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The effects of emotionally charged evidence on juror verdicts:
Photographic evidence

Russo, Michael Joseph, Ph.D.
The Ohio State University, 1992

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THE EFFECTS OF EMOTIONALLY CHARGED EVIDENCE ON JUROR VERDICTS: PHOTOGRAPHIC EVIDENCE

DISSERTATION

Presented in Partial Fulfillment of the Requirements for
the Degree of Doctor of Philosophy in the Graduate School of the Ohio State University

By

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* * * * *

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CHAPTER I
INTRODUCTION

Contemporary psychological models of jury decision making have focused almost exclusively on cognitive variables (Pennington & Hastie, 1981). These models depict the juror as a logical, albeit potentially imperfect, information processor who takes in evidence, assigns probabilities for alleged events, and who, by some calculus, converts this information into a final verdict. The legal system, however, recognizes that, at times, jurors are not the dispassionate decision makers that these models suggest. Rather, rules of evidence, judicial decisions, and trial strategists all assume that jurors may respond to certain emotionally charged evidence in ways that cause them to disregard the legal questions with which they are confronted and to make decisions on extralegal grounds. The legal issues that these assumptions give rise to are unsettled and many of these assumptions remain unexplored and untested empirically (Gold, 1983). The purpose of this study is to assess the effects of a class of emotionally charged evidence on the juror decision-making process.
Legal Formulations of the Role of Emotionally Charged Evidence

Rule 403\(^1\) of the Federal Rules of Evidence, and comparable rules in most state jurisdictions\(^2\) are designed to limit the assumed dangers created by emotionally charged evidence. Two classes of evidence have been the subject of most of the case law and debate surrounding the issue of prejudicial evidence: evidence of prior criminal acts and photographic evidence (Gold, 1983). Most of the controversy surrounding photographic evidence has centered on photographs of the victim and of his or her injuries, especially where the injuries are fatal. Historically, the level of scrutiny with which these rules have been applied has varied (Beaver, 1988). Assumptions about what constituted evidence so emotionally charged that its exclusion was mandated and assumptions about how the effects of that evidence could be reduced have varied from jurisdiction to jurisdiction and from time to time. The balance between the desire to control biasing evidence and the desire to present the trier of fact (the juror) with all available relevant evidence also has shifted over time. Most recently, courts have tended to decide that balance in favor of relevance (Beaver, 1988). That is, they have admitted more and more emotionally

\(^1\) Rule 403 states in pertinent part, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury...."

charged evidence under the theory that the trier of fact, the jury, should be exposed to as much relevant evidence as possible. In response, trial attorneys have become more adept at developing exhibits which are designed to affect jurors emotionally. Whereas in the past, color photographs of the deceased in a homicide trial would be presented, recent trials have seen the introduction of videotapes of the body surrounded by mourning family members at the funeral home.

At the heart of the controversy over emotionally charged evidence are the assumptions, within the legal community, that evidence that is emotionally charged will lead to unfair prejudice and to an unjust decision by jurors (Beaver, 1988). Evidence is viewed by courts as unfairly prejudicial when it "appeals to the jurors sympathies, arouses its sense of horror, provokes its instinct to punish, or triggers other mainsprings of human action [which] may cause a jury to base its decision on something other than the established propositions in the case" (Weinstein & Berger, 1982). While it is obvious that these assumptions reflect underlying beliefs about the nature of human decision making, it is somewhat surprising to learn that there is little empirical data exploring these assumptions (Gold, 1983). Indeed, theories of jury decision making provide no room for emotional evidence at all.
Psychological Formulations of the Role of Emotionally Charged Evidence

Resort to current psychological literature provides little clarification for questions pertaining to emotionally charged evidence. For example, Pennington and Hastie's (1981) review of the current models of juror decision making, though generally comprehensive, implicitly accepts the information processing paradigm by focusing attention on constructs such as input, combination rules and output, while neglecting affective variables. Consequently, reference to these models, in a search for theoretical understanding of this issue has proven unproductive.

Two studies (Oliver & Griffitt, 1976, and Whalen & Blanchard, 1982) attempted to address the issue of the effects of photographic evidence on juror judgments. Both of these studies were inspired, in part, by a highly publicized criminal case in which the conviction of a physician for manslaughter, after performing a legal abortion, was overturned. The appellate court in that case had ruled that the trial judge should have excluded photographs of the aborted fetus. The court reasoned that the photographs had unfairly biased the jury against the defendant in that trial.
Oliver and Griffitt (1976) asked 48 undergraduates to read case summaries of a personal injury case involving a farming accident that resulted in a hand injury. In a 2X2 factorial design, half of the subjects were shown color slides of an injured hand, while the remaining subjects read only the case summaries. The second independent variable, the seriousness of the injury, was manipulated by informing half of the subjects that the hand injury was successfully treated, while the other half were told that the hand was lost after infection. Subjects were asked to assess the blameworthiness of the defendant and to assess the appropriate monetary damages. Neither photographic evidence nor seriousness yielded significant effects for blameworthiness of the defendant. However, a main effect for slide vs. no slide was obtained for another dependent variable, monetary award. That is, subjects who viewed the photographs of the injury awarded significantly more money to the plaintiff than did those who simply read the case summary. The authors concluded that emotion-arousing evidence may interfere with "objective evaluation of factual evidence."

Whalen and Blanchard (1982) suggested an alternative interpretation of the Oliver and Griffitt results. They proposed that the presence of the slide may have provided additional information to the subjects concerning the severity of the injury, rather than creating an increase in the
emotional reactions of the subjects. With a design similar to that employed by Oliver and Griffitt, Whalen and Blanchard asked subjects to read a three page summary of a personal injury case. In this study, the case involved the injury of a child in an abandoned building that was alleged to be an "attractive nuisance," a dangerous building to which children would be attracted and in which they would be expected to play. In short, it was alleged that the negligence of the owner caused the injury to the child. Within a 3X2X3 factorial design, the authors varied the nature of photographic evidence (no photograph, black and white photograph, color photograph), the severity of the injury (high and low) and the negligence of the defendant (high, medium and low). The authors found a three way interaction for the dependent measure of damages awarded, such that the greatest award was in the color photograph, high injury and high negligence condition. The authors concluded that the observed differences between the color and black and white photograph conditions (which presumably carried the same objective information) required them to discard their alternate explanation for the Oliver and Griffitt findings. Rather, they attributed the findings to the emotional impact of the evidence.
Although seeming to provide a clear demonstration of the effects of emotionally charged evidence on judgments, the two studies described above are limited in several respects. First, both studies failed to provide juror instructions. Since subjects are provided with no guidelines for the determination of damages, their reliance on other than "objective" information is not surprising. A better test would be whether such subjects would be influenced by vivid photographic evidence even when given extensive juror instructions.

A second and more serious criticism is related to the fact that the task presented to the subject does not entail the kinds of processes involved in reaching a verdict in actual cases. In real trials, the juror's function is that of a trier of fact. It is the role of the juror to observe and to remember the often conflicting evidence, to determine that which is credible, and to compare that against the verdict categories. The juror is expected to function according to instructions provided by the court. The questions for the jury more often is of the form: "Did the defendant commit an act? and "Did he or she intend the act?" rather than, "What is fair compensation for the injuries incurred?" In short, it is the juror's job to determine what happened factually rather than what is a fair or equitable solution to the case. Thus, both Oliver & Griffitt (1976), and Whalen & Blanchard (1982), by providing subjects with already summarized fact pat-
terns (narratives of the events that allegedly gave rise to the law suit) bypassed the most important and most common function that jurors perform, the determination of what happened. The importance of distinctions between narratives and more realistic trial materials has been noted in the past. For example, Kassin and Wrightsman (1988) studied the effects of two dispositional variables, belief in a just world, and locus of control on juror judgments. They observed that while several studies using single page case summaries found relationships between those dispositional variables and case decisions, their own research (Kassin and Wrightsman, 1983) which used three separate videotapes of simulated trials, demonstrated that measures of belief in a just world and of locus of control were unrelated to trial verdicts in all three trials. They concluded that certain effects that can be demonstrated experimentally with case scenarios can disappear when more realistic trial materials are employed.

The Task of the Juror

The task of the juror is complex. Pennington and Hastie (1981) attempted to analyze that task through a careful study of legal literature to determine the job expected of jurors by the courts and to break it down into its component parts. They referred to this as the task of the Ideal Juror and presented the model as a framework for the organization of empirical data and the review of psychological models. Rather than repre-
senting a psychological model of juror decision making, the model attempts to describe the expectations that the legal system has for the juror, the steps that the judge instructs the juror to perform in the process of arriving at a verdict. Pennington and Hastie note that the juror performs the task of arriving at a verdict with information from several sources and in several forms. The first source of information comes from the reading of the indictment and the plea of the defendant to the jury. The trial proper begins with the opening statements of the attorneys, which are followed by the testimony of the witnesses, the introduction of exhibits and then by closing arguments. Before asking the jurors to begin deliberations, the judge instructs them on the elements of the crimes charged, and on the process they are to follow in arriving at a verdict. It is from all of these sources and forms of information that the juror's verdict is expected to be derived. Therefore, according to Pennington and Hastie, the first subtask (Subtask 1) to be performed by the juror is to observe the proceeding passively and to remember, to the extent possible, all that has been presented in court.

According to the Ideal Jury Model, the jurors are expected to make no judgments and to draw no conclusions during the course of the trial. It is only after the close of the evidence and the judge's presentation of the final instructions to the jurors that they become more active. The jurors
then embark on the second subtask (Subtask 2), the establishment in their minds of the various categories for the verdicts, based on the explanation provided by the judge's instructions. For example, to convict a person of Murder, a juror must find that the defendant intended to harm another, and that the defendant performed some voluntary act that resulted in a death. To convict a person of First Degree Murder, an additional element of deliberation must be found to have been present.

According to Pennington and Hastie, once jurors are apprised of the judgment categories, they are faced with their next subtask (Subtask 3), the selection of admissible evidence. Based on the judge's instructions, the jurors are expected to review all that has occurred at the trial and to separate out that which they may "legally" use to arrive at a verdict. For example, jurors are instructed that the indictment and the opening statements are not evidence and are not to be used in arriving at a verdict.

Many questions faced by jurors are not readily answerable through direct observation of the evidence presented at trial. Inferences must be drawn. For example, absent the rare occasion when a witness admits that he or she is lying, the jurors can only determine credibility through observation of the witnesses' demeanor, from the presence or absence of apparent bias, or from inconsistencies within and between the witnesses'
statements. Truthfulness and accuracy must be inferred. The need for such inferential activity on the part of jurors is reflected, therefore, in the next three subtasks suggested by Pennington and Hastie. First, the juror must construct a plausible sequence of events from, and consistent with, the evidence given at trial (Subtask 4). Since witnesses often present fragments of the whole series of events involved in a crime, and many key acts may occur without a witness being present, the sequence of events, and at times, even their occurrence must be inferred from the evidence that is presented. Second, the jurors must assess the credibility of the witnesses and the plausibility of the stories that they have constructed (Subtask 5). In order to accomplish this, they are instructed to take several factors into consideration. Jurors are instructed to consider possible sources of bias that could cause the witness to make false statements. Further they are instructed to consider the witness' demeanor, while testifying, for indications that he or she may be lying. They are also instructed to consider the witness's opportunity to observe the events about which he or she is testifying, and to consider whether the content of the testimony is consistent with their notions of how things happen in the real world. After considering all of these factors, the jurors must decide whether they believe the witness. Third, the juror must evaluate the evidence for implied facts that are at issue in the case at hand (Subtask 6), but for which no direct evidence exists. For example, in most criminal cases, the mental state of the defen-
The defendant is an element of the crime and a fact in question. Without an admission through the direct testimony of the defendant, the mental state of the defendant can only be inferred.

The final subtask (Subtask 7) requires the jurors to match the facts, as they have determined them, to the verdict categories. They must decide whether each of the elements of the crime, as described in the judges' instructions, were established "beyond a reasonable doubt." If all of the elements have been proved to that level of certainty, they are to convict the defendant. If the jurors believes that any one of the elements is not sufficiently proved, they are expected to acquit. For example, to convict in a Murder trial, the jurors must find, beyond a reasonable doubt, that the defendant performed an act, that the act was intended, and that the act resulted in the death of a human being. If any one of those facts is not present, the jurors are required to find the defendant Not Guilty.

Clearly, attempts to simulate juror decision making with narratives of cases as stimulus material, as was done by both Oliver and Griffitt (1976), and Whalen and Blanchard (1982), bypass many of the subtasks believed to be performed by jurors. In contrast to real trials, such narratives present predetermined sequences of events not constructed by the juror. Narratives usually exclude conflicting information and present the
case from the point of view of an omniscient narrator rather than from the various perspectives of the witnesses. Consequently, narratives obviate the need to infer facts, to assess credibility, and to choose from among the evidence presented by the different witnesses that which is admissible, credible and relevant to a final verdict.

In order to assess the effects of emotionally charged evidence on juror decision making, it would seem appropriate to simulate the task of jurors more closely by requiring them to sort through the testimony of various witnesses and to construct their own theories of what took place. A simulation closer to the actual tasks expected of jurors would require subjects to receive evidence from several sources and in a more fragmented form (i.e. each witness giving only "part of the story" and witnesses disagreeing about detail). It would also require subjects to look at arguments from the perspectives of both the prosecution and the defense. Finally, a closer simulation would require subjects to receive extensive juror instructions, explaining the elements of the crime charged and the judgments to be made. With such a simulation, assessments of the effects of emotionally arousing or gruesome evidence could be made on both the overall verdict and on specific subtasks identified by Pennington and Hastie (1981).
Theoretical Considerations

Both Oliver and Griffitt (1976), and Whalen and Blanchard (1982), approached the issue of the effects of emotionally charged photographic evidence without reference to psychological theory. Rather, their stated purpose was limited to assessing the underlying assumptions of an Appeals Court decision in a recent high publicity case. Neither contemporary decision theories nor theories of motivation and emotion provide adequate assistance in predicting the effects of vivid, gruesome, or emotionally arousing evidence on juror decisions. To present a theoretical basis for this study, and thus to guide its design, the decision-making process in a criminal case needs to be conceptualized to incorporate an affective component.

In contemporary models of juror decision making, the guilt/innocence decision is generally treated as merely reflecting the individual juror's beliefs concerning what events occurred and his or her belief that these events did or did not constitute the elements of the crime charged. However, the act of convicting a defendant in a criminal case, or of finding a civil defendant liable, carries with it meaning beyond the conclusion that something did or did not happen. Implicit in a criminal con-
conviction is a condemnation of the defendant and a determination that the person is deserving of punishment. As such, conviction may be viewed as an act of aggression.

This recognition of the aggressive nature of the act of conviction of criminal defendants is not novel. Much of the early research on personality correlates of "conviction proneness" clearly recognized, or at least implicitly accepted, the aggressive nature of the act of conviction by focusing on authoritarianism as a key component of the tendency to convict (see e.g. Boehm, 1968). Further, studies of aggression have used simulated juror verdicts and proposed sanctions as operationalized measures of aggression. For example, Freedman, Levy, Buchanan and Price (1972), studying the effects of overcrowding on aggression, used simulated trial recordings as stimulus material and jury verdicts as measures of aggression.

Construing the act of conviction as aggressive in nature gives rise to a theoretically approachable question: What are the effects of vivid, gruesome or emotionally charged photographs on the viewers tendency to convict (aggress). Two theories of aggression, Freud's notion of displacement and Bandura's Social Learning Theory, can provide some guidance to answering this question. Expectations regarding such effects are de-
dependent on the assumed nature of the influence that such evidence has on the viewer’s emotional experience. If one assumes that gruesome photographic evidence acts as a trigger for anger, then such evidence would be predicted to increase the likelihood of conviction (aggression) through the mechanism of displacement, regardless of surrounding circumstances. In contrast, if vivid evidence is assumed to raise the viewer’s level of general arousal without specifically triggering anger, then under certain conditions, the introduction of such evidence would be predicted to increase the likelihood of conviction, while under other conditions, such evidence would be predicted to reduce it.

Photographic Evidence as a Trigger of Anger.

The assumptions embodied in Federal Rule of Evidence 403 suggest that gruesome photographic evidence functions to induce anger, bias, and prejudice, which, in turn, can lead to unfair conviction of innocent defendants. Theories of displacement, presented by Freud (1920) and later by Dollard, Doob, Miller, Mowrer, & Sears (1939) are generally consistent with this notion. According to the theory of displacement, aggression, which ordinarily can be expected to be directed against an instigator of anger, may be directed against a different person when the instigator is unavailable or when aggression against the instigator would have serious
negative consequences. Furthermore, the tendency of an angry person to aggress against a non-instigator is believed to increase with the degree to which he or she is associated with the instigator.

The tendency in humans to displace aggression has been demonstrated experimentally by several researchers. Holmes (1972) found that highly frustrated subjects would aggress (*i.e.* deliver electric shocks) against an innocent bystander more than non-frustrated subjects. Moreover, he found no difference between the degree of aggression directed against the frustrator and the degree of aggression directed against the innocent bystander. Konecni and Doob, (1972) studied catharsis, which they operationally measured by the number of shocks annoyed subjects were willing to give following a prior opportunity to aggress. They found that subjects who had an opportunity to aggress against an individual who had not instigated their anger, termed the scapegoat, subsequently shocked their instigator less than subjects who were afforded no opportunity to deliver shocks to the scapegoat. They concluded that the opportunity to aggress against a scapegoat had a cathartic effect and thus supported the notion of displacement. Fenigstein and Buss (1974) attempted to determine the relative contributions to displaced aggression of similarity of the target person to the frustrator and opportunity to aggress intensely. They found that annoyed subjects who were given the oppor-
tunity to choose between delivering mild aggression against a confederate who was a friend of the instigator (similar) and delivering intense aggression against a confederate not associated with the instigator (dissimilar) were more likely to opt for the high intensity dissimilar choice. In short, there appears to be substantial support for the belief that angered individuals will displace aggression on blameless but available third parties when the instigator of that anger is unavailable.

If one assumes that gruesome photographic evidence functions to anger jurors in a trial context, it would be expected that jurors, presented with such evidence, would be more likely to aggress by showing a heightened inclination to convict. This tendency to convict would be predicted to increase with the intensity of the emotional stimulus regardless of initial tendencies to either convict or acquit. Factors in the trial pointing to guilt or innocence would not be expected to affect this tendency. Where the evidence points strongly to the conviction of the defendant, that defendant would be seen by jurors as the instigator of anger, and thus, a natural target of aggression. In the absence of strong evidence pointing out the guilty party, jurors, frustrated by an absence of an appropriate outlet for their aggression, would be predicted to convict the most conveniently available target, the defendant. An innocent defendant, therefore, may serve as a convenient target for their displaced aggression.
Photographic Evidence as a Trigger of Increased Arousal.

Somewhat different predictions arise if one assumes that gruesome photographic evidence functions to increase general arousal rather than anger in the viewer. Bandura (1973, pp. 53-59) presented a social learning model linking arousal to aggression. According to Bandura, arousal functions to increase the probability of behavior occurring, and aggression is one type of behavior that can occur. However, according to Bandura, arousal can facilitate other types of behavior, as well. The Social Learning Model asserts that aggression becomes more likely in the face of arousing stimuli, only if aggression is the dominant or most likely response for the individual under the surrounding circumstances. When other responses, especially those incompatible with aggression are dominant, arousal may actually be predicted to inhibit aggression. For example, while frustration may result in aggression in some individuals, others may respond to the same situation with constructive problem solving, psychosomatization, withdrawal, or self-anaesthetization through drugs and alcohol. The particular behaviors manifested are those that are prepotent for the individual.
There exists a substantial body of research demonstrating the aggression facilitating effects of arousal (see Baron 1977, Rule & Nesdale 1976, for reviews). For example, Konecni (1975) varied the level of arousal by exposing subjects to stimulating tones that varied in intensity and complexity. Prior to exposure to the tone, half of the subjects were verbally insulted by a confederate of the experimenter. Konecni found that arousal interacted significantly with the insult condition, such that aggressive behavior (i.e., number of shocks administered) increased with an increase of complexity and volume of the tones, but only for subjects who had been insulted. Arousal did not affect the number of shocks administered by subjects who were not previously insulted, and therefore not predisposed to aggress. In a study of the effects of overcrowding, Freedman, Levy, Buchanan & Price (1972) found that males were more likely to compete and aggress under conditions of overcrowding while females were less likely to do so. Since both competition and aggression are response styles more typical of males than of females, these results also lend credence to the theory that arousal serves to enhance rather than initiate aggression. That is, arousal appears to facilitate the prepotent response, whether or not it is aggressive in character.
Thus, if gruesome photographs introduced at trial are assumed to increase arousal, Bandura's Social Learning Model of Aggression would lead to predictions that differ, at times, from those which would arise from Federal Rule of Evidence 403 and from Freud's conception of displaced aggression. Specifically, gruesome photos would be predicted to increase the probability of conviction when conviction is already the dominant or most likely response, and would be predicted to decrease the probability of conviction when another, incompatible response is prepotent. The prepotent response would be determined by surrounding circumstances and individual characteristics of the juror. Where, absent such photographs, the evidence points to conviction, conviction would become even more probable with the introduction of gruesome photographs. In contrast, where the evidence points to acquittal, the introduction of such photographs would be predicted to increase the probability of acquittal.

