

NEGATIVE PRETRIAL PUBLICITY AND JUROR VERDICTS:  
TESTING THE DEMAND CHARACTERISTICS HYPOTHESIS

Gregory T. Pearce

A Thesis Submitted to the  
University of North Carolina Wilmington in Partial Fulfillment  
of the Requirements for the Degree of  
Master of Arts

Department of Psychology  
University of North Carolina Wilmington

2008

Approved by

Advisory Committee

\_\_\_\_\_  
Len Lecci

\_\_\_\_\_  
James D Johnson

\_\_\_\_\_  
Bryan Myers  
Chair

Accepted by

\_\_\_\_\_  
Dean, Graduate School

## TABLE OF CONTENTS

ABSTRACT.....	iv
ACKNOWLEDGMENTS.....	v
DEDICATION.....	vi
LIST OF FIGURES.....	vii
INTRODUCTION.....	1
Free Press v. Fair Trial.....	1
Demand Characteristics.....	7
Contiguous Presentation.....	8
Disguising NPTP.....	9
Multiple Types / Levels of NPTP.....	11
STUDY 1 METHODS.....	17
STUDY 1 RESULTS.....	22
STUDY 1 DISCUSSION.....	30
STUDY 2 METHODS.....	34
STUDY 2 RESULTS.....	37
STUDY 2 DISCUSSION.....	39
GENERAL DISCUSSION.....	44
REFERENCES.....	48
APPENDIX.....	52

## ABSTRACT

Two studies were conducted to investigate if demand characteristics could explain the relation between increased guilty verdicts and negative pretrial publicity. The purpose of study 1 is to show that when we keep demand characteristics constant between levels of pretrial publicity, but vary the degree of pretrial publicity, guilt judgments differ between the control and negative pretrial publicity groups, but the two levels of negative pretrial publicity do not differ. A total of 172 university undergraduates participated in this study and were randomly assigned to one of three groups. Participants read a mock trial transcript, along with mock newspaper articles, and rendered verdicts, beliefs about study intent and completed Gudjonsson's Compliance Scale. The results indicated, contrary to what was hypothesized, guilt judgments did not vary according to a demand characteristics model. That is, the two NPTP groups did not differ significantly from the control group on guilt judgments.

The purpose of study 2 was to show that if we keep negative pretrial publicity constant but vary the demand characteristics, guilt judgments will vary across conditions. A total of 192 university undergraduate students were randomly assigned to one of four conditions (control, NPTP, DC Guilty, DC not guilty). Participants read the identical trial transcript as study 1, as well as the weak NPTP condition mock newspaper articles in study 1 (for all conditions but control). In addition, participants completed Gudjonsson's measure of compliance and rendered verdicts along with study intent ratings. The results again revealed findings inconsistent with a demand characteristics model. Here, none of the four groups differed significantly from one another.

## ACKNOWLEDGMENTS

I wish to express my sincere thanks to my advisor, Dr. Bryan Myers, for providing me countless hours of assistance during the creation of my thesis. I am sure that he sacrificed not only time at the office, but personal time at his home to provide me continuous feedback and support while I worked. I owe a great deal of my success in this endeavor to his continued aid and I just wanted to say thank you to him and his family for all the time that they gave me.

## DEDICATION

My thesis would not be complete without mentioning the most important person that supported me and aided me not just during graduate school and my thesis, but throughout my life. That person is my mother, Linda Pearce, to whom this thesis is dedicated. Without her continued support and gentle nudging for all these many years, I doubt I would be where I am today and also this thesis would never have come to fruition. Mom, thank you from the bottom of my heart.

## LIST OF FIGURES

Figure	Page
1. Dichotomous verdicts of guilt for control, weak and strong NPTP groups (study 1).....	24
2. Dichotomous verdicts of guilt for weak and strong NPTP groups (study 1).....	25
3. Mean verdict strength score by condition (study1).....	27
4. Relative study intent score by condition (study 1).....	28
5. Mean verdict strength score by condition (study 2).....	38

## INTRODUCTION

### *Free Press v. Fair Trial*

In today's world of streaming news from so many sources including television, radio, Internet and even cellular phones it is probably easy to remember a plethora of news stories about at least one criminal case. Especially with the advent of 24 news channels (e.g. CNN, Court TV, MSNBC and Fox News) the coverage of criminal prosecutions both before and during the trials is ever increasing. Many trials have become so popular in the United States that just the mention of the defendant or the accused crime (e.g. O.J. Simpson, Pamela Smart or the Oklahoma City bombing) brings to mind a host of media coverage surrounding the events. This increase of media coverage brings to the forefront a problem that has been around for quite some time. That problem is the conflict between the freedom of the press and a fair trial in criminal prosecutions.

This conflict between fair trials versus a free press arises from the fact that the United States Constitution guarantees both of these rights and must balance both of them simultaneously. The First Amendment guarantees the freedom of the press, while the Sixth Amendment guarantees the right to an impartial jury during a criminal prosecution. In addition to those amendments, the Fourteenth Amendment contains a due process clause that makes all federally protected rights equally applicable to the state governments as well. In these conflicts the United States Supreme Court is the authority that settles them. The history of these conflicts between fair trials versus a free press is very long and complex. To understand the issue better, some of the more important cases involving this issue will be examined next.

Over the years the Supreme Court has decided cases that clarify what an impartial jury is and also helps define the boundaries that allow a defendant to receive a fair trial in a criminal

prosecution. As early as 1878 in the case of *Reynolds v US*, the Supreme Court ruled on the definition of an impartial jury in relation to pretrial publicity. A juror in the Reynolds' case read news articles about the case prior to hearing testimony and said that he had formed an opinion. However, he stated that he did not think that opinion would impair his ability to listen to the evidence and make a fair decision. The court agreed that this was sufficient for that juror to be in fact, impartial. The court explained that the impartial jury was one that had not closed its mind to the evidence and would be willing to weigh all the evidence and make a decision based on it fairly.

The current model that the Supreme Court uses to determine the fairness and impartiality of a jury in a trial is the *totality of the circumstances test*. This test has developed through many rulings and in its current form the court says that there is no simple solution to the amount and kind of pretrial publicity that makes a jury partial or unfair. The totality of circumstances basically means that the court takes everything into account to make determinations on the fairness of a jury given the specifics of the pretrial publicity. This model dates back to a series of cases (i.e. *Irvin v. Dowd* (1961); *Rideau v. Louisiana* (1963); *Estes v. Texas* (1965); and *Shepard v. Maxwell* (1966)) where the Supreme Court overruled lower state courts convictions saying that the trials has been corrupted by press coverage. These cases help establish the situations when there is in fact too much press coverage and that pretrial publicity makes the jury unable to remain impartial.

In *Mu'Min v. Virginia* (1991) the U.S. Supreme Court reaffirmed their stance that the standard by which impartiality is determined should not rest on whether jurors had been exposed to negative publicity surrounding the defendant, but whether they are unable to put that knowledge aside and render decisions in a fair and impartial manner. In an opinion delivered by



Justice Rehnquist the court said:

...the pretrial publicity in the case did not involve damaging information that created such a presumption of community prejudice that the jurors' claims of impartiality should not be believed. (*Mu'Min v. Virginia*, p. 5193)

The court also said that the trial court's decision of impartiality could only be overturned for an error that is obvious and indisputable. These rulings from the Irvin case to the Mu'Min case give the trial court wide latitude to decide on a case-by-case basis on the ability for a jury to remain impartial without a high likelihood to be overturned later. The crux of these rulings were that defendants were not able to claim a biased jury if jury members said they could be impartial even though they were exposed to negative pretrial publicity. Therefore, trial courts have a heavy reliance on the statements potential jurors make and must use those statements to aid in the decision of the impartiality of the jury based on the totality of the circumstances.

Even though the courts have established that publicity alone does not create bias, there are times when the totality of the circumstances test does indicate that some bias might be present. In such cases when the court believes that the freedom of the press may have impeded the civil liberties of a defendant, some standard procedures do exist to rectify this possible bias. These normal procedures are: the voir dire process, change of venue, and continuance. It is important to review and understand these procedures because they are the main ones used when there is a question of juror bias. Any discussion about pretrial publicity and its likelihood of biasing a jury will normally lead to the remedies the courts have in place currently and therefore a basic understanding of these is needed. These three procedures will be discussed next to give a basic understanding of the courts' remedies for bias.

The voir dire process is when both the defense and prosecution are able to speak to

prospective jurors and ask them certain questions. Based on these interactions the prosecution and defense can ask that a juror not be allowed based on cause or either party can challenge a limited number of jurors without cause. Exposure to pretrial publicity does not disqualify a juror at this stage if she believes that she can be impartial during the trial. So under the current standards the prosecution and defense can only use one of their limited challenges without cause if they do not want the person to be part of the jury. Truthfulness and knowledge about their ability to be impartial by the jury is essential for this remedy to work if there is any bias from publicity. That honesty can be called into question when for example it was found during interviews with jurors that answered questions during actual voir dire procedures that a number of them lied or omitted information during the process (Marshall & Smith, 2001; Mize, 1999; Seltzer, Venuti & Lopez, 1991).

Change of venue is a process where the defendant is tried in a location other than that where the crime he is charged with was committed. One famous case that had significant media coverage where this strategy was employed was in the Oklahoma City bombing, *United States v McVeigh* (1997). The judge felt that the change of venue was needed for a fair trial so the court issued a change of venue from the state of Oklahoma to Colorado. McVeigh later appealed his conviction claiming that the jury was biased even after the move of the trial, but the appeals court upheld the lower court's conviction.

Finally, the court may also choose to use a delay in trial to deal with potential bias from publicity. In this situation usually the defense lawyer requests one or many continuances in order for the seating of the juror to be temporally disconnected from the pretrial publicity presented. Normally the defense makes this motion because the Sixth Amendment gives a defendant the right to a fair trial, but also to a speedy trial. So if the court chooses to grant this motion for a

continuance based on the claim of pretrial publicity the defendant normally is required to sign a waiver of speedy trial motion. Often the judicial system refers to a continuance as a cooling off period for potential jurors. After reviewing these legal options and opinions, the research revolving around pretrial publicity will be examined next.

### *Research on Pretrial Publicity*

Based on their rulings it appears the courts believe that a clear relationship between pretrial publicity and juror bias has not been demonstrated. Yet, quotes from Hope, Memon and McGeorge (2004) such as: “Prejudicial pretrial publicity (PTP) constitutes a serious source of juror bias.” (p. 111) and “...PTP research is now moving into what has been identified as its ‘second’ generation with a greater focus on explaining the PTP effect...” (p. 111) seem to suggest that the relation of PTP and juror bias has been clearly demonstrated. This perspective is common. In one review by Studebaker and Penrod (1997) they commented on the effect of pretrial publicity and the opinions of others by noting:

“Besides the mediating mechanisms by which pretrial publicity exerts its influence, future basic research also needs to address the question of why the commonsense judgments of citizens, attorneys, and judges include the belief that jurors can disregard the influence of pretrial publicity, despite much evidence to the contrary.” (p. 449).

This belief that there is a clear cause and effect relation between pretrial publicity and jury bias is not limited to these researchers, but can be found throughout the literature (e.g. Kramer, Kerr & Carroll, 1990; Steblay, Besirevic, Fulero & Jimenez-Lorente, 1999; Wilson & Bornstein, 1998). All of these findings seem to imply that research in the field of pretrial publicity has moved beyond the question of whether it exists, but more into the mechanisms that produce it. Further support of this belief that the internal validity is clearly established is again found in the words of

researchers when one study commented that "...research has generally been found to be internally valid, the external validity of the research is sometimes doubted." (Studebaker, Robbennolt, Penrod, Pathek-Sharma, Groscup & Devenport, 2002, p. 20). What researchers do once they have accepted the internal validity of the negative effects of pretrial publicity on juror verdicts will be looked at next.

Armed with this accepted philosophy that there is both a biasing effect from pretrial publicity and that it affects a juror's ability to render an impartial verdict, some researchers have gone on to study the courts ability to use its remedies to combat this problem of juror bias from pretrial publicity. A study by Kramer, Kerr, and Carroll (1990) focused again on the effects of pretrial publicity but they also examined the court remedies to handle potentially biased jurors. Kramer et al. looked at many remedies including voir dire, judicial instructions, jury deliberation and continuance in their study. Another study chose to focus on a single judicial remedy and examined the voir dire process to see its ability to manage pretrial publicity (Dexter, Cutler, & Moran, 1992). Both Kramer et al. and Dexter et al. were exploring the court system's ability to manage for the potential of a partial juror in the case that pretrial publicity did in fact generate a bias.

There is a growing body of research that finds the presentation of pretrial publicity to have a significant relation to the increase in jurors' verdicts of guilt. Davis (1986) is one of the few published studies that did not find this same effect. The general consensus of social scientists seems to be that they believe there is a consistent, strong relation between the presentation of negative pretrial publicity and an increase in guilt verdicts delivered by jurors. However, the court system seems to have a relatively different belief that jurors can cast aside this pretrial knowledge and decide a case based on its merits. Before continuing along the current path of

research with the assumptions that negative pretrial publicity has an effect by increasing guilty verdicts of jurors, it is essential to examine the merits of this assumption. Appearances are that many researchers have focused on the external validity of the subject and less so on the internal validity. One plausible alternative to the apparent cause-and-effect relation between pretrial publicity and verdicts is that they may in fact be due largely to the presence of demand characteristics. To explore this further, the following studies will be grouped by specific design factors and then examined with respect to the potential that demand characteristics could account for the findings. However, it may be helpful to first define and look at the origin of demand characteristics before reviewing these studies.

### *Demand Characteristics*

According to Orne (1962), many factors can lead participants to alter their behavior to be more in line with what they believe the researcher wants. Aspects of the experimental procedure itself, the researcher, implicit or explicit instructions and other subtle cues involved in the experiment can all potentially impact the behavior of research participants. Orne created the term “demand characteristics” to explain when participants react due to some belief or expectation of the study. Some texts on the topic of research methods caution that participants are not blank slates and that many things can imply how the experimenter wants the study to turn out and how they as participants need to behave (Schweigert 1994). Schweigert cautions, as did Orne earlier, that the presence of these demand characteristics could influence the outcome of the experiment and interfere with a clear cause and effect relationship. Another text comments on the undermining effects of demand characteristics on both internal and external validity because of the misattribution of the effect to the manipulated variable (Lewis-Beck, Bryman, & Liao, 2004). Yet, as we will see, researchers investigating pretrial publicity and juror judgments often

fail to account for the impact of demand characteristics on their findings despite these explicit warnings. This is particularly true of early and basic research in this area.

### *Contiguous Presentation*

The chief characteristics of these studies were that they presented the trial information immediately after they were presented the PTP information, with little attempt to disguise the purpose of the PTP. In fact, most of the research on NPTP is conducted in this one session presentation manner with a few exceptions. One early example of contiguous presentation was a study conducted by Sue, Smith, & Pedroza (1975). They presented participants with negative pretrial publicity (NPTP) where participants were given a newspaper article explaining that a gun seized from the defendant was the murder weapon, but it was now inadmissible because of an illegal search by the police. In the control condition participants were given a newspaper article saying that the defendant's gun was not the weapon used in the murder. Participants read one article depending on their assigned condition and then both groups of participants were given the same trial summary to read. Finally, the individual jurors were asked to render a verdict of guilty or not guilty. The results were that participants in the NPTP condition returned significantly more guilty verdicts than did those in the "control" condition.

