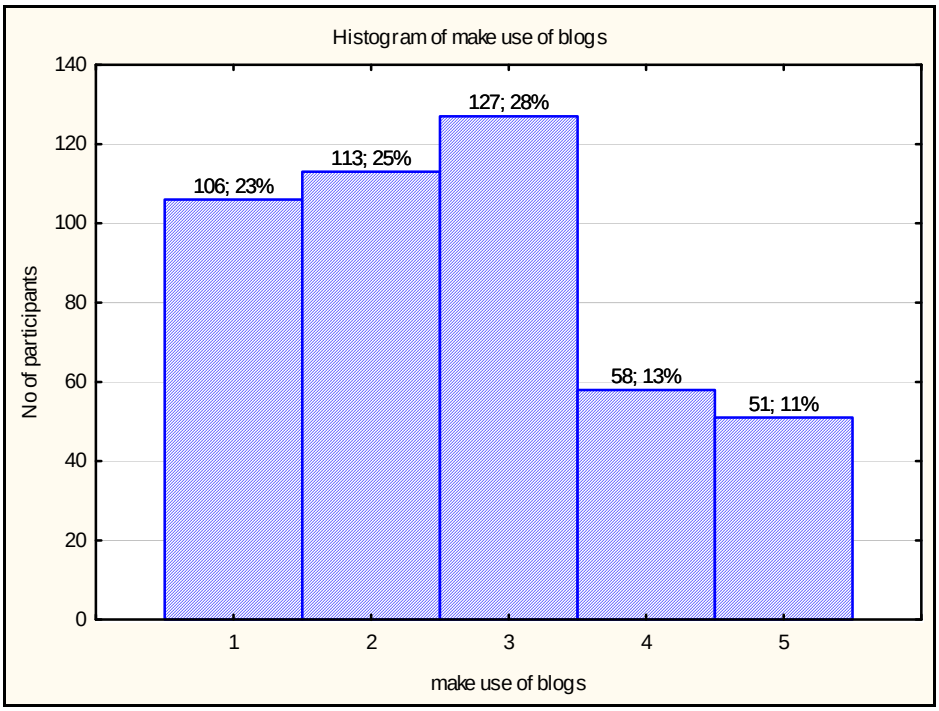
f) Radio



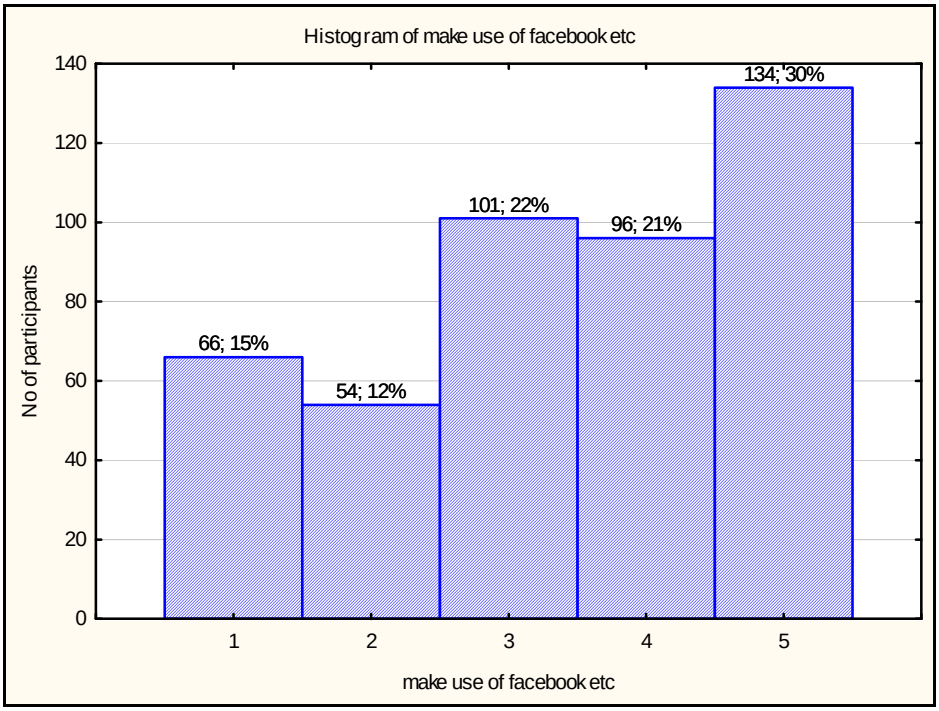
g) Internet: news websites (e.g. news24.com)