Other Effects

There are reasons to expect that the introduction of gruesome photographic evidence would affect the performance of jurors on specific subtasks of the individual's decision-making process as identified in the Ideal Juror Model (Pennington & Hastie, 1981). In an exploratory vein, the present project investigates three such subtasks which may be par-
ticularly vulnerable to the influence of such evidence: memory, evaluation of the credibility of the witnesses, and the drawing of inferences concerning facts in issue.

*Memory.*

The quality of performance on a wide variety of cognitive and behavioral tasks repeatedly has been demonstrated to improve as arousal increases to an optimal point and then to decline as arousal continues to increase past that point (Yerkes, and Dodson, 1908, Buck, 1988). This effect has been observed in learning and memory tasks (Eysenck, 1976). That is, experimental subjects tend to demonstrate poor performance on memory tests under conditions of extremely low or extremely high arousal. Superior performance tends to appear in conditions of intermediate or moderate arousal.

The first subtask for the Ideal Juror is to observe and encode the information presented at trial. Given that one possible effect of gruesome photographic evidence is to raise the level of arousal in jurors, it is possible that the introduction of gruesome photographic evidence will tend to influence subjects performance on the memory subtask. Specifically, since participating in a jury trial itself can be expected to be an emotionally arousing experience, the presence of highly emotionally arousing evidence
in a trial setting may raise jurors' level of arousal to the point that it tends
to interfere with their ability to take in and store testimonial evidence. Jurors, presented with gruesome photographic evidence, may show recall inferior to that of jurors who have not been presented with such evidence.

*Arousal, Anger and the Evaluation of Credibility.*

Faced with contradictory evidence, jurors must assess the credibility of witnesses and choose from among conflicting statements. Because the act of finding someone untruthful, like the act of conviction, carries with it an element of judgment and condemnation beyond the mere finding of fact, it would seem likely that this process would parallel that of conviction and be subject to the influence of emotionally charged photographic evidence. Theories of aggression would be expected to provide insight into this matter. As in the case of conviction, recourse to both theories of displacement and arousal can aid in the development of predictions of the likely effects of emotionally arousing evidence on the assessment of credibility.

From Freud (1920), Dollard, *et al.* (1939) and Rule 403 of the Federal Rules of Evidence, it would be assumed that emotionally arousing photographic evidence would generate anger in the viewer. As described above, this anger would be expected to be directed towards its instigator.
when that person is available and displaced to a convenient target when he
or she is not. Further, the choice of targets would be based on availability
and similarity to the instigator. If the assessment of credibility is aggres-
sive in nature, as has been proposed here, and if photographic evidence
arouses anger in viewers, as this formulation assumes, then it would be
predicted that its introduction would have several effects. First, to the ex-
tent that the defendant in a trial is perceived as the instigator of the anger,
that person would be the target of direct aggression and his or her
credibility would tend to be rated as lower. If the defendant is not clearly
the instigator, but is a convenient target, then the anger should be dis-
placed to him or her and credibility would again be rated lower. Further,
because defense witnesses are associated with the defendant, they too
would be predicted to suffer a loss of credibility through displaced aggres-
sion. In contrast, the credibility of prosecution witnesses, who are clearly
separated from the defendant in the minds of the jurors may not suffer.

As in the case of conviction, Bandura's Social Learning Model of
Aggression points to somewhat different predictions from those generated
from the displacement formulation. That model assumes that emotionally
charged photographic evidence would function to increase arousal rather
than anger, and assumes that the arousal would serve to potentiate the
prepotent response, whether that prepotent response is aggression or not.
Accordingly, from this model it would be predicted that the introduction of gruesome photographic evidence would cause the juror to find a witness less credible when that finding is prepotent and more credible when it is not. Where the evidence points to untruthfulness on the part of the witness, the introduction of such photographs should make it more likely that the juror would rate him or her untruthful. In contrast, where the evidence points to the finding that the witness was truthful, that finding should become more likely.

*Inference of the Existence of Facts.*

At trial, jurors are required to make reasoned inferences about issues that are not readily observable, and therefore not the subject of direct testimony of witnesses. For example, to find a defendant guilty of First Degree Murder, the juror must conclude that the killing was part of a plan. As few defendants plan their crimes in public, jurors must often infer the existence of a plan from the circumstances surrounding the crime. While little research exists to shed light on the impact of emotionally charged evidence on inferential reasoning, there is reason to expect that such evidence would affect jurors' ability to draw logical inferences from the evidence at trial. For example, Lefford (1946) studied syllogistic reasoning in college students. He found that subjects faced with emotionally charged syllogisms had greater difficulty in processing logically than
did subjects presented with emotionally neutral ones. Specifically, sub-
jects in that study tended to accept logically incomplete syllogisms as com-
plete when they led to emotionally desirable conclusions and tended to
reject logically complete syllogisms as incomplete when they led to un-
desirable conclusions. Thus, it would be expected that a strong emotional
tone, set by the presence of gruesome photographic evidence, may affect
conclusions from the evidence. Specifically, it is predicted that, in the
face of emotionally arousing evidence, jurors will more readily infer the
existence of facts that have not been directly proved in a manner consis-
tent with their predispositions, than would those not exposed to the
photographs.

The Present Study

The present study addresses several questions associated with the
use of emotionally charged photographic evidence in a trial setting. First,
by using a task more representative of that faced by jurors in real trials
than has been used previously, the study attempts to determine whether
vivid and gruesome photographic evidence has a demonstrable effect on
juror verdicts. The study requires subjects to deal with evidence in its
more natural, fragmented and inconsistent form, by reading an ab-
abbreviated homicide trial transcript including both testimony and multiple
exhibits. The exhibits include illustrations of the victim that are factually
irrelevant to the final judgment but vary in the intensity of emotions that they are intended to engender in the viewer. Following previous research (Whalen and Blanchard 1982), the intensity of the illustrations of the victim is varied by presenting participants with either a line drawing, a black and white or a color photograph of the homicide victim showing her condition at the time of her death. The study then requires subjects to make judgments of guilt or innocence, and to decide on an appropriate sentence.

The present study also pits against each other two competing hypothesized effects of the introduction of gruesome photographs on the judgments of individual jurors. The assumptions embodied in Federal Rule of Evidence 403, and theories proposed by Freud (1920) and Dollard, et al. (1939) would lead to the prediction that such photographic evidence would serve to heighten jurors' anger, and to increase the probability of conviction through the mechanism of displacement. This effect would be expected regardless of surrounding circumstances. In contrast, according to Bandura's (1973) Social Learning Model, gruesome photographs are assumed to increase the level of arousal experienced by the juror. Arousal produced by the introduction of such photographs should increase the likelihood and intensity of a dominant response, which, depending on the circumstances, may or may not be the inclination to convict.
To test these competing predictions, the present study presented subjects with trial material for which conviction is either a relatively low or high probability occurrence. The dominant response becomes acquittal for the former and conviction for the latter. If gruesome photographs function to generate anger in jurors, then the exposure of subjects to such photographs in both the weak and the strong evidence conditions should produce an increase in the tendency to convict. However, if the introduction of such photographs functions to increase arousal rather than anger in jurors, then subjects in the strong evidence condition, who are exposed to gruesome photographs, should show a higher tendency to convict than those not exposed to the photographs. In contrast, subjects in the weak evidence condition, exposed to the same photographs, should show a higher tendency to acquit than those not exposed to them.

The present study also seeks to assess the effects of gruesome photographic evidence on three of the subtasks hypothesized to be performed by the Ideal Juror described by Pennington and Hastie (1981). First, it is hypothesized that the introduction of gruesome photographic evidence will raise subjects' level of arousal beyond that which is likely to result from participating as mock jurors, and result in a decrement in their ability to take in and encode the testimonial evidence presented. To test this hypothesis, the present study incorporates a brief recognition task.
Subjects who are presented with the photographic images of the victim are predicted to perform more poorly on this task than are those who receive the line drawing only.

The present study also explores the influence of emotionally arousing evidence on jurors' assessment of witness credibility. As with the verdict variables, the study adopts a conceptualization of the assessment of credibility as a form of aggression, and presents alternate predictions. Following Freud (1920), Dollard, et al. (1939) and the Federal Rules, it is predicted that the introduction of this evidence will serve to generate anger in the juror/subjects which will be expressed directly against the defendant in the strong evidence condition and displaced against him in the weak evidence condition. In either case, the introduction of the evidence is expected to increase the likelihood that the juror/subjects will find the defendant less credible. The credibility of the prosecutions witnesses is expected to be unaffected. In contrast, following Bandura, it is predicted that the introduction of emotionally arousing evidence will serve to increase arousal rather than anger in the viewer, which will, in turn, result in an increase in the likelihood of the prepotent response. For the strong evidence condition, the prepotent response would be to believe the prosecution witnesses and disbelieve the defendant. For the weak evidence condition, the effect should be reversed and the jurors, faced
with emotionally arousing evidence, would be expected to find the defendant more credible, and the prosecution witnesses less credible than would those who do not receive the photographs.

Finally, the present study explores the possibility that emotionally charged or gruesome photographic evidence will affect jurors’ performance of the sixth subtask expected of the Ideal Juror (Pennington & Hastie, 1981), the inference of facts not directly proved by the evidence. Specifically, it is hypothesized that jurors, presented with such vivid photographic evidence will be more polarized in their tendencies to infer the existence of facts for which no direct proof exists than will those who are not presented with the photos in a pattern that parallels their decisions on the verdict measures. That is, it is predicted that when the evidence against the defendant is weak, subjects exposed to the photographs will be less likely to make such inferences than those not exposed to the photographs. In contrast, when the evidence against the defendant is strong, it is predicted that those exposed to the photographs will be more likely to infer facts than will those who are not exposed to them. To test these hypotheses, the study asks subjects in the various conditions whether they agree or disagree with certain inferences related to the defendants activities and state of mind.
CHAPTER II

METHOD

Overview

To assess the possible effects of emotionally charged photographic evidence on juror decisions, the present study required subjects to read written transcripts, review exhibits, and enter written judgments in a questionnaire. In a 2X3 factorial design, the study varied weight of the testimonial evidence against the defendant (strong vs. weak) and the nature of photographic evidence presented (line drawing, black and white, or color photographs). Written questions about verdicts, weight of the evidence and the appropriate amount of punishment served as the major dependent measures. To assess the hypothesized effects of the photographic evidence on juror's ability to encode and recall the evidence, subjects were required to complete a brief multiple choice memory test. Assessments of witness credibility was accomplished by requiring subjects to answer questions rating the credibility of two key witnesses, specifically, the defendant and his chief accuser. Finally, to assess the effects of
gruesome photographic evidence on the inferential activity of jurors, subjects were asked their degree of acceptance or rejection of certain assertions about the defendant's intent and planning.

Subjects

Sixty male and 60 female undergraduates enrolled in the Introductory Psychology course at the Ohio State University participated in the study in partial fulfillment of a course requirement. Subjects were recruited by posted sign-up sheet, which described the study as one of jury decision making and which warned potential participants that realistic evidence from a homicide case would be involved. As the procedure required subjects to read elaborate case transcripts, participation was limited to native English speakers.

Materials

The materials were presented to subjects in two folders, one containing the transcript and exhibits, and the other containing the dependent measures.
Weight of the Evidence: Transcripts

The first folder contained one of two 21 page transcripts\textsuperscript{3} of a criminal trial. Contained in each of the two versions of the transcript were opening instructions, opening statements of counsel, witness' direct and cross examination testimony, exhibits, final arguments of counsel, and the judge's final instructions. Through the testimony of several witnesses and exhibits, the transcripts presented the trial of an individual accused of shooting his wife in front of her stepmother's house after the couple had recently been separated. An eyewitness, the victim's stepmother, placed the defendant at the scene of the shooting, while another witness, the defendant's landlady, placed him at home, away from the event. Cross examination of the stepmother also revealed that there was another individual who had both motive and opportunity to commit the shooting. The evidence clearly limited the issue to the identity of the assailant, and rendered the photographic evidence presented factually irrelevant to the resolution of that issue.

\textsuperscript{3} Exhibits and transcript materials are adapted from Beskind, et al. (1986). Used by permission.
The two transcripts differed with respect to the weight of the evidence against the defendant, producing one weak and one strong evidence transcript. (See Appendix A and B for copies of the "Weak" and "Strong" evidence transcripts respectively.) Weight of the evidence was manipulated by varying the testimony. For example, one passage in the cross examination testimony of the eyewitness, the victim's stepmother, in the Weak evidence transcript read as follows:

DEFENSE: Mrs. Wilson, you said in your testimony that the car that you saw was a white Pontiac.

MRS. WILSON: Well, the car was white, I can't say it was a Pontiac, but, it was Joe's car, I mean, it looked like Joe in it so it must have been his car.

DEFENSE: So you are not sure?

MRS. WILSON: No, I guess not. Not 100%.

In contrast, for the Strong evidence transcript, that testimony read as follows:

DEFENSE: Mrs. Wilson, you said in your testimony that the car that you saw was a white Pontiac.

MRS. WILSON: I'm pretty sure it was his Pontiac. I've seen it many times before.

DEFENSE: How can you be sure?

MRS. WILSON: Look, I saw what he was wearing earlier when he came by and he had the same clothes on when I saw him shoot her. There was plenty of light and I had time to see who it was. He killed Helen. She was my daughter.
Similarly, the confidence of the alibi witness, the defendant's landlady, was manipulated through differences in her cross-examination testimony presented in the following two passages:

Weak evidence transcript:

PROSECUTION: Just one question to clarify things. You did not look at your watch did you?

MS. HOOVER: No sir, I did not.

PROSECUTION: Nothing further.

Strong evidence transcript:

PROSECUTION: Just a few questions to clarify things. You did not look at your watch did you?

MS. HOOVER: No sir, I did not.

PROSECUTION: So your time estimate is just that, an estimate?

MS. HOOVER: Yes.

PROSECUTION: And when you say he got home before 10:00, you can't be sure of that can you.

MS. HOOVER: Well no, not 100%, but I think it was before 10:00.

PROSECUTION: And if the network shows weren't on schedule that night, you could be completely wrong, couldn't you?

MS. HOOVER: Yes.

PROSECUTION: So you can't be sure of the time, can you?

MS. HOOVER: No, I guess not.

PROSECUTION: Nothing further.
The transcripts varied in several other ways, as well. For example, the key prosecution witness, in the Weak evidence transcript, reported hearing the victim say "Oh no! Oh no!." In the Strong evidence transcript, that quote was replaced with "Oh no! Oh no! Joe don't," which identified the defendant by name. Also, the police officer, in the Weak evidence transcript, admitted that the results of a scientific test used to determine whether the defendant had fired a gun were negative. He also admitted that a recently paroled murderer, who was identified by name and who had threatened the victim's family in the past, had just been arrested for assaulting someone with a gun of the type used in the murder. In contrast, in the Strong evidence transcript, the results of the scientific test were described as positive, though potentially subject to error, and the discussion of other potential assailants was limited to unnamed individuals who had made threats years earlier. Further, in the Weak evidence transcript, one witness testified that she had talked to the defendant shortly before the shooting, that he appeared calm and that he indicated that he wanted to work things out with his wife. In contrast, in the Strong evidence condition, that same witness only described the defendant as "very angry." Other differences between the two transcripts included the key witness's confidence in her identification of the defendant on direct examination, and her ability to observe the event.
Development of the Transcripts.

The transcripts were pilot tested and refined to ensure that they did, in fact, vary with respect to the tendency to elicit votes to convict. Forty eight subjects participated in the pilot study. Development and refinement proceeded as an iterative process, so that each draft of each of the strong and weak transcripts were read by six subjects. The refinement process continued until mean verdict scores for the two transcripts from the pilot groups were significantly different at the .05 level with six subjects in each group.

Four to six subjects were seen during each session of the pilot study. Under the same instructions as in the study proper, pilot subjects were asked to read either the strong or weak evidence transcript, without the exhibits, and were asked to answer all of the questions in the verdict questionnaire described below. Following completion of the questionnaire, subjects were interviewed regarding their subjective reactions to the transcripts. For example, subjects were asked what they thought actually happened in the case, and what testimony they found least and most persuasive. Refinements were made to the transcripts based on the information gathered, and the transcripts were again tested in the same manner. The critical item in the pilot questionnaire was the verdict item, which
asked subjects to indicate the degree to which they believed the defendant to be guilty or not guilty of Murder. Response options ranged from 1 to 7, where "1" represented the strong belief that the defendant was not guilty and "7" represented the strong belief that the defendant was guilty. The neutral midpoint was not included as an option. The criterion verdict score difference was met after three revisions of the transcript \( t(10) = 2.49, p = .032 \). The mean score for the Weak Evidence transcript was 2.83 (S.D. = 1.84) and for the Strong Evidence transcript the mean was 5.33 (S.D. = 1.63).

*Nature of the Exhibits*

The folder containing the transcripts also varied between conditions with respect to the nature of the exhibits presented. Although each contained a map of the neighborhood (Figure 1) where the crime allegedly took place, and a diagram of the front yard of the house (Figure 2) where the shooting allegedly occurred, one third of the folders included a color photograph of the victim (Plate I), one third included a black and white photograph made from the same negative (Plate II), and one third included a medical illustrator's black and white line drawing of the victim in the same position as is depicted in the photographs (Plate III). Combinations of transcripts and exhibits where varied systematically to generate a 2 (Weight of Evidence) X 3 (Nature of Exhibit) factorial design.
Development of the Visual Exhibits.

In a separate pilot study, the exhibits were tested to verify that they did vary in the degree to which they aroused emotions in the viewer. Fifteen males and fifteen females, participated in groups of four to six subjects each. Subjects entered a room with tables arranged to allow them to perform the required task without being able to observe the work of others. Each subject received a folder which contained one of the three exhibits, either the line drawing, the black and white photographs or the color photograph, and a single page questionnaire (a copy of which is presented in Appendix C). Folders were randomly distributed in a manner which assured that each exhibit would be viewed and rated by five males and five females over the course of the study. Key questions in that questionnaire required subjects to rate the exhibit in their folder with respect to the degree to which they found the image to be disturbing, the degree to which they thought that the average freshman would find the exhibit to be disturbing, the intensity of the feelings that the exhibit gave rise to, and the amount of information that they felt the exhibit contained. Response options ranged from 1 to 9, where 1 = "Not at all" and 9 = "Extremely." The experimenter instructed subjects to look at the exhibit and respond to the
questions contained in the questionnaire (a copy of those instructions is presented in Appendix D). Subjects were given approximately 15 minutes to complete the task.

The inter-item correlation matrix for the five items is presented in Table 1. Inspection of the inter-item correlations, as well as an intuitive grouping of the items based on the item content, suggested the presence of two discrete item groups. Specifically, the first four items were highly intercorrelated, and appeared to assess the degree to which the exhibits were viewed as disturbing by the subjects, and the intensity of the feelings that the exhibits engendered. In contrast, the final item was generally uncorrelated with the others, and appeared to measure the degree to which subjects found the exhibits to be informative. Consequently, it was concluded that the first four items assessed the general level of emotionality of the exhibits, and the final item assessed their informational value. For subsequent analyses, the responses to the first four items were averaged to produce an Emotionality Scale. The fifth item was analyzed separately as a measure of informational value. The resultant Emotionality Scale was highly internally consistent, with a reliability coefficient (Cronbach’s alpha) of .95. The overall means for the Emotionality Scale and the Infor-

4. These and all subsequent analyses were performed using SPSS/PC+, Version 2.0.
mational Value Item were 5.52 and 4.17, respectively, and the standard deviations for each were 2.32 and 1.70. The Emotionality Scale did not correlate significantly with the Informational Value item ($r = .28, p < .07$).

Table 1.

**Inter-correlation table for exhibit pilot study dependent measures.**

<table>
<thead>
<tr>
<th>Item</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. How disturbing did you find this image?</td>
<td>1.000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. How disturbing do you think the average freshman will find this image?</td>
<td>.895***</td>
<td>1.000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. How emotional do you think the average freshman will find this image?</td>
<td>.826***</td>
<td>.866***</td>
<td>1.000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. How intense were these feelings listed in the previous item?</td>
<td>.852***</td>
<td>.797***</td>
<td>.793***</td>
<td>1.000</td>
<td></td>
</tr>
<tr>
<td>5. How informative is the image?</td>
<td>.228</td>
<td>.386*</td>
<td>.191</td>
<td>.235</td>
<td>1.000</td>
</tr>
</tbody>
</table>

* $p < .05$, ** $p < .01$, *** $p < .0001$.

To assess differences in emotional intensity and informational properties of the exhibits, mean scores on the Emotionality Scale and the Informational Value Item for the three groups were analyzed. Table 2 presents the means and standard deviations for the Emotionality Scale and the Informational Value Item for each of the three exhibits. A one-way ANOVA for the Emotionality Scale (presented in Table 3) yielded a significant main effect for the Nature of the Exhibit, $F(2, 27) = 15.51$, $p < .0001$. Post-hoc comparisons (Scheffe test) revealed that the mean
score for the line drawing was significantly lower (at the .05 level) than the means for the black and white and color photographs. However, the latter two means did not differ significantly. In contrast, for the Informational Value Item, the one-way ANOVA (presented in Table 4) was nonsignificant, \( F(2,27) = 1.20, p<.32 \), and post-hoc comparisons revealed no significant differences among the exhibits.