Although participants were not directly informed of the hypothesis of the above study, no controls were set into place to reduce the effects of demand characteristics. These demand characteristics could have occurred from contiguous presentation of the pretrial publicity information, trial information, and the guilt measure. The relevance of the pretrial publicity to the trial and the verdict was not disguised or hidden in any fashion. Therefore, it is difficult to determine whether the information (in the pretrial publicity) impacted their beliefs in guilt because it altered how they thought about the evidence, or it merely suggested to them that an

increased belief in guilt would be the appropriate and anticipated response to this information. Simply stated, participants may have been able to ascertain that negative pretrial publicity should be associated with a guilt verdict. With the lack of control for demand characteristics the findings cannot clearly be stated to be due to the presence of NPTP or demand characteristics.

There are additional studies that have also used this simple contiguous presentation of NPTP, trial information and judgment of guilt (e.g. Bornstein, Whisenhunt, Nemeth, and Dunaway, 2002; Fein, McCloskey, & Tomlinson, 1997; Kramer & Kerr 1989; Riedel, 1993). One recent example of contiguous presentation can be found in Hope, Memon, and McGeorge (2004). The NPTP was presented to participants in the form of newspaper articles. Next, trial transcripts were given to the participants followed by a measure of guilt. Hope et al. compared a control condition to an NPTP condition and found the NPTP group returned significantly more guilty verdicts compared to the control group. Although Hope et al. was conducted over two decades after Sue et al. (1975), the problem has not gone away and still exists. The results from the study cannot be clearly attributed to NPTP because of the potential presence of demand characteristics. Again, if participants were able to ascertain on any level that their exposure to the NPTP was so that they would or should endorse a guilty verdict the results become confounded.

#### *Disguising NPTP*

Many researchers recognize that demand characteristics can affect their results and they do attempt to control these demand characteristics through masking the true reason for the presentation of the NPTP information. Orne (1969) commented that experimenters often employ this technique of disguise to keep participants blind to the true purpose of the study, but he also cautions that this technique may not be sufficient and may actually just provide a false sense of

security to the researcher about the actual control for demand characteristics. Some of the methods used to attempt to disguise are presented next.

One method of masking is often accomplished by informing participants that the information provided before the “trial” is designed to give them access to all the information an actual juror would have received before making a judgment of guilt (e.g., Kramer & Kerr, 1989; Otto, Penrod, & Dexter, 1994; Shaw & Skolnick, 2004). Another method used to mask the NPTP during its initial presentation is to give an alternate explanation to the purpose of the information outside of the judgment of guilt following the trial. Riedel (1993) exposed participants to NPTP through the form of four articles and then had the participants take a reading comprehension test on the articles. Riedel states in his article that the purpose of the comprehension tests was to mask the relationship between the NPTP and the trial. In addition to that, one study (Hope, Memon, & McGeorge, 2004) used both a statement about the need for participants to have the same media that actual jurors would have and a few filler tasks after the presentation of NPTP to help mask the study’s intent.

These studies (Hope, Memon, & McGeorge, 2004; Kramer & Kerr, 1989; Otto, Penrod, & Dexter, 1994; Riedel, 1993; Shaw & Skolnick, 2004) all found that NPTP produced increases in guilty verdicts as a result of NPTP and they also showed a concerted effort to control for the effects of demand characteristics, but as Orne (1969) cautioned they may only be a false belief that these demand characteristics have been controlled and are no longer present. Because of the still present contiguous relationship of the pretrial publicity information, trial information, and the guilt measure coupled with a clever but mild masking technique it is still difficult to draw a clear and uncontaminated cause and effect relationship between NPTP and guilt verdicts. All of these studies used this method in an attempt to mask the purpose for the presentation of the



NPTP, but this deception may not be sufficient to actually mask the true purpose of the studies from the participants involved.

### *Multiple Types / Levels of NPTP*

Another method that could establish the presence of a true effect on an increase in guilty verdicts due to NPTP and not to demand characteristics would be if there were significant differences in guilt when the type or form of NPTP presented was varied. If demand characteristics can explain the differences in judgments from prior studies, then those differences should be greatly attenuated when demand characteristics remain constant across different levels of PTP. Presumably, demand characteristics should be equal across different levels of PTP.

In reviewing the studies that have varied the type of PTP, there is indeed evidence that the strength of the PTP effect has been significantly reduced when examined across levels of PTP. Here, we typically see that the effect of PTP is much smaller, and *often we see null findings* when comparing across the levels of PTP. For example, Kramer and Kerr (1989) conducted a study that involved two levels of pretrial publicity (high and low), two types of pretrial publicity (emotional and factual) and two types of trial lengths (short and long) to further investigate the effects of NPTP. The high and low pretrial publicity conditions were created by news stories for both groups. The high condition introduced information that would not be available in trial and the low condition was basic information about the case that would be available during the trial. All participants were assigned to their appropriate condition and viewed their respective type and level of NPTP via videotapes. Next, participants immediately viewed a long or short trial via videotape and at the completion of the trial participants gave a dichotomous judgment of guilty or not guilty. The results of the study were that all three conditions containing NPTP (emotional NPTP / factual NPTP / emotional and factual NPTP) produced significantly more guilty verdicts

compared to the control conditions. However, there were no significant differences between any of the three conditions that contained NPTP. Thus, when demand characteristics are presumably equal across levels of PTP, the differences in verdicts are greatly diminished.

Wilson and Bernstein (1998) sought to test the effects of the medium through which pretrial publicity was presented along with the nature of the pretrial publicity. They manipulated type of NPTP in three conditions (control / emotional / factual) along with the format of NPTP (video / written). The results of the study were that the presence of NPTP caused a significant increase in murder convictions versus manslaughter convictions in both the emotional and factual conditions compared to the control group. However, there were no significant differences between levels of NPTP (emotional / factual), nor were there any significant differences between the levels of stimuli presentation (written / video).

Both Kramer and Kerr (1989) and Wilson and Bernstein (1998) found that NPTP increased the tendency for jurors to render verdicts that found the defendant more culpable. However, in both of these studies the NPTP is not hidden in any meaningful way from the participants. Both studies had the participants complete the study in one sitting. Near the beginning of the study participants were exposed to some form of NPTP and then within a relatively short period of time asked to render a verdict. This time interval was longest in Wilson and Bernstein (1998) with their study lasting 3 hr from beginning to end. This situation of simple presentation of the NPTP and then determination of culpability within such a short time span creates the same problem as with earlier studies (Sue et al., 1975; Padawer-Singer & Barton, 1975) in that we cannot rule out demand characteristics as a prominent feature of the findings. Groups that would have the same demand characteristics (i.e., all groups containing some form of PTP) differ from the control groups, but not from one another. This pattern of

findings is consistent with a demand characteristics explanation. This lack of difference between types of NPTP and presentation formats does not rule out the explanation that there may be a strong effect in all of those conditions (i.e., a ceiling effect), but it equally supports the possibility that the effect seen is due largely to demand characteristics. Participants were able to ascertain that guilty verdicts would be the appropriate response when they were presented with NPTP, and so they responded appropriately. Different types of NPTP may fail to elicit differences from one another because all types of NPTP are equally impactful. Or, NPTP does not influence juror judgments and it is demand characteristics that are the source of the verdict differences. Consequently, this possibility merits investigation.

However, one issue that appears to contradict a demand characteristics model comes from a meta-analysis on PTP that suggests delay between PTP and decision task increases guilt judgments. That is, Steblay, Besirevic, Fulero and Jimenez-Lorente (1999) conducted a meta-analysis on NPTP and found the effect of NPTP increased as a function of delay. They reported an effect size of  $r = .15$  for verdicts in studies without delay from the presentation of the NPTP to the final verdict. They also reported a much larger effect size of  $r = .36$  when there was a delay of more than one week from presentation of the NPTP and the verdict. These data seem to argue against a possible demand characteristic explanation for NPTP. If the effects were due to demand characteristics one would expect a decrease in effect size as delay between NPTP and judgments increase. As the two events become temporally disconnected it could be possible for the relation between the purpose of the NPTP and guilt judgments to become less connected and therefore reduce demand characteristics. Thus, this finding would appear to argue against the importance of demand characteristics.

On closer inspection of the meta-analysis, there are reasons to suggest factors other than delay are impacting judgments in the studies reviewed. A majority of the data for the delay effect size came from surveys that did not have a no-delay condition and were different in multiple respects from the studies involving delays. One example of this was a study conducted by Moran and Cutler (1991). One of these studies consisted of a telephone survey about a real crime that had occurred in the survey area and that had substantial pretrial publicity surrounding it. The survey was delayed temporally from the exposure of the pretrial publicity, but this was not manipulated or compared to a no delay condition. This makes interpreting an effect due to delay difficult at best. However, one study in the meta-analysis did manipulate delay and that study is reviewed next.

Kramer, Kerr and Carroll (1990) conducted an experiment that consisted of four variables, one of which was delay. This was one of the studies in the meta-analytic review by Steblay et al. (1999). This study demonstrates some of the problems inherent in those studies involving delay. Moreover, it accounts for nearly three-quarters of the subjects used in the delay portion of the meta-analysis. Kramer et al., (1990) created their delay condition in three ways. The materials were mailed to the participant ahead of time, the participant came at their convenience to the university to view the materials, or someone took that materials to their home and allowed them to view the pretrial materials. Thus researchers varied delay, but delay was confounded with other procedural discrepancies (e.g., at home vs. at university). Moreover, the effects due to delay did not emerge initially, but only after deliberation with other jurors. Results from the study found that individual juror verdicts prior to deliberation showed no effect for NPTP, but only after deliberation a strong effect for negative pretrial publicity was found.

Effects as a result of delay from Kramer et al., (1990) are both difficult to interpret and unclear because delay covaried with the manner in which the NPTP was presented. Also, when individual jurors gave verdicts, there was no effect for NPTP on guilty verdicts prior to deliberation. Kramer et al., (1990) interpreted this to suggest the jurors were initially cautious and did not want to make a decision prior to the opportunity to compare their views with the others in the jury. Yet, it is puzzling that the effects of NPTP would emerge only after deliberation. Deliberation should mitigate bias, not exacerbate the effects of bias. Thus, the effects of delay on NPTP are not clear and therefore they do not convincingly argue against a demand characteristics explanation for the effects of NPTP.

In respect to time sequence the meta-analysis by Steblay et al., (1999) shines a light on another possible problem that could heighten the effects for demand characteristics in the research of NPTP. As previously discussed, there is an inherent problem between the contiguous presentation of NPTP, trial information, and judgments. This situation that already has a high potential for demand characteristics was heightened in 17 of the studies used in the Steblay et al., (1999) meta-analysis calculations. The meta-analysis stated an effect size of  $r = .28$  occurred when participants were asked to make a decision of guilt after the presentation of the NPTP but before the presentation of any trial materials. In these studies participants were presented with NPTP and then asked to render a verdict or guilty or not guilty based solely on the NPTP prior to any trial stimulus materials. Studies that use this approach can inadvertently tip off the participant to the purpose of the study, strengthening demand characteristics, more than other studies that made a simple contiguous presentation of NPTP, trial information, and verdict. Thus, asking participants to make a judgment of guilt before presenting any trial information only enhances and subtle cues that may have been present before and exaggerates them creating more

not less demand characteristics. This occurrence of pretrial opinions on guilt only muddle the cause and effect relation between NPTP and increased verdicts of guilt and provide further support for a demand characteristics explanation of the observed data.

#### PRESENT STUDY AND HYPOTHESIS

None of these previous studies convincingly show a cause and effect relation between NPTP and guilt judgments. In all of these studies, it is possible that the effects observed are due in large part to demand characteristics created from the experiments rather than a real effect from NPTP. To clarify and delve further into this issue the following two studies were conducted to explore the role of demand characteristics in relation to increased guilty verdicts when NPTP is presented.

Experiment 1 is designed to replicate findings from earlier studies showing an increase in guilty verdicts when NPTP is presented to participants compared to control participants that are not exposed to any NPTP. However, there will be two levels of NPTP (strong / weak) and it is expected that these two conditions will both differ significantly from the control group, but that these two groups will not differ significantly from each other. This finding will support a demand characteristics interpretation as demand characteristics are presumed to be equally strong in the two NPTP conditions. However, such a finding would be inconsistent with a NPTP explanation because levels of NPTP will differ, but guilt judgments will not.

The purpose of study 1 is to show that when we keep demand characteristics constant between levels of PTP, but vary the degree of PTP, guilt judgments do not differ. The purpose of study 2 is to show that if we keep NPTP constant but vary the demand characteristics guilt judgments will vary across conditions. Therefore, the second experiment is designed to create a difference in groups presented with the same NPTP by altering the demand characteristics of the

groups. There will be four groups in total. One group will be the control group and not exposed to any NPTP. The three remaining groups will all be exposed to the same NPTP. The first group will receive NPTP only and no additional demand characteristics other than those already hypothesized to be present whenever PTP is presented prior to a trial task. The second group will receive not guilty demand characteristics (DC-NG). They will be lead to believe the experimenter expects more not guilty verdicts from participants. The third group will receive guilty demand characteristics (DC-G). They will be lead to believe that the experimenter expects more guilty verdicts from participants. It is hypothesized that the no additional demand characteristics (NPTP only) group and the guilty demand characteristics (DC-G) will not differ significantly from each other because it is assumed that the demand characteristics for guilt judgments are already present in studies with NPTP and a trial task. Also, it is hypothesized that these two groups (NPTP only and DC-G) will have significantly higher guilt ratings compared to the control condition. Moreover it is predicted that the not guilty demand characteristics (DC-NG) group will have significantly lower guilt ratings compared to the control condition.

## STUDY 1

### *Method*

#### *Design and Participants*

Psychology students attending the University of North Carolina at Wilmington were recruited. This experiment included 172 participants drawn from the psychology department subject pool. To insure adequate power in this study (i.e., 0.80), the number of participants needed was based on a hypothesized medium effect size (i.e.,  $d = .25$ ), and  $\alpha = .05$  (Cohen, 1992). Participants were randomly assigned into one of three conditions (control / weak NPTP / strong NPTP).

## *Materials*

### *Demographic Questionnaire*

This consisted of a single page questionnaire that included questions about participants' age, gender, and race. This questionnaire also contained the following questions: (1) Have you ever been a victim of a violent crime? (2) Have you ever served on a jury? (3) Are you a registered voter? (4) Do you believe you can be impartial as a jury member?

### *Pretrial Publicity*

The negative pretrial publicity articles were created using the American Bar Association's rule 3.6 and Federal Rules of Evidence (FRE) Rule 404 guidelines on prejudicial information. The weak NPTP condition was constructed using two mock newspaper articles with each containing one piece of prejudicial information. One article contained information that the defendant does not pay child support regularly. The second article contained information that the defendant is currently unemployed. The strong NPTP condition was constructed using two mock newspaper articles. The strong condition articles each contained four biasing pieces of information. The prejudicial items in the first article were that the defendant has a felony record, he is currently being investigated by the FBI on unrelated charges, he was fired six months ago for stealing and he currently unemployed but seems to find his money elsewhere. The prejudicial items in the second article were that the defendant made a confession that will not be admitted into trial, he has previously been arrested for cocaine possession, he owns a gun and shoots it regularly and he joked with a friend about robbing a store. The control condition consisted of two newspaper articles taken from the New York Times about recent events. In all three conditions the two combined newspaper articles were all similar in total words so that the length of time to read the articles was very similar across conditions. The articles in all



conditions did not have any dates or identification telling participants where the articles were taken from. The appearance of the articles were made them seem as if they were clipped from a newspaper and photocopied.