h) Internet: blogs



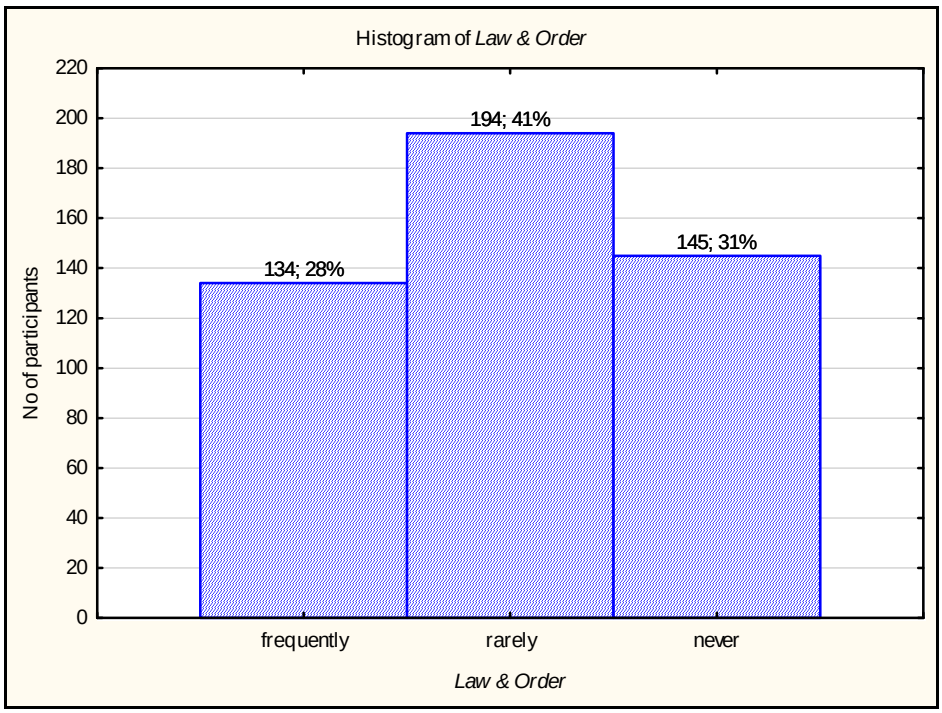
i) Internet: *facebook*, *myspace*, *youtube* etc. (social networking websites)



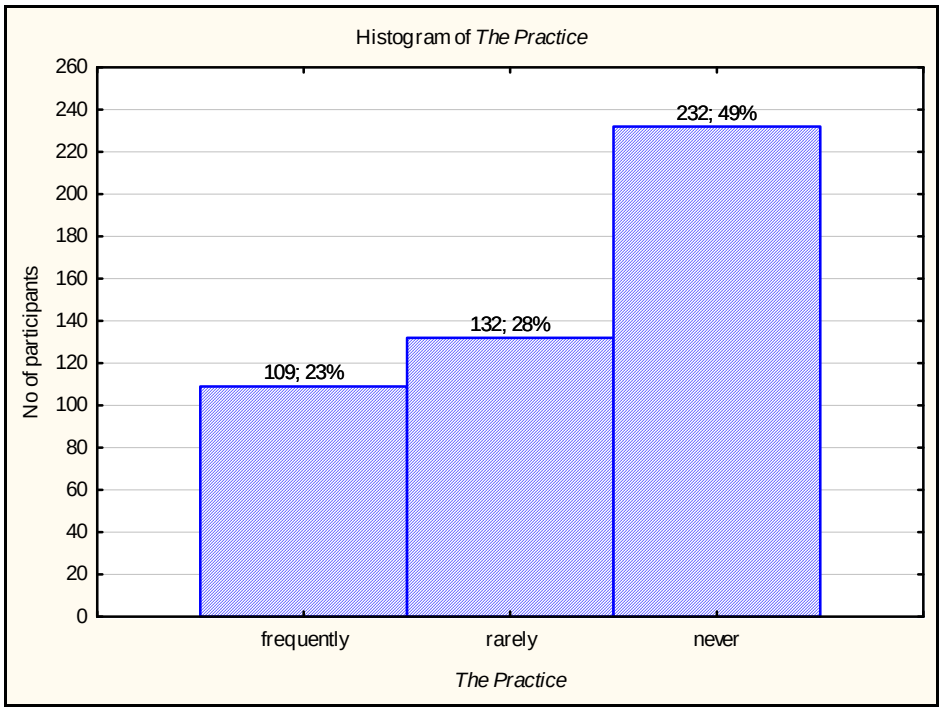
Histograms: Popular media sources (television series')

Please note that, on the horizontal bar, 1 = frequently; 2 = rarely and 3 = never.

