

THE EFFECTS OF PRE- AND POST-VERDICT PUBLICITY ON JUROR  
DECISION-MAKING

by

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A dissertation submitted to the Graduate Faculty in Psychology in partial fulfillment of  
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This manuscript has been read and accepted for the  
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Abstract

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Given the proliferation of the media in everyday life, finding jurors who have not been exposed to potentially biasing pretrial publicity (PTP) is somewhat of a challenge, especially in high profile cases. This has long been recognized by the courts, but some question the effectiveness of the remedies that have been put in place. Over the past 45 years, psychologists have studied these effects to understand whether and how PTP influences juror decision making. This research has shown that PTP effects do indeed exist and can jeopardize the defendant's right to a fair and impartial trial. At the same time, some have questioned the methodological rigor of these studies and their applicability to the trial setting. Additionally, some important questions remain, specifically the durability of PTP effects, the influence of quantity and type of PTP (pro-prosecution vs. pro-defense), the medium of exposure (print vs. television), and the influence of mid-trial publicity.

This study was designed to address these questions by investigating the influence of pre- and post-venire publicity on juror decision making. The purpose of this study was (1) to examine the durability of PTP effects, (2) to examine the influence of pro-prosecution and pro-defense PTP on decision making, (3) to examine the influence of

natural vs. experimentally manipulated PTP, (4) to examine the influence of amount of PTP exposure on decision making, (5) to examine the influence of medium of PTP, (6) to examine the influence of post-venire publicity, and (7) to add to the external validity of PTP effects. It was proposed that depending on the media slant jurors are exposed to – a pro-prosecution slant or a pro-defense slant -- their perceptions and inferences will be distorted in the direction of the favored party. This has significant legal implications as many news media sources are substantially biased in one direction or the other and this exposure could influence decision making.

The results revealed that participants were significantly influenced by the slant of the PTP they were exposed to. Specifically, participants in the pro-defense condition were more likely to render not guilty verdicts as compared to those in the pro-prosecution condition, and this effect lasted throughout the duration of the trial. Additionally PTP exposure significantly distorted participants' perceptions of witnesses at all points in the trial. Secondly, a finding of no significant difference of the effect of exposure slant between the naturally exposed, and experimentally exposed samples provide support for the external validity of laboratory studies examining PTP effects. In addition, quantity of PTP influenced decision making, such that those exposed to greater quantities of PTP tended to be more biased. Finally, medium of PTP and post-venire publicity exposure had no significant influence on decision making. Results provide support for the pervasive and persistent nature of PTP effects on juror decision making.

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## **CHAPTER 1: INTRODUCTION – CHALLENGES TO THE FAIR AND IMPARTIAL JURY BY MEDIA-GENERATED PUBLICITY ABOUT LEGAL CASES**

As news coverage has become progressively more accessible via the newspapers, television, and the internet, the influence of pre-trial publicity (PTP) on jurors has become an increasing concern. PTP refers to any information disseminated via the media about a case that is making its way toward trial (Greene & Wade, 1998; Studebaker & Penrod, 1997). As has been pointed out by the courts, not all publicity is problematic. The standard is not that jurors should be ignorant of the case and have no knowledge whatsoever regarding the defendant, but rather that they not have formed an opinion regarding guilt or innocence based on this knowledge (*Newcomb v. State*, 1990). Exposure to basic facts about the indictment or an outline of the facts in the case might not be considered prejudicial whereas publicity that is inherently inflammatory, for example, inadmissible evidence, emotionally charged editorials and so on might be (see, e.g., *Newcomb v. State*, 1990; Vidmar, 2002).

Given the strong constitutionally protected free press in the United States, the justice system must deal with the potentiality that a citizen who has been called for jury duty has been exposed to information about the case on which he or she is being asked to sit in judgment (Posey & Wrightsman, 2005). If that information presents biased, inflammatory, false or incomplete information about a party in the case, then it has the potential to undermine the constitutional guarantees to trial by an impartial jury (as guaranteed under the sixth amendment) and to due process in both civil and criminal trials.

Concerns with PTP are not novel for the judicial system and date back at least as far as 1807 when former vice president of the United States Aaron Burr was arrested on charges of treason (Abramson, 2000). Barr's attorneys argued that in light of the negative publicity surrounding the charges, finding an impartial jury was highly improbable, and that, therefore, Barr should be tried in a different jurisdiction. This request for a "change of venue" was denied in Barr's case as Chief Justice Marshall ruled that potential jurors had not lost their ability to be impartial by reading the contents of a newspaper. In recent years, defendants' claims that their trials were unfair based on improper denial of a change of venue motion seem to have increased.

Starting in the 1960s the courts became more open to the potentially biasing effects of PTP (*Irvin v. Dowd*, 1961; *Rideau v. Louisiana*, 1963; *Sheppard v. Maxwell*, 1966). These cases addressed the conflict between the First and Sixth Amendments of the United States constitution, recognizing the media's influence on potential jurors and the bias it creates. Minnow and Cate (2001) estimated that in the 1980s at least 3,100 defendants claimed they could not be tried in a fair manner in the jurisdiction in which the alleged crime took place, due to the significant amounts of negative PTP surrounding their case. Replicating their methods, a Lexis-Nexis search was conducted which revealed that the number of defendants who claimed a fair trial was jeopardized as a result of PTP between 1998 and 2008 was over 7,000<sup>1</sup>. The 7,000 figure may substantially underestimate the actual number of cases as it is reasonable to anticipate that far more claims would be reported by locally contained cases -- most of which are

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<sup>1</sup> This number is based on a Lexis-Nexis newspaper and wire services database using the search term: (No or Not or Impossible or Unlikely or Prejudic! Or Bias!) w/25 (((Fair or Constitution!) w/4 trial or hearing) or ((Impartial of Bias! Or Prejudic!) w/ 4 (Jury or Juror))) w/25 (Publicity or Report! Or ((Media or Press) w/ 4 (Attention or Coverage))) and Date ([as appropriate]). Search term was used by Minnow & Cate, 2001 and again by Charowski, 2005.

not included in the databases which we searched. Additionally, given the way the legal system functions, many defendants are faced with inadequate counsel, or the pressure to plea bargain. Thus, potentially, many defendants who may have raised this claim as a part of their case do not.

In addition to the influence of PTP, another factor that may be potentially problematic for the courts is post-venire publicity (PVP). PVP for our purposes is defined as any external information empanelled jurors are exposed to following their appearance and selection for jury duty. Although it is possible that potential jurors are exposed to PTP before they are called to jury duty in a case, that information may not be salient for them. As noted in *United States v. William* (1978), “information reported during the trial seems far more likely to remain in the mind of a juror exposed to it, and he may be more inclined to seek out this information when he is personally involved in the case”(p. 38). Once a person is empanelled on a jury, any extra-legal information they are now exposed to potentially becomes increasingly more salient as they are now invested in the proceedings and may consciously or subconsciously influence their decision-making. PVP, labeled sometimes as mid-trial publicity, has been a concern in the courts, and jurors’ exposure to it has been the basis for a number of successful appeals (Vidmar, 2002).

### **Remedial Efforts by the Legal System**

Although the players in the adversarial system, including the courts and trial attorneys have placed much faith in jurors’ ability to be impartial, they have taken several steps to try to ensure that a defendant receives a fair and impartial trial even in the face of media-generated publicity. Following a number of high profile cases in which PTP was

brought up as a concern (*Irvin v. Dowd*, 1961; *Rideau v. Louisiana*, 1963; & *Sheppard v. Maxwell*