### *Trial Stimulus*

The trial information was presented via a realistic transcript consisting of 11 pages containing approximately 5600 words. An attorney reviewed the transcript to ensure it represented what someone from the legal profession would consider a realistic transcript. The trial transcript includes all of the traditional trial components such as: judge's initial statement, opening statements from the prosecution and defense, prosecution's case presentation, defense's case presentation, closing arguments from prosecution and defense, and the jury's final instructions from the judge. The transcript involves a case with a white male charged with armed robbery and assault with a deadly weapon inflicting serious injury. The prosecution's case consisted of two people testifying. One was an eyewitness to the robbery and the other was the chief detective assigned to the case. The defense's case consisted of the testimony of the defendant's girlfriend. The case had no other direct evidence and was based solely on the testimony of these individuals.

### *Post Trial Questionnaire*

The participants were asked to make a dichotomous choice of *guilty* or *not guilty* for their verdicts. Participants were also rated the following items on a likert scale: (1) Based on the trial and your verdict, please indicate your belief in the defendant's guilt: 1 (Completely Not Guilty) – 10 (Completely Guilty). (2) How certain are you in your verdict choice? 1 (Completely uncertain) – 10 (Completely certain). (3) What was the strength of the defense's case? 1 (very

weak) – 10 (very strong). (4) What was the strength of the prosecution’s case? 1 (very weak) – 10 (very strong).

There were also five questions posed in multiple choice format designed to identify how well participants recall facts present in the transcript: (1) During the trial what weapon did Mrs. Dunn testify was used in the robbery? Knife / Gun / Baseball Bat. (2) Officer Richardson testified to having previously conducted approximately how many police lineups? 2 / 17 / 50 (3) What time of day did the robbery occur? Morning / Afternoon / Evening (4) Where was the defendant arrested by the police? At another convenience store / At his apartment / Fleeing to Canada (5) Was the weapon allegedly used in the robbery recovered? Yes / No.

#### *Gudjonsson Compliance Scale*

This 20 item questionnaire was developed by Gudjonsson (1989). According to Gudjonsson, the purpose of the questionnaire is to identify those that are likely to be compliant and go along with the wishes of others. The 20 items on the scale are self report measures that participants may answer T / F. Some examples of these items are: “I try to please others”, “As a child I always did what my parents told me”, “I tend to give into people who insist they are right”, and “People in authority make me feel uncomfortable and uneasy”. Scores on this test range from 0 to 20 with higher scores indicating a greater degree of compliance to go along with others in order to please them.

#### *Study Intent Questionnaire*

Participant were asked to rate the degree to which each of the five items are likely to be the true intent of the study with options ranging from not at all likely (scored 1) to very likely (scored 5). The five questions were based on questions that could plausibly be the intent of the

current study. These five options are: (1) media exposure, (2) defendant race, (3) crime brutality, (4) victim suffering, and (5) victim race. Participants were informed that they will be entered for a gift card drawing if they can correctly ascertain the true intent of the study. In truth all subjects were entered into the gift card drawing but this was designed to elicit a strong attempt to answer this question correctly.

### *Procedure*

Upon arriving for the study, participants were presented with a consent form. Participants then completed the demographic questionnaire. The experimenter next handed each participant a blank manila folder containing the two newspaper articles that constitute the respective condition in which participants were randomly assigned (control, weak NPTP, strong NPTP). Participants were directed to read the articles at their own pace and when completed to please place them back into the folder and await further instructions.

The trial transcripts were then given to all participants when they all had completed reading their newspaper articles. Participants were then asked to complete the post-trial questionnaire, the Gudjonsson compliance scale, and the study intent questionnaire. After all participants completed all of the forms, the participants were debriefed, thanked and given their participation credit slip. Participants were instructed that they were contacted at the end of the semester and given a complete debriefing. Contact information was obtained from participants in order to carry out this debriefing after the experiment has been completed for the semester.

### *Hypothesis*

It is hypothesized that the two NPTP groups will both differ significantly from the control group in relation to their dichotomous verdicts of guilt. Also, it is hypothesized that while the

strong NPTP and the weak NPTP groups will differ from the control group they will not differ significantly from each other.

It is further hypothesized that this same pattern of differences will emerge for a more sensitive measure of guilt judgments based on a 10-pt scale of verdict strength ranging from 1 (completely not guilty) to 10 (completely guilty). It is hypothesized that a significant difference will emerge as the control group will have significantly lower mean verdict strength ratings than the combined PTP conditions. Again, it is hypothesized that while the combined NPTP groups will differ from the control condition they will not differ significantly from each other.

In addition, it is hypothesized that the two NPTP groups will both differ significantly from the control group but not from each other on the measurement of study intent. It is hypothesized that a significant difference will emerge as the control group will have significantly lower mean study intent scores than the combined PTP conditions. Also, it is expected that these NPTP groups will not differ significantly from each other on study intent scores.

Finally, it is hypothesized that individual differences in demand characteristics susceptibility will relate to guilt ratings. That is, individuals with a greater certainty of the purpose of the study's intent and a greater willingness to comply in the NPTP groups should be most likely to respond to the PTP by rendering higher guilt ratings.

## RESULTS

### *Verdicts*

A chi-square test for independence on dichotomous verdicts of guilt showed that the combined weak and strong NPTP (40.87% guilty) conditions did not differ significantly from the control group (43.86% guilty),  $\chi^2(1, N=172) = .140, p > .05, \phi = .029$  (see Figure 1).

Additionally, a second chi-square revealed that the strong NPTP (45.61% guilty) and weak

NPTP (36.21% guilty) groups did not differ significantly from each other in relation to dichotomous verdicts of guilt,  $\chi^2(1, N=115) = 1.053, p > .05, \phi = .096$  (see Figure 2). Therefore contrary to the hypothesized effect, pretrial publicity information did not significantly impact guilt judgments.

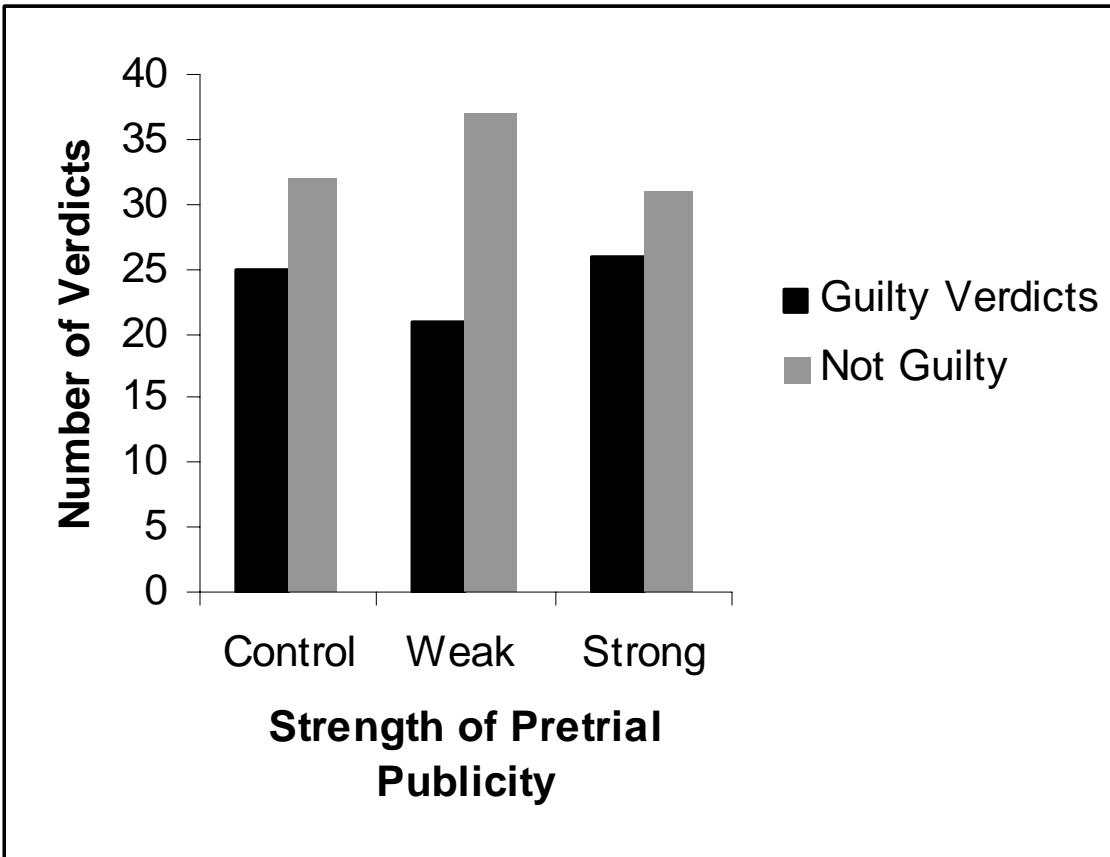


Figure 1. Dichotomous verdicts of guilt for control, weak and strong NPTP groups (study 1).

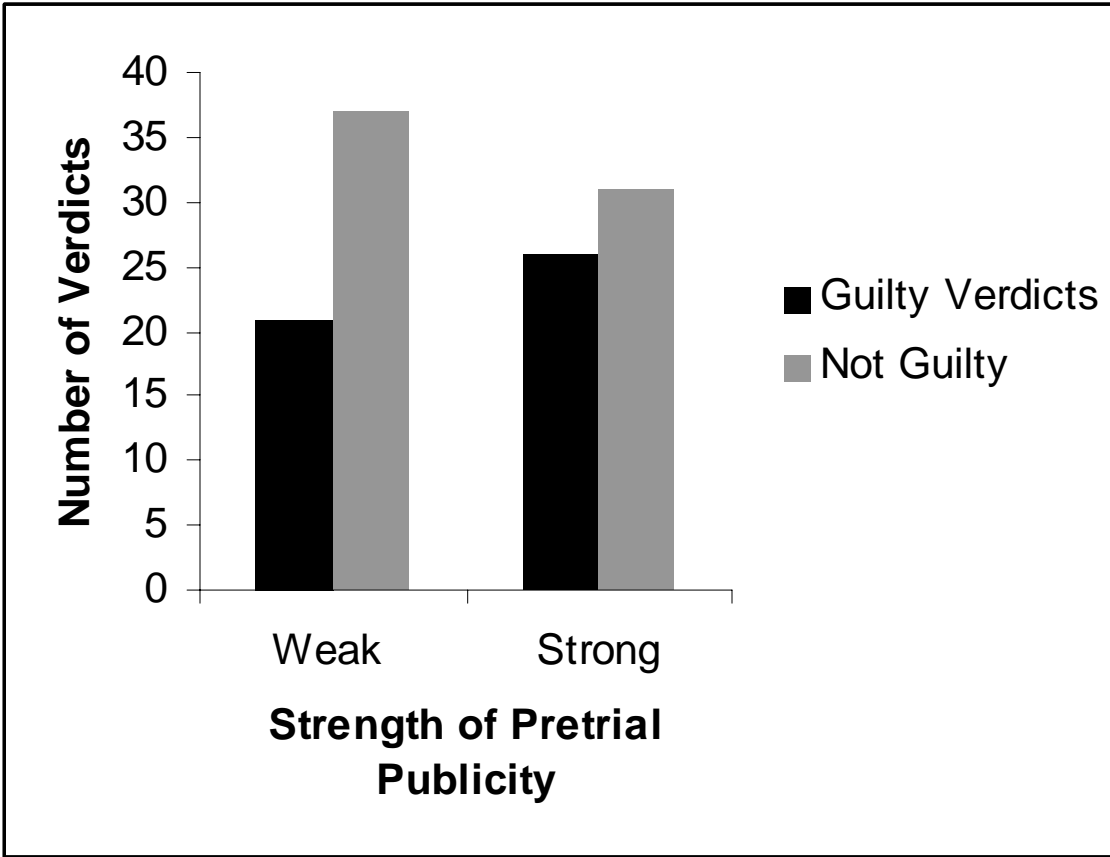


Figure 2. Dichotomous verdicts of guilt for weak and strong NPTP groups (study 1).

Consistent with the findings for the dichotomous measures of guilt, analysis of the more continuous measure of guilt, verdict strength rating (on a 10-point scale), also did not differ across conditions. Results from a one-way ANOVA showed there were no significant differences between the weak NPTP ( $M = 5.34, SD = 2.72$ ), strong NPTP ( $M = 6.42, SD = 2.54$ ) and control ( $M = 5.68, SD = 2.61$ ) conditions on verdict strength,  $F(2, 169) = 2.519, p > .05, \eta^2 = 0.029$  (see Figure 3).

### *Study Intent*

Relative intent scores were used to operationalize demand characteristics for the purpose of a manipulation check. Intent scores were calculated by taking the value participants gave to the media option on the study intent questionnaire and subtracting the average of the four other options on this same questionnaire. Consistent with the hypothesis, relative intent scores did differ significantly between the weak NPTP ( $M = -0.19, SD = 1.58$ ), strong NPTP ( $M = 0.19, SD = 1.73$ ) and control ( $M = -0.69, SD = 1.42$ ) conditions,  $F(2, 169) = 4.46, p < .05$  (see Figure 4). As predicted, the a-priori linear contrast between the combined weak and strong NPTP conditions ( $M = 0, SD = 1.66$ ) and the control condition ( $M = -0.69, SD = 1.42$ ) revealed that the relative intent scores for the control group was significantly lower than those scores for the PTP groups combined,  $t(169) = 2.71, p < .05$ . The second a-priori linear contrast revealed that the strong ( $M = 0.19, SD = 1.73$ ) and weak ( $M = -0.19, SD = 1.58$ ) NPTP conditions did not differ significantly from each other on their relative intent scores,  $t(169) = -1.27, p > .05$ . These results showed that participants exposed to media in the two N-PTP conditions were statistically more likely to endorse that media was a possible purpose for the study compared to the control condition. The same two groups, strong and weak N-PTP, did



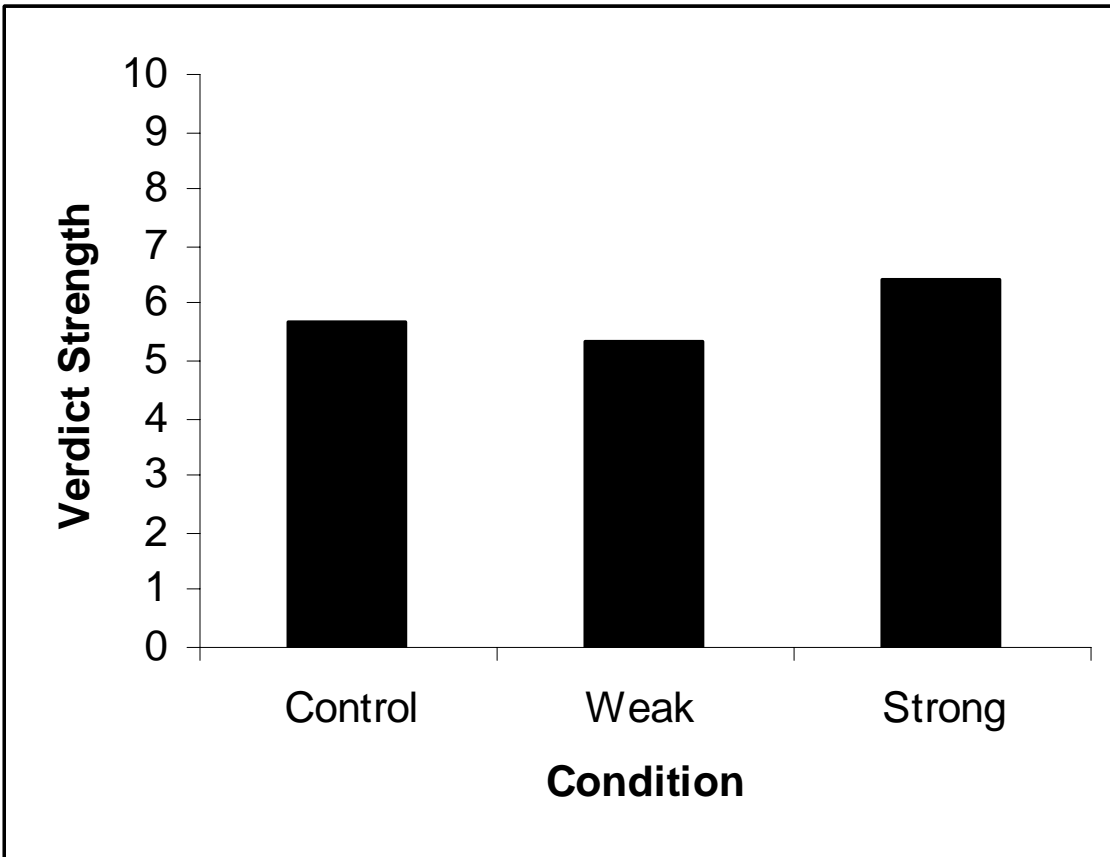


Figure 3. Mean verdict strength score by condition (study 1).