Table 2.

<table>
<thead>
<tr>
<th>Variable</th>
<th>Line Drawing</th>
<th>Black and White Photo</th>
<th>Color Photo</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Emotionality Scale</td>
<td>3.18 (1.94)</td>
<td>6.82 (1.51)</td>
</tr>
<tr>
<td></td>
<td>Informational Value Item</td>
<td>3.50 (1.78)</td>
<td>4.60 (1.43)</td>
</tr>
</tbody>
</table>

\[ a \] Standard deviations are indicated in parentheses.
Table 3.
ANOVA table for Emotionality Scale by Stimulus

<table>
<thead>
<tr>
<th>Source</th>
<th>D.F.</th>
<th>Sum of Squares</th>
<th>Mean Squares</th>
<th>F Ratio</th>
<th>Probability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nature of the Exhibit</td>
<td>2</td>
<td>83.15</td>
<td>41.58</td>
<td>15.51</td>
<td>0.0000</td>
</tr>
<tr>
<td>Error</td>
<td>27</td>
<td>72.39</td>
<td>2.68</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>29</td>
<td>155.54</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 4.
ANOVA table for Informational Value Item.

<table>
<thead>
<tr>
<th>Source</th>
<th>D.F.</th>
<th>Sum of Squares</th>
<th>Mean Squares</th>
<th>F Ratio</th>
<th>Probability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nature of the Exhibit</td>
<td>2</td>
<td>6.87</td>
<td>3.43</td>
<td>1.20</td>
<td>0.32</td>
</tr>
<tr>
<td>Error</td>
<td>27</td>
<td>77.30</td>
<td>2.86</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>29</td>
<td>84.17</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Contrary to expectations, the color photographic exhibit was not rated to be significantly more emotionally arousing than was the black and white exhibit. However, for several reasons, this was not felt to be an obstacle to the utilization of these exhibits in the present study. First, the
present study represents an attempt, in part, to determine whether black and white/color differences found in previous research (Whalen and Blanchard 1982) using case narratives would be found using transcripts. The emotionality of the exhibits in that study was not pretested. In order to parallel the design of prior research, black and white and color exhibits were needed. Second, the scale employed to measure differences in the emotionality of the exhibits, though apparently reliable and face valid, has not been empirically validated. Thus, failure to find differences in emotionality scores among the exhibits does not guarantee that the exhibits do not differ in the degree to which they engender emotions in the viewer. Finally, the ability of subjects to identify and assess the emotionality of a stimulus may be independent of the stimulus' actual influence on decision making. Though differences in emotionality are not reflected in the scale scores, differences in judgments might still be obtained.

Dependent Measures

The second folder presented to all subjects in the main study contained a questionnaire in which subjects were asked to indicate several judgments about the case presented in the transcript. (A copy of this questionnaire is presented in Appendix E). On the front page of the questionnaire appeared a verdict question which asked subjects to indicate the de-
gree to which they believed the defendant to be guilty or innocent of Murder. In addition to the verdict question, the questionnaire also contained items which asked subjects to report their confidence in their decisions, their beliefs about the strength of the evidence, their beliefs about various parties in the case, their inclinations regarding punishment of the defendant, and their memory for the evidence. Several additional items, included to further assess subjects' tendencies to view the defendant as guilty or not guilty, asked subjects to report their beliefs about the strength of evidence and the probability of the defendants' guilt. The first employed a 9 point Likert type scale with response options ranging from "Overwhelmingly in favor of guilt" to "Overwhelmingly in favor of innocence" with a neutral midpoint. Another item related to subjects' tendency to view the defendant as guilty or not guilty asked subjects to estimate the probability of guilt on a 100 point scale. Yet another item asked subjects to rate their confidence in their verdicts on a 10 point scale, where 1 represented "Not Confident at All," and 10 represented "Completely Confident."

Subjects were also asked to report their inclinations concerning punishment by indicating the sentence that they would impose, acting as judges, if the defendant were found guilty. Several items then asked subjects to indicate the degree to which they agreed or disagreed with certain
statements about the case, including assertions about certain elements of
the crime, and about the credibility of the defendant and of the key
prosecution eyewitness. A fifteen item multiple choice quiz was incor­
porated to assess subjects memory for the evidence.

To determine whether memory for the evidence varied between the
two transcripts, three items in the memory quiz specifically related to
those areas of testimonial evidence that had been varied. The correct op­
tion for each of these items depended on the condition to which the sub­
ject was assigned. In other words, a correct response for subjects in the
Weak Evidence condition would be incorrect for subjects in the Strong
Evidence condition.

To detect differences in mood states for subjects in the various con­
ditions, seven semantic differential scale type items, anchored by antonym
mood descriptors, were incorporated in the questionnaire. For these
items, subjects were asked to indicate their feelings while working on the
task. Specifically, subjects were asked to indicate the degree to which they
were either Happy or Sad, Relaxed or Anxious, Peaceful or Angry, Calm or
Upset, Pleased or Disgusted, Bored or Fascinated, and Carefree or
Serious.
Two questions concerning the "likeability" of the defendant and the key prosecution witness were included in the questionnaire. Additionally, subjects were asked to write a narrative in response to the question: "What do you think really happened?" and to describe the ways in which they believed themselves to be influenced by the exhibits. These questions were included in an effort to gather information for future research. Analyses of these questions are not relevant to the current study. No further mention of them will be made in this document.

**Procedure**

Subjects, in groups of four to six, met with the experimenter at the location and time designated on the sign-up sheet. Subjects were then seated in cubicles, designed to allow them all to see the experimenter, but to prevent them from observing the actions of their fellow subjects and to prevent them from seeing that materials (i.e. transcripts and exhibits) differed across conditions. Oral instructions (presented in Appendix F) were then read to the subjects, which oriented them to the task, and instructed them to read the transcript thoroughly and review all of the evidence before reaching a verdict or filling out the questionnaires. Subjects were then randomly assigned to one of the six conditions from a predetermined random number table and were given the transcript and questionnaire, which corresponded to the condition to which they were assigned. The
random order of presentation of materials to subjects was modified to ensure that equal numbers of males and females would be assigned to each of the six conditions. Subjects were given 45 minutes to read the transcript and to complete the questionnaires. Following completion of the questionnaires, the experimenter collected all of the materials and thoroughly debriefed the subjects in accordance with the outline presented as Appendix G.
CHAPTER III
RESULTS

Tendency to View the Defendant as Guilty or Not Guilty

Three questions were included in the questionnaire\(^5\) to assess subjects' tendencies to see the defendant as guilty or not guilty. As the first dependent measure, subjects were asked to indicate their verdict on a seven point Likert type scale where "1" represented the "strong belief" that the defendant was not guilty of murder and "7" represented the "strong belief" that the defendant was guilty. A neutral midpoint option was not included. The second measure asked subjects to rate the strength of the evidence against the defendant. For this item, options ranged from +4 to -4, where "+4" indicated the belief that the evidence was "Overwhelmingly in favor of guilt," while "-4" indicated the belief that the evidence was "Overwhelmingly in favor of innocence." The third item asked subjects to

\(^5\) See Appendix D for the dependent measure questionnaire.
rate the probability (as a percentage) that the defendant was guilty of murder. For this item, subjects were instructed that "0%" meant that "there is no chance that he committed the crime," and "100%" meant that "there is no doubt at all that he committed the crime." Table 5 presents the correlations between the three measures of the tendency to see the defendant as guilty or not guilty across conditions. As can be seen, these three measures were strongly correlated.

Table 5.

<table>
<thead>
<tr>
<th>Item</th>
<th>1</th>
<th>2</th>
<th>3</th>
</tr>
</thead>
</table>
| 1. Verdict                  | 1.000
| 2. Rated Strength of Evidence | .850*** | 1.000 |
| 3. Rated Probability of Guilt | .804*** | .818*** | 1.000 |

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

The three dependent measures (Verdict, Rated Strength of Evidence, and Rated Probability of Guilt) were analyzed using a two-way MANOVA, with two levels of the first independent variable, Weight of the

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6. Three-way MANOVA's with Gender as the third factor revealed no significant main effects for Gender. Further, Gender was not implicated in any of the interactions. Therefore, Gender was not included in any of the subsequent analyses.
Evidence (hereafter Transcript)-Weak Evidence and Strong Evidence, and three levels of the second independent variable, Nature of the Exhibit (Exhibit)-Line Drawing, Black and White Photograph, and Color Photograph. As the data for four subjects were discarded due to missing responses or uncodability on one or more of the items, the analysis was performed on the data from 116 subjects. The hierarchical (default) adjustment for nonorthagonality produced by the resultant unequal $N$ was used. As expected, the Transcript main effect was significant, approximate $F(3,108) = 15.16, p < .0001$ with Wilks' Lambda $= .704$ and eta squared $= .296$. However, the Exhibit main effect was nonsignificant, approximate $F(6,214) = 0.64, p > .70$ with Wilks' Lambda $= .966$. Also as predicted, the Transcript X Exhibit interaction was significant, approximate $F(6,216) = 2.44, p < .05$ with Wilks' Lambda $= .877$ and eta squared $= .123$.

Table 6.

<table>
<thead>
<tr>
<th>Source</th>
<th>D.F.</th>
<th>Error D.F.</th>
<th>Wilks' Lambda</th>
<th>Approximate F</th>
<th>Probability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transcript</td>
<td>3</td>
<td>108</td>
<td>0.704</td>
<td>15.162</td>
<td>.001</td>
</tr>
<tr>
<td>Exhibit</td>
<td>6</td>
<td>214</td>
<td>0.966</td>
<td>0.636</td>
<td>.702</td>
</tr>
<tr>
<td>Transcript X Exhibit</td>
<td>6</td>
<td>216</td>
<td>0.877</td>
<td>2.436</td>
<td>.027</td>
</tr>
</tbody>
</table>
Figures 3, 4, and 5 depict the mean scores for the Verdict, Rated Strength of Evidence, and Rated Probability of Guilt variables, respectively. Post-hoc comparisons (Scheffe test with a family-wise alpha = .05) for the Verdict variable revealed that subjects in the Strong Evidence condition, for all three exhibits, were significantly more inclined to convict the defendant than subjects in the Weak Evidence condition who viewed either the Line Drawing or the Black and White Photograph. However, subjects in the Weak Evidence Condition who viewed the Color Photographic Exhibit were not significantly less inclined to convict the defendant than were subjects in the Strong evidence conditions. In other words, while subjects who read the Strong Evidence Transcripts tended to be more inclined to convict than were subjects who read the Weak Evidence Transcript, this tendency lessened when subjects in the Weak Evidence condition viewed the Color Photograph of the victim.

The same pattern obtained for the Rated Strength of Evidence measure. Again, subjects in all three of the Strong Evidence conditions were significantly (Scheffe test with family-wise error = .05) more inclined to rate the strength of the evidence against the defendant higher than where subjects in the Weak Evidence condition who viewed either the Line Drawing or the Black and White Photograph. However, ratings of the
strength of the evidence by subjects in the Weak Evidence condition who viewed the Color Photograph were not significantly lower than were ratings by subjects in the Strong Evidence conditions.

A somewhat different pattern of results obtained for the Rated Probability of Guilt measure. Consistent with the other measures of the inclination to view the defendant as guilty or not guilty, subjects in the Strong Evidence conditions, regardless of which exhibit they viewed, rated the probability of the defendant’s guilt as significantly higher (Scheffe test with family-wise error = .05) than did subjects in the Weak Evidence condition who viewed the Line Drawing. Also consistent with the previous measures, ratings by subjects in the Weak Evidence condition who viewed the Color photographs were not significantly lower than were those by subjects who read the Strong Evidence transcripts. Further, subjects in the Weak Evidence condition who viewed the Black and White Photographs rated the probability of the defendant’s guilt as significantly lower than did subjects in the Strong Evidence condition who viewed the Line Drawing. In contrast to the pattern of results which obtained for the two previous measures, subjects in the Weak Evidence condition who viewed the Black and White Photographs did not rate the probability of guilt sig-
significantly less than subjects did in the Strong Evidence condition who viewed either of the remaining two exhibits (Black and White or Color Photographs).

Overall, the results of these analyses suggest that the Weak Evidence Transcript induced less certainty of guilt than did the Strong Evidence Transcript. However, the presence of the color photo for the Weak Evidence/Color Photograph group appears to have heightened subjects' tendency to convict to the point of being statistically indistinguishable from that of subjects in the Strong Evidence Conditions.

Memory for the Evidence.

It was predicted that subjects who viewed the color photographs would experience an increase in arousal and a corresponding decrement in their ability to remember the evidence. A 15 item multiple choice quiz was incorporated in the questionnaire to assess subjects' memory for the testimony presented in the transcript. One subject failed to complete all of the items. The responses of the remaining 119 subjects were scored so that one point was given for each correct response. Scores were summed across the items to produce a Memory Quiz Score. This measure had a mean of 13.25, a standard deviation of 1.58 and a Cronbach's alpha of .62. A 2(Transcript) X 3(Exhibit) two-way ANOVA (presented in Table 7) was
performed on the overall 15 item memory quiz. Contrary to predictions, performance on the Memory Quiz was not affected significantly by either of the manipulations, Weight of Evidence or Nature of the Exhibit. Neither the main effects nor the interaction achieved statistical significance.

Table 7.

<table>
<thead>
<tr>
<th></th>
<th>Mean</th>
<th>Standard Deviation</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Weak Evidence Transcript</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Line Drawing</td>
<td>13.4000</td>
<td>1.1877</td>
<td>20</td>
</tr>
<tr>
<td>Black &amp; White Photograph</td>
<td>13.4000</td>
<td>.8208</td>
<td>20</td>
</tr>
<tr>
<td>Color Photograph</td>
<td>13.4000</td>
<td>.9403</td>
<td>20</td>
</tr>
<tr>
<td><strong>Strong Evidence Transcript</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Line Drawing</td>
<td>13.0526</td>
<td>.9703</td>
<td>19</td>
</tr>
<tr>
<td>Black &amp; White Photograph</td>
<td>13.2000</td>
<td>1.0052</td>
<td>20</td>
</tr>
<tr>
<td>Color Photograph</td>
<td>13.7000</td>
<td>1.1286</td>
<td>20</td>
</tr>
</tbody>
</table>
Table 8.
ANOVA table for Memory Quiz.

<table>
<thead>
<tr>
<th>Source</th>
<th>D.F.</th>
<th>Sum of Squares</th>
<th>Mean Squares</th>
<th>F Ratio</th>
<th>Probability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transcript</td>
<td>1</td>
<td>0.191</td>
<td>0.191</td>
<td>0.185</td>
<td>0.668</td>
</tr>
<tr>
<td>Exhibit</td>
<td>2</td>
<td>2.249</td>
<td>1.125</td>
<td>1.089</td>
<td>0.340</td>
</tr>
<tr>
<td>Transcript X Exhibit</td>
<td>2</td>
<td>2.285</td>
<td>1.142</td>
<td>1.106</td>
<td>0.335</td>
</tr>
<tr>
<td>Error</td>
<td>113</td>
<td>116.747</td>
<td>1.033</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>118</td>
<td>121.462</td>
<td>1.029</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Evaluation of Credibility.

It was predicted that subjects' assessment of the credibility of witnesses would be a function of the interaction of the Weight of the Evidence against the defendant, the Nature of the Exhibit viewed by the subjects, and the type of witness (prosecution or defense) whose credibility is being evaluated. That is, a subject's tendency to view a witness as believable or not would depend on the side that the witness represents, the balance of the weight of the evidence and the presence or absence of emotionally arousing stimuli in the evidence. To test this hypothesis, two items were included in the questionnaire to measure subjects' assessment of credibility, one representing the assessment of a
prosecution witness, and the other representing the assessment of a
defense witness. Specifically, subjects were asked to indicate the degree to
which they agreed or disagreed with the following: "I believed the tes-
timony of Mary Wilson." Subjects were also asked to indicate the degree
to which they agreed or disagreed with the following: "I believed the tes-
timony of Joseph Thomas." For each item, response options ranged from
-3 to +3, where -3 represented "Strong Disagreement" and +3 represented
"Strong Agreement," The overall mean and standard deviation for
prosecution witness credibility item were .65 and 1.90 respectively. For
the defendant credibility item, the overall mean and standard deviation
were -0.13 and 1.97 respectively. Responses to the two items were nega-
tively correlated, $r = -0.504, p < 0.001$.

As the two credibility items differed only in the identity of the wit-
tness being evaluated for credibility, the pair of items served as a within-
subject factor. The results of a $2 \times 3 \times 2$ three-way mixed ANOVA with
two between subjects variables (Transcript and Exhibit), and one within
subject variable (Type of Witness: Prosecution and Defense) are
presented in Table 8. Mean scores for the six groups for each of the wit-
tnesses being evaluated are presented in Figure 6. As can be seen, the
Strength of Evidence variable interacted significantly with the Witness
being evaluated ($F(1,114) = 17.71, p < 0.001$), such that, when the evidence
was strong against the defendant, he was rated as less credible than the prosecution witness, but when the evidence was weak, the defendant was rated as more credible than the prosecution witness. Additionally, the prosecution witness was generally rated as more credible than the defendant \( (F(1,114) = 7.34, p < .01) \). The presence/absence of the photographic evidence did not significantly affect the rating of credibility directly, nor did it interact with the other factors significantly.
<table>
<thead>
<tr>
<th>Source</th>
<th>df</th>
<th>Sum of Squares</th>
<th>Mean Squares</th>
<th>F Ratio</th>
<th>Probability</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Between Subjects</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transcript</td>
<td>1</td>
<td>3.75</td>
<td>3.75</td>
<td>2.04</td>
<td>.156</td>
</tr>
<tr>
<td>Exhibit</td>
<td>2</td>
<td>7.03</td>
<td>3.52</td>
<td>1.91</td>
<td>.152</td>
</tr>
<tr>
<td>Transcript X Exhibit</td>
<td>2</td>
<td>0.70</td>
<td>.35</td>
<td>.19</td>
<td>.827</td>
</tr>
<tr>
<td>Error</td>
<td>114</td>
<td>209.50</td>
<td>1.84</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Within Subjects</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Witness</td>
<td>1</td>
<td>36.82</td>
<td>36.82</td>
<td>7.34</td>
<td>.008</td>
</tr>
<tr>
<td>Transcript X Witness</td>
<td>1</td>
<td>88.82</td>
<td>88.52</td>
<td>17.71</td>
<td>.001</td>
</tr>
<tr>
<td>Exhibit X Witness</td>
<td>2</td>
<td>7.03</td>
<td>3.52</td>
<td>.70</td>
<td>.498</td>
</tr>
<tr>
<td>Transcript X Exhibit X Witness</td>
<td>2</td>
<td>2.53</td>
<td>1.27</td>
<td>.25</td>
<td>.777</td>
</tr>
<tr>
<td>Error</td>
<td>114</td>
<td>571.80</td>
<td>5.02</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>239</td>
<td>927.98</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Inference of the Existence of Facts.**

As a measure of willingness to infer facts which were not directly proved by the testimony, subjects were asked to agree or disagree with a series of statements about the actions and mental state of the defendant. Specifically, subjects were asked to agree or disagree with the following three statements: "The defendant caused the death of his wife," "The
The defendant intended to cause the death of his wife," and "The defendant planned to cause the death of his wife." Response options ranged from -3 to +3, with -3 corresponding to "Strong Disagreement" with the statement and +3 corresponding to "Strong Agreement." As can be seen from Table 9, which presents the correlations between the measures of the tendency to infer facts across conditions, these three items are strongly intercorrelated. Figures 7, 8, and 9 depict mean scores for these three questions. A 2(Transcript) X 3(Exhibit) between subjects multivariate analysis of variance was performed on the three dependent measures. The results of the MANOVA revealed a significant Transcript main effect, approximate $F(3,112) = 14.22$, $p < .0001$ with Wilks' Lambda = .724 and eta squared = .276. The Exhibit main effect was nonsignificant, approximate $F(6,224) = 0.49$, $p > .82$ with Wilks' Lambda = .974. Additionally, the Transcript X Exhibit interaction was not significant, approximate $F(6,112) = 0.17$, $p > .98$ with Wilks' Lambda = .991. In sum, subjects in the Strong Evidence condition were more willing to infer facts not directly proved concerning the actions, intent and planning of the defendant. The intensity of the exhibits failed to influence that inferential activity significantly.
Table 10.

Correlations between measures of tendency to infer facts not directly proved by the evidence across conditions.