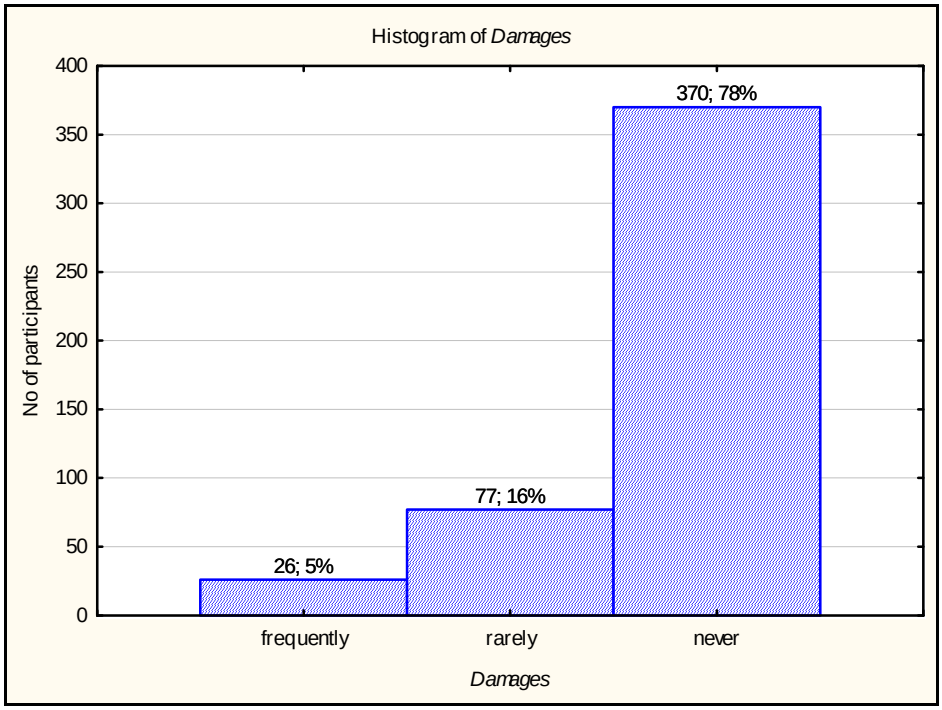
a) *Law & Order*



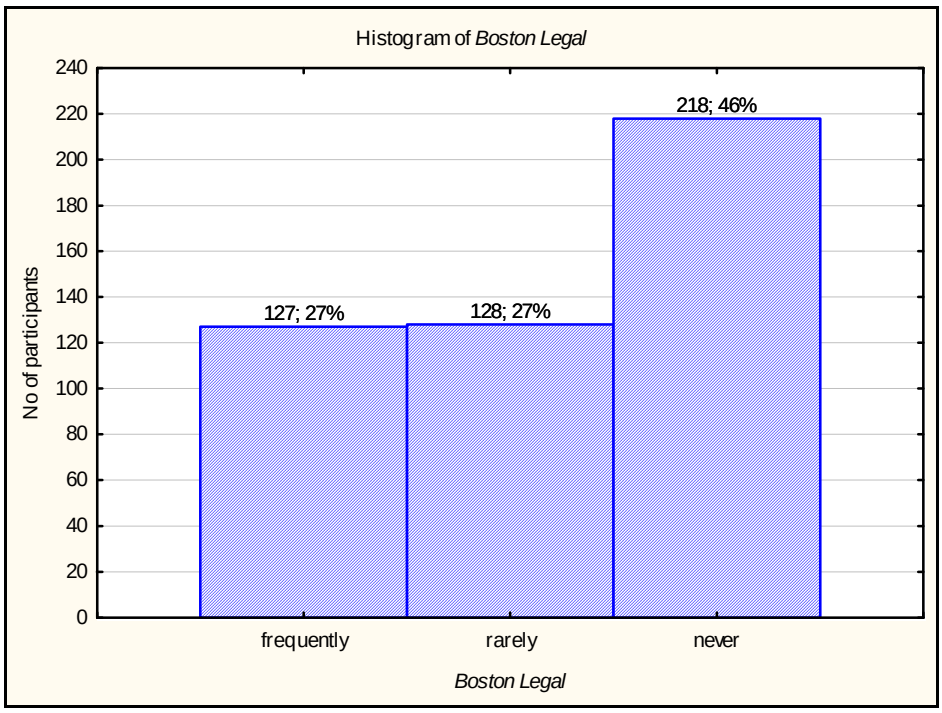
b) *The Practice*



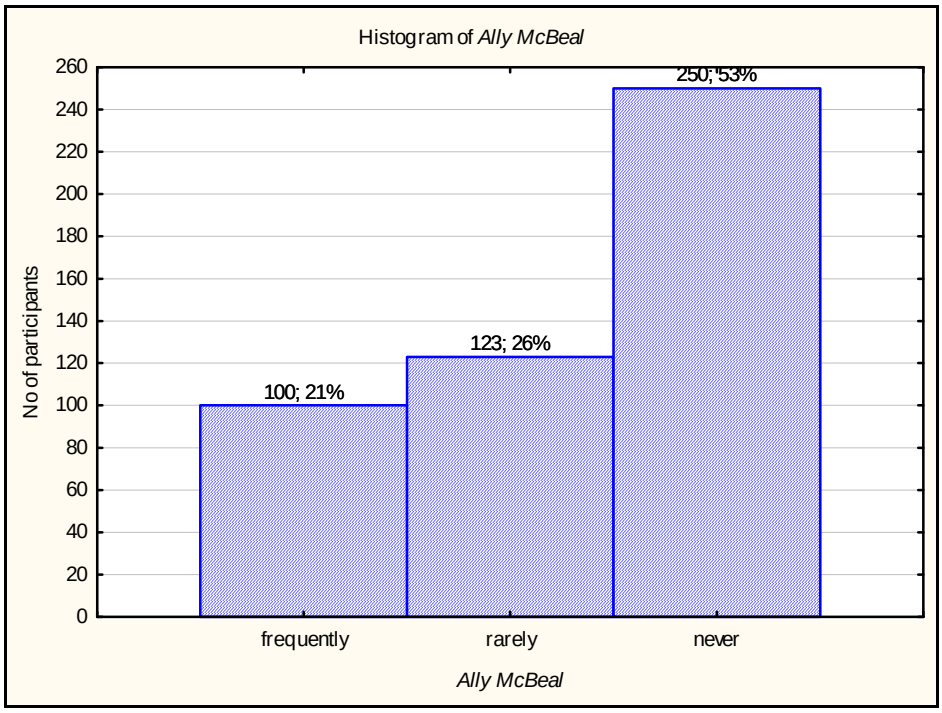
c) *Damages*



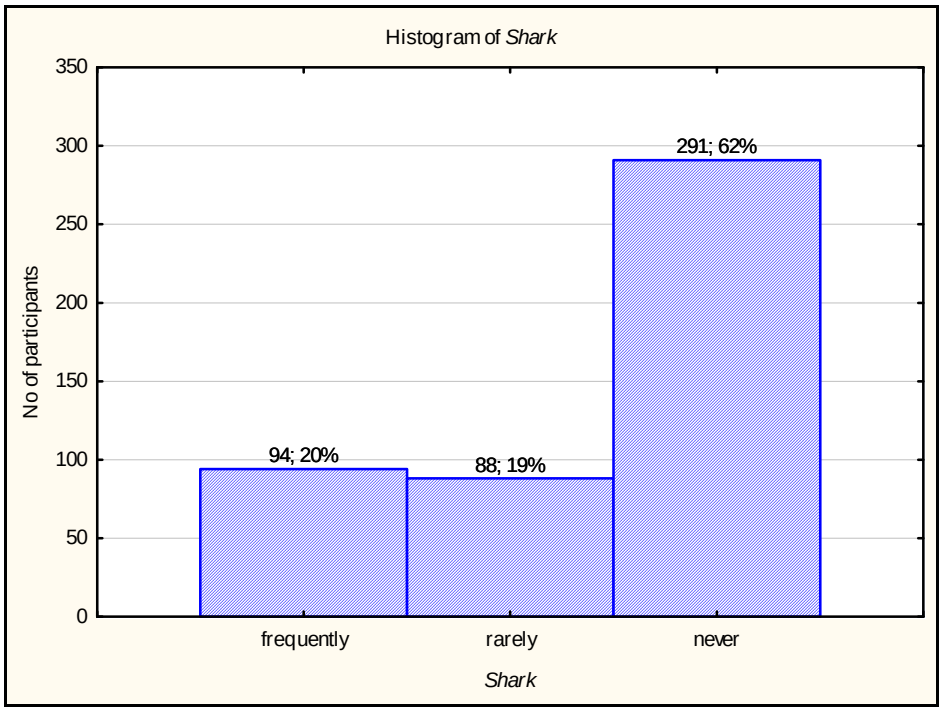
d) *Boston Legal*



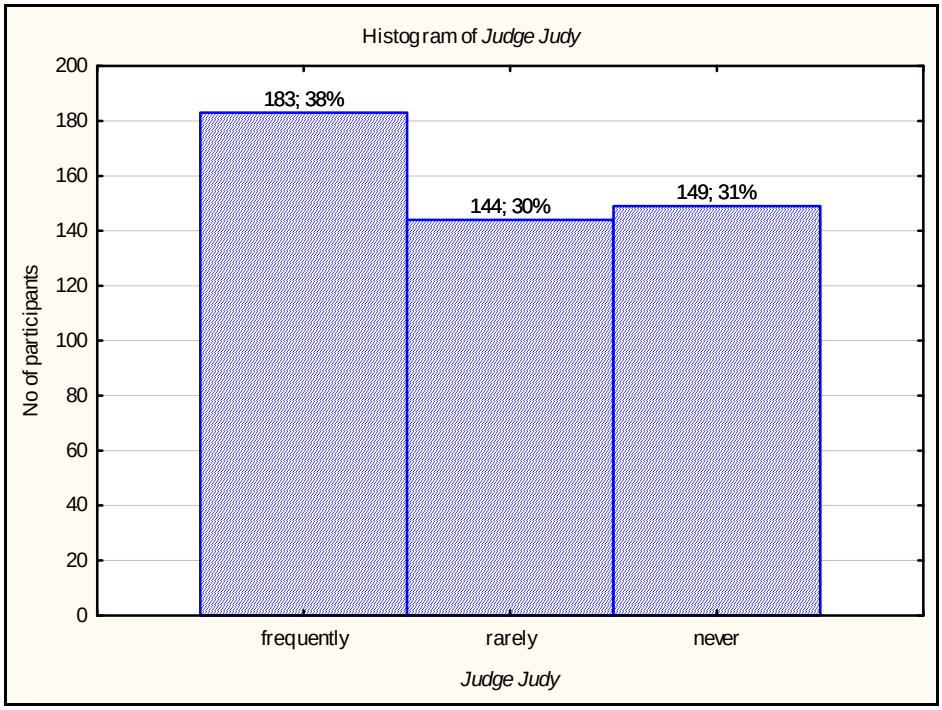
e) *Ally McBeal*



f) Shark



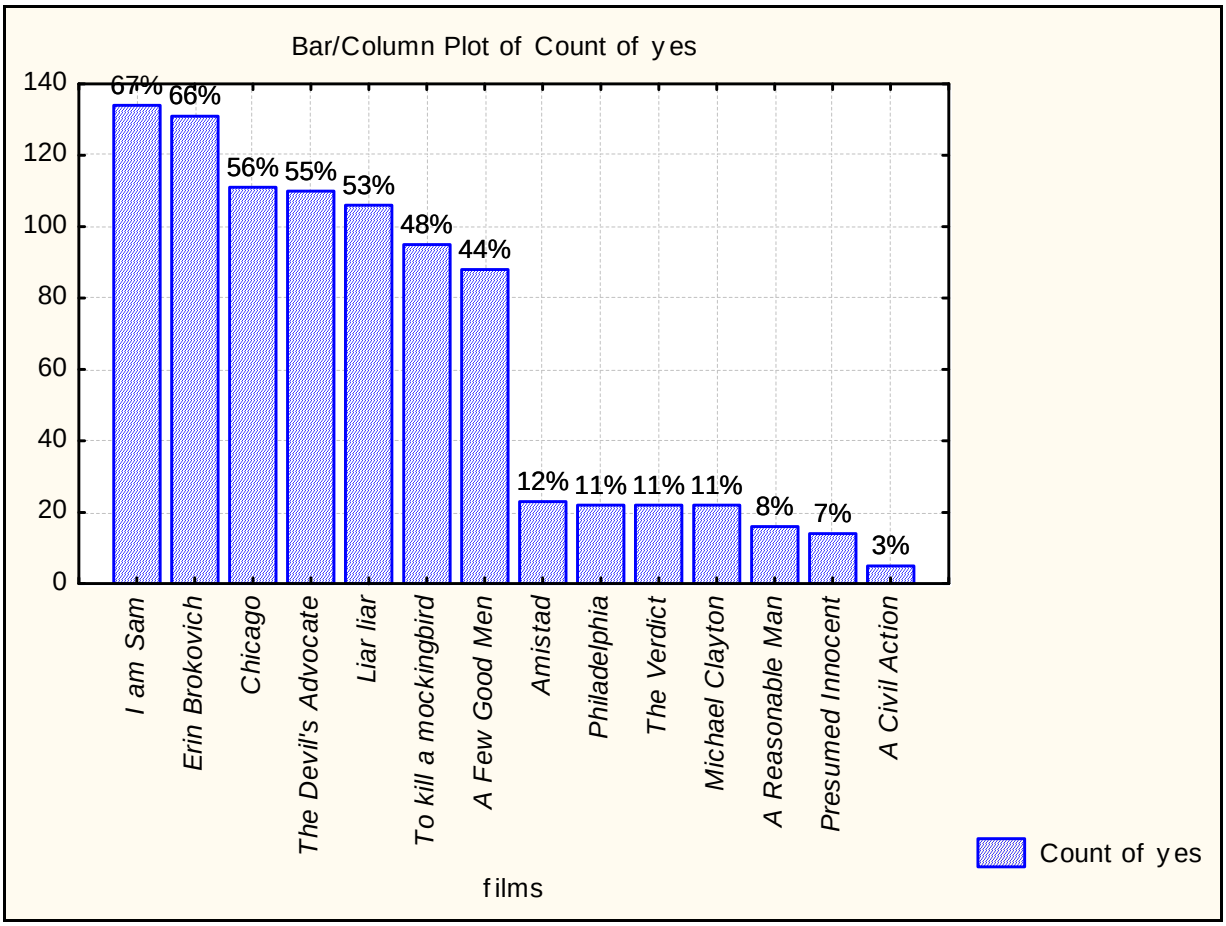
g) Judge Judy



h) Other

Other television series' that were listed by participants included *Judging Amy*; *Judge Hatchett*; *Eli Stone* and *Sokhullu & Partners*.

Bar/ Column plot: Popular media sources (films)



Appendix D (v) Correlations: Sources and opinions of the law