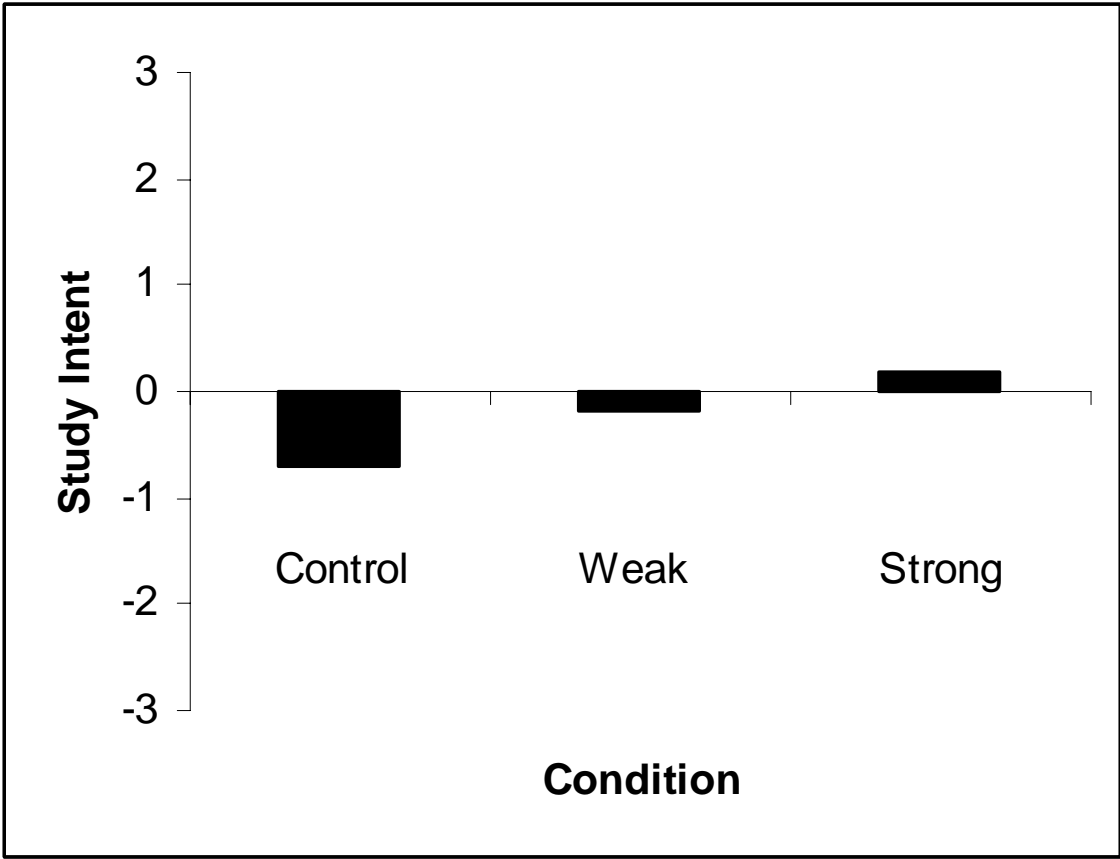


Figure 4. Relative study intent score by condition (study 1).

not differ significantly in their ratings for media to be a possible purpose for the study suggesting that demand characteristics did not differ between these two groups, but they were higher than that of the control group. Further analysis of participants' responses on the study intent questionnaire revealed that the media affects verdicts option was not the highest valued response. Overall, participants rated crime brutality ( $M = 3.66, SD = 1.30$ ) and suffering of the victim ( $M = 3.66, SD = 1.28$ ) as more likely to be the intent of the study. Media was rated as the third most likely intent of the study ( $M = 2.72, SD = 1.54$ ). Also, an additional one-way ANOVA was conducted on the raw media scores to examine this measure as a standalone value. The results from this revealed a similar pattern to the relative intent scores above with a significant difference detected between the weak NPTP ( $M = 2.95, SD = 1.58$ ), strong NPTP ( $M = 3.02, SD = 1.55$ ) and control ( $M = 2.18, SD = 1.34$ ) conditions,  $F(2, 169) = 5.58, p < .05$ .

#### *Demand Characteristics Susceptibility*

Recall that Demand Characteristics Susceptibility (DCS) scores were operationally defined as the product of the relative intent scores and compliance scores. It was predicted that those most susceptible to demand characteristics would rate guilt the highest when presented with a trial with strong demand characteristics for guilt (i.e., the two NPTP conditions). A Pearson correlation was therefore conducted between the DCS scores and the verdict strength for the 115 participants in the combined strong and weak N-PTP conditions. The results of this analysis did not reveal a significant positive correlation as hypothesized,  $r = -0.14, p > .05$ . Similar relative intent scores were computed for both crime brutality and victim suffering (i.e., these scores were subtracted from the average of the remaining options concerning intent of the study). These relative intent scores for both crime brutality and victim suffering were then separately multiplied by the total score the participant obtained on the measure of compliance.

These values (intent x compliance) were then correlated with belief in the defendant's guilt (i.e., verdict strength). These correlations were computed to determine if demand characteristics may indeed still be operating, but they are operating not for pretrial publicity, but for crime brutality or victim suffering. Additionally, although this correlation could be conducted on the entire sample (i.e., across all three conditions), it was restricted to the same participants used in the analyses where media was as the study intent was assessed. Neither scores for crime brutality ( $r = .11, p > .05$ ), nor victim suffering ( $r = .04, p > .05$ ) significantly correlated with verdict strength scores.

While methodologically the more appropriate technique to operationalize study intent was the method employed above, nevertheless it is also important to examine how participants endorsed media as a standalone measure. Pursuant to this, DCS scores were calculated again using the raw media intent scores (ranging from 1-5) and an additional correlation was performed. These results indicated a similar result as the correlation above in that there was no significant relation between verdict strength and the new DCS score using raw media intent,  $r = -0.03, p > .05$ .

## DISCUSSION

The results of this study do not directly support a DC explanation for the responding of participants. A DC model would have predicted significant differences between the no NPTP control group and the two NPTP groups (weak and strong), but no differences emerging between the latter two where DC is presumed to be equally strong. While this pattern did emerge in the media study intent question as was predicted suggesting demand characteristics may have differed between the two NPTP groups and the control group, these differences in demand characteristics did not translate into verdicts. The verdicts in this study showed no significant

differences between any of the groups in either their dichotomous or continuous measures of guilt. Moreover, compliance scores (Gudjonsson, 1989) did not significantly correlate with guilt judgments, as would be expected if participants were simply responding to DC. Together, these findings suggest that for the conditions used in this study participants were not responding due to a DC for a guilty verdict based on the NPTP.

The intent of this study was to show that NPTP could create demand characteristics for guilty verdicts and that participants would then vote accordingly. In order for this to occur participants in the two NPTP conditions would have to have differed from the control group along the dimension of demand characteristics. In Orne's (1962) work with demand characteristics he commented that one way to determine what was operating behind the scenes with participants was simply to ask them. In this study that was accomplished by the final questionnaire which asked participants what they believed the intent of the study was that they just participated. Results from the study intent question found that the two NPTP groups did respond according to the predicted pattern as mentioned above with respect to media being the purpose of the study. However, a more in depth examination of the study intent question found that participants in all conditions gave higher ratings to brutality of the crime and suffering of the victim compared to media coverage as the purpose of the study. This suggests that even if the participants were responding due to demand characteristics, it may not have been related to the NPTP but rather to the suffering of the victim or brutality of the crime. If this is what participants were responding to then one would expect to see similar results of guilt across conditions because these factors did not vary across conditions. This is in fact what was observed in this study because guilt verdicts did not differ significantly between conditions. Although it is not

necessary for participants to be able to articulate possible demand characteristics that affected them it is important to note that in this situation they did not believe it was the NPTP.

Although the DC model was not supported by these findings it is interesting that the robust findings of NPTP and guilty verdicts were also not replicated in this study. In the current study three different conditions (control / strong NPTP / weak NPTP) were used to examine the relation between guilty verdicts and NPTP. Many of the previous studies (e.g. Sue et al., 1975; Kramer & Kerr, 1989; Kramer et al., 1990) that found significant relations between NPTP and guilty verdicts used only a strong and weak condition design that lacked a true control group. If the current study was analyzed using only the data from the strong and weak conditions then there would be a statistically significant result (with  $\alpha = .05$ ) with strong NPTP having a higher rating of guilt compared to the weak condition.

One more recent study (Hope et al., 2004) did use a true control group and a strong NPTP condition as part of their design. In this study the participants in the NPTP condition were exposed to negative information about the defendant via a mock newspaper article prior to reading the trial and those in the control condition were not provided with any articles to read prior to the trial. The results from this study found that NPTP increased guilty verdicts compared to a true control condition. Again, the results from the current study would be similar to other NPTP research in that if we examine only the data from those two conditions (Strong NPTP and Control) then the strong NPTP condition would have higher guilt ratings compared to the control condition ( $p = .06$ ) with differences between groups approaching a standard statistical significance of  $\alpha = .05$ .

While the current study did not reveal statistically significant differences between the groups it does bring attention to the fact that depending on the experimental setup the same data

could show differences one way but not in another, which reinforces the necessity of using a control group in an experimental design. With no previous research examining both multiple levels of NPTP and a control condition simultaneously there is nothing to directly compare the null findings from the current study against. One possibility to consider for the inability to reject the null hypothesis, that NPTP has no effect on verdicts, is that the effect size estimated from previous research may have been an overestimation. If the current study had inadequate power (.80 estimated / .50 actual) based on a faulty premise of effect size from previous research that did not use multiple levels of NPTP along with a true control group, then this could explain the null findings.

Another logical area to examine in explaining the null findings from the current study is to examine the NPTP content and to compare this to other studies in the field. Recall that in the current study the strong NPTP condition was constructed using two mock newspaper articles. The strong condition articles each contained four biasing pieces of information. The prejudicial items in the first article were that the defendant has a felony record, he is currently being investigated by the FBI on unrelated charges, he was fired six months ago for stealing and he currently unemployed but seems to find his money elsewhere. The prejudicial items in the second article were that the defendant made a confession that will not be admitted into trial, he has previously been arrested for cocaine possession, he owns a gun and shoots it regularly and he joked with a friend about robbing a store.

Most studies in NPTP use only a few items to create the NPTP condition. In Davis (1986) there were five negative items used to create the NPTP condition which included: defendant's prior record, chance to dispose of evidence, instability at work, name of victim, and current high crime rate. Kramer et al. (1990) used the following items to create the high factual NPTP

condition: the defendant had a long criminal record, a toy gun and bag similar to those used in robbery were found in his girlfriend's apartment and the police erred so those items would not be admissible. Hope et al. (2004) used the following items to create the NPTP condition; defendant was an unemployed carpenter, he was a bully with few friends and his ex-wife and colleagues would not comment on the situation. The current study used eight total items to create the strong NPTP in comparison to most studies use of only two to five items. This larger number than the average was intentional by design to insure that the strong NPTP was much stronger than weak NPTP condition which only contained two items. Because of this strong emphasis on biasing information it is unlikely that null findings were a result of a weak manipulation.

## STUDY 2

### *Method*

#### *Design and Participants*

Participants were recruited from the UNCW psychology department subject pool. To ensure adequate power, this experiment included 192 participants, based on a hypothesized medium effect size (i.e.,  $d = .5$ ) and  $\alpha = .05$ . Participants were randomly assigned into one of four conditions (control / not guilty demand characteristic / guilty demand characteristic/ NPTP only).

### *Materials*

#### *Pretrial Publicity*

The pretrial publicity articles were the same as the weak NPTP used in study 1. The PTP were constructed using two mock newspaper articles that provide some negative information about the defendant consistent with FRE 404 guidelines on prejudicial information.

#### *Additional Materials*



The identical materials used in study 1 (e.g. demographic questionnaire, trial stimulus, post-trial questionnaire, compliance scale, and study intent questionnaire) were used in study 2.

### *Procedure*

Participants were tested in non interactive groups between 2 and 20 members. After participants completed the consent form the experimenter distributed a demographic questionnaire. Depending on the condition to which participant groups were randomly assigned (control / not guilty demand characteristic / guilty demand characteristic / NPTP only), participants received a manipulation designed to enhance the demand characteristics of the study. Using a similar technique to the one developed by Orne (1962), the experimenter informed participants in the not guilty demand characteristics and the guilty demand characteristics groups of the following: “The study you are participating in involves the effects of (negative / positive) pretrial publicity and its effects on juror verdicts. This type of publicity normally has the tendency to (increase / decrease) guilty verdicts. Your role in this study is to behave as you think most jurors would in a real trial where they read this (positive / negative) information about a defendant. Please do your absolute best to play your part as you continue and try to act just as a real juror would who had read these articles”. After explaining this to the participants in the not guilty demand characteristics and guilty demand characteristics groups, they were directed to read the assigned pretrial stimulus and trial transcript. The experimenter informed the participants in the control and NPTP condition of the following: “During this study, please complete all materials given to you and do your best to behave as actual jurors in a real trial would.” After explaining this to these two groups, they were directed to read the assigned pretrial stimulus and trial transcript. For all groups, once all participants in the group have completed reading the trial transcripts they were asked to complete the post-trial questionnaire, compliance

scale, and study intent questionnaire. After the completion of this final form participants were debriefed, thanked and given their participation credit slip. Participants were instructed that they will be contacted at the end of the semester and given a complete debriefing. Contact information was obtained from participants in order to carry out this debriefing after the experiment has been completed for the semester.

### *Hypotheses*

It is hypothesized that the DC-G group and the NPTP only group will both have the highest number of dichotomous guilty judgments and the control group will have significantly less guilty judgments than the these two groups. It is also hypothesized that the DC-NG group will have a significantly lower number of guilt judgments than the control group. It is further hypothesized that this same pattern of differences will emerge for a more sensitive measure of guilt judgments based on a 10-pt scale of verdict strength ranging from 1 (completely not guilty) to 10 (completely guilty).

Additionally, the question from the study intent questionnaire (Does media exposure influence judgments?) was multiplied with the participants score from the Gudjonsson compliance scale to develop a new score which was called the demand characteristics susceptibility score (DCS). A correlation between verdict strength and DCS scores for the DC-G and the NPTP only groups is hypothesized to result in a significant positive correlation. The opposite pattern is hypothesized for the DC-NG condition where the correlation between verdict strength and DCS scores is expected to show a significant negative correlation.