<table>
<thead>
<tr>
<th>Item</th>
<th>1</th>
<th>2</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Belief that the defendant caused the death of his wife.</td>
<td>1.000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Belief that the defendant intended to cause the death of his wife.</td>
<td>.909***</td>
<td>1.000</td>
<td></td>
</tr>
<tr>
<td>3. Belief that the defendant planned the death of his wife.</td>
<td>.819***</td>
<td>.896***</td>
<td>1.000</td>
</tr>
</tbody>
</table>

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

Other Measures

Two additional measures were included in the questionnaire to assess other aspects of the subjects' decision making, subjects' confidence in their verdicts and subjects' proposed sentence for the defendant. First, subjects were asked to evaluate and report their confidence in their verdicts. Response options for this item ranged from 1 to 10, where 1 is the "least confident" and 10 is the "most confident." Mean confidence ratings are presented in Figure 10. Table 10 presents the ANOVA for this item. Confidence ratings did not differ significantly between Transcripts or among Exhibits, nor was the interaction significant. The overall mean for
the confidence measure was 7.62 and the standard deviation was 1.82. From this score, it can be seen that subjects were generally confident in their verdicts.

Table 11.  
ANOVA table for confidence in verdict item.

<table>
<thead>
<tr>
<th>Source</th>
<th>D.F.</th>
<th>Sum of Squares</th>
<th>Mean Squares</th>
<th>F Ratio</th>
<th>Probability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transcript</td>
<td>1</td>
<td>0.012</td>
<td>0.561</td>
<td>0.164</td>
<td>0.920</td>
</tr>
<tr>
<td>Exhibit</td>
<td>2</td>
<td>1.676</td>
<td>0.838</td>
<td>0.245</td>
<td>0.783</td>
</tr>
<tr>
<td>Transcript X Exhibit</td>
<td>2</td>
<td>1.550</td>
<td>0.775</td>
<td>0.227</td>
<td>0.797</td>
</tr>
<tr>
<td>Error</td>
<td>112</td>
<td>382.605</td>
<td>3.416</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>117</td>
<td>385.839</td>
<td>3.298</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Subjects were also asked to propose a sentence for the defendant, under the assumption that he had already been convicted. Response options consisted of sentences increasing in severity in a progression which was designed to reflect the sentencing options currently available to judges. Response options ranged from 1 to 9 in the following progression:
1. Probation.
2. Less than 1 year in prison.
3. Between 1 and 2 years in prison.
4. Between 2 and 5 years in prison.
5. Between 5 and 10 years in prison.
6. Between 10 and 20 years in prison.
7. Thirty years in prison.
8. The rest of his life in prison.

Figure 11 depicts mean punishment scores for Strong and Weak evidence transcripts. The results of the 2(Transcript) X 3(Exhibit) two-way ANOVA are presented in Table 11. Proposed sentences were not influenced significantly by the strength of the evidence against the defendant or the intensity of emotion engendered by the exhibits. Neither the main effects nor interactions for the two-way ANOVA were significant. The overall mean punishment score was 6.95 (SD = 1.64).
Table 12.

ANOVA table for proposed sentence item.

<table>
<thead>
<tr>
<th>Source</th>
<th>D.F.</th>
<th>Sum of Squares</th>
<th>Mean Squares</th>
<th>F Ratio</th>
<th>Probability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transcript</td>
<td>1</td>
<td>6.541</td>
<td>6.541</td>
<td>0.969</td>
<td>0.410</td>
</tr>
<tr>
<td>Exhibit</td>
<td>2</td>
<td>1.287</td>
<td>0.643</td>
<td>0.237</td>
<td>0.790</td>
</tr>
<tr>
<td>Transcript X Exhibit</td>
<td>2</td>
<td>0.740</td>
<td>0.370</td>
<td>0.136</td>
<td>0.873</td>
</tr>
<tr>
<td>Error</td>
<td>113</td>
<td>307.058</td>
<td>2.717</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>118</td>
<td>315.697</td>
<td>2.675</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Key testimonial passages in the two transcripts differed to vary the weight of the evidence against the defendant. The first three items of the multiple choice memory quiz were formulated to determine whether subjects read and remembered these key passages. For the memory quiz, subjects were asked to indicate the response option that most closely corresponded to their memory of the evidence. The responses scored as correct for the first three items varied to match the transcript content. The sums of these first three item scores were then analyzed using a two-way 2(Transcript) X 3(Exhibit) between subjects ANOVA. As can be seen in Table 12, subjects' memory for these key passages did not differ significantly between Transcripts or across Exhibits. Further, these two con-
ditions did not interact to influence memory for these items. The mean score across conditions was 2.46 (SD = .66) out of 3.0 possible (81%). This mean score suggests that subjects did, in fact, remember the material related to the transcript manipulations with reasonable accuracy.

Table 13.

<table>
<thead>
<tr>
<th></th>
<th>Mean</th>
<th>Standard Deviation</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weak Evidence Transcript</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Line Drawing</td>
<td>2.600</td>
<td>0.503</td>
<td>20</td>
</tr>
<tr>
<td>Black &amp; White Photograph</td>
<td>2.350</td>
<td>0.672</td>
<td>20</td>
</tr>
<tr>
<td>Color Photograph</td>
<td>2.450</td>
<td>0.605</td>
<td>20</td>
</tr>
<tr>
<td>Strong Evidence Transcript</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Line Drawing</td>
<td>2.300</td>
<td>0.801</td>
<td>20</td>
</tr>
<tr>
<td>Black &amp; White Photograph</td>
<td>2.400</td>
<td>0.754</td>
<td>20</td>
</tr>
<tr>
<td>Color Photograph</td>
<td>2.850</td>
<td>0.587</td>
<td>20</td>
</tr>
</tbody>
</table>
Table 14.

ANOVA table for three item measure of memory for differences between the transcripts.

<table>
<thead>
<tr>
<th>Source</th>
<th>D.F.</th>
<th>Sum of Squares</th>
<th>Mean Squares</th>
<th>F Ratio</th>
<th>Probability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transcript</td>
<td>1</td>
<td>0.008</td>
<td>0.008</td>
<td>0.019</td>
<td>0.890</td>
</tr>
<tr>
<td>Exhibit</td>
<td>2</td>
<td>0.617</td>
<td>0.308</td>
<td>0.705</td>
<td>0.496</td>
</tr>
<tr>
<td>Transcript X Exhibit</td>
<td>2</td>
<td>0.740</td>
<td>0.370</td>
<td>0.136</td>
<td>0.873</td>
</tr>
<tr>
<td>Error</td>
<td>114</td>
<td>49.850</td>
<td>0.437</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>119</td>
<td>51.792</td>
<td>0.435</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Finally, a set of seven items was included in the questionnaire to detect differences in mood states of subjects among conditions. This was done using seven point semantic differential items requiring subjects to report on their feelings while working on the study. These seven items were comprised of pairs of antonym mood descriptors separated by seven spaces. Subjects were asked to indicate their feelings by marking an X in one of the spaces separating the pairs of adjectives. Thus, scores ranged from 1 to 7, with "4" representing the neutral midpoint between the two poles. Table 13 presents the correlations between the antonym mood descriptors across conditions. Overall, these items were moderately intercorrelated. A 2(Transcript) X 3(Exhibit) between subjects multivariate analysis of variance was performed on the six adjective pairs. As can be
seen from the results presented in Table 14, subjects' mood states during the experiment, as measured through self-report, were unaffected by either of the manipulations. The overall means and standard deviations for each of the six items are shown in Table 15. As can be seen from Table 15, subjects tended to report being "fascinated" by the task and "serious" in their approach to it. At the same time, subjects tended to describe themselves as neither happy nor sad, relaxed nor anxious, peaceful nor angry, nor pleased nor disgusted.

Table 15.
Inter-correlation matrix for antonym mood descriptors across conditions.

<table>
<thead>
<tr>
<th>Variable</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. HAPPY-SAD</td>
<td>1.000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. RELAXED-ANXIOUS</td>
<td>.420**</td>
<td>1.000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. PEACEFUL-ANGRY</td>
<td>.540**</td>
<td>.634**</td>
<td>1.000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. CALM-UPSET</td>
<td>.605**</td>
<td>.700**</td>
<td>.778**</td>
<td>1.000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. PLEASED-DISGUSTED</td>
<td>.655**</td>
<td>.444**</td>
<td>.547**</td>
<td>.609**</td>
<td>1.000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. BORED-FASCINATED</td>
<td>.336**</td>
<td>.358**</td>
<td>.350**</td>
<td>.434**</td>
<td>.370**</td>
<td>1.000</td>
<td></td>
</tr>
<tr>
<td>7. CAREFREE-SERIOUS</td>
<td>.169</td>
<td>.151</td>
<td>.262*</td>
<td>.250*</td>
<td>.192</td>
<td>.319**</td>
<td>1.000</td>
</tr>
</tbody>
</table>

* p<.05, ** p<.01.
Table 16.

MANOVA table for antonym mood descriptors.

<table>
<thead>
<tr>
<th>Source</th>
<th>D.F.</th>
<th>Error D.F.</th>
<th>Wilk's Lambda</th>
<th>Approximate F</th>
<th>Probability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transcript</td>
<td>7</td>
<td>107</td>
<td>0.930</td>
<td>1.150</td>
<td>0.338</td>
</tr>
<tr>
<td>Exhibit</td>
<td>14</td>
<td>214</td>
<td>0.902</td>
<td>0.810</td>
<td>0.658</td>
</tr>
<tr>
<td>Transcript X Exhibit</td>
<td>14</td>
<td>214</td>
<td>0.869</td>
<td>1.116</td>
<td>0.345</td>
</tr>
</tbody>
</table>

Table 17.

Means and standard deviations for antonym mood descriptors across conditions.

<table>
<thead>
<tr>
<th>Variable</th>
<th>Mean</th>
<th>Standard Deviation</th>
</tr>
</thead>
<tbody>
<tr>
<td>HAPPY-SAD</td>
<td>4.82</td>
<td>1.29</td>
</tr>
<tr>
<td>RELAXED-ANXIOUS</td>
<td>4.30</td>
<td>1.84</td>
</tr>
<tr>
<td>PEACEFUL-ANGRY</td>
<td>3.97</td>
<td>1.52</td>
</tr>
<tr>
<td>CALM-UPSET</td>
<td>3.85</td>
<td>1.83</td>
</tr>
<tr>
<td>PLEASED-DISGUSTED</td>
<td>4.85</td>
<td>1.34</td>
</tr>
<tr>
<td>BORED-FASCINATED</td>
<td>5.59</td>
<td>1.24</td>
</tr>
<tr>
<td>CAREFREE-SERIOUS</td>
<td>6.32</td>
<td>0.94</td>
</tr>
</tbody>
</table>
CHAPTER IV
DISCUSSION

Questions, Predictions and Findings.

This study asked three major questions: Does gruesome or emotionally arousing photographic evidence have an effect on juror verdicts in a criminal trial simulation more representative of the task faced by jurors than has been used in previous studies, a simulation that requires jurors to take in conflicting evidence, to follow judicial instructions and to determine what happened?; If there is an effect on decision making, what is the nature of that effect?; and How might such evidence affect three key sub-tasks involved in the jurors' decision making processes (information storage and retrieval, assessment of witness credibility, and the drawing of inferences from the evidence)?

It was hypothesized that the introduction of emotionally arousing evidence would have an effect on juror decisions in the context of a simulation representative of the traditional juror task. Alternative pre-
dictions regarding the effects of emotionally arousing evidence on juror decisions were generated from two theoretical formulations. On the one hand, following the Federal Rules of Evidence and theories of displacement proposed by Freud (1920) and Dollard, et al. (1939), highly arousing evidence would be predicted to induce anger in the viewer, which, in turn would increase the likelihood of conviction through the mechanism of displacement, regardless of circumstances. On the other hand, following Bandura's Social Learning Model of Aggression, the introduction of such evidence was predicted to increase arousal rather than anger in the viewer. It was hypothesized that the effect of its introduction would depend on the juror's prepotent response. That is, when the dominant response for the juror was to convict, conviction would become more likely, but when the dominant response for the juror was to acquit, acquittal would become the more likely response.

It also was hypothesized that the introduction of emotionally charged photographic evidence would affect three of the subtasks involved in juror decision making process (information storage and retrieval, assessment of witness credibility, and the drawing of inferences from the evidence). First, gruesome photographic evidence was predicted to increase the viewers' level of arousal and anger to a point where their ability to take in and recall the contents of the trial would be diminished.
Second, it was predicted that juror's assessment of the credibility of witnesses would follow a pattern that parallels their verdicts. As in the case of verdicts, alternate formulations produced alternate predictions. From a formulation derived from Freud's notion of displaced anger, it was predicted that arousing evidence would influence jurors to find the defendant less credible and prosecution witnesses more credible. In contrast, Bandura's Social Learning Model lead to the prediction that the pattern above would obtain, only when conviction is the prepotent response. Where acquittal is prepotent, the pattern would reverse, and the defendant would be viewed as more credible and prosecution witnesses would be viewed as less credible in the presence of arousing evidence. Finally, it was predicted that subjects faced with emotionally charged photographic evidence would more freely make inferential leaps to find facts not directly proved in the trial.

To test these hypotheses, a study was conducted which required simulated jurors to read abbreviated transcripts of a fictional murder trial. These transcripts contained both prosecution and defense testimony, and judicial instructions. Subjects' prepotent responses were manipulated by varying the weight of the evidence against the defendant. Pilot testing demonstrated that, absent exhibits, one version of the transcript tended to elicit judgments of acquittal, while the other tended to elicit judgments of
The emotionality of the exhibits was manipulated by varying the realism of an image of the victim of the murder. Subjects in the low emotionality condition viewed a black and white medical illustrator’s line drawing of the victim, subjects in the intermediate emotionality condition viewed a black and white photograph of the victim, and subjects in the high emotionality condition viewed a color photograph made from the same negative. Combinations of transcripts and exhibits where varied systematically to complete a 2 (Weight of Evidence) X 3 (Nature of Exhibit) factorial design.

Tendency to View the Defendant as Guilty or Not Guilty

The results of the study provide limited support for the hypothesis that emotionally arousing evidence does have an influence on juror decision making in a trial simulation representative of traditional juror tasks. The presence or absence of vivid photographic evidence was found to interact significantly with the strength of the evidence against the defendant on the verdict measures. That is, the inclination to convict for subjects who read the weak evidence transcript and who viewed the color photograph were heightened to the point of being statistically indistinguishable from those of subjects who read the strong evidence transcripts. However, this effect was found to be relatively weak when compared to the direct influence of the strength of evidence against the defendant. A com-
parison of measures of effect size (eta squared) revealed that the effects on the verdict measures attributable to the weight of the evidence manipulation were nearly three times as great as those resulting from the interaction of the nature of the exhibit with the weight of the evidence against the defendant. Thus, while these results suggest that emotionally arousing evidence can influence jurors' decisions, it is likely that the factual weight of the evidence may often play a larger role in the ultimate verdict. The relative relationship is likely dependent on the intensity of the exhibits and the strength of the evidence.

Overall, the results of the present study are consistent with previous findings by Oliver & Griffitt (1976) and Whalen & Blanchard (1982), who, using case summaries, demonstrated that the introduction of gruesome photographic evidence did influence simulated jurors' judgments. These results suggest that their previous findings were not merely a product of the use of narratives, and suggest that their findings are relevant to the understanding of juror decision making. Apparently, the effects of emotionally arousing evidence, though possibly attenuated by the specific nature of the trial materials and the presence of instructions to the jurors, do not disappear when more realistic trial materials are utilized. Thus, the present results reinforce the conclusions of those previous studies that affectively charged evidence can bias jurors' verdicts.
In contrast to both of the alternative predicted patterns of interaction between the strength of evidence against the defendant and the nature of the exhibits, subjects in the strong evidence conditions appeared to be uninfluenced by the presence or absence of emotionally arousing evidence. Rather, effects of arousing evidence were limited to the weak evidence conditions, where the presence of the color photograph was observed to raise the likelihood of conviction over the other weak evidence conditions to the point that it was statistically indistinguishable from scores in the strong evidence condition. This pattern of interaction is more compatible with predictions generated from Federal Rule of Evidence 403 and theories of displacement than it is with the Social Learning formulation. Rather than being pushed in the direction of their prepotent response (acquittal), subjects in the weak evidence condition appear to have been incited towards conviction.

The failure to observe significant effects in the strong evidence condition presents some interpretive difficulties, since differences were predicted from both the displacement and social learning formulations. Both formulations led to the prediction that subjects reading the strong evidence transcripts would show a heightened inclination to convict after viewing the emotionally charged exhibits. Both formulations predicted an
enhancement of an already existing propensity to convict. However, it is possible that there is a limit to the degree to which subjects are willing to vote to convict, independent of their underlying motivation to convict. That is, this limit may represent a psychological ceiling effect, beyond which subjects are not generally willing to go in voting to convict. It is further possible that the strong evidence transcripts brought subjects’ motivation to convict to that limit and prevented increased motivation to convict from being reflected in the data.

Memory for the Evidence.

Subject’s memory for the evidence did not appear to be affected by either of the manipulations. This finding is somewhat surprising, given the previously demonstrated robust nature of the relationship between arousal and performance. Closer inspection of the results suggests two possible explanations which may have worked together to produce this finding. First, pretesting of the photographic stimulus material suggested that its emotional impact, though significantly greater than that of the line drawing was not extreme in its ability to arouse the viewer. The highest mean emotionality scale score, which occurred for the Black and White Photograph exhibit was less than 7 on a 9 point scale. Further, questions intended to assess arousal in the subjects which were incorporated in the dependent measure questionnaire failed to detect differences in arousal
between those who viewed the line drawing and those viewing the photographs. Indeed, practical and ethical considerations required that comparatively mild photographic exhibits be used in this study. It is clear that considerably more emotionally arousing photographs have been used in actual criminal trials (Beaver, 1988).

The second factor that may have interfered with the detection of effects of arousing exhibits on subjects' memory for the evidence arises from limitations in the measurement procedures. The scale employed to assess memory for the evidence was characterized by a high mean and small variance. Many items were easily answered by nearly all of the subjects, and it is likely that these items failed to detect subtle differences between groups. Consequently, the scale's sensitivity may have been limited. In retrospect, with comparatively unarousing stimuli and a relatively insensitive measure, failure to find differences among the groups is not surprising. However, it seems reasonable to expect that the degree of influence on decision making should vary with the intensity of the emotions that are aroused. Further experiments which vary the intensity of the emotionally arousing properties of the exhibits beyond the relatively narrow range that was represented in the present study need to be conducted.
Evaluation of Credibility.

The present study also failed to demonstrate effects of emotionally arousing evidence on jurors' assessment of the credibility of witnesses. Rather, the assessment of witness credibility tended to be influenced by the weight of the evidence against the defendant. That is, when the balance of evidence was in favor of the conviction of the defendant, he was viewed as having low credibility and the key prosecution was viewed as being more credible. When the balance was in favor of the acquittal of the defendant, the key prosecution witness was viewed as having low credibility and the defendant was viewed as being more credible. The presence or absence of gruesome photographic evidence did not influence this pattern significantly.

Little can be concluded from negative results. However, several possible explanations suggest themselves. For example, it may be that such evidence does not influence the assessment of credibility. The hypothesized link between the assessment of credibility and aggression may not exist. Alternatively, the exhibits employed in the present study may not have been of sufficient intensity to bring about the expected differences. Finally, the assessment of credibility in the present study was measured only as it related to key witnesses, the defendant and the eyewit-
ness. The importance of their testimony to the ultimate verdict may have heightened subjects' attention to content and overridden any biasing effects on the jurors. In future research, it would be useful to incorporate exhibits of higher intensity and to focus on subjects' reactions to peripheral witnesses.

*Inclination to Punish the Defendant.*

Both Oliver & Griffitt (1976) and Whalen & Blanchard (1982) found a significant increase in damages awarded in simulated civil trials when vivid, emotionally charged photographs were viewed by subjects over damages awarded by subjects who did view such exhibits. The proposed punishment in a criminal context is the parallel to civil damages in a civil trial. It was, therefore, somewhat surprising that proposed sentences did not reflect an influence from emotionally charged evidence. However, because the present study used a very serious crime, murder, as the subject matter for the transcripts, the failure to find differences may be attributable to ceiling effects. Subjects in all conditions were inclined to punish the defendant severely. In fact, several subjects (16) chose the most severe punishment option offered, the death penalty. It could be expected that emotionally charged evidence would show its greatest influence in trials of lesser crimes.
Inference of the Existence of Facts.

Finally, in an exploratory vein, it was anticipated that the presence of gruesome or emotional charged photographs would influence certain inferential activity by jurors. However, the present study failed to demonstrate such an influence. Here again, it is only possible to speculate at the meaning of this finding. The relatively low intensity of the exhibits employed in the study may have resulted in a failure to detect any association between emotional arousal and inferential reasoning that may exist. There is a need for further research using exhibits with greater variability in intensity.

Implications for the Legal Community.

The results of the present study have several implications for the legal community. First, these results provide support for some of the assumptions underlying Federal Rule of Evidence 403 and associated case law intended to reduce biasing effects of emotionally arousing evidence. Consistent with these assumptions, the present findings suggest that gruesome photographic evidence can arouse anger in jurors which can lead to unfair conviction. At a time when courts are deciding the balance between admissibility and exclusion more often in favor of the admission of relevant evidence at the risk of bias to the jury (Beaver, 1988), and at a
time when commentators are suggesting that too much energy has been devoted to the issue (Gold, 1983), the results of this study may serve as a reminder that juries are potentially subject to biasing effects from vivid evidence, and defendants are at risk from unfair conviction.