In the following table, the correlations between the opinions that participants had of the law and the specific sources they found helpful are defined more clearly. Note that the null hypothesis was that there is no relationship between the sources participants found helpful and the various opinions participants had regarding the statements defining judicial officers, lawyers and the South African legal system.

Where the p-value was more 0.05, the null hypothesis was accepted – in other words, it was accepted that there is no significant correlation between the fact that participants found a particular source to be helpful and had a more positive or more negative opinion. On the other hand, where the p-value was less than 0.05, it was accepted that there is a statistically significant correlation between the source and the opinion.

Please note that along with the titles, statistically significant correlations are printed **in bold** below; whereas correlations that are statistically insignificant are in plain font:

VARIABLE 1	VARIABLE 2	Correlation	P-value
helpful: lawyers in family	**lawyers have prestige**	**0.12**	**<0.01**
helpful: lawyers in family	**lawyers are trustworthy & ethical**	**0.09**	**0.05**
helpful: lawyers in family	**lawyers deserve income**	**0.12**	**<0.01**
helpful: lawyers in family	lawyers are role models	0.08	0.09
helpful: lawyers in family	judges have a lot of prestige	0.08	0.09
helpful: lawyers in family	judges are trustworthy & ethical	0.04	0.34
helpful: lawyers in family	judges are role models	0.05	0.27
helpful: lawyers in family	operate to best of abilities	0.08	0.09
helpful: lawyers in family	is fair	0.01	0.91
helpful: lawyers in family	is effective	-0.01	0.86
helpful: lawyers in family	has many shortcomings	-0.00	0.97
helpful: lawyers in family	is corrupt	-0.02	0.72
helpful: personal experience	**lawyers have prestige**	**0.10**	**0.03**
helpful: personal experience	**lawyers are trustworthy & ethical**	**0.13**	**<0.01**
helpful: personal experience	**lawyers deserve income**	**0.15**	**<0.01**
helpful: personal experience	**lawyers are role models**	**0.12**	**0.01**
helpful: personal experience	judges have a lot of prestige	0.06	0.20
helpful: personal experience	judges are trustworthy & ethical	0.03	0.49