## RESULTS

### *Verdicts*

A chi-square test for independence on dichotomous verdicts of guilt showed that the combined DC-G and the NPTP (29.0% guilty) conditions did not differ significantly from the control group (25.6% guilty),  $\chi^2(1, N=143) = .174, p > .05, \phi = .035$ . Additionally, a second chi-square revealed that the DC-NG (30.6% guilty) and control (25.6% guilty) conditions did not differ significantly from each other in relation to dichotomous verdicts of guilt,  $\chi^2(1, N=92) = .286, p > .05, \phi = .056$ . Therefore contrary to the hypothesized effect, the implemented demand characteristic manipulation did not impact guilt judgments. Consistent with the findings for the dichotomous measure of guilt, analysis of the more continuous measure of guilt--verdict strength rated on a 10-point scale--also did not differ across conditions. Results from a one-way ANOVA showed there were no significant differences between the DC-NG ( $M = 5.18, SD = 2.54$ ), control ( $M = 4.98, SD = 2.53$ ), NPTP ( $M = 5.33, SD = 2.55$ ) and DC-G ( $M = 5.23, SD = 2.54$ ) conditions on verdict strength,  $F(3, 188) = .156, p > .05, \eta^2 = 0.0025$  (see Figure 5).

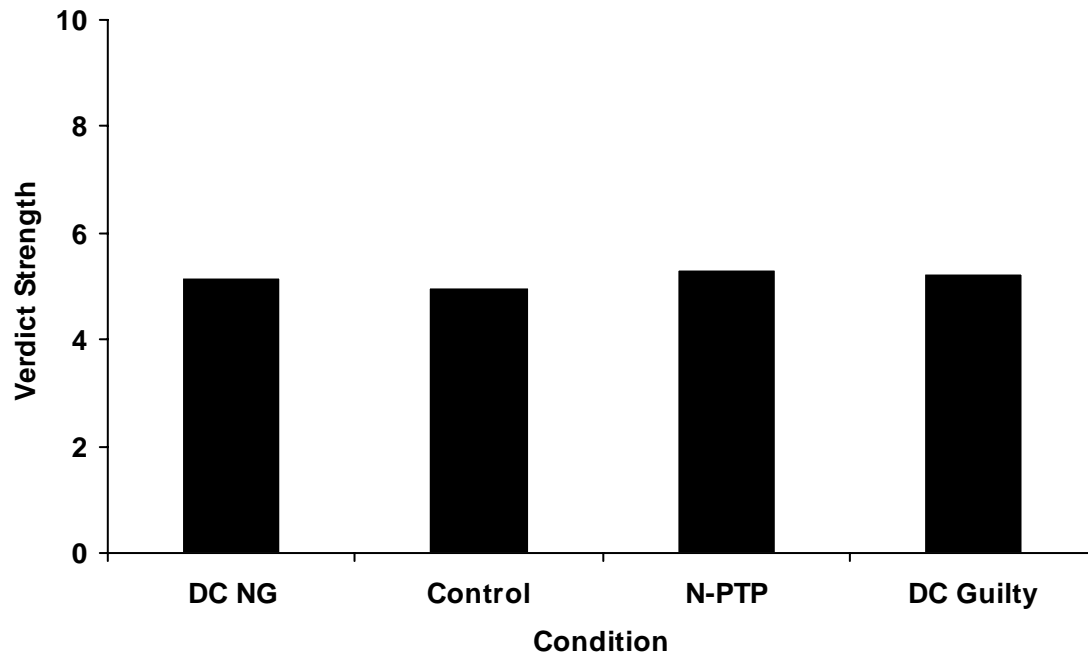


Figure 5. Mean verdict strength score by condition (study 2).

### *Demand Characteristics Susceptibility*

Recall that DCS scores were operationally defined as the product of the relative intent scores and compliance scores. A Pearson correlation was conducted between the DCS scores and the verdict strength for the combined DC-G and N-PTP conditions. The results of this analysis did not reveal a significant positive correlation as hypothesized,  $r = 0.14$ ,  $n = 100$ ,  $p > .05$ .

Additionally, the Pearson correlation conducted between the DCS scores and verdict strength for the DC-NG condition also did not reveal the hypothesized negative correlation,  $r = 0.14$ ,  $n = 49$ ,  $p > .05$ .

These correlations were also conducted using the product of the raw media scores instead of the relative ones and compliance scores to create new DCS scores. A Pearson correlation was conducted between the DCS scores and the verdict strength for the combined DC-G and N-PTP conditions. The results of this analysis did not reveal a significant positive correlation as hypothesized,  $r = 0.16$ ,  $n = 100$ ,  $p > .05$ . Additionally, the Pearson correlation conducted between the DCS scores and verdict strength for the DC-NG condition also did not reveal the hypothesized negative correlation,  $r = 0.20$ ,  $n = 49$ ,  $p > .05$ .

## DISCUSSION

Despite the fact that demand characteristics are often cited as a critical confounding factor in research where the study's hypotheses are particularly transparent (Cook & Campbell, 1979), the present study showed no evidence of this effect. The null findings could be due to a variety of factors, yet the most parsimonious explanation may be the best choice in this case. This simple explanation may be that the experimental manipulation for demand characteristics was too subtle and therefore insufficient to produce an effect. The manipulation of the demand characteristics in each experimental group was intended to be subtle enough to avoid a reactance

effect but strong enough to cause the desired effect. Reactance (Brehm, 1966) is a common problem in research using human subjects where demands placed on participant's freedom of choice and expression is high. However, in the attempt to avoid a reactance effect we may have inadvertently reduced the strength of our manipulation.

To examine this further let us turn our attention to the results of the current study. Again as with study 1, compliance scores (Gudjonsson, 1989) did not significantly correlate with guilt judgments in any of the conditions analyzed. Also, guilt judgments, whether dichotomous or based on a Likert scale, did not differ significantly between any of the conditions. This lack of difference between groups' guilt judgments and the non-significant Pearson correlations are consistent with each other. The reason for this is that if participants that were high in compliance scores were exposed to a strong experimental manipulation to demand characteristics, then one would expect verdicts to be in line with those intentions of the experimenter. This reasoning would support a weak manipulation explanation for the lack of differences in this study. The weak manipulation of demand characteristics may also have been due in part to competing factors that were present in the experiment, more specifically the trial that participants read.

As mentioned previously in the discussion of Study 1, the trial itself may have created some factors that resulted in participants being resistant to experimental manipulation of the intended demand characteristics. This seems possible because of the data from the study intent questionnaire. Overall participants were equally likely to endorse media exposure ( $M = 3.19$   $SD = 1.64$ ), crime brutality ( $M = 3.14$ ,  $SD = 1.49$ ), and victim suffering ( $M = 3.30$ ,  $SD = 1.34$ ) as the purpose of the study. This same pattern of responding was also observed in study 1 that used the identical trial stimulus. In both studies participants rated victim suffering as the most likely purpose of the study. It is important to remember that participants' do not necessarily need to

articulate demand characteristics for them to be operating, but Orne (1969) did view this as an effective method in detecting them. By taking Orne's perspective into consideration, participants in the current studies may have believed that suffering of the victim, which was constant across conditions due to the trial itself, was the true purpose of the study. If we follow this belief and the original premise that the results from NPTP research may be due to demand characteristics then the trial stimulus here may help to explain the findings from the current studies. More specifically, the attempt to sway participants to vote in a specific direction based on NPTP could have been thwarted by the overpowering belief that the suffering of the victim or that the brutality of the crime were the primary points of concern.

To examine this possibility further, the raw study intent scores for victim suffering and crime brutality were used to compute new DCS scores for each of these study intent score items as was done above with the media study intent scores. First, a Pearson correlation between these new DCS scores and verdict strength was conducted to examine if there was a positive correlation between the variables for the combined DC-G and N-PTP conditions. This analysis revealed that there was not a significant positive correlation between suffering DCS scores and verdict strength,  $r = 0.13$ ,  $n = 100$ ,  $p > .05$ . However, there was a significant positive correlation between crime brutality DCS scores and verdict strength,  $r = 0.17$ ,  $n = 100$ ,  $p < .05$ . After detecting this positive relation between crime brutality DCS scores and verdicts for the combined DC-G and N-PTP conditions, an additional correlation was performed on these same measures for all conditions. The reasoning for this new correlation was that if the same positive relation existed in all of the groups then it might help explain why the groups did not differ in respect to guilt ratings. The results from the test did in fact show this statically positive correlation between crime brutality DCS scores and verdicts for all of the conditions,  $r = 0.16$ ,  $n = 192$ ,  $p < .05$ . This

lends additional backing to the idea that some aspect of the trial or crimes in the trial created a situation that interfered with the experimental manipulations in the study. In other words, aspects of the trial stimuli may have inadvertently masked the true intent of the study and became a competing demand characteristic in the study.

To provide further support for this explanation it is necessary to refer to some of the more popular NPTP research and compare those trials to that of the current study to investigate similarities and differences in the trials that may help explain the null findings. First, the studies that found an effect for NPTP will be reviewed. In Hope et al. (2004) the crime described in the trial was that the defendant shot his wife killing her. It was not disputed that he was there but rather whether he shot her attempting to disarm her from a suicide or intentionally committed the act. Both the Kramer and Kerr (1989) and Kramer et al. (1990) studies used a trial where the crime described was a simple armed robbery of \$10,000. Another example can be found in Wilson and Bornstein (1998) where the crime involved killing a person with a knife. In all of these cases the experimenters concluded that the effect of NPTP was that it increased guilty verdicts. However, in Davis (1986), where the crime in the trial was breaking and entering along with attempted rape, there were null findings for NPTP. Davis' findings are in direct contrast with most of the other findings involving NPTP because he did not produce the findings that others have demonstrated.

Because both the Davis (1986) study and the current study failed to find an effect for NPTP, the crimes involved in these trials were compared to the above mentioned studies (i.e. Hope et al., 2004; Kramer & Kerr, 1989; Kramer et al., 1990; Wilson & Bornstein, 1998) that did demonstrate an effect for NPTP to find commonalities and differences. Davis and the current study both involved crimes that were a simple robbery and an attached shocking crime. In Davis



this attached crime to the robbery was an attempted rape and in the current study it was placing a person in a chronic vegetative state following a shooting. In the studies that did find an effect for NPTP the crimes were simple robberies or some type of murder, but not in combination with each other. Based on this information it seems that at least for this small sample that the crimes that produced a relation between guilty verdicts and NPTP were different than the crimes that failed to find this effect. Could some crimes be more atrocious than others and therefore resistant to this NPTP manipulation? To explore this pattern further it may be useful to find an objective measure to evaluate the crimes in question to explain why people may or may not be affected by NPTP.

The harmfulness of a crime is not something that is easily quantified because individuals are likely to vary considerably on how damaging they believe certain crimes are based on individual experiences. Some people may think that attempted rape and seriously injuring a person are more harmful than murder while others might argue the opposite as true. This is not a hopeless endeavor though because researches such as Dolan, Loomes, Peasgood, and Tsuchiy (2005) provide a tool that creates an objective measure and allows for the comparison of types of crimes and the suffering they may cause. In their article they give a total intangible cost to victims based on crime categories. In this article they rate rape as the highest value (\$2126) followed by serious wounding (\$1302), murder (\$1215) and robbery (\$735). Using this standard one could infer that crimes involving rape or serious injury, such as Davis (1986) and the current study, may be seen as more harmful to victims and therefore may react differently to NPTP compared to something rated lower such as murder or robbery. This is by no means a conclusive argument for the null findings in the current or Davis study, but it does provide support for the argument.

## GENERAL DISCUSSION

The current studies sought to test if the robust findings from other researchers were in fact due to demand characteristics rather than a true effect from negative pretrial publicity. The data from these studies do not provide support for a demand characteristic model, but they also do not strengthen the argument for the robustness of guilty verdicts in the presence of negative pretrial publicity. Instead, it raises more questions for the relation between negative pretrial publicity and jury verdicts.

Participants in these studies did not seem to change their guilt ratings regardless of the experimental manipulation to which they were exposed. As with any experiment the chance of a weak manipulation is a possible reason for these data, but equally strong is that chance that this case was resistant to persuasion from either negative publicity or subtle experimenter expectations. In both studies participants rated victim suffering as the most likely purpose to the study after they completed their participation. In this line of reasoning one would expect no differences in any groups because the victim suffering information was presented at trial and that did not vary across conditions. This would imply that pretrial publicity's effect on verdicts is not a robust one and substantially impacted by the trial evidence in which it emerges.

The current studies could have been improved upon by eliminating some of the factors that may have contributed to the null findings. In the first study in order to answer the question if the results from previous research were due to demand characteristics or NPTP it would have been more efficient to use the same trial stimulus as one of the more popular NPTP research articles (e.g. *New Jersey v. Bias* 1992 as used in Hope et al., 2004). The rationale for doing this would be to eliminate the chance that the trial used in the current study was a main factor in the null findings. By doing this there would be something to directly compare the study results to

and at the same time eliminate any possible interaction effects based on the type of crime. Additionally, the sample size should also be increased for fear that using one of the previous trial stimuli with three NPTP conditions reveals a smaller effect size. This will insure greater power and therefore a higher likelihood that if there is an effect it would be detected. The second study should also use one of the previous trial stimuli that showed an effect for NPTP so that the possibility that some element in the current trial (e.g. type of crime) could be eliminated from the interpretation of the findings. Also, the experimental manipulation of demand characteristics should be less subtle than it was in the present study. A more effective approach might be to simply tell the participants directly “we are trying to replicate previous studies where participants found the defendant [guilty / not guilty] and we would prefer that you respond in that manner as well.” A similar technique was used by Navarick (2007) where he informed participants "In this part of the experiment, we would prefer that you press the disk on the [nonpreferred] side. However, you can press whichever disk you want." (p. 503). This may be simple enough to produce the desired effect without causing a reactance in the participants. This will require a delicate balance to obtain the intended results instead of some other demand characteristic or reactance effect, but given the success of this simple approach in other studies it seems prudent to believe this technique can be used with a favorable outcome.

What is clear from the present research is that the relation between NPTP and guilt has not been clearly and strongly established. There is variability that is not completely accounted for and more investigation needs to be completed. The current studies may not have demonstrated a demand characteristics model for NPTP but it does show situations where NPTP does not seem to increase guilty verdicts.

Future directions for research in this area need to focus first on the importance of replicating the standard. These current studies may have been an exception to the rule and there may actually be a strong relation between NPTP and increased verdicts of guilt and additional studies may help to argue for NPTP and against DC. One way to accomplish both of these simultaneously would be to conduct additional studies that involve measures to detect juror bias such as the pretrial juror attitude questionnaire (Lecci & Myers, In press) or the juror bias scale (Kassin & Wrightsman, 1983) in addition to the standard measures collected. In this type of design one could argue that a main effect for NPTP coupled with an interaction with a high bias might argue for support of NPTP and against a DC explanation.

If such studies do continue to support the effect for NPTP, then it would only prudent to follow the advice given by Hope et al., (2004) and move into the new generation of NPTP research. There are a variety of interesting possibilities to explore once the literature can refute DC as a viable alternative to the NPTP research. One example of such future studies could investigate if the race of the defendant plays a direct role in the affect of NPTP. Previous research has shown that after exposure to violent media participants made more dispositional assessments of defendant's behavior when the defendant was Black compared to either White or unspecified race defendants (Johnson, Adams, Hall & Ashbum, 1997). It would seem to be a natural progression to follow this into NPTP research. Additionally, individual characteristics such as suspicion, resistance, or even need for cognition could be important to the understanding of NPTP. It could be these individual factors are responsible for an increase or reduction in the effect of NPTP. After more research is conducted we will know more definitively if guilty verdicts increase because of actual effect due to NPTP or just simple DC from the experiments themselves. Either answer brings with it advancement to the field of jury research; we will either

have a great new area to continue to study or we can lie to bed a debate that have plagued the courts for some time.