The present study also provides specific support for the notion, propounded by at least one court (*State v. Polk*, 1977), that potentially biasing gruesome evidence can be presented in a form that is less threatening to the fairness of proceedings. Specifically, the court in *Polk* suggested that the inflammatory influence of gruesome photographs could be reduced by converting color photographs to black and white. Black and white photographs made from a color negative, for the present study, tended to show less influence on juror verdicts than did the corresponding color photographs. Thus, the present study suggests that black and white photographs may serve to lessen the threat to fairness that may be represented by gruesome photographs.

The present study may also serve as a reminder to trial attorneys to remain mindful of the influence that may occur as a result of the use of exhibits. As attorneys develop trial strategy, they need to be mindful of the
fact that the choice of exhibits should reflect consideration of both factual relevance and emotional impact. Choices of the size and form of an exhibit may be as important as its content.

Implications for the Psychology of Juror Decision Making.

The current study has implications for the psychology of juror decision making as well. Current theories of juror decision making have neglected to recognize a role for emotions in the decision making process. The results of this and the two previous studies (Oliver & Griffitt, 1976, and Whalen & Blanchard, 1982) addressing this issue suggest that emotion can significantly influence jurors as they arrive at decisions. Therefore, it seems necessary that emotions be incorporated into future models of juror decision-making processes.

Using the Ideal Juror Model (Pennington & Hastie 1981) as a prototype, one can see that emotions can function in several ways to affect decision making. First, strong emotions may function to bias specific steps in the decision-making process. As jurors perceive and store information, develop judgment categories, and develop theories of an event, strong emotions may serve to influence the processes. For example, systematic errors in information acquisition, storage and retrieval have been demonstrated to result from a subject's affect state, such that positive af-
fect appears to interfere with the processing and recall of negative material (Bower, Gilligan, & Montiero, 1981; Bower, Montiero, & Gilligan, 1978), and negative affect has the reverse effect (Nasby & Yando, 1982), facilitating the processing and recall of negative material while interfering with the processing and recall of the positive material. Thus, photographic evidence that induces anger, anxiety and sadness may be shown to cause subjects to remember negative facts about the defendant, but prevent them from remembering the positive. If emotionally arousing evidence serves to influence task performance, measures directed at specific subtasks would be expected to detect these changes.

The findings of the present study are consistent with the notion that vivid, and emotionally charged evidence serves to induce anger, which may then be displaced on an innocent defendant. Rather than influencing the fact finding function of jurors, such evidence may serve to influence their desire to punish the defendant. That is, jurors, whether presented with emotionally charged evidence or not may perform their tasks similarly, but those presented with emotionally arousing evidence might perform differently at the point that they arrive at a verdict. Having arrived at beliefs as to what occurred and beliefs as to whether these facts constitute a crime, the juror must decide whether to convict, and, to effect the release or punishment of the defendant. Thus, the final point of judgment may ac-
tually reflect the desire of jurors to punish the defendant, rather than their
determination of what happened. The events, as the jury has determined
them to be, may be only one factor in the decision to punish. Indeed, there
is evidence to suggest that, at times, verdicts do reflect the jurors' inclina­
tion to punish or not. Kalven and Zeisel (1966) have noted that when
jurors view the potential punishment as disproportionate to the crime,
they have been known to acquit, even in the face of overwhelming evidence
pointing to guilt.

Limitations of the Present Findings

There are several limitations to the degree to which the present
findings can be generalized, which derive from the analog nature of the
methodology used in the present study (Konecni and Ebbeson, 1982).
Perhaps the most obvious limitation arises from the use of abbreviated
transcripts to simulate trial materials. It is important to note that these
transcripts do represent a closer approximation to the actual trial ex­
perience of jurors than has been used in previous research on the effects of
gruesome exhibits. Many of the key characteristics of a trial are present in
the transcripts, including direct and cross examination of witnesses, argu­
ments of counsel, and instructions to the jury. At the same time, in actual
trials, testimony, arguments and instructions are presented orally and
jurors hear the testimony, and see the behavior of the parties directly.
Some authors have questioned the generalizability of the results of simulated trials to actual courtroom decision making (Konecni and Ebbeson, 1982). Consequently, conclusions drawn from the current findings must be tentative.

A second limitation of this study derives from the use of only one case to assess the effects of gruesome photographs. It is conceivable that certain characteristics of various cases could interact with the presence or absence of emotionally charged evidence to produce effects that are significantly different from the results obtained in the present study. In some cases, no effect might be observed. In others, the opposite results might obtain. Therefore, it is important to acknowledge the limits to the degree that the current findings can be generalized to other cases.

Finally, a third limitation of this study derives from the nature of the subject sample. College students do not constitute a representative sample of persons usually called upon to serve on juries. Jurors are typically drawn from the pool of registered voters or licensed drivers. College students tend to be younger and less experienced in life. It is conceivable that their reactions to gruesome photographic evidence differ significantly
from the reactions of subjects in a sample drawn from a more traditional juror pool. Here again, methodological limitations dictate that conclusions drawn from the current data be viewed tentatively.

Suggestions for Future Research.

The results of the present study, combined with the work of Oliver & Griffitt (1976), and Whalen & Blanchard (1982), represents a beginning in the inquiry into the effects of emotionally charged evidence on juror decision making. These results suggest that a demonstrable effect does exist, and that the effect does not disappear in the context of complex trial material and extensive juror instructions. Further, the results of this study suggest that these effects are generally consistent with a displacement formulation. However, much remains to be learned about the nature of the effect. To begin with, limitations to the generalizability of the current results give rise to the need for research which expands the mode of presentation, populations, nature of cases and methodologies employed to study those effects.

The conditions under which affectively charged evidence does or does not affect judgments seems to be an area worthy of exploration. For example, the results of the current study suggest that the process by which such evidence influences decisions may be through the mechanism of dis-
placement. If so, then the availability of an alternate "villain" against whom the jury can express their anger may actually work to reduce the likelihood of conviction, even with the introduction of anger inducing evidence. For example, apparently incompetent or vindictive investigation and prosecution may cause jurors to view acquittal of the defendant as a way of expressing their anger towards members of the prosecution team. The need to displace anger resulting from emotionally charged evidence may manifest itself in a vote to acquit, which would become more likely with the introduction of such evidence.

Additionally, it would seem important to explore the steps that can be taken to lessen or eliminate the potentially biasing effects of emotionally arousing evidence. Currently, the only option presented to judges by Rule 403 is total exclusion of the evidence. Unfortunately, this option is unsatisfying, since potentially relevant evidence, evidence that could aid the trier of fact in arriving at a verdict, would be denied to the jury. Other options need to be explored. Parallel research in the dangers of eyewitness testimony to fair trials, (Loftus, 1978), suggests some potential alternatives. Juror instructions specifically crafted and empirically demonstrated to aid jurors in dealing with such evidence would be one possible remedy worthy of exploration. Further, expert testimony designed to teach jurors to understand and deal with their reactions to the
evidence may represent another area worthy of exploration. That is, information presented by testimony of psychologists to jurors concerning the influence of emotionally charged evidence may serve to lessen the biasing effects of such testimony.

Finally, the results of the present study raise questions concerning other factors that may serve to bias the jury against an innocent defendant through emotional influence. Particularly heinous or gruesome crimes, and particularly sympathetic victims may also give rise to anger in the jurors. From a theoretical standpoint, models of jury decision making need to address this issue. Further, from a practical standpoint, there is a need to better understand emotionally biasing circumstances at trial, and a need to understand those steps that can be taken to attenuate the bias when those circumstances are present.

Conclusion.

The present study represents another step in the inquiry into the influence of emotionally charged evidence on juror decision making. It provides support for the belief that such evidence can influence judgments in ways independent of the objective factual information that they contain. Further, the results of the present study raise questions about the ade-
quacy of current models of decision making that fail to take into account the emotional implications of evidence, and point to a need for further research in this area.
REFERENCES


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Yerkes, R. M., & Dodson, J. D., (1908). The relation of strength of stimulus to rapidity of habit formation. *Journal of Comparative Neurology of Psychology. 18*, 459-482.
Figure 1. Map of the Neighborhood
Figure 2. Diagram of the Crime Scene.
FIGURE 2
Figure 3. Mean scores for the Verdict measure as a function of Level of Evidence and Intensity of Stimulus.
FIGURE 3

Guilty
Weak Evidence

Not Guilty
Strong Evidence

Type of Exhibit
Line Drawing  B/W Photo  Color Photo
Figure 4.  Mean scores for Rated Strength of Evidence as a function of Level of Evidence and Intensity of Stimulus.
FIGURE 4

![Graph showing the rated strength of evidence for different types of exhibits. The x-axis represents the type of exhibit: Line Drawing, B/W Photo, Color Photo. The y-axis represents the rated strength of the evidence, with Not Guilty at the bottom and Guilty at the top. The graph shows the comparison between weak and strong evidence for each type of exhibit.]
Figure 5. Mean score for Rated Probability of Guilt as a function of Level of Evidence and Intensity of Stimulus.
Figure 6. Mean Credibility rating as a function of Level of Evidence and Intensity of Stimulus and the Identity of the Witness being evaluated.
FIGURE 6
Figure 7. Mean scores for agreement/disagreement with assertion that the defendant caused the death of his wife as a function of Level of Evidence and Intensity of Stimulus.
Belief that the Defendant Caused the Death

Type of Exhibit

FIGURE 7
Figure 8. Mean scores for agreement/disagreement with assertion that the defendant intended to cause the death of his wife as a function of Level of Evidence and Intensity of Stimulus.
FIGURE 8
Figure 9. Mean scores for agreement/disagreement with assertion that the defendant planned the death of his wife as a function of Level of Evidence and Intensity of Stimulus.
Belief that the Defendant Planned Death

Disagree

Agree

Type of Exhibit

-4 Line Drawing
0 B/W Photo
4 Color Photo

Weak Evidence
Strong Evidence

FIGURE 9
Figure 10. Mean confidence ratings as a function of Level of Evidence and Intensity of Stimulus.
FIGURE 10
Figure 11. Mean punishment ratings as a function of Level of Evidence and Intensity of Stimulus.

Note: 1 = Probation, 2 = Less than 1 year in prison, 3 = Between 1 and 2 years in prison, 4 = Between 2 and 5 years in prison, 5 = Between 5 and 10 years in prison, 6 = Between 10 and 20 years in prison, 7 = Thirty years in prison, 8 = The rest of his life in prison, 9 = Death sentence.
Plate I.  Color Photograph of the Victim
Plate II. Black and White Photograph of the Victim
Plate III. Medical Illustrator's Line Drawing of the Victim
Appendix A.

Weak Evidence Transcript
JUDGE: We will begin with the opening statement of Mr. Christopher Madden, Assistant District Attorney:

OPENING STATEMENTS

PROSECUTION: Thank you your Honor. Ladies and gentlemen of the jury, we expect the evidence to show that the defendant, Joseph Thomas, shot and killed his wife, on the front porch of her step-mother's house on September 10, 1987 at approximately 10:00 p.m.. An eyewitness, the deceased's step-mother, claims that she saw the defendant drive up in his car along the curb in front of the house and fire a pistol shot that struck and killed Helen Wilson Thomas.

JUDGE: We will now hear from the defense counsel, John Simpson.

DEFENSE: The defendant, Joseph Thomas, has pleaded not guilty in this case. We fully expect the evidence to show that he is innocent and that he was elsewhere at the time of his wife's death. We do not deny that Helen Wilson was shot and killed on the night of September 10, 1987. But, we feel that the evidence will clearly show that the shooting was done by someone else and that Joseph Thomas was at his apartment when the shooting took place.

JUDGE: Mr. Madden, Call your first witness.

DIRECT EXAMINATION OF MARY L WILSON

PROSECUTION: The State calls Mary Wilson. Good morning Mrs. Wilson. Mrs. Wilson, how old are you?

MRS. WILSON: I am 49 years old.
PROSECUTION: Mrs. Wilson, are you currently married?

MRS. WILSON: No, I am a widow. My husband, Judge Henry J. Wilson died 12 years ago.

PROSECUTION: How are you related to the deceased, Helen Wilson Thomas?

MRS. WILSON: I am her step-mother. She was Henry's daughter.

PROSECUTION: What was your relationship with Helen?

MRS. WILSON: Well, I raised her. She was only 5 when I married her father. She lived with my husband and me while he was alive and after he died she continued to live with me until she married Joe.

PROSECUTION: By Joe, you mean the defendant, Joseph Thomas?

MRS. WILSON: Yes.

PROSECUTION: Could you tell us about her relationship with him.

MRS. WILSON: Well yes, she started dating him about 3 years ago and I didn't really like him, I admit that. He said he was a writer of short stories, detective stories and murder mysteries. But, he told me that he had never sold one of his stories and that he was working part-time as an attendant at a gas station to support himself.

I never thought he would make Helen happy. When she told me that she was going to marry him, I warned her against it. I told her I thought he was lazy and shiftless and would ruin her life. As it has turned out, I was right. During the winter and spring of '85 Joe came to our house many times. He dated Helen 3 or 4 times per week. She told me that she had to pay for the gas for the car and for the dinners and shows they went to because Joe was short of money.
In spite of all I did to prevent it, Helen told me that she was going to marry Joe. From what I saw, he was going to live on her money. My husband had left her a lot. I told her many times I didn’t think Joe was the man for her and that her father and mother, if they were alive, wouldn’t approve of this marriage.

I would have done anything to prevent the marriage. If only I had, she would be alive today. But they went ahead and were married on November 15, 1986. I wasn’t there because I was ill.

PROSECUTION: And after the marriage?

MRS. WILSON: Well, I didn’t see them that often. They came over a couple of times in that old white Pontiac of his. Sometime back in July '86 she came home one night. She and Joe had separated after a bitter argument. She said she had tried to get Joe to give up his writing and take a job at the bank, but he had refused. I told her that I was glad to have her back home without Joe and that she certainly could live with me.

After they separated, Helen lived with me, and Joe went back to live at Hoover’s Boarding House. Joe would come to the house about twice a week and argue with Helen to get her to come back to him. She always refused saying she would not return to him unless he quit his writing and got a "real job."

I didn’t trust him, I was afraid that he was going to do something violent to her and I was also afraid that with all his smooth talk he would get her to go back, so I insisted on being home with them. Several times I told Joe in very plain language that I didn’t like him and that I wanted him to stay away from her. We had bitter arguments. A couple of times he threatened me. He said something about getting even with me because I had broken up his marriage to Helen. A couple of times he threatened to hurt me or Helen for ruining his marriage. This man had a violent temper.

PROSECUTION: When did you last see him before September 10th?

MRS. WILSON: The last time he visited her was the night before he killed her. I was there, he didn’t quarrel with her then and he only stayed for a little while. He asked her to come back to him. He said "Helen, I’m asking you for the last time, you’d better listen to me if you know what’s good for
you." and she said, "Joe, I’m not coming back to you until you get a real job and quit this silly stuff about writing." He said, "you know I won’t do that; I’m not giving up my work, even for you." She said, "then this is the way it’s got to be. I’m all through with you Joe, I’m sorry it’s worked out like this." Then Joe said, "well I guess there’s no use trying anymore, the way you feel. I won’t bother you anymore. But don’t forget this, I’m going to make you regret what you’ve done to me if it’s the last thing I ever do." Then he said to me, "you’re an evil person, you turned Helen against me. You broke up this marriage and I’ll see that you pay for this."

PROSECUTION: Tell us what happened on the day of her death?

MRS. WILSON: The next day, September 10th was Helen’s birthday. At about 7:00 p.m. she left the house to go to a movie at the Embassy Theater about 5 blocks away. She said she would be home around 10:00. She went alone.

PROSECUTION: Is that the location marked on the map on Exhibit A?

MRS. WILSON: Yes, it is.

PROSECUTION: What was the night like?

MRS. WILSON: It wasn’t raining then, but she took an umbrella with her. It was a warm sort of fall evening.

PROSECUTION: Did anything unusual happen?

MRS. WILSON: At 7:30 the front doorbell rang. It was raining then, but just a drizzle. I saw Joe standing on the porch, his car, that old white Pontiac was parked across the street, facing East. I told him she had gone to the Embassy Theater. He wanted to know when she would be home, but I said I didn’t know so that he wouldn’t bother her again.

He had something under his right arm, it was wrapped in an old newspaper and I couldn’t tell what it was.

PROSECUTION: What happened next?
MRS. WILSON: Around 10:00, the doorbell rang again. Helen was there, she was standing on the porch, about 2 or 3 feet from the step. Just then I heard a car. I looked out and I saw a white car. It was a Pontiac, same style and shape as Joe's. The car came on fast, going East. All of a sudden I heard the brakes squeal and the car stopped at the curb right in front of our house. I suddenly realized this was Joe's car and Helen cried out, "Oh no! Oh no!" Or something like that. I saw a man lean out of the car window, put his head and shoulders out of the front window. He didn't have a hat on. I saw a small dark object in his hand, like a gun. Then I heard a shot, only one shot and I saw Helen fall over backwards. She sort of spun around and fell on the porch with her head towards the street. The car sped away down the street going East.

PROSECUTION: Mrs. Wilson, did you get a good look at the person in the car?

MRS. WILSON: There was a street light on the other side of the street and I could see the face pretty well. It looked like Joe.

PROSECUTION: By Joe, you mean the defendant, Joseph Thomas?

MRS. WILSON: Yes, that's Joe sitting over there at the table.

PROSECUTION: Are you sure?

MRS. WILSON: I'm pretty sure that Joe Thomas is the man I saw fire that shot that night. I saw his face for only a couple of seconds.

PROSECUTION: No further questions.

JUDGE: Cross examination?

CROSS EXAMINATION OF MARY L. WILSON

DEFENSE: Mrs. Wilson, you said in your testimony that the car that you saw was a white Pontiac.
MRS. WILSON: Well, the car was white, I can't say it was a Pontiac, but, it was Joe's car, I mean, it looked like Joe in it so it must have been his car.

DEFENSE: So you are not sure?

MRS. WILSON: No, I guess not. Not 100%.

DEFENSE: Mrs. Wilson, your husband was a judge for many years, isn't that true?

MRS. WILSON: Yes.

DEFENSE: And over those years, he made a lot of enemies didn't he?

MRS. WILSON: I'm not sure I know what you mean.

DEFENSE: Had you ever heard that he had a reputation as a "hanging judge?"

MRS. WILSON: If you mean he was tough on criminals, yes.

DEFENSE: In fact, over the years, he sent many people to prison, isn't that true?

MRS. WILSON: Yes.

DEFENSE: And over the years he had received many threats, hadn't he?

MRS. WILSON: Yes.

DEFENSE: Death threats?

MRS. WILSON: Yes.

DEFENSE: Against him?
MRS. WILSON: Yes.

DEFENSE: And against his family?

MRS. WILSON: Yes.

DEFENSE: Mrs. Wilson, do you know the name Joe Bierman?

MRS. WILSON: Yes.

DEFENSE: Who is that?

MRS. WILSON: He is a person that my husband sentenced to jail for a long time, but that was like 14 years ago.

DEFENSE: Isn't it a fact that Bierman threatened your husband? Threatened to kill him and his family, when he got out?

MRS. WILSON: Yes.

DEFENSE: Mrs. Wilson, are you aware of the fact that Joe Bierman was paroled about 4 days before the killing?

MRS. WILSON: Yes. I had read something like that in the paper.

DEFENSE: This concerned you enough to ask the police to look out for him, didn't it?

MRS. WILSON: Yes.

DEFENSE: No further questions.
DIRECT EXAMINATION OF OFFICER FRANK NOVAK

PROSECUTION: Officer Novak, were you on duty on the night of September 10, 1987?

OFFICER NOVAK: Yes.

PROSECUTION: Could you tell us about that night?

OFFICER NOVAK: Officer Johnson and I were on routine patrol and approximately 10:10, there was a radio call to investigate a shooting at 1751 Madison Street. We proceeded directly to Madison Street address where we found a young, white female in her mid 20's lying on the front porch in front of the door. Her feet were pointed toward the door, about 6 inches from the step and her head was towards the street. There was a substantial amount of blood coming from her chest. This was the only wound, but there was some blood coming from her nose. I checked for life signs and found none. Officer Johnson talked to Mrs. Wilson while I got my camera and took photographs of the scene and drew some diagrams.

PROSECUTION: Are those the exhibits marked B and C?

OFFICER NOVAK: Yes.

PROSECUTION: What happened next?

OFFICER NOVAK: Johnson came out on the porch and reported that the victim’s mother, Mrs. Mary Wilson, was inside and that she apparently had observed the shooting. Together we questioned her further and she told us that her daughter and her daughter’s estranged husband, Joseph Thomas, had been arguing that evening and that a person, who she thought was Joseph, had shot her from the street. Officer Johnson stayed with the mother while the ambulance arrived and I headed over to the Thomas apartment.

PROSECUTION: What happened when you arrived at the apartment?
OFFICER NOVAK: When I arrived at the apartment, Katherine Hoover, who is the landlord of the building, directed me to Mr. Thomas' room.

PROSECUTION: And did you go up to the apartment?