helpful: personal experience	**judges are role models**	**0.13**	**<0.01**
helpful: personal experience	operate to best of abilities	0.03	0.47
helpful: personal experience	is fair	0.08	0.24
helpful: personal experience	is effective	0.08	0.24
helpful: personal experience	has many shortcomings	-0.05	0.33
helpful: personal experience	is corrupt	0.02	0.62
helpful: classes	**lawyers have prestige**	**0.12**	**<0.01**
helpful: classes	lawyers are trustworthy & ethical	0.07	0.13
helpful: classes	lawyers deserve income	0.18	<0.01
helpful: classes	**lawyers are role models**	**0.18**	**<0.01**
helpful: classes	judges have a lot of prestige	0.08	0.09
helpful: classes	judges are trustworthy & ethical	0.08	0.08
helpful: classes	**judges are role models**	**0.11**	**0.02**
helpful: classes	**operate to best of abilities**	**0.12**	**0.01**
helpful: classes	**is fair**	**0.18**	**<0.01**
helpful: classes	is effective	0.19	<0.01
helpful: classes	has many shortcomings	-0.02	0.65
helpful: classes	**is corrupt**	**-0.09**	**0.05**
helpful: discussions w friends	**lawyers have prestige**	**0.10**	**0.03**
helpful: discussions w friends	lawyers are trustworthy & ethical	0.02	0.68
helpful: discussions w friends	lawyers deserve income	0.08	0.07
helpful: discussions w friends	lawyers are role models	0.14	<0.01
helpful: discussions w friends	judges have a lot of prestige	0.07	0.12
helpful: discussions w friends	judges are trustworthy & ethical	0.03	0.56
helpful: discussions w friends	**judges are role models**	**0.07**	**0.14**
helpful: discussions w friends	operate to best of abilities	-0.02	0.61
helpful: discussions w friends	is fair	0.11	0.12
helpful: discussions w friends	is effective	0.09	0.19

helpful: discussions w friends	has many shortcomings	0.02	0.73
helpful: discussions w friends	is corrupt	-0.04	0.40
helpful: news coverage	**lawyers have prestige**	**0.14**	**<0.01**
helpful: news coverage	lawyers are trustworthy & ethical	0.03	0.46
helpful: news coverage	**lawyers deserve income**	**0.13**	**<0.01**
helpful: news coverage	**lawyers are role models**	**0.20**	**<0.01**
helpful: news coverage	**judges have a lot of prestige**	**0.22**	**<0.01**
helpful: news coverage	judges are trustworthy & ethical	0.05	0.24
helpful: news coverage	**judges are role models**	**0.18**	**<0.01**
helpful: news coverage	operate to best of abilities	0.04	0.41
helpful: news coverage	is fair	0.02	0.79
helpful: news coverage	is effective	-0.08	0.28
helpful: news coverage	**has many shortcomings**	**0.16**	**<0.01**
helpful: news coverage	is corrupt	0.05	0.27
helpful: popular media	lawyers have prestige	0.05	0.25
helpful: popular media	lawyers are trustworthy & ethical	0.07	0.15
helpful: popular media	lawyers deserve income	0.18	<0.01
helpful: popular media	lawyers are role models	0.22	<0.01
helpful: popular media	judges have a lot of prestige	0.07	0.11
helpful: popular media	**judges are trustworthy & ethical**	**0.11**	**0.02**
helpful: popular media	judges are role models	0.07	0.15
helpful: popular media	**operate to best of abilities**	**0.12**	**<0.01**
helpful: popular media	is fair	0.10	0.15
helpful: popular media	is effective	0.11	0.12
helpful: popular media	has many shortcomings	0.02	0.62
helpful: popular media	is corrupt	-0.03	0.58