## REFERENCES

- Bornstein, B. H., Whisenhunt, B.L., Nemeth, R.J. (2002). Pretrial publicity and civil cases: A two-way street? *Law and Human Behavior*, 26, 3-17.
- Brehm, S. & Brehm, W. (1981). Psychological reactance: A theory of freedom and control. New York: Academic Press.
- Cohen, J. (1992). A power primer. *Psychological Bulletin*, 112, 155–159.
- Cook, T.D. & Campbell, D.T. (1979). Quasi-experimentation: Design and analysis issues for field settings. Chicago: Rand-McNally.
- Davis, R.W. (1986). Pretrial publicity, the timing of the trial, and mock jurors' decision processes. *Journal of Applied Social Psychology*, 16, 590-607.
- Dexter, H.R., Cutler, B.L. & Moran, G. (1992). A test of voir dire as a remedy for the prejudicial effects of pretrial publicity. *Journal of Applied Social Psychology*, 22, 819-832.
- Dolan, P., Loomes, G., Peasgood, T., & Tsuchiya, A. (2005). Estimating the intangible victim costs of violent crime. *British Journal of Criminology*, 45 , 958-976.
- Fein, S., McCloskey, A.L., & Tomlinson, T.M. (1997). Can the jury disregard that information? The use of suspicion to reduce the prejudicial effects of pretrial publicity and inadmissible testimony. *Personality and Social Psychology Bulletin*, 23, 1215-1226.
- Gudjonsson, G. (1989). Compliance in an interrogative situation: A new scale. *Personality and Individual Differences*, 10, 535 – 540.
- Hope, L., Memon, A., & McGeorge, P. (2004). Understanding pretrial publicity: Predecisional distortion of evidence by mock jurors. *Journal of Experimental Psychology*, 10, 111-119.

- Johnson, J., Trawalter, S., & Dovidio, J. (2000). Converging interracial consequences of exposure to violent rap music on stereotypical attributions of blacks, *Journal of Experimental Social Psychology*, 36, 233-251.
- Johnson, J. D., Adams, M. S., Hall, W. & Ashbum, L. (1997). Race, media, and violence: differential racial effects of exposure to violent news stories. *Basic and Applied Social Psychology*, 19, 81-90.
- Jones, C. S. & Kaplan, M. F. (2003). The effects of racially stereotypical crimes on juror decision-making and information-processing strategies. *Basic & Applied Social Psychology*, 25, 1-13.
- Kassin, S. M., & Wrightsman, L. S. (1983). The construction and validation of a juror bias scale. *Journal of Research in Personality*, 17, 423 – 442.
- Kramer, G.P., Kerr, N.L. (1989). Laboratory simulation and bias in the study of juror behavior: A methodological note. *Law and Human Behavior*, 13, 89-100.
- Kramer, G.P., Kerr, N.L., & Carroll, J.S. (1990). Pretrial publicity, judicial remedies, and jury bias. *Law and Human Behavior*, 14, 409-438.
- Lewis-Beck, M., Bryman, A., & Liao, T. (Eds.). (2004). *The Sage Encyclopedia of Social Science Research Methods*. United States: Sage Publications, Inc.
- Lecci, L., & Myers, B. (In press) Individual Differences in Attitudes Relevant to Juror Decision Making: Development and Validation of the Pretrial Juror Attitude Questionnaire (PJAQ). *Journal of Applied Social Psychology*.
- Marshal, L., & Smith, A. (2001). The effects of demand characteristics, evaluation anxiety, and expectancy on juror honesty during voir dire. *The Journal of Psychology*, 120, 205-217.

- Mize, G. (1999). On better jury selection: Spotting unfavorable jurors before they enter the jury room. *Court Review*, 36, 10-15.
- Morgan, G., & Cutler, B. (1991). The prejudicial impact of pretrial publicity. *Journal of Applied Social Psychology*, 21, 345 – 367.
- Navarick, D. (2007). Attenuation and enhancement of compliance with experimental demand characteristics. *The Psychological Record*, 57, 501-515.
- Ogloff, J.R., & Vidmar, N. (1994). The impact of pretrial publicity on jurors: A study to compare the relative effects of television and print media in a child sex abuse case. *Law and Human Behavior*, 18, 507-525.
- Otto, A.L., Penrod, S. D., & Dexter, H.R. (1994). The biasing impact of pretrial publicity on juror judgments. *Law and Human Behavior*, 18, 453-469.
- Orne, M.T. (1962). On the social psychology of the psychological experiment: with particular reference to demand characteristics and their implications. *American Psychologist*, 17, 776-783.
- Orne, M.T. (1969). Social psychology a series of monographs, treatises, and texts. Leon Festinger and Stanley Schachter (Eds.), *Demand Characteristics and Quasi-controls* (pp. 143-179). New York: Academic Press.
- Padawer-Singer, A., & Barton, A. (1975). The impact of pretrial publicity on jurors' verdicts. In R.J. Simon (Ed.), *The jury system in America: A critical overview* (pp. 123-139). Beverly Hills, CA: Sage.
- Riedel, R.G. (1993). Effects of pretrial publicity on male and female jurors in a mock rape trial. *Psychological Reports*, 73, 819-833.



- Sargent, M & Bradfield, A. (2004). Race and information processing in criminal trials: does the defendant's race affect how the facts are evaluated? *Personality and Social Psychology Bulletin*, 30, 995-1008.
- Schweigert, W.A. (1994). *Research Methods and Statistics for Psychology*. Pacific Grove, CA: Brooks & Cole Publishing Company.
- Seltzer, R., Venuti, M., & Lopez, G. (1991). Juror honesty during the voir dire. *Journal of Criminal Justice*, 19, 451-462.
- Shaw, J.I., & Skolnick, P. (2004). Effects of prejudicial pretrial publicity from physical and witness evidence on mock jurors' decision making. *Journal of Applied Social Psychology*, 34, 2132-2147.
- Stebly, N. M., Besirevic, J., Fulero, S. M., Jimenez-Lorente, B. (1999). The effects of pretrial publicity on juror verdicts: A meta-analytic review. *Law and Human Behavior*, 23, 219-235.
- Stuebaker, C.A., & Penrod, S.D. (1997). Pretrial publicity: The media, the law, and common sense. *Psychology, Public Policy, and Law*, 3, 428-460.
- Stuebaker, C.A., Robbennolt, J.K., Penrod, S.D., Pathek-Sharma, M.K., Groscup, J.L. & Devenport, J.L. (2002). Studying pretrial publicity effects: New Methods for improving ecological validity and testing external validity. *Law and Human Behavior*, 26, 19-41.
- Sue, S., Smith, R.E. & Pedroza, G. (1975). Authoritarianism, pretrial publicity, and awareness of bias in simulated jurors. *Psychological Reports*, 37, 1299-1302.
- Wilson, J. R., Bornstein, B. H. (1998). Methodological considerations in pretrial publicity research: is the medium the message?. *Law and Human Behavior*, 22, 585-597.

APPENDIX

Appendix A. Background Questionnaire

Participant ID: \_\_\_\_\_

Please circle the appropriate response or fill in the corresponding blank for the following questions.

Please circle the race / ethnicity that best describes you:

White / Anglo-American

Black / African-American

Asian American

Middle-Eastern

Latino (a) / Hispanic-American

Other

Gender:     Male    /    Female

Age:        \_\_\_\_\_

Have you ever been the victim of a violent crime?    Yes / No

Have you ever served on a jury?                                Yes / No

Are you a registered Voter?                                        Yes / No

Do you believe you can be impartial as a jury member?    Yes / No

Appendix B. Verdict Questionnaire

Please circle the appropriate response or fill in the corresponding blank for the following questions.

Your verdict from the trial: Guilty / Not Guilty

Based on the trial and your verdict please indicate your belief in the defendant's guilt:

1 2 3 4 5 6 7 8 9 10  
 (Completely Not Guilty) (Completely Guilty)

How certain are you in your verdict choice?

1 2 3 4 5 6 7 8 9 10  
 (Completely uncertain) (Completely certain)

How strong was the defense's case?

1 2 3 4 5 6 7 8 9 10  
 (Very Weak) (Very Strong)

How strong was the prosecution's case?

1 2 3 4 5 6 7 8 9 10  
 (Very Weak) (Very Strong)

During the trial what weapon did Mrs. Dunn testify was used in the robbery?

Knife Gun Baseball Bat

Officer Richardson testified he conducted approximately how many previous police lineups?

2 17 50

What time of day did the robbery occur?

Morning Afternoon Evening

Where was the defendant arrested by the police?

At another convenience store At his apartment Fleeing to Canada

Was the weapon allegedly used in the robbery recovered? Yes / No

## Appendix C. Gudjonsson Compliance Scale

Please read the following statements and circle True (T) or False (F).

1. I give in easily to people when I am pressured. T / F
2. I find it very difficult to tell people when I disagree with them. T / F
3. I am not too concerned of what people think of me. T / F
4. People in authority make me feel uncomfortable and uneasy. T / F
5. I tend to give in to people who insist that they are right. T / F
6. I tend to become easily alarmed and frightened when I am in the company of people in authority. T / F
7. I try very hard not to offend people in authority. T / F
8. I would describe myself as a very obedient person. T / F
9. I strongly resist being pressured to do things I don't want to do. T / F
10. I tend to go along with what people tell me even when I know that they are wrong. T / F
11. I believe in avoiding rather than facing demanding and frightening situations. T / F
12. I try to please others. T / F
13. Disagreeing with people often takes more time than its worth. T / F
14. I generally believe in doing what I am told. T / F
15. When I am uncertain about things I tend to accept what people tell me.
16. When I was a child I sometimes took the blame for things I had not done. T / F
17. I generally try to avoid confrontation with people. T / F
18. As a child I always did what my parents told me. T / F
19. I try hard to do what is expected of me. T / F
20. I would never go along with what people tell me in order to please them. T / F

T / F



## Appendix E. Mock Trial Transcript

**Judge:** Please be seated. Court is now in session. We have before us criminal case, number 94-143, the *State of California vs. James Williams*. The defendant, Mr. Williams is being charged with the crimes of armed robbery and assault with a deadly weapon inflicting serious injury. You are further advised that the defendant has appeared in this court and has entered a plea of not guilty to the charges of armed robbery and assault with a deadly weapon inflicting serious injury. I note for the record that Andrew A. Nelson is here, representing the state as the prosecutor, and Michael D. Campbell is here as defense counsel for Mr. James Williams. All right Mr. Nelson, you may proceed with your opening statement.

**Prosecutor (Andrew A. Nelson):** Thank you, your honor. Ladies and gentleman of the jury, the state of California charges Mr. James Williams of robbing the Quick Stop convenience store, on the corner of Washington and 57<sup>th</sup> Avenue. He is also charged with shooting and seriously injuring the clerk, Mr. David Aimes. Mr. Aimes is still hospitalized in a chronic vegetative state because of the head wound he received during the robbery and therefore is unable to be here today and testify for himself. Mrs. Barbara Dunn, a frequent shopper of the Quick Stop Convenience store, who happened to be present at the time the crime was committed, has identified Mr. James Williams. The evidence will show that Mrs. Barbara Dunn positively identified Mr. James Williams in a police line-up conducted by the Lakeside Police Department. And the defense will attempt to convince you that the procedures used by the Lakeside Police Department when conducting their line-ups is unfair and biased. However, as you will see, the procedures used in constructing and administering the line-up are fair and unbiased, and the evidence will show that the line-up used in identifying Mr. James Williams, by Mrs. Barbara Dunn, was in fact the standard line-up used by the Lakeside Police Department. Furthermore, the evidence will show that the circumstances leading up to the arrest of Mr. James Williams, are highly incriminating, and it is our feeling that a close examination of the evidence of this case, will convince you beyond a reasonable doubt, that Mr. James Williams, is guilty as charged.

**Judge:** Thank you, Mr. Nelson. Mr. Campbell, you may make your opening statements.

**Defense (Michael D. Campbell):** Thank you, your honor. Ladies and gentleman of the jury, the defendant, Mr. James Williams has been mistakenly identified by a single eyewitness as the man who robbed the Quick Stop convenience store and who shot and injured the clerk, Mr. David Aimes. The evidence will show that the defendant is innocent of the crimes for which he has

been accused. You see the defendant, Mr. James Williams, wasn't at the Quick Stop convenience store that day. You'll here a testimony from his girlfriend, Ms. Rice that Mr. James Williams was at his home at the times that the crimes occurred, thus it is impossible for him to have been the perpetrator. The evidence will show that the procedures used by Officer Richardson, in the construction and presentation of the line-up to the eyewitness were biased and unfair. Ladies and gentleman of the jury, substantial questions exist regarding the eyewitness's memory of the crimes and the conditions of the identification that remain unfairly point the finger to the defendant. Careful attention to the evidence today will show that Mrs. Dunn was incorrect in her eye-witness identification of the defendant, and that my client, Mr. James Williams, is innocent of the charges. Thank You.

**Judge:** Mr. Nelson, you may proceed with your first witness.

**Prosecutor (Andrew A. Nelson):** Thank you, your honor. I would like to call Barbara Dunn to the stand.

**Bailiff:** Please raise your right hand. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**Witness #1 (Barbara Dunn):** I do.

**Judge:** Please be seated.

**Prosecutor (Andrew A. Nelson):** Mrs. Dunn, will you please state your full name for the record.

**Witness #1 (Barbara Dunn):** My name is Barbara Jane Dunn.

**Prosecutor (Andrew A. Nelson):** Mrs. Dunn, are you familiar with the Quick Stop convenience store on the corner of Washington and 57<sup>th</sup> Avenue?

**Witness #1 (Barbara Dunn):** Yes I am. I often stop in there to buy gas or a soda.

**Prosecutor (Andrew A. Nelson):** Did you stop at the Quick Stop convenience store on February 22, 1994?

**Witness #1 (Barbara Dunn):** Yes I did. I stopped in there to buy gas at about 8:40pm that evening.

**Prosecutor (Andrew A. Nelson):** Could you please tell the jury what events took place that evening?

**Witness #1 (Barbara Dunn):** Well after I filled up with gas, then I went inside and paid the cashier, um, I then went to the back to use the restroom. As I came out, I heard yelling and saw a man waving a gun at the cashier. So, I hid behind one of those tall bread racks at the back of the store.

**Prosecutor (Andrew A. Nelson):** Mrs. Dunn, could you please tell the jury what you saw next?

**Witness #1 (Barbara Dunn):** I saw the cashier give the guy with the gun the money. Um, the guy with the gun was swearing and yelling. Then he yelled, “Where’s the rest of it? You better give me more than this shit.” and the cashier said that that’s all that there was, that he had just made a drop. Um, the guy with the gun seemed to get really upset, and then he started shouting more obscenities even louder while he was shaking the gun at the cashier. Then he shot the clerk and ran out of the store.

**Prosecutor (Andrew A. Nelson):** What happened next?

**Witness #1 (Barbara Dunn):** Well after the guy left, I called 911 and the police came.

**Prosecutor (Andrew A. Nelson):** Mrs. Dunn, were there any other customers in the store?

**Witness #1 (Barbara Dunn):** No. Besides the cashier, I was the only other person in the store.

**Prosecutor (Andrew A. Nelson):** Mrs. Dunn, when you were hiding behind the bread rack, did you have an opportunity to get a good look at the robber?