OFFICER NOVAK: Yes. I got to the room, I told Mr. Thomas that his wife had been shot that night at about 10:00 p.m. His face turned chalky white and I thought he was going to faint. He asked me to come into his room. He was shaken up. He said, "Helen's been shot? Is she okay?" I told him that Helen was dead. I then asked him if he would come to headquarters with us to answer some questions and he said that he would.

While he was dressing, I noticed 38 caliber revolver on the chair. When I looked at it, he said he bought it while he was in the service, and only used it for target practice. He then handed the gun to me. I examined the gun, and found no cartridges in it.

When we arrived at headquarters, I had the gun tested and performed a dermal nitrate test on Mr. Thomas. This is a test to determine whether he had fired a gun recently. The results of the tests were both negative. The gun showed no evidence of having recently been fired, and there was no evidence that Mr. Thomas had recently fired a gun.

PROSECUTION: What could produce negative results even if the gun had been recently fired?

OFFICER NOVAK: Well, if he had washed recently, cleaned the gun, the tests could have been negative.

PROSECUTION: Did you find any pellets at the scene?

OFFICER NOVAK: None that we could test.

PROSECUTION: Please continue?

OFFICER NOVAK: I asked Mr. Thomas of his whereabouts that evening. He said that evening he had stopped by his wife's mother's home to talk to her. That she wasn't there. That he then decided to pick up his gun at the gun shop and that he got home to his apartment at 9:45.
PROSECUTION: Thank you, no further questions.

JUDGE: Mr. Simpson?

CROSS EXAMINATION OF OFFICER FRANK NOVAK

DEFENSE: Officer Novak, who was Joe Bierman?

OFFICER NOVAK: He was a murderer that was sentenced to prison about ten years ago by Judge Wilson.

DEFENSE: How do you know that?

OFFICER NOVAK: I wasn’t on the force at the time, but we were told at roll call to keep a look out for him. He had threatened the Judge many years ago and he was recently paroled.

DEFENSE: When you heard about the shooting of Helen Wilson, didn’t you connect that with Bierman’s parole?

OFFICER NOVAK: Well, I thought about it at the time, but when Mrs. Wilson said that Thomas had been the one she saw in the car, I didn’t think it was worth pursuing.

DEFENSE: Where is Bierman now?

OFFICER NOVAK: He’s in the County Jail. He shot someone in a holdup back in October.

DEFENSE: With a .38?

OFFICER NOVAK: Well yes.

DEFENSE: Same kind as was used in this case?

OFFICER NOVAK: Yes.
DEFENSE: Didn't that make you curious about whether there was any connection with the Wilson case.

OFFICER NOVAK: Look, I don't have time to follow up on every lead.

DEFENSE: Well, you knew that Joe Thomas had denied doing the shooting, right?

OFFICER NOVAK: Yes.

DEFENSE: And you knew that all of the tests on the gun and on him were negative, right?

OFFICER NOVAK: Yes.

DEFENSE: And you knew that he had an alibi, too?

OFFICER NOVAK: Sure.

DEFENSE: But you didn't have time to check to see whether Bierman could have been involved.

OFFICER NOVAK: No. It was a busy time, maybe I should have.

DEFENSE: How long would it take to clean a gun?

OFFICER NOVAK: To get it as clean as we found his, at least 20 minutes.

DEFENSE: That's all I have for this witness.

JUDGE: Next witness.

DIRECT EXAMINATION OF DENISE BLACK

PROSECUTION: Ms. Black, do you know the victim, Helen Thomas?
MS. BLACK: Yes, she and I were close friends. I often visited her at her home, where she lived with her step-mother, Mrs. Wilson.

PROSECUTION: And do you know the defendant, Joe Thomas?

MS. BLACK: Yes. I first met him in the winter of '87. He and Helen came to the theater where I work and she introduced him to me.

PROSECUTION: What, if anything, happened on the night of September 10th related to this incident?

MS. BLACK: I was working on September 10th at the ticket window at the theater. Helen came up to buy a ticket at about 7:00 p.m. We talked for a few minutes. I noticed that she seemed nervous. I asked if she had seen Joe and she had said that he had come to the house the night before and threatened Mrs. Wilson again. She said this time he had also threatened her and she was afraid something terrible was going to happen to her and her mother. She said that she had told Joe that they were through and that Joe hated them both now. Then, Helen got her ticket and went into the theater.

PROSECUTION: What happened next?

MS. BLACK: At about 7:45, Joe came to the ticket window and asked me if I had seen Helen. I told him that she had gone into the show at about 7:00. I said "What have you done to Helen? She's afraid of you." He told me there was nothing wrong between Helen and him, and that it was that "evil wretch of a woman," her step-mother who's broken up their marriage. He said "She's not going to get away with that." He also said "She always hated me. I love my wife and it would be all right between us if her step-mother weren't in our way." He asked me when the show would end and I told him about 9:40.

PROSECUTION: Is that all you remember?
MS. BLACK: Yes, that's it. Helen left after the show ended, spoke with me for a few minutes and said that she was going home. That's the last I ever saw her.

CROSS EXAMINATION OF DENISE BLACK

DEFENSE: What mood was Joe in when he came to the window of the theater.

MS. BLACK: He seemed calm. He had a sad look in his eyes and when he told me he still loved Helen, I believed him.

DEFENSE: Did he seem angry at all?

MS. BLACK: No. I think he just wanted to make up with her and get Helen to come home with him.

DEFENSE: No further questions.

JUDGE: Mr. Madden, do you have any other witnesses?

PROSECUTION: No your Honor.

JUDGE: Mr. Simpson, call your first witness.

DEFENSE: The defense calls Joseph Thomas.

DIRECT EXAMINATION OF DEFENDANT JOSEPH THOMAS

MR. THOMAS: Mr. Thomas, why are you testifying right now?

MR. THOMAS: Well, I know I'm the defendant in this case and I know I've been charged with the murder of my wife. My lawyer advised me that I do not have to testify in my own defense under the Constitution, but I want to testify. I have nothing to hide, I didn't kill my wife. I loved her.
DEFENSE: Would you please tell us a little bit about yourself?

MR. THOMAS: Yes. I am a free lance writer of short stories and T.V. and radio scripts, mainly murder mysteries, crime stories, detective fiction. I don't work for anybody right now, I am independent and work on my own. When I was in high school, I worked on the school paper and I decided that I'd like to be a writer. When I graduated from high school I enlisted in the Marines and during my term of service there, I took correspondence courses in writing. When I got out of the service, I returned home to the city. I had a little money saved and wanted to devote all of my time to writing. I got a part-time job in a gas station and lived in Mrs. Hoover's boarding house. I gave all the time I could to my writing, but I did not sell any of my writing until September 10th of 1987.

DEFENSE: Tell us of your relationship with Helen Wilson?

MR. THOMAS: I met my wife in the Fall of 1985. We dated and in the summer of 1986, we decided to get married. When I met Helen, she was working as a secretary to the president of the First State Bank.

From the beginning, Mrs. Wilson was opposed to me. She didn't approve of me and told me that she was against my marrying Helen. We married anyway.

Helen was interested in my work as a writer. She thought I had a future in it. It was her idea that I quit my job at the gas station to give all of my time to writing. Helen went on with her job at the bank and was making about $900.00 a month and had an income of about $250.00 from a trust fund that her father had set up for her in his Will.

Mrs. Wilson refused to attend either our wedding or the wedding reception which followed. After we were married, Helen and I did visit Mrs. Wilson at her home. At that time, Helen insisted that I give up my gas station job and spend all of my time writing at home. I told Mrs. Wilson about this. In Helen's presence, she told me I was lazy and no good and trying to live off of Helen's money. After a while I stopped going with Helen to Mrs. Wilson’s and Helen would go alone. She would come back after these visits and tell me that Mrs. Wilson was trying to get her to leave me and get her to come back to live with her.
DEFENSE: What was the outcome of Mrs. Wilson’s opposition?

MR. THOMAS: Helen lost interest in my writing. She began to talk to me about getting what she called, "a real job." and said she could get me some kind of work in the bank. I refused to give up my writing. Mrs. Wilson finally persuaded Helen to leave me. One night in July of 1987 she said she was leaving me. She told me she was going back to Mrs. Wilson, if I did not give up my writing. I refused and we had a bitter quarrel. She left and went to Mrs. Wilson's.

DEFENSE: Did you let her go?

MR. THOMAS: I would go to Mrs. Wilson's house several times a week to try and persuade Helen to come back. Helen refused unless I quit my writing. During these conversations, Mrs. Wilson was always present. She insisted on being there. She told Helen not to come back to me. She told Helen to divorce me and again and again, she told me in front of Helen I was no good and lazy and living off of Helen's money. It is true that during these conversations I sometimes lost my temper.

DEFENSE: When was the last time you saw Helen?

MR. THOMAS: The last time I saw Helen alive was on the night of September 9, 1987. I went to Mrs. Wilson's between 9:00 and 10:00 p.m. I only stayed a little while. Mrs. Wilson and Helen were there. I don't remember the exact words anyone said, but the gist of it was that I asked Helen for the last time to come back to me. She still refused unless I gave up my writing. I would not do that and I said, "we're all through then. I'm sorry it didn't work out." I admit I was angry at Mrs. Wilson and Helen.

I do remember I said something about making them both sorry for what they had done to me and that Mrs. Wilson had broken up my marriage and I would make her pay for it. I don't recall the exact words, but what I meant was that when I made it big with my writing, they would regret what they had done. I didn't mean I'd do physical violence to them. I left the house at about 9:30 p.m. After I left them, I drove around the
streets for a while trying to think things out. I was confused, hurt and upset. I loved my wife and I wanted us to be together. Mrs. Wilson was the cause of our problems. The more I thought of it the angrier I got at her.

DEFENSE: What happened on September 10th?

MR. THOMAS: September 10th was Helen's birthday. That afternoon I got a check for $500.00 as an advance for a T.V. script, a murder story I had written. I cashed the check and bought a five pound box of candy. I wanted to see Helen and tell her about my good luck and maybe to get her to come back after all. The box of candy was for her birthday.

That night I drove to her house in my 1979 Pontiac Ventura I've had for a couple of years. I wanted to surprise Helen. I got to the house at about 7:30 but I'm not positive about the time. I parked on the street. Mrs. Wilson came to the door and I asked for Helen. She told me that Helen had gone to the Embassy Theater where Helen and I had often gone. I asked when she would be back and Mrs. Wilson said around 10:00. I only talked to her for a few minutes at the most. She was curt and abrupt. She did not ask me in, of course, and it was raining. I didn't have a hat or umbrella and I was getting pretty wet. I had a box of candy under my arm. I didn't want the wrapping to get wet so I wrapped it in a couple of newspapers. I left Mrs. Wilson's at about 7:35 or so and drove to the Embassy Theater.

DEFENSE: Why did you go to the Embassy theater?

MR. THOMAS: I thought I would try to surprise Helen there. Since I had just gotten my first check from my writing I wanted to share it with her. While I was driving there I was trying to think things out. The idea that I would lose Helen because of Mrs. Wilson upset me. I couldn't see myself living without her. I was in love with my wife. It seemed so cruel and ironic really that I should lose out by one day after waiting so long. After all, I had just sold a script and was making money at writing.

DEFENSE: What happened at the theater?
MR. THOMAS: I parked near the theater. I knew the ticket seller there, Ms. Denise Black. I think it was about 7:45 or so when I arrived. I went up to the ticket booth and asked her if she had seen Helen. She told me that Helen had gone into the theater. I remember asking Denise several times when the show would be over. I think she said the first show would be out around 9:40 or 9:45. We talked for a while. I recall Denise said something about Helen being afraid of me or something like that. I told Denise that there was nothing wrong between Helen and me, but that it was all Mrs. Wilson's fault.

DEFENSE: Where did you go next?

MR. THOMAS: I think it was about 8:30. I went into the Silver Dollar Bar there on the South Side of Madison Street about 5 blocks from the theater. I had 3 glasses of beer. After about an hour I think, I left the Silver Dollar. I was certainly not drunk. I think that I left there at about 9:30.

I turned around and drove West on Madison. I passed the theater, but didn’t stop. I didn’t even look into the ticket booth as I passed. I went past Helen’s stepmother’s house and the porch lights and the lights in the two front rooms were on. It was still drizzling.

Since I had some money, I decided to go pick up my 38 caliber revolver at Russell’s Gun Shop at 2165. I had left the gun there for cleaning and some minor repairs about a week before. I found the place still open so I went in. Sam Russell gave me the gun. I paid the bill, it was about $6.50 and I left. I was only there for a few minutes so you can check that out with Sam.

I bought this gun when I was in the service and kept it as a memento of service days. The only time I used it was to practice target shooting on the outskirts of the city.

When I got home, I went up to my room on the second floor of Mrs. Hoover’s boarding house. I took off my wet clothes and got into a bathrobe and pajamas. I sat down to read. I had a headache that wouldn’t go away and around 10:15 or so, I went down to Mrs. Hoover’s to borrow some aspirin. She was watching T.V.. She gave me some aspirin and I went back to my room.

DEFENSE: Why did you go back to your room instead of to Helen’s.
MR. THOMAS: I wasn’t feeling well. I was cold and wet.

DEFENSE: Then what happened?

MR. THOMAS: At about 10:45, Officer Novak knocked on my door. He told me Helen had been shot. He allowed me to change my clothes and together we went to the police station. I told him that I had nothing to hide and that I was willing to answer his questions. After I made a statement to Officer Novak, he took me to the crime lab and one of the technicians performed a test on my hands.

DEFENSE: Mr. Thomas, did you kill your wife?

MR. THOMAS: Absolutely not. I loved her.

DEFENSE: No further questions.

CROSS EXAMINATION OF JOSEPH THOMAS

PROSECUTION: Mr. Thomas, you said you’ve practiced shooting several times a week, isn’t that true?

MR. THOMAS: Yes, I did.

PROSECUTION: And you became quite proficient with that gun, isn’t that true?

MR. THOMAS: Yes. Helen used to joke that I could hit a dime from one hundred yards.

PROSECUTION: Let’s talk about the night of September 9th. Let’s see, you went to see your wife at the home, isn’t that true?

MR. THOMAS: Yes.

PROSECUTION: And you asked her to come home with her?
MR. THOMAS: Yes.

PROSECUTION: And when she refused, you became very angry, isn't that true?

MR. THOMAS: Yes.

PROSECUTION: You raised your voice, isn't that true?

MR. THOMAS: Well yes.

PROSECUTION: Threatened them didn't you?

MR. THOMAS: Yes, not with violence. I only meant that they'd be sorry when I was successful. I was angry, I didn't know what I was saying, but I'd never hurt them. I'd never hurt my wife, I loved her.

PROSECUTION: Didn't you want to hurt her?

MR. THOMAS: Hurt? No, No, not hurt physically.

PROSECUTION: Isn't that what happened? You went to hurt your wife that night?

MR. THOMAS: No, absolutely not. I'm not a violent man.

PROSECUTION: No further questions.

JUDGE: Call your next witness.

DIRECT EXAMINATION OF KATHERINE HOOVER

DEFENSE: We call Katherine Hoover, owner of the boarding house.

DEFENSE: Mrs. Hoover, do you understand why you were called here?
MS. HOOVER: Yes. I understand that Joe Thomas was charged with shooting and killing his wife, Helen on September 10th.

DEFENSE: What happened on September 10th?

MS. HOOVER: I distinctly recall September 10th. That morning Joe came down and showed me a check for $500.00 he had received in the mail and said it was an advance for one of his T.V. scripts. He went out to cash to check and then he came back and paid me $100.00 he owed me for the room and board. He said he was going over that night to see Helen and tell her about his good luck. He mentioned that September 10th was Helen’s birthday.

DEFENSE: When did you next see him.

MS. HOOVER: On the evening of September 10th, I met him at the front door when I was coming in from shopping. It was about 7:15. He had a box about as big as a five pound candy box, wrapped in newspapers. It looked like a box of candy for Helen, for her birthday.

DEFENSE: And did you see him again that day?

MS. HOOVER: Yes. That night I was watching T.V. in my living room. I heard a car pull up at the curb outside my front window and the brakes sort of grinding or screeching. I said to myself, Joe certainly is in a hurry tonight. I looked out my front window and saw his car at the curb and Joe went running up the walk. It was still raining. I heard him unlock the front door and saw him go past my living room door, which was open. He ran up the steps.

DEFENSE: What time was that?

MS. HOOVER: I'd say that he came in somewhere between 9:40 and 9:55 p.m. I can fix the time because I remember that I was watching a T.V. program which always comes on at 9:00 and ends at 10:00. After the first half hour there is always a series of commercials and a station break, and that had already been on when I heard Joe's car and saw him go past my
door. That program also has a preview of the next week’s program of 9:55, and that hadn’t come on yet when Joe got home. I clearly remember that the program hadn’t ended yet. I was watching the program and not my watch or the time, so I can’t say exactly what time Joe got home that night, but I can fix the time as being somewhere between 9:40 and 9:55.

DEFENSE: Did you see him again that night?

MS. HOOVER: I did not see him again until around 10:30 p.m. when he came down to my living room. I was still watching T.V. He was dressed in his pajamas and bathrobe and slippers. He told me he had a bad cold coming on from being out in the rain so much that night. He said he was feeling down and he was coughing. I gave him some aspirin tablets. He did not say much of anything else and he went back upstairs.

DEFENSE: Could he have come or gone without you knowing it?

MS. HOOVER: No. His room was on the second floor at the head of the stairs from the entrance hall. The door of my living room is at the bottom of the stairs and anybody going out from the second floor to the street, has to come down the stairs and go by my door to go out the front door.

DEFENSE: Thank you Mrs. Hoover, no further questions.

CROSS EXAMINATION OF MRS. HOOVER

PROSECUTION: Just one question to clarify things. You did not look at your watch did you?

MS. HOOVER: No sir, I did not.

PROSECUTION: Nothing further.

DEFENSE: No further witnesses

JUDGE: Closing?
CLOSING ARGUMENTS

PROSECUTION: Briefly. Ladies and gentlemen of the jury, you have heard the testimony and you have heard Mrs. Wilson identify Joseph Thomas as the one who shot her daughter. We know by Joseph Thomas's own admission that he was angry over the breakup of his marriage and we know that he had a gun that evening of the same type that was used in this terrible murder. The evidence points to only one verdict, guilty.

DEFENSE: Ladies and gentlemen of the jury, recall the evidence. Mrs. Wilson was not 100% sure of her identification that dark and rainy night. She disliked Joseph Thomas and believed him capable of terrible crimes, but you heard him say that he loved his wife and meant her no harm. You heard Mrs. Hoover, his landlady say that he was in his apartment when his wife was shot and you heard that others had motive and opportunity to commit this crime. We submit that the only verdict to deliver is not guilty.
JURY INSTRUCTIONS

Members of the jury, the evidence and arguments in this case have been completed, and I will now instruct you as to the law. The law applicable to this case is stated in these instructions and it is your duty to follow all of them.

It is your duty to determine the facts, and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case. You must not be governed or influenced by sympathy or prejudice for or against any party in this case. Your verdict must be based on evidence and not upon speculation, guess, or conjecture.

The evidence that you should consider consists only of the witnesses’ testimony and the exhibits. You should consider all evidence in the light of your own observations and experiences in life.

You are the sole judges of the credibility of the witnesses and of the weight to be given to the testimony of each witness. In determining what credit is to be given any witness, you may take into account his ability and opportunity to observe; any interest, bias, or prejudice he may have; the reasonableness of his testimony considered in the light of all the evidence; and any other factors that bear on the believability and weight of the witness’s testimony.

The State has the burden of proving beyond a reasonable doubt every essential element of the crime charged in the indictment and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

"Reasonable doubt" means a doubt based upon reason and common sense that arises from a fair and rational consideration of all the evidence or lack of evidence in the case. It is a doubt that is not a vague, speculative, or imaginary doubt, but such a doubt as would cause reasonable persons to hesitate to act in matters of importance to themselves.

The defendant is presumed to be innocent of the charges against him. The presumption is not overcome until, from all the evidence in the case, you are convinced beyond a reasonable doubt that the defendant is guilty.

1. The State of Ohio has charged the defendant, Joseph Thomas, with the crime of Murder. The defendant has pleaded Not Guilty.
2. Under the criminal code of the State of Ohio, a person commits the crime of Murder if, the intent to cause the death of a person other than himself, he causes the death of that person or of another person.

4. To sustain the charge of Murder, the State must prove the following propositions:

(a) That defendant performed the acts which caused the death of Helen W. Thomas; and

(b) That defendant acted with the intent to cause the death of Helen W. Thomas or any other person. That is, if you believe that the defendant intended to kill any person, this element has been satisfied.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty of Murder.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty of Murder.
Appendix B.

Strong Evidence Transcript
Excerpt of Transcript
State v. Thomas

JUDGE: We will begin with the opening statement of Mr. Christopher Madden, Assistant District Attorney:

OPENING STATEMENTS

PROSECUTION: Thank you your Honor. Ladies and gentlemen of the jury, we expect the evidence to show that the defendant, Joseph Thomas, shot and killed his wife, on the front porch of her step-mother's house on September 10, 1987 at approximately 10:00 p.m.. An eyewitness, the deceased's step-mother, claims that she saw the defendant drive up in his car along the curb in front of the house and fire a pistol shot that struck and killed Helen Wilson Thomas.