**Witness #1 (Barbara Dunn):** Yes I did.

**Prosecutor (Andrew A. Nelson):** Approximately how long were you able to get that good look at the robber?

**Witness #1 (Barbara Dunn):** Um, I’d say about 2 minutes

**Prosecutor (Andrew A. Nelson):** Were you distracted at all during this time period?

**Witness #1 (Barbara Dunn):** No I was not.

**Prosecutor (Andrew A. Nelson):** Did you find that during this time period, you were able to pay close attention to the robber’s face?

**Witness #1 (Barbara Dunn):** Yes, I believe I was able to pay close attention to the robber’s face.

**Prosecutor (Andrew A. Nelson):** Was the robber wearing a mask or a disguise of any kind?

**Witness #1 (Barbara Dunn):** No he wasn’t.

**Prosecutor (Andrew A. Nelson):** Mrs. Dunn, is the person you saw rob the Quick Stop convenience store in the room at this time?



**Witness #1 (Barbara Dunn):** Yes he is.

**Prosecutor (Andrew A. Nelson):** Could you please point to this person?

**Witness #1 (Barbara Dunn):** *(she points to Mr. James Williams)* Yes, that's him there.

**Prosecutor (Andrew A. Nelson):** And for the record, can you indicate an article of clothing that this person is wearing?

**Witness #1 (Barbara Dunn):** Yes, he is the blonde gentleman, wearing the gray suit with the floral tie and white shirt.

**Prosecutor (Andrew A. Nelson):** Let the record reflect that the witness has identified the defendant, Mr. James Williams.

**Judge:** So noted.

**Prosecutor (Andrew A. Nelson):** Mrs. Dunn, let's now turn our attention to the events that took place *after* the crime was committed. Did you at a later date, have an opportunity to view a live line-up and make an identification of the robber?

**Witness #1 (Barbara Dunn):** Yes I did.

**Prosecutor (Andrew A. Nelson):** And after the robbery occurred, how confident were you that you would be able to make a positive identification?

**Witness #1 (Barbara Dunn):** I was about 65% sure that I would be able to make an identification from the line-up.

**Prosecutor (Andrew A. Nelson):** How confident were you immediately after having made the identification?

**Witness #1 (Barbara Dunn):** Um, I was 90% sure that the person I selected from the line-up was the robber.

**Prosecutor (Andrew A. Nelson):** And Mrs. Dunn, how confident are you now that your identification was correct?

**Witness #1 (Barbara Dunn):** I'm still 90% confident that my decision was correct.

**Prosecutor (Andrew A. Nelson):** Mrs. Dunn, how many line-ups did you view the day that you identified Mr. James Williams?

**Witness #1 (Barbara Dunn):** I only saw one line-up.

**Prosecutor (Andrew A. Nelson):** And how long did it take you to identify the man that you believed to have been the robber?

**Witness #1 (Barbara Dunn):** I did not even finish looking at all the men in the lineup. As soon as I saw the defendant I recognized him.

**Prosecutor (Andrew A. Nelson):** Could you please describe to the court, what if anything, the police officer said to you prior to viewing the line-up

**Witness #1 (Barbara Dunn):** Well before I saw the line-up, the police officer read me some instructions. Um, he told me that he would be showing me a line-up of men that may or may not contain the person who committed the crime. He told me that I'd be seeing each line-up member individually and that I'd need to make a decision after each one. Um, he told me that I couldn't go back and see a line-up member that I'd seen before and he couldn't tell me how many line-up members that I would be seeing. He read to me that I, um, should keep in mind that hairstyles, beards and mustaches could easily be changed, so I should look at each line-up member carefully, and after each one I should tell him whether or not I saw the person who committed the crime. Then he read to me that I shouldn't tell anyone else whether or not I had identified anyone.

**Prosecutor (Andrew A. Nelson):** Thank you Mrs. Dunn, I have no further questions.

**Judge:** Mr. Campbell, your witness.

**Defense (Michael D. Campbell):** Thank you, your honor. Mrs. Dunn, did you view mug shots of robbery suspects of any kind between the robbery and the line-up identification?

**Witness #1 (Barbara Dunn):** No I did not.

**Defense (Michael D. Campbell):** And how long was it from the robbery to the day you identified my client from the live line-up.

**Witness #1 (Barbara Dunn):** It was about 2 weeks.

**Defense (Michael D. Campbell):** Mrs. Dunn, could you please describe the description of the robber that you gave to the police?

**Witness #1 (Barbara Dunn):** Yes, I described him as being a white male, about 25 years old, 5'10, about 175lbs. Um, his hair was blonde and straight and he had no facial hair. He was wearing a pair of white shorts, a yellow t-shirt and white tennis shoes.

**Defense (Michael D. Campbell):** And how did the members of the line-up dress? Where any of them wearing the same clothes that you described?

**Witness #1 (Barbara Dunn):** No, none of them were wearing the clothes that I had described. They were all wearing different clothing.

**Defense (Michael D. Campbell):** Now, generally speaking, did most of the people in the line-up match the description of the person you saw rob the convenience store?

**Witness #1 (Barbara Dunn):** No, not really. Some of them were too heavy or tall, and some of them had dark hair and facial hair.

**Defense (Michael D. Campbell):** Mrs. Dunn, how many people were in the line-up?

**Witness #1 (Barbara Dunn):** There were 5 men in the line-up.

**Defense (Michael D. Campbell):** You said earlier that you stop at this store often?

**Witness #1 (Barbara Dunn):** Yes, that is where I usually stop to get gas when I need it.

**Defense (Michael D. Campbell):** Is it possible that you recognize the defendant not from the day of the robbery, but from one of your earlier stops at the store?

**Witness #1 (Barbara Dunn):** No.

**Defense (Michael D. Campbell):** How many of the five men in the lineup looked like the man you described to the police?

**Witness #1 (Barbara Dunn):** Only one man did, Mr. Williams.

**Defense (Michael D. Campbell):** Let me make sure that I understand your testimony Mrs. Dunn. It is your testimony that there is no chance that you identified Mr. Williams because he was the only man in the lineup that looked similar to the description you gave police.

**Witness #1 (Barbara Dunn):** Well, um, I identified him because he did look like the man that robbed the store.

**Defense (Michael D. Campbell):** And you are completely sure without any doubt that you recognized Mr. Williams from the robbery and not from a previous time you were at the Quick Stop.

**Witness #1 (Barbara Dunn):** I am pretty sure that it was from the day of the robbery.

**Defense (Michael D. Campbell):** Pretty sure, but not 100% completely sure right Mrs. Dunn?

**Witness #1 (Barbara Dunn):** No, not 100% sure.

**Defense (Michael D. Campbell):** Thank you, I have no further questions.

**Judge:** Mrs. Dunn, you may step down.

**Judge:** Mr. Nelson, you may call the next witness.

**Prosecutor (Andrew A. Nelson):** Thank you, your honor. At this time, the state wishes to call officer, Paul Richardson, to the stand.

**Bailiff:** Officer Richardson, raise your right hand. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**Witness #2 (Officer Richardson):** I do.

**Prosecutor (Andrew A. Nelson):** Officer Richardson, will you please state your full name for the record?

**Witness #2 (Officer Richardson):** My name is Paul Richardson.

**Prosecutor (Andrew A. Nelson):** And what is your occupation?

**Witness #2 (Officer Richardson):** I'm a police officer with the Lakeside Police Department.

**Prosecutor (Andrew A. Nelson):** Officer Richardson, have you been involved at all in the investigation of the robbery of the Quick Stop convenience store, which took place on February 22, 1994?

**Witness #2 (Officer Richardson):** Yes I was.

**Prosecutor (Andrew A. Nelson):** And in what capacity were you involved?

**Witness #2 (Officer Richardson):** I was the chief investigating officer. I took the witness statement immediately following the crime. I organized and conducted the line-up.

**Prosecutor (Andrew A. Nelson):** Could you please tell the court how it is that the defendant, James Williams, was picked up and charged with this crime?

**Witness #2 (Officer Richardson):** The defendant, James Williams, was picked up at about 10 blocks from the crime scene, for loitering and suspicious behavior in front of another small convenience store. He matched the description of the perpetrator given by Mrs. Dunn and based on that information was held, placed under arrest, and taken to the Lakeside Police Department where the line-up was later conducted.

**Prosecutor (Andrew A. Nelson):** Officer Richardson, in your experiences with the police force. About how many line-ups have you been involved with?

**Witness #2 (Officer Richardson):** I've conducted at least 50 line-ups in other cases.

**Prosecutor (Andrew A. Nelson):** Prior to having Mrs. Dunn view the line-up, did you say anything to her?

**Witness #2 (Officer Richardson):** I instructed her on the line-up that she would be seeing.

**Prosecutor (Andrew A. Nelson):** Your honor, may I please approach the witness?

**Judge:** Yes you may.

**Prosecutor (Andrew A. Nelson):** Officer Richardson, do you recognize this?

**Witness #2 (Officer Richardson):** Yes I do.

**Prosecutor (Andrew A. Nelson):** And how do you recognize it?

**Witness #2 (Officer Richardson):** This is a standard instruction form for a witness line-up.

**Prosecutor (Andrew A. Nelson):** Could you please read that for the court?

**Witness #2 (Officer Richardson):** Yes. The line-up of men you are about to see might or might not contain the person who committed the crime. Each line-up member will be presented individually and you must make a decision after viewing each one. You cannot go back to see a line-up member who you have already viewed and I cannot tell you how many line-up members you are going to see. Please keep in mind that hairstyles, beards and mustaches can easily be changed. I want you to look at each line-up member carefully and after each one, tell me whether or not you see the person who committed the crime. Please do not tell anyone else whether or not you have identified anyone.

**Prosecutor (Andrew A. Nelson):** Thank you very much. Officer Richardson, was there anything unusual about the procedure used to construct the line-up?

**Witness #2 (Officer Richardson):** No. The procedures I used to conduct the line-up were standard procedures used by the Lakeside Police Department.

**Prosecutor (Andrew A. Nelson):** Officer Richardson, is it true that Mrs. Dunn, the eyewitness, identified the defendant, Mr. James Williams, from the line-up, as the man who robbed the convenience store?

**Witness #2 (Officer Richardson):** Yes she did.

**Prosecutor (Andrew A. Nelson):** Thank you, Officer Richardson. I have no further questions.

**Judge:** Mr. Campbell, your witness.

**Defense (Michael D. Campbell):** Thank you, your honor. Officer Richardson, let's consider the line-up from which the defendant, James Williams, was picked. You were in charge of determining the composition of the line-up and of administering it to the witness, were you not?

**Witness #2 (Officer Richardson):** Yes, I was responsible for everything.

**Defense (Michael D. Campbell):** Is there an established procedure for constructing a line-up?

**Witness #2 (Officer Richardson):** We select five or six people who look like the perpetrator and those are the people we use in the line-up.

**Defense (Michael D. Campbell):** Were any of the other men in the lineup being held in the jail for two weeks prior to the lineup?

**Witness #2 (Officer Richardson):** No.

**Defense (Michael D. Campbell):** Did any of the other men in the lineup have all the characteristics described by the eyewitness of the crime?

**Witness #2 (Officer Richardson):** No.

**Defense (Michael D. Campbell):** So then you were wrong when you said that you selected five or six people who look like the perpetrator because you actually only picked one person in this case that looked like the perpetrator?

**Prosecutor (Andrew A. Nelson):** Objection.

**Judge:** Sustained.

**Defense (Michael D. Campbell):** Would it be fair to say that the only person that resembled the perpetrator in this lineup was the defendant?

**Witness #2 (Officer Richardson):** Yes, because he is the one that Mrs. Dunn described and identified as the robber.

**Defense (Michael D. Campbell):** Officer Richardson, was the gun that was used to shoot the clerk, David Aimes, ever found?

**Witness #2 (Officer Richardson):** No, we searched the area surrounding the premises, but were unable to locate it.

**Defense (Michael D. Campbell):** Did you search my client's apartment for the gun?

**Witness #2 (Officer Richardson):** Yes we did.

**Defense Attorney (Michael D. Campbell):** And were you able to locate the gun there?

**Witness #2 (Officer Richardson):** No, we were still unable to locate the gun.

**Defense (Michael D. Campbell):** Thank you, your honor. I have no further questions for this witness.

**Judge:** Officer Richardson, you may step down. Mr. Nelson, you may call your next witness.

**Prosecutor (Andrew A. Nelson):** Thank you, your honor. The state rests at this time.

**Judge:** Mr. Campbell, you may call your first witness.

**Defense (Michael D. Campbell):** Thank you, your honor. The defense would like to call Diana Rice to the stand.

**Bailiff:** Raise your right hand. Ms. Rice, do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**Witness #3 (Diana Rice):** I do.

**Judge:** Please be seated.

**Defense (Michael D. Campbell):** Ms. Rice, would you please state your full name for the record?

**Witness #3 (Diana Rice):** My name is Diana Maria Rice.

**Defense (Michael D. Campbell):** Ms. Rice, what is your relationship to the defendant, James Williams?

**Witness #3 (Diana Rice):** James is my boyfriend. We have been dating for about 2 years.

**Defense (Michael D. Campbell):** Are you familiar with the Quick Stop convenience store located on the corner of Washington and 57<sup>th</sup>?

**Witness #3 (Diana Rice):** Yes, it is about 10 blocks from my apartment.

**Defense (Michael D. Campbell):** Approximately how long does it take you to get to the Quick Stop from your apartment?

**Witness #3 (Diana Rice):** It's not too far. I would say it's about a 5-minute drive.

**Defense (Michael D. Campbell):** Could you please tell the jury where you were at approximately 8:30pm on the evening of February 22, 1994?

**Witness #3 (Diana Rice):** Sure. I was at home watching TV.

**Defense (Michael D. Campbell):** Was there anyone else there with you that evening?

**Witness #3 (Diana Rice):** Yes, um, my boyfriend, James, was with me.

**Defense (Michael D. Campbell):** Was James with you the entire evening?

**Witness #3 (Diana Rice):** Well, no. He came for dinner, we watched some TV and then he went back to his place.

**Defense (Michael D. Campbell):** Where is James Williams's apartment?

**Witness #3 (Diana Rice):** James's apartment is about 15 blocks away, on Scott Street.

**Defense (Michael D. Campbell):** At approximately what time did he leave?

**Witness #3 (Diana Rice):** I remember that it was between Mad About You and Friends, so I would say about 8:30pm.

**Defense (Michael D. Campbell):** Did you speak with him at any other time this evening?

**Witness #3 (Diana Rice):** Yes, um, I called him shortly after he left, to tell him that he had left his jacket at my place.

**Defense (Michael D. Campbell):** Approximately what time did you call?

**Witness #3 (Diana Rice):** Well, I didn't look at the clock or anything, but I would guess that it was about 8:45.

**Defense (Michael D. Campbell):** What makes you think that the time was approximately 8:45pm?

**Witness #3 (Diana Rice):** I remember because I was watching Friends and I specifically waited for a commercial because I didn't want to miss any part of the show.

**Defense (Michael D. Campbell):** What was his response when you told him that he left his jacket?

**Witness #3 (Diana Rice):** He said he would come back to my apartment to pick it up because he needed the next day, um, to go to work.

**Defense (Michael D. Campbell):** Did he come back by your apartment?

**Witness #3 (Diana Rice):** Well, no, since he was coming back to my apartment, I asked him if he could please pick something up for me at the store and um, that was when he got arrested so... no, he never made it back to my apartment.

**Defense (Michael D. Campbell):** When you spoke to James on the phone, did you notice anything unusual about his voice or behavior?