JUDGE: We will now hear from the defense counsel, John Simpson.

DEFENSE: The defendant, Joseph Thomas, has pleaded not guilty in this case. We fully expect the evidence to show that he is innocent and that he was elsewhere at the time of his wife's death. We do not deny that Helen Wilson was shot and killed on the night of September 10, 1987. But, we feel that the evidence will clearly show that the shooting was done by someone else and that Joseph Thomas was at his apartment when the shooting took place.

JUDGE: Mr. Madden, Call your first witness.

DIRECT EXAMINATION OF MARY L WILSON

PROSECUTION: The State calls Mary Wilson. Good morning Mrs. Wilson. Mrs. Wilson, how old are you?

MRS. WILSON: I am 49 years old.
PROSECUTION: Mrs. Wilson, are you currently married?

MRS. WILSON: No, I am a widow. My husband, Judge Henry J. Wilson died 12 years ago.

PROSECUTION: How are you related to the deceased, Helen Wilson Thomas?

MRS. WILSON: I am her step-mother. She was Henry's daughter.

PROSECUTION: What was your relationship with Helen?

MRS. WILSON: Well, I raised her. She was only 5 when I married her father. She lived with my husband and me while he was alive and after he died she continued to live with me until she married Joe.

PROSECUTION: By Joe, you mean the defendant, Joseph Thomas?

MRS. WILSON: Yes.

PROSECUTION: Could you tell us about her relationship with him.

MRS. WILSON: Well yes, she started dating him about 3 years ago and I didn't really like him, I admit that. He said he was a writer of short stories, detective stores and murder mysteries. But, he told me that he had never sold one of his stories and that he was working part-time as an attendant at a gas station to support himself.

I never thought he would make Helen happy. When she told me that she was going to marry him, I warned her against it. I told her I thought he was lazy and shiftless and would ruin her life. As it has turned out, I was right. During the winter and spring of '85 Joe came to our house many times. He dated Helen 3 or 4 times per week. She told me that she had to pay for the gas for the car and for the dinners and shows they went to because Joe was short of money.
In spite of all I did to prevent it, Helen told me that she was going to marry Joe. From what I saw, he was going to live on her money. My husband had left her a lot. I told her many times I didn't think Joe was the man for her and that her father and mother, if they were alive, wouldn't approve of this marriage.

I would have done anything to prevent the marriage. If only I had, she would be alive today. But they went ahead and were married on November 15, 1986. I wasn't there because I was ill.

PROSECUTION: And after the marriage?

MRS. WILSON: Well, I didn't see them that often. They came over a couple of times in that old white Pontiac of his. Sometime back in July '86 she came home one night. She and Joe had separated after a bitter argument. She said she had tried to get Joe to give up his writing and take a job at the bank, but he had refused. I told her that I was glad to have her back home without Joe and that she certainly could live with me.

After they separated, Helen lived with me, and Joe went back to live at Hoover's Boarding House. Joe would come to the house about twice a week and argue with Helen to get her to come back to him. She always refused saying she would not return to him unless he quit his writing and got a "real job."

I didn't trust him, I was afraid that he was going to do something violent to her and I was also afraid that with all his smooth talk he would get her to go back, so I insisted on being home with them. Several times I told Joe in very plain language that I didn't like him and that I wanted him to stay away from her. We had bitter arguments. A couple of times he threatened me. He said something about getting even with me because I had broken up his marriage to Helen. A couple of times he threatened to hurt me or Helen for ruining his marriage. This man had a violent temper.

PROSECUTION: When did you last see him before September 10th?

MRS. WILSON: The last time he visited her was the night before he killed her. I was there, he didn't quarrel with her then and he only stayed for a little while. He asked her to come back to him. He said "Helen, I'm asking you for the last time, you'd better listen to me if you know what's good for
you." and she said, "Joe, I'm not coming back to you until you get a real job and quit this silly stuff about writing." He said, "you know I won't do that; I'm not giving up my work, even for you." She said, "then this is the way it's got to be. I'm all through with you Joe, I'm sorry it's worked out like this." Then Joe said, "well I guess there's no use trying anymore, the way you feel. I won't bother you anymore. But don't forget this, I'm going to make you regret what you've done to me if it's the last thing I ever do." Then he said to me, "you're an evil person, you turned Helen against me. You broke up this marriage and I'll see that you pay for this."

PROSECUTION: Tell us what happened on the day of her death?

MRS. WILSON: The next day, September 10th was Helen's birthday. At about 7:00 p.m. she left the house to go to a movie at the Embassy Theater about 5 blocks away. She said she would be home around 10:00. She went alone.

PROSECUTION: Is that the location marked on the map on Exhibit A?

MRS. WILSON: Yes, it is.

PROSECUTION: What was the night like?

MRS. WILSON: It wasn't raining then, but she took an umbrella with her. It was a warm sort of fall evening.

PROSECUTION: Did anything unusual happen?

MRS. WILSON: At 7:30 the front doorbell rang. It was raining then, but just a drizzle. I saw Joe standing on the porch, his car, that old white Pontiac was parked across the street, facing East. I told him she had gone to the Embassy Theater. He wanted to know when she would be home, but I said I didn't know so that he wouldn't bother her again.

He had something under his right arm, it was wrapped in an old newspaper and I couldn't tell what it was.

PROSECUTION: What happened next?
MRS. WILSON: Around 10:00, the doorbell rang again. Helen was there, she was standing on the porch, about 2 or 3 feet from the step. Just then I heard a car. I looked out and I saw a white car. It was Joe's Pontiac. The car came on fast, going East. All of a sudden I heard the brakes squeal and the car stopped at the curb right in front of our house. I suddenly realized this was Joe's car and Helen cried out, "Oh no! Oh no! Joe don't." I saw Joe lean out of the car window, put his head and shoulders out of the front window. He didn't have a hat on. I saw a small dark object in his hand, like a gun. Then I heard a shot, only one shot and I saw Helen fall over backwards. She sort of spun around and fell on the porch with her head towards the street. The car sped away down the street going East.

PROSECUTION: Mrs. Wilson, did you get a good look at the person in the car?

MRS. WILSON: Yes, there was a street light on the other side of the street and I could see the face well. It was Joe.

PROSECUTION: By Joe, you mean the defendant, Joseph Thomas?

MRS. WILSON: Yes, that's Joe sitting over there at the table.

PROSECUTION: Are you sure?

MRS. WILSON: Joe Thomas is definitely the man I saw fire that shot that night. I saw his face for several seconds, but that was enough.

PROSECUTION: No further questions.

JUDGE: Cross examination?

CROSS EXAMINATION OF MARY L. WILSON

DEFENSE: Mrs. Wilson, you said in your testimony that the car that you saw was a white Pontiac.
MRS. WILSON: I'm pretty sure it was his Pontiac. I've seen it many times before.

DEFENSE: How can you be sure?

MRS. WILSON: Look, I saw what he was wearing earlier when he came by and he had the same clothes on when I saw him shoot her. There was plenty of light and I had time to see who it was. He killed Helen. She was my daughter.

DEFENSE: Mrs. Wilson, your husband was a judge for many years, isn't that true?

MRS. WILSON: Yes.

DEFENSE: And over those years, he made a lot of enemies didn't he?

MRS. WILSON: I'm not sure I know what you mean.

DEFENSE: Had you ever heard that he had a reputation as a "hanging judge?"

MRS. WILSON: If you mean he was tough on criminals, yes.

DEFENSE: In fact, over the years, he sent many people to prison, isn't that true?

MRS. WILSON: Yes.

DEFENSE: And over the years he had received many threats, hadn't he?

MRS. WILSON: Yes.

DEFENSE: Death threats?

MRS. WILSON: Yes.
DEFENSE: Against him and his family?

MRS. WILSON: Yes.

DEFENSE: No further questions.

DIRECT EXAMINATION OF OFFICER FRANK NOVAK

PROSECUTION: Officer Novak, were you on duty on the night of September 10, 1987?

OFFICER NOVAK: Yes.

PROSECUTION: Could you tell us about that night?

OFFICER NOVAK: Officer Johnson and I were on routine patrol and approximately 10:10, there was a radio call to investigate a shooting at 1751 Madison Street. We proceeded directly to Madison Street address where we found a young white female in her mid 20's lying on the front porch in front of the door. Her feet were pointed toward the door, about 6 inches from the step and her head was towards the street. There was a substantial amount of blood coming from her chest. This was the only wound, but there was some blood coming from her nose. I checked for life signs and found none. Officer Johnson talked to Mrs. Wilson while I got my camera and took photographs of the scene and drew some diagrams.

PROSECUTION: Are those the exhibits marked B and C?

OFFICER NOVAK: Yes.

PROSECUTION: What happened next?

OFFICER NOVAK: Johnson came out on the porch and reported that the victim's mother, Mrs. Mary Wilson, was inside and that she apparently had observed the shooting. Together we questioned her further and she told us that her daughter and her daughter's estranged husband, Joseph Thomas, had been arguing that evening and that a person, who she thought was
Joseph, had shot her from the street. Officer Johnson stayed with the mother while the ambulance arrived and I headed over to the Thomas apartment.

PROSECUTION: What happened when you arrived at the apartment?

OFFICER NOVAK: When I arrived at the apartment, Katherine Hoover, who is the landlord of the building, directed me to Mr. Thomas' room.

PROSECUTION: And did you go up to the apartment?

OFFICER NOVAK: Yes. I got to the room, I told Mr. Thomas that his wife had been shot that night at about 10:00 p.m. His face turned chalky white and I thought he was going to faint. He asked me to come into his room. He was shaken up. He said, "Helen's been shot? Is she okay?" I told him that Helen was dead. I then asked him if he would come to headquarters with us to answer some questions and he said that he would.

While he was dressing, I noticed 38 caliber revolver on the chair. When I looked at it, he said he bought it while he was in the service, and only used it for target practice. He then handed the gun to me. I examined the gun, and found no cartridges in it.

When we arrived at headquarters, I had the gun tested and performed a dermal nitrate test on Mr. Thomas. This is a test to determine whether he had fired a gun recently. The results of the tests were both positive. There was evidence that the gun had recently been fired, and that Mr. Thomas had recently fired a gun.

PROSECUTION: Please continue?

OFFICER NOVAK: I asked Mr. Thomas of his whereabouts that evening. He said that evening he had stopped by his wife's mother's home to talk to her. That she wasn't there. That he then decided to pick up his gun at the gun shop and that he got home to his apartment at 9:45.

PROSECUTION: Thank you, no further questions.

JUDGE: Mr. Simpson?
CROSS EXAMINATION OF OFFICER FRANK NOVAK

DEFENSE: Those test aren't 100% accurate, are they?

OFFICER NOVAK: No, there are occasionally errors but they are usually quite accurate.

DEFENSE: Positive results don't tell you what the gun was shot at do they?

OFFICER NOVAK: No, of course not.

DEFENSE: And they don't tell you exactly when the gun was fired?

OFFICER NOVAK: No, they can be off by hours.

DEFENSE: That's all I have for this witness.

JUDGE: Next witness.

DIRECT EXAMINATION OF DENISE BLACK

PROSECUTION: Ms. Black, do you know the victim, Helen Thomas?

MS. BLACK: Yes, she and I were close friends. I often visited her at her home, where she lived with her step-mother, Mrs. Wilson.

PROSECUTION: And do you know the defendant, Joe Thomas?

MS. BLACK: Yes. I first met him in the winter of '87. He and Helen came to the theater where I work and she introduced him to me.

PROSECUTION: What, if anything, happened on the night of September 10th related to this incident?
MS. BLACK: I was working on September 10th at the ticket window at the theater. Helen came up to buy a ticket at about 7:00 p.m. We talked for a few minutes. I noticed that she was looking up and down the street, as if she expected someone. I asked if she had seen Joe and she had said that he had come to the house the night before and threatened Mrs. Wilson again. She said this time he had also threatened her and she was afraid something terrible was going to happen to her and her mother. She said that Joe was capable of violence and she thought that he might want to hurt her. She said that she had told Joe that they were through and that Joe hated them both now. Then, Helen got her ticket and went into the theater.

PROSECUTION: What happened next?

MS. BLACK: At about 7:45, Joe came to the ticket window and asked me if I had seen Helen. I told him that she had gone into the show at about 7:00. I said "What have you done to Helen? She’s afraid of you." He told me that it was that "evil wretch of a woman," her step-mother who’s broken up their marriage. He said "She’s not going to get away with that." He also said "She always hated me. I love my wife and it would be all right between us if her step-mother weren’t in our way." He asked me when the show would end and I told him about 9:40.

PROSECUTION: Is that all you remember?

MS. BLACK: Yes, that’s it. Helen left after the show ended, spoke with me for a few minutes and said that she was going home. That's the last I ever saw her.

CROSS EXAMINATION OF DENISE BLACK

DEFENSE: What mood was Joe in when he came to the window of the theater.

MS. BLACK: He seemed very angry, especially when he talked about the marriage.
DEFENSE: No further questions.

JUDGE: Mr. Madden, do you have any other witnesses?

PROSECUTION: No your Honor.

JUDGE: Mr. Simpson, call your first witness.

DEFENSE: The defense calls Joseph Thomas.

DIRECT EXAMINATION OF DEFENDANT JOSEPH THOMAS

MR. THOMAS: Mr. Thomas, why are you testifying right now?

MR. THOMAS: Well, I know I'm the defendant in this case and I know I've been charged with the murder of my wife. My lawyer advised me that I do not have to testify in my own defense under the Constitution, but I want to testify. I have nothing to hide, I didn't kill my wife. I loved her.

DEFENSE: Would you please tell us a little bit about yourself?

MR. THOMAS: Yes. I am a free lance writer of short stories and T.V. and radio scripts, mainly murder mysteries, crime stories, detective fiction. I don't work for anybody right now, I am independent and work on my own. When I was in high school, I worked on the school paper and I decided that I'd like to be a writer. When I graduated from high school I enlisted in the Marines and during my term of service there, I took correspondence courses in writing. When I got out of the service, I returned home to the city. I had a little money saved and wanted to devote all of my time to writing. I got a part-time job in a gas station and lived in Mrs. Hoover's boarding house. I gave all the time I could to my writing, but I did not sell any of my writing until September 10th of 1987.

DEFENSE: Tell us of your relationship with Helen Wilson?
MR. THOMAS: I met my wife in the Fall of 1985. We dated and in the summer of 1986, we decided to get married. When I met Helen, she was working as a secretary to the president of the First State Bank.

From the beginning, Mrs. Wilson was opposed to me. She didn't approve of me and told me that she was against my marrying Helen. We married anyway.

Helen was interested in my work as a writer. She thought I had a future in it. It was her idea that I quit my job at the gas station to give all of my time to writing. Helen went on with her job at the bank and was making about $900.00 a month and had an income of about $250.00 from a trust fund that her father had set up for her in his Will.

Mrs. Wilson refused to attend either our wedding or the wedding reception which followed. After we were married, Helen and I did visit Mrs. Wilson at her home. At that time, Helen insisted that I give up my gas station job and spend all of my time writing. I told Mrs. Wilson about this. In Helen's presence, she told me I was lazy and no good and trying to live off of Helen's money. After a while I stopped going with Helen to Mrs. Wilson's and Helen would go alone. She would come back after these visits and tell me that Mrs. Wilson was trying to get her to leave me and get her to come back to live with her.

DEFENSE: What was the outcome of Mrs. Wilson's opposition?

MR. THOMAS: Helen lost interest in my writing. She began to talk to me about getting what she called, "a real job." and said she could get me some kind of work in the bank. I refused to give up my writing. Mrs. Wilson finally persuaded Helen to leave me. One night in July of 1987 she said she was leaving me. She told me she was going back to Mrs. Wilson, if I did not give up my writing. I refused and we had a bitter quarrel. She left and went to Mrs. Wilson's.

DEFENSE: Did you let her go?

MR. THOMAS: I would go to Mrs. Wilson's house several times a week to try and persuade Helen to come back. Helen refused unless I quit my writing. During these conversations, Mrs. Wilson was always present. She insisted on being there. She told Helen not to come back to me. She told
Helen to divorce me and again and again, she told me in front of Helen I was no good and lazy and living off of Helen’s money. It is true that during these conversations I sometimes lost my temper.

DEFENSE: When was the last time you saw Helen?

MR. THOMAS: The last time I saw Helen alive was on the night of September 9, 1987. I went to Mrs. Wilson’s between 9:00 and 10:00 p.m. I only stayed a little while. Mrs. Wilson and Helen were there. I don’t remember the exact words anyone said, but the gist of it was that I asked Helen for the last time to come back to me. She still refused unless I gave up my writing. I would not do that and I said, "we're all through then. I'm sorry it didn't work out." I admit I was angry at Mrs. Wilson and Helen.

I do remember I said something about making them both sorry for what they had done to me and that Mrs. Wilson had broken up my marriage and I would make her pay for it. I don’t recall the exact words, but what I meant was that when I made it big with my writing, they would regret what they had done. I didn’t mean I’d do physical violence to them. I left the house at about 9:30 p.m. After I left them, I drove around the streets for a while trying to think things out. I was confused, hurt and upset. I loved my wife and I wanted us to be together. Mrs. Wilson was the cause of our problems. The more I thought of it the angrier I got at her.

DEFENSE: What happened on September 10th?

MR. THOMAS: September 10th was Helen's birthday. That afternoon I got a check for $500.00 as an advance for a T.V. script, a murder story I had written. I cashed the check and bought a five pound box of candy. I wanted to see Helen and tell her about my good luck and maybe to get her to come back after all. The box of candy was for her birthday.

That night I drove to her house in my 1979 Pontiac Ventura I've had for a couple of years. I wanted to surprise Helen. I got to the house at about 7:30 but I’m not positive about the time. I parked on the street. Mrs. Wilson came to the door and I asked for Helen. She told me that Helen had gone to the Embassy Theater where Helen and I had often gone. I asked when she would be back and Mrs. Wilson said around 10:00. I only talked to her for a few minutes at the most. She was curt and abrupt.
She did not ask me in, of course, and it was raining. I didn’t have a hat or umbrella and I was getting pretty wet. I had a box of candy under my arm. I didn’t want the wrapping to get wet so I wrapped it in a couple of newspapers. I left Mrs. Wilson’s at about 7:35 or so and drove to the Embassy Theater.

DEFENSE: Why did you go to the Embassy theater?

MR. THOMAS: I thought I would try to surprise Helen there. Since I had just gotten my first check from my writing I wanted to share it with her. While I was driving there I was trying to think things out. The idea that I would lose Helen because of Mrs. Wilson upset me. I couldn’t see myself living without her. I was in love with my wife. It seemed so cruel and ironic really that I should lose out by one day after waiting so long.

DEFENSE: What happened at the theater?

MR. THOMAS: I parked near the theater. I knew the ticket seller there, Ms. Denise Black. I think it was about 7:45 or so when I arrived. I went up to the ticket booth and asked her if she had seen Helen. She told me that Helen had gone into the theater. I remember asking Denise several times when the show would be over. I think she said the first show would be out around 9:40 or 9:45. We talked for a while. I recall Denise said something about Helen being afraid of me or something like that. I told Denise that there was nothing wrong between Helen and me, but that it was all Mrs. Wilson’s fault.

DEFENSE: Where did you go next?

MR. THOMAS: I think it was about 8:30. I went into the Silver Dollar Bar there on the South Side of Madison Street about 5 blocks from the theater. I had 3 glasses of beer. After about an hour I think, I left the Silver Dollar. I was certainly not drunk. I think that I left there at about 9:30.

I turned around and drove West on Madison. I passed the theater, but didn’t stop. I didn’t even look into the ticket booth as I passed. I went past Helen’s stepmother’s house and the porch lights and the lights in the two front rooms were on. It was still drizzling.
Since I had some money, I decided to go pick up my 38 caliber revolver at Russell's Gun Shop at 2165. I had left the gun there for cleaning and some minor repairs about a week before. I found the place still open so I went in. Sam Russell gave me the gun. I paid the bill, it was about $6.50 and I left. I was only there for a few minutes so you can check that out with Sam.

I bought this gun when I was in the service and kept it as a memento of service days. The only time I used it was to practice target shooting on the outskirts of the city.

When I got home, I went up to my room on the second floor of Mrs. Hoover's boarding house. I took off my wet clothes and got into a bathrobe and pajamas. I sat down to read. I had a headache that wouldn't go away and around 10:15 or so, I went down to Mrs. Hoover's to borrow some aspirin. She was watching T.V. She gave me some aspirin and I went back to my room.

DEFENSE: Then what happened?

MR. THOMAS: At about 10:45, Officer Novak knocked on my door. He told me Helen had been shot. He allowed me to change my clothes and together we went to the police station. I told him that I had nothing to hide and that I was willing to answer his questions. After I made a statement to Officer Novak, he took me to the crime lab and one of the technicians performed a test on my hands.

DEFENSE: Mr. Thomas, did you kill your wife?

MR. THOMAS: Absolutely not. I loved her.

DEFENSE: No further questions.

CROSS EXAMINATION OF JOSEPH THOMAS

PROSECUTION: Mr. Thomas, you said you've practiced shooting several times a week, isn't that true?

MR. THOMAS: Yes, I did.
PROSECUTION: And you became quite proficient with that gun, isn't that true?

MR. THOMAS: Yes. Helen used to joke that I could hit a dime from one hundred yards.

PROSECUTION: Let's talk about the night of September 9th. Let's see, you went to see your wife at the home, isn't that true?

MR. THOMAS: Yes.

PROSECUTION: And you asked her to come home with her?

MR. THOMAS: Yes.

PROSECUTION: And when she refused, you became very angry, isn't that true?

MR. THOMAS: Yes.

PROSECUTION: You raised your voice, isn't that true?

MR. THOMAS: Well yes.

PROSECUTION: Threatened them didn't you?

MR. THOMAS: Yes, not with violence. I only meant that they'd be sorry when I was successful. I was angry, I didn't know what I was saying, but I'd never hurt them. I'd never hurt my wife, I loved her.

PROSECUTION: Didn't you want to hurt her?

MR. THOMAS: Hurt? No, No, not hurt physically.

PROSECUTION: Isn't that what happened? You went to shoot your wife on the night of September 10th?
MR. THOMAS: No, absolutely not. I'm not a violent man.

PROSECUTION: No further questions.

JUDGE: Call your next witness.

DIRECT EXAMINATION OF KATHERINE HOOVER

DEFENSE: We call Katherine Hoover, owner of the boarding house.

DEFENSE: Mrs. Hoover, do you understand why you were called here?

MS. HOOVER: Yes. I understand that Joe Thomas was charged with shooting and killing his wife, Helen on September 10th.

DEFENSE: What happened on September 10th?

MS. HOOVER: I distinctly recall September 10th. That morning Joe came down and showed me a check for $500.00 he had received in the mail and said it was an advance for one of his T.V. scripts. He went out to cash to check and then he came back and paid me $100.00 he owed me for the room and board. He said he was going over that night to see Helen and tell her about his good luck. He mentioned that September 10th was Helen's birthday.

DEFENSE: When did you next see him.

MS. HOOVER: On the evening of September 10th, I met him at the front door when I was coming in from shopping. It was about 7:15. He had a box about as big as a five pound candy box, wrapped in newspapers. It looked like a box of candy for Helen, for her birthday.

DEFENSE: And did you see him again that day?
MS. HOOVER: Yes. That night I was watching T.V. in my living room. I heard a car pull up at the curb outside my front window and the brakes sort of grinding or screeching. I said to myself, Joe certainly is in a hurry tonight. I looked out my front window and saw his car at the curb and Joe went running up the walk. It was still raining. I heard him unlock the front door and saw him go past my living room door, which was open. He ran up the steps.

DEFENSE: What time was that?

MS. HOOVER: I'd say that he came in somewhere between 9:40 and 9:55 p.m. I can fix the time because I remember that I was watching a T.V. program which always comes on at 9:00 and ends at 10:00. After the first half hour there is always a series of commercials and a station break, and that had already been on when I heard Joe's car and saw him go past my door. That program also has a preview of the next week's program of 9:55, and that hadn't come on yet when Joe got home. I clearly remember that the program hadn't ended yet. I was watching the program and not my watch or the time, so I can't say exactly what time Joe got home that night, but I can fix the time as being somewhere between 9:40 and 9:55.

DEFENSE: Did you see him again that night?

MS. HOOVER: I did not see him again until around 10:30 p.m. when he came down to my living room. I was still watching T.V. He was dressed in his pajamas and bathrobe and slippers. He told me he had a bad cold coming on from being out in the rain so much that night. He said he was feeling down and he was coughing. I gave him some aspirin tablets. He did not say much of anything else and he went back upstairs.

DEFENSE: Could he have come or gone without you knowing it?

MS. HOOVER: No. His room was on the second floor at the head of the stairs from the entrance hall. The door of my living room is at the bottom of the stairs and anybody going out from the second floor to the street, has to come down the stairs and go by my door to go out the front door.
DEFENSE: Thank you Mrs. Hoover, no further questions.

CROSS EXAMINATION OF MRS. HOOVER

PROSECUTION: Just a few questions to clarify things. You did not look at your watch did you?

MS. HOOVER: No sir, I did not.

PROSECUTION: So your time estimate is just that, an estimate?

MS. HOOVER: Yes.

PROSECUTION: And when you say he got home before 10:00, you can’t be sure of that can you.

MS. HOOVER: Well no, not 100%, but I think it was before 10:00.

PROSECUTION: And if the network shows weren’t on schedule that night, you could be completely wrong, couldn’t you?

MS. HOOVER: Yes.

PROSECUTION: So you can’t be sure of the time, can you?

MS. HOOVER: No, I guess not.

PROSECUTION: Nothing further.

DEFENSE: No further witnesses

JUDGE: Closing?
CLOSING ARGUMENTS

PROSECUTION: Briefly. Ladies and gentlemen of the jury, you have heard the testimony and you have heard Mrs. Wilson identify Joseph Thomas as the one who shot her daughter. We know by Joseph Thomas's own admission that he was angry over the breakup of his marriage and we know that he had a gun that evening of the same type that was used in this terrible murder. The evidence points to only one verdict, guilty.

DEFENSE: Ladies and gentlemen of the jury, recall the evidence. Mrs. Wilson was not 100% sure of her identification that dark and rainy night. She disliked Joseph Thomas and believed him capable of terrible crimes, but you heard him say that he loved his wife and meant her no harm. You heard Mrs. Hoover, his landlady say that he was in his apartment when his wife was shot and you heard that others had motive and opportunity to commit this crime. We submit that the only verdict to deliver is not guilty.

JURY INSTRUCTIONS

Members of the jury, the evidence and arguments in this case have been completed, and I will now instruct you as to the law. The law applicable to this case is stated in these instructions and it is your duty to follow all of them.

It is your duty to determine the facts, and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case. You must not be governed or influenced by sympathy or prejudice for or against any party in this case. Your verdict must be based on evidence and not upon speculation, guess, or conjecture.

The evidence that you should consider consists only of the witnesses' testimony and the exhibits. You should consider all evidence in the light of your own observations and experiences in life.

You are the sole judges of the credibility of the witnesses and of the weight to be given to the testimony of each witness. In determining what credit is to be given any witness, you may take into account his ability and opportunity to observe; any interest, bias, or prejudice he may have; the
reasonableness of his testimony considered in the light of all the evidence; and any other factors that bear on the believability and weight of the witness's testimony.

The State has the burden of proving beyond a reasonable doubt every essential element of the crime charged in the indictment and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

"Reasonable doubt" means a doubt based upon reason and common sense that arises from a fair and rational consideration of all the evidence or lack of evidence in the case. It is a doubt that is not a vague, speculative, or imaginary doubt, but such a doubt as would cause reasonable persons to hesitate to act in matters of importance to themselves.

The defendant is presumed to be innocent of the charges against him. The presumption is not overcome until, from all the evidence in the case, you are convinced beyond a reasonable doubt that the defendant is guilty.

1. The State of Ohio has charged the defendant, Joseph Thomas, with the crime of Murder. The defendant has pleaded Not Guilty.

2. Under the criminal code of the State of Ohio, a person commits the crime of Murder if, the intent to cause the death of a person other than himself, he causes the death of that person or of another person.

4. To sustain the charge of Murder, the State must prove the following propositions:

(a) That defendant performed the acts which caused the death of Helen W. Thomas; and

(b) That defendant acted with the intent to cause the death of Helen W. Thomas or any other person. That is, if you believe that the defendant intended to kill any person, this element has been satisfied.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty of Murder.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty of Murder.
Appendix C.

Exhibit Pilot Study Questionnaire
Questions

1. Age _____

2. Gender (Circle) M F

Please circle the appropriate number.

3. How disturbing did you find this image.

1 2 3 4 5 6 7 8 9
Not at all Somewhat Moderately Very Extremely

4. How disturbing do you think the average freshman will find this image.

1 2 3 4 5 6 7 8 9
Not at all Somewhat Moderately Very Extremely

5. How emotional do you think the average freshman will find this image.

1 2 3 4 5 6 7 8 9
Not at all Somewhat Moderately Very Extremely

6. Please look at the image again and write down what emotions you feel as you look at it.

7. How intense were these feelings listed in item 6.

1 2 3 4 5 6 7 8 9
Not at all Somewhat Moderately Very Extremely

8. How much information does the image contain? Put another way, how informative is the image?

1 2 3 4 5 6 7 8 9
Not at all Somewhat Moderately Very Extremely
Appendix D.

Exhibit Pilot Study Instructions
ORAL INSTRUCTIONS

Good [morning/afternoon], my name is ____________________ and I am an experimenter in the department of Psychology at Ohio State working for Michael Russo and under the direction of Dr. Herbert Mirels. We appreciate your taking the time to participate in our study and hope that it will be an agreeable and educational experience for you.

So that you can work quietly and on your own, we have arranged rooms in such a manner that you will not be disturbed by others. A few of you will be taken to other rooms to work. Except to the extent that it insures that you work on your own, this is not a part of the experiment.

Presently, each of you will be given a folder. This folder [Hold up folder 1.] contains an item of evidence from a criminal trial, and a questionnaire.

When I say "Begin" I want you to open the Folder and take a few minutes to look at the Exhibit and then fill out the questionnaire carefully and honestly. Be sure to answer all the questions.

Please answer the questions carefully. This is part of study on jury decision making. If our results are to have meaning, it is important that your responses to the questions reflect your true reactions to the Exhibits.

At this point, I should note that the materials presented here are part of a real Homicide case. The process of reviewing such materials may cause you to experience emotional reactions that some might consider unpleasant. This is a reaction commonly experienced by jurors in real trials. However, IF FOR THAT REASON OR ANY OTHER, you wish to discontinue your participation in this study, simply return the questionnaires to me. You will still receive full credit for your participation in today’s study.
One further item. Since we are not interested in any one individual's answers but rather the general reactions of the group as a whole, we are requesting that you NOT put your name or any other identifying information except your age and sex on any of the materials you will receive. You can be sure that your responses will be anonymous.

Please return all of the materials to me when you have completed the questionnaires in both folders. At that time, I will sign your experiment card. Then return to your seat. When everyone has finished, someone will discuss the study with you.

I will now distribute the materials.

If, at any time, any of the questions or directions are unclear, please feel free to ask for assistance and I will try to help you.

OK, Please begin. Remember to work quickly and carefully.
Appendix E.

Dependent Measures Questionnaire
VERDICT

State v. Thomas

Please circle one of the following:

1 I BELIEVE STRONGLY THAT THE DEFENDANT IS NOT GUILTY OF MURDER.
2 I BELIEVE MODERATELY THAT THE DEFENDANT IS NOT GUILTY OF MURDER.
3 I BELIEVE SLIGHTLY THAT THE DEFENDANT IS NOT GUILTY OF MURDER.
5 I BELIEVE SLIGHTLY THAT THE DEFENDANT IS GUILTY OF MURDER.
6 I BELIEVE MODERATELY THAT THE DEFENDANT IS GUILTY OF MURDER.
7 I BELIEVE STRONGLY THAT THE DEFENDANT IS GUILTY OF MURDER.
Questions

1. Age _____  
2. Gender (Circle) M F

3. Please indicate, on a scale of 1 to 10, where 1 is the LEAST CONFIDENT and 10 is the MOST CONFIDENT, how confident you are in your verdict.

   1  2  3  4  5  6  7  8  9  10
   NOT CONFIDENT       COMPLETELY CONFIDENT
   AT ALL

4. How strong was the evidence?

   4 Overwhelmingly in favor of guilt.
   3 Strongly in favor of guilt.
   2 Moderately in favor of guilt.
   1 Slightly in favor of guilt.
   0 Neither in favor of guilt or innocence.
   -1 Slightly in favor of innocence.
   -2 Moderately in favor of innocence.
   -3 Strongly in favor of innocence.
   -4 Overwhelmingly in favor of innocence.

5. What do you believe is the probability that the defendant committed First Degree Murder. Indicate probability as a percent (a value between 0% and 100%) where:

   0% means that the there is no chance that he committed the crime.
   50% means that there is a 50-50 chance that he committed the crime and
   100% means that there is no doubt at all that he committed the crime.
6. Ordinarily, juries decide guilt or innocence and judges decide the sentence after a finding of guilt. If you were the judge in this case and the jury found the defendant guilty, what sentence would you give him?

1. Probation.
2. Less than 1 year in prison.
3. Between 1 and 2 years in prison.
4. Between 2 and 5 years in prison.
5. Between 5 and 10 years in prison.
6. Between 10 and 20 years in prison.
7. Thirty years in prison.
8. The rest of his life in prison.

Please mark each statement to the left according to how much you agree or disagree with it. Use the following code.

+1 I AGREE SLIGHTLY  
+2 I AGREE MODERATELY  
+3 I AGREE STRONGLY  
-1 I DISAGREE SLIGHTLY  
-2 I DISAGREE MODERATELY  
-3 I DISAGREE STRONGLY

7. The defendant caused the death of his wife.
8. The defendant intended to cause the death of his wife.
9. The defendant planned to cause the death of his wife.
10. Mary Wilson, the victim's stepmother was a likable person.
11. I believed the testimony of Mary Wilson.
12. The defendant, Joseph Thomas is a likable person.
13. I believed the testimony of Joseph Thomas.
Please mark an _X_ to indicate your feelings while you were working on this task.


22. In your own words, what do you think really happened on the night of September 10th, 1987?

23. How did the exhibits affect your decision?

EXHIBIT A

EXHIBIT B

EXHIBIT C
Answer the following from your memory of the case. Please do not refer back.

1. How certain was Mrs Wilson that Joseph Thomas was the person who killed his wife?
   a. Not at all.
   b. Somewhat certain.
   c. Very certain.
   d. 100% certain.

2. What were the results of the test on the gun and hands of Joseph Thomas?
   a. Negative.
   b. Inconclusive.
   c. Positive.

3. How certain was Mrs. Hoover of the time that Joseph Thomas got home on the night of September 10th?
   a. Not at all.
   b. Somewhat certain.
   c. Very certain.
   d. 100% certain.

4. Helen Wilson Thomas' father was a
   a. doctor.
   b. judge.
   c. police chief
   d. warden.

5. What kind of car did Joseph Thomas drive?
   a. Pontiac Ventura.
   b. Chevrolet Impala.
   c. Ford Mustang.
   d. Ford Pinto.

6. Helen Wilson Thomas died
   a. at the hospital, a week after the shooting.
   b. in the emergency room.
   c. on the road to the hospital.
   d. at the scene of the shooting.
7. The shooting took place in
   a. August.
   b. September.
   c. October.
   d. November.

8. Katherine Hoover was Joe Thomas’
   a. sister.
   b. neighbor.
   c. landlord.
   d. housekeeper.

9. Mary Wilson was Helen’s
   a. aunt.
   b. mother.
   c. grandmother.
   d. stepmother.

10. The police found the gun
    a. at the scene.
    b. on the street, about a mile from the shooting.
    c. in Joe’s car.
    d. in Joe’s apartment.

11. What movie was showing at the theater?
    a. Casablanca
    b. The Godfather.
    c. A Clockwork Orange.
    d. The transcript didn’t say.

12. When the police arrived at his apartment, Joe was wearing
    a. a bathrobe and pajamas.
    b. wet clothes.
    c. shorts and a T-Shirt.
    d. The transcript didn’t say.

13. How much was the check that Joe received on the day of the shooting for?
    a. $50.
    b. $100.
    c. $500.
    d. $1,000.
14. Joe wrote
   a. Children's stories.
   b. Comic strips.
   c. Science fiction stories.
   d. Murder mysteries.

15. How long had Joe and Helen been married before the shooting?
   a. Less than 6 months.
   b. Between 6 months and 1 year.
   c. Between 1 year and 2 years.
   d. More than 2 years.
Appendix F.

Oral Instructions for Main Study
ORAL INSTRUCTIONS

Good [morning/afternoon], my name is____________________ and I am an experimenter in the department of Psychology at Ohio State working for Michael Russo and under the direction of Dr. Herbert Mirels. We appreciate your taking the time to participate in our study and hope that it will be an agreeable and educational experience for you. Presently, each of you will be given two folders. The first folder [Hold up folder 1.] contains a transcript of a criminal trial, and a verdict form. The second folder contains a brief questionnaire which asks questions about various aspects of the experiment.

So that you can work quietly and on your own, we have arranged rooms in such a manner that you will not be disturbed by others. A few of you will be taken to other rooms to work. Except to the extent that it insures that you work on your own, this is not a part of the experiment.

When I say "Begin" I want you to open Folder 1 and begin to read the material in that folder. When you have completed reviewing all of the material in that folder, including the Exhibits, you should decide the case as you would if you where a juror on the case. Once you have filled out the verdict form, please close that folder and answer the questions in Folder 2.

Please answer the questions carefully. This is a study of the way a person sitting on a jury in a criminal case might make decisions. I need not tell you that jury decisions require serious consideration. For our study to have meaning, you should approach this task in a serious manner. Thus, to the extent possible, treat this case as you would a real trial, with the understanding that your decision will have importance to others. Treat the task as if a real homicide had taken place and a real person was on trial, depending on your verdict. At the same time, since real jurors ordinarily only have one opportunity to hear the evidence, it is important that you work quickly and only read the transcript once.
At this point, I should note that the materials presented here describe real Homicide case. The process of reviewing such materials may cause you to experience emotional reactions that some might consider unpleasant. This is a reaction commonly experienced by jurors in real trials. However, IF FOR THAT REASON OR ANY OTHER, you wish to discontinue your participation in this study, simply return the questionnaires to me. You will still receive full credit for your participation in today's study.

One further item. Since we are not interested in any one individual's answers but rather the general reactions of the group as a whole, we are requesting that you NOT put your name or any other identifying information except your age and sex on any of the materials you will receive. You can be sure that your responses will be anonymous.

Please return all of the materials to me when you have completed the questionnaires in both folders. At that time, I will sign your experiment card. Then return to your seat. When everyone has finished, someone will discuss the study with you.

I will now distribute the materials.

If, at any time, any of the questions or directions are unclear, please feel free to ask for assistance and I will try to help you.

I wish to point out that as simulated jurors you should keep the following in mind. These are instructions that the judge would present in the real trial, and it is important that you approach the case as if there were a real person on trial.

During the trial, you should keep an open mind. You should not form an opinion during the trial and should reach no conclusion in this case until you have read all of the evidence, the arguments of counsel, and the final instructions as to the law that will be given to you by the court.

First, the attorneys will have an opportunity to make opening statements. These statements are not evidence and should be considered only as a preview of what the attorneys expect the evidence will be.
Following the opening statement, witnesses will be called to testify. They will be placed under oath and questioned by the attorneys. Documents and other tangible exhibits may also be received as evidence.

When the evidence is completed, the attorneys will make final statements. These final statements are not evidence but are given to assist you in evaluating the evidence. The attorneys are also permitted to argue in an attempt to persuade you to a particular verdict. You may accept or reject those arguments as you see fit.

Finally, just before you retire to consider your verdict, the judge will give you further instructions on the law that applies to this case.

This is the case of the State of Ohio versus Joseph Thomas. Joseph Thomas has been charged with the First Degree Murder of his wife, Helen Wilson Thomas.

OK, Please begin. Remember to work quickly and carefully.
Appendix G.

Outline of Debriefing Procedure
DEBRIEFING PROCEDURE

The debriefing procedure follows the one outlined by Mills (1976). Debriefing will be conducted following the second session of the experiment. General debriefing will be conducted in a group setting with the experimenter available to answer individual questions and, should the need arise, to discuss the matter in greater detail with individual subjects. The debriefing will be conducted in four parts along the following general outline.

I. Explanation of the purpose of this particular study and the deceptions that were used.

A. Explain purpose: to see whether the presence of emotionally arousing, but otherwise redundant, evidence will affect decision making in a mock trial. The study will then be detailed according to the information contained in the proposal with a description of the procedure as well as the hypotheses.

B. Explain specific procedures used to test the hypotheses including.

C. End with the questions

1. Do you see why we conducted the study the way we did?

3. Do you have any questions?

II. Relief of subjects anxiety about his/her performance in the experiment and exploration of any emotional effect that the study may have had on him/her.

A. Relief about subjects anxiety about performance.

1. This experiment is not a test of your ability, worthiness, etc.
2. Response of any one individual is not of interest.
   a. We will have to combine the data from a large number of individuals to draw any conclusions.
   b. Your responses will remain anonymous.

B. Exploration of any emotional effect that the study may have had on him or her.

1. Tell subjects that the task of reading murder cases and judging the guilt or innocence of people might be unpleasant for some individuals, and that this is perfectly normal.

2. Explain the importance of the study and need for them to experience some of the feelings that one might encounter as a juror.

3. Make subjects aware of the experimenter's availability if any should desire to talk in private about the study or any issues that it raises.

III. Explain the necessity of not discussing this study with anyone else.

A. If others find out about the purpose of the study, their data would not be valid.

B. End with the questions:
   1. Do you see why it is important that others not learn of the study before it has been run?
   2. Will you promise not to say anything about the experiment?
   3. Do you have any questions? Comments? Suggestions?