**Witness #3 (Diana Rice):** He sounded a little bit out of breath, but um, when I asked him about it he said he had just gone out to get his mail and he had to run back to his place to get the phone.

**Defense (Michael D. Campbell):** Ms. Rice, to your knowledge, has James Williams ever owned a gun?

**Witness #3 (Diana Rice):** No, not that I'm aware of.

**Defense (Michael D. Campbell):** Thank you, Ms. Rice. I have no further questions.

**Judge:** Your witness, Mr. Nelson.

**Prosecutor (Andrew A. Nelson):** Thank you, your honor. Ms. Rice, is it possible that you called Mr. Williams at approximately 8:50pm?

**Witness #3 (Diana Rice):** No, I don't think so.

**Prosecutor (Andrew A. Nelson):** But you're not sure of the exact time, are you?

**Witness #3 (Diana Rice):** No, um, I didn't look at the clock so I'm not sure of the exact time.

**Prosecutor (Andrew A. Nelson):** Ms. Rice, when traveling from your apartment to the defendant's place of residence, do you normally pass the Quick Stop convenience store?

**Witness #3 (Diana Rice):** Yes.



**Prosecutor (Andrew A. Nelson):** And about how long does it take you to get to the defendant's residence?

**Witness #3 (Diana Rice):** I would say about 7 or 8 minutes.

**Prosecutor (Andrew A. Nelson):** And you stated earlier, did you not, that when you called the defendant approximately 15 minutes after he had left your place, that he was just coming in from outside?

**Witness #3 (Diana Rice):** Well, yes, but he had said that he had just come in with the mail, not that he had just arrived home.

**Prosecutor (Andrew A. Nelson):** Ms. Rice, when you're with your boyfriend, Mr. Williams, does he normally get the mail as he comes into the apartment? Or does he later go back out and get the mail?

**Witness #3 (Diana Rice):** Well I guess that normally he gets the mail first, but on that night he must have forgotten it and had to go back out for it.

**Defense (Michael D. Campbell):** Objection your honor, calls for speculation from the witness. I move to have that testimony stricken from the record.

**Judge:** Sustained. Strike Ms. Rice's previous statement from the record. Ladies and gentlemen of the jury you will disregard Ms. Rice's previous statement.

**Prosecutor (Andrew A. Nelson):** Thank you, your honor. I have no further questions for this witness.

**Judge:** Mr. Campbell, you may call your next witness.

**Defense (Michael D. Campbell):** Your honor, at this time, the defense rests.

**Judge:** Ladies and gentlemen of the jury, we will now proceed with the closing arguments. The prosecution will go first, and then the defense will proceed. Mr. Nelson, you may now begin with your closing arguments.

**Prosecutor (Andrew A. Nelson):** Thank you, your honor. Ladies and gentlemen of the jury, today you have heard the case of Mr. James Williams. Mr. Williams stands accused. He stands accused of robbing the Quick Stop convenience store, on the corner of 57<sup>th</sup> Avenue and Washington. He also stands accused of shooting and severely injuring the clerk, Mr. David Aimes. And as a representative of the state of California, it's my job to prove to you beyond a reasonable doubt, that Mr. James Williams committed these crimes. Today you have heard the

testimony of Mrs. Barbara Dunn, the eyewitness who was present when the crimes were committed. You heard her testify that the person who she saw commit these crimes at the Quick Stop convenience store was in fact, the defendant, James Williams. And in fact, she positively identified Mr. Williams in a police line-up. Now also within this trial, you heard the testimony of Officer Richardson, of the Lakeside Police force. Officer Richardson was the chief investigating officer on this crime. And you heard Officer Richardson describe the standard procedures used in 1) instructing eye-witnesses 2) choosing suspects for the line-up 3) the standard procedure for presenting these suspects to the eye-witness in a police line-up. You also heard Officer Richardson testify that these standard procedures were the ones used in the line-up, which led to the identification of Mr. James Williams. He also testified that this particular police line-up was conducted in an unbiased and fair manner. Ladies and gentleman, I believe that upon close examination of the evidence that was presented here today at this trial, you will be convinced beyond a reasonable doubt, that Mr. James Williams is guilty as charged.

**Judge:** Thank you, Mr. Nelson. Mr. Campbell, you may proceed with your closing arguments.

**Defense (Michael D. Campbell):** Thank you, your honor. Ladies and gentleman of the jury, today you have heard testimony from a number of witnesses stating that the defendant, Mr. Williams, is guilty of the charges. This, in fact, is incorrect. Reasonable doubt exists as to who committed these crimes, and you must therefore, in the interest of justice, find him not guilty. Let's go back to the testimony that we heard today. First, we heard the testimony of Ms. Rice, the defendant's girlfriend. She testified to four important pieces of information. First, she testified that the defendant was at her apartment and that he then went directly home. This proves that he was not out at the time the crimes were committed. Second, she knows he went directly home because she spoke to him on the phone shortly after he arrived there. Third, she testified that she asked him to go to the store and that's why he was out when the police apprehended him. And fourth, she testified that to her knowledge, the defendant does not own a gun. The only incriminating evidence is the testimony of Mrs. Dunn, the lone eyewitness. I wouldn't be so bold as to stand here today and tell you that Mrs. Dunn is a liar. She has just mistakenly identified the defendant from an unfair and biased line-up. In evaluating the evidence, you should consider the procedures used to obtain the identification. The evidence today showed that, first, the instructions given to Mrs. Dunn prior to her viewing of the line-up were biased. Second, the suspects used in the line-up were biased against my client. And third,

the manner in which the line-up was presented was also biased against my client. These led to a mistaken identification of the defendant, thus he is not guilty. Thank you.

**Judge:** Members of the jury, I thank you for your attention during this trial. Please pay attention to the instructions I am about to give you. Mr. James Williams, the defendant in this case, is accused of the armed robbery of the Quick Stop and assault with a deadly weapon inflicting serious injury of David Aimes. Whenever the words “reasonable doubt” are used, you must consider the following: A reasonable doubt is not a possible doubt, speculative, imaginary or forced doubt. Such a doubt must not influence you to return a verdict of not guilty if you have an abiding conviction of guilt. On the other hand, if, after carefully considering, comparing and weighing all the evidence, there is not an abiding conviction of guilt, or, if having a conviction it is one which is not stable, but one which waivers, then the charge is not proved beyond every reasonable doubt and you must find the defendant not guilty because the doubt is reasonable. It is to the evidence introduced upon this trial and to it alone, that you are to look for that proof. A reasonable doubt as to the guilt of the defendant may arise from the evidence, conflict in the evidence, or lack of evidence. If you have a reasonable doubt, you should find the defendant not guilty. If you have no reasonable doubt, you should find the defendant guilty. It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence and which evidence should not be relied upon when considering your verdict. You must find some of the evidence not reliable or less reliable than other evidence. You should consider how the witnesses acted as well as what they said. Some things you should consider are: Did the witness seem to have the opportunity to see and know the things about which the witness testified? Did the witness seem to have an accurate memory? Was the witness honest and straight forward when answering the attorney’s questions? Did the witness have some interest in how the case should be decided? Does the witness’s testimony agree with the other testimony and other evidence in the case? You may rely on your own conclusions about the witness. A jury may believe or disbelieve all or any part of the evidence or the testimony of any witness. These are some general rules that apply to your verdict decision. You must follow these rules in order to return a lawful verdict. This case must be decided upon the evidence that you have heard from the answers of the witnesses and have seen in the form of exhibits or evidence in these instructions. Remember, the lawyers are not on trial. Your feelings about them should not influence your decisions in this case. Before you can find the defendant guilty

of assault with a deadly weapon inflicting serious injury, the state must prove the following three elements beyond a reasonable doubt: 1) David Aimes' was seriously injured; 2) That this occurred as a consequence of the use of a deadly weapon; 3) James Williams was the person who actually injured David Aimes. The crime of robbery is taking of money or other property of value from the person or custody from another by force, violence, assault, or putting in fear. Before you can find the defendant guilty of armed robbery the state must prove the following elements beyond a reasonable doubt: 1) larceny or attempted larceny occurred at the Quick Stop; 2) from a person or the presence of a person; 3) with the use or threatened use of a dangerous weapon; 4) James Williams was the person who actually committed these acts. An issue in this case is whether the defendant was present when the crime allegedly was committed. If you have a reasonable doubt that the defendant was present at the scene of the alleged crime, it is your duty to find the defendant not guilty. The constitution requires the state to prove its accusations against the defendant. It is not necessary for the defendant to disprove anything. Nor is the defendant required to prove his innocence. It is up to the state to prove the defendant's guilt by evidence. The defendant exercised his right of choosing not to be a witness in this case. You must not view this as an admission of guilt nor should you be influenced in any way by his decision. No juror should ever be concerned that the defendant did or did not take the witness stand to give testimony in the case.

## Neanderthals in Gene Pool, Study Suggests

*Associated Press*

By JOHN NOBLE WILFORD

Published: November 9, 2006

Scientists have found new genetic evidence that they say may answer the longstanding question of whether modern humans and Neanderthals interbred when they co-existed thousands of years ago. The answer is: probably yes, though not often.

In research being published online this week by the Proceedings of the National Academy of Sciences, the scientists reported that matings between Neanderthals and modern humans presumably accounted for the presence of a variant of the gene that regulates brain size.

Bruce T. Lahn of the University of Chicago, the report's senior author, said the findings demonstrated that such interbreeding with relative species, those on the brink of extinction, contributed to the evolutionary success of modern humans.

Both genetic and fossil studies show that anatomically modern humans emerged 200,000 years ago in Africa and migrated into Europe 40,000 years ago. In about 10,000 years, Europe's longtime inhabitants, Neanderthals, became extinct. The mainstream interpretation is that modern humans somehow replaced them without interbreeding.

In previous research, Dr. Lahn and associates discovered that a gene for brain size called microcephalin underwent a significant change 37,000 years ago. Its modified variant, or allele, appeared to confer a fitness advantage on those who possessed it. It is now present in about 70 percent of the world's population.

The new research focused on the two classes of alleles of the brain gene. One appeared to have emerged

## Arts, Briefly

Compiled by LAWRENCE VAN GELDER  
Published: November 10, 2006

### Louvre Show in Canada

A loan of 276 works from all parts of the Louvre Museum's collection will provide the Musée National des Beaux-Arts in Quebec with a major exhibition in 2008 to run from June 5 to Oct. 26, CBC Arts reported. The exhibition, "Louvre in Quebec: Arts and Life," will draw upon the Louvre's holdings in Egyptian antiques; Asian, Greek, Etruscan and Islamic art; tapestries; paintings; and

sculpture. "We wanted to do justice to the variety of the Louvre's collection," said Line Ouellet, curator of the museum in Quebec. "We will have the chance here to go from one civilization to another, from one period which stretches 3,000 years before Christ until the middle of the 19th century." An agreement to hold the exhibition was signed on Tuesday in Paris by officials of the two museums.

**City police hold man in connection to robbery**

August 24, 2004

Linda Lee

*DAILY NEWS STAFF*

The Lakeside Police Department arrested Mr. James Williams last evening in connection to the armed robbery of the Quick Stop Convenience Store. Williams is the primary suspect in the crime and was picked up by police not far from the location of the robbery. Williams is suspected of being the perpetrator that not only robbed the Quick Stop, but also shot and seriously injuring the store clerk, Mr. David Aimes, during the commission of the robbery. Aimes remains in the hospital and is in a chronic vegetative state due to being shot in the head during the robbery.

Ms. Ruth Taylor, Williams' estranged spouse, was unaware that Williams was being investigated in connection with the robbery of the Quick Stop Convenience Store. However, she told reporters

that Williams does not pay his child support on a regular basis and he has fallen seriously behind on his payments.

District Attorney, Andrew A. Nelson, said Lakeside Police Department has an eyewitness to the robbery. At this time police have not been able to find the gun that was used in the robbery, but the search for the weapon continues.

Authorities spent the evening interviewing James and they are expected to officially charge him with the robbery and the shooting later today.

**Charges amended just before trial**

November 2, 2005

Linda Lee

*DAILY NEWS STAFF*

James Williams was formally charged in August 2004 with Armed Robbery and assault with a deadly weapon. Now that the case is about to go to trial, the district attorney has chosen to amend the charges. In November 2005, prosecutors filed an amended felony information charging Williams with assault with a deadly weapon inflicting serious injury. This constitutes a more serious charge than then previous assault with a deadly weapon.

The prosecution's case took a heavy blow just before this ruling when during the evidentiary review of this case the judge ruled in favor of the defense's motion to suppress a piece of evidence the prosecution intended to present at trial. Sources inside the courthouse say that the trial judge would not allow the information that Williams was unemployed

around the time of the robbery to be admitted into evidence. The judge found that information not to be relevant to the current proceedings.

Williams' lawyer was quoted as saying "Our legal system has specific guidelines for what is allowed into a trial and it is comforting to see this court enforcing the law effectively" in response to these rulings.

Jury selection for this trial has been completed and the first day of the trial is scheduled for Tuesday November 17, 2005.



**City police hold man in connection to robbery**

August 24,2004

Linda Lee

*DAILY NEWS STAFF*

The Lakeside Police Department arrested Mr. James Williams last evening in connection to the armed robbery of the Quick Stop Convenience Store.

Williams is the primary suspect in the crime and was picked up by police not far from the location of the robbery. Williams is suspected of being the perpetrator that not only robbed the Quick Stop, but also shot and seriously injuring the store clerk, Mr. David Aimes, during the commission of the robbery. Aimes remains in the hospital and is in a chronic vegetative state due to being shot in the head during the robbery.

Sources from the police department tell us that Williams has a felony record and is currently being investigated by the FBI on unrelated charges. Michael Jones, a neighbor of Williams, was interviewed and said "None of these charges surprise me.

When you live around a people like Williams, you just expect police to show up sooner or later." The neighbor went on to say that Williams had been fired six months ago from stealing from his last job.

Others in the local neighborhood said that even though Williams is unemployed he seems to find his money elsewhere because he always has nice stuff.

District Attorney, Andrew A. Nelson, said Lakeside Police Department has an eyewitness to the robbery. At this time police have not been able to find the gun that was used in the robbery, but the search for the weapon continues.

Authorities spent the evening interviewing James and they are expected to officially charge him with the robbery and the shooting later today.

**Charges amended just before trial**

November 2, 2005

Linda Lee

*DAILY NEWS STAFF*

James Williams was formally charged in August 2004 with Armed Robbery and assault with a deadly weapon. Now that the case is about to go to trial, the district attorney has chosen to amend the charges. In November 2005, prosecutors filed an amended felony information charging Williams with assault with a deadly weapon inflicting serious injury. This constitutes a more serious charge than then previous assault with a deadly weapon.

The prosecution's case took a heavy blow just before this ruling when during the evidentiary review of this case the judge ruled in favor of the defense's motion to suppress a number of pieces of evidence the prosecution intended to present at trial. Sources inside the courthouse say that the trial judge would not allow the confession Williams made the night of

the arrest into evidence. There was a disagreement regarding whether appropriate steps were taken by the police to immediately contact Mr. Williams' legal representation. Additionally, his previous arrest for cocaine possession was not found to be relevant to these proceedings. And an acquaintance of Williams that was going to testify that he owned a gun and shot it regularly as well as previously joking about robbing a store would not be allowed to testify to these facts.

Williams' lawyer was quoted as saying "Our legal system has specific guidelines for what is allowed into a trial and it is comforting to see this court enforcing the law effectively" in response to these rulings.

Jury selection for this trial has been completed and the first day of the trial is scheduled for Tuesday November 17, 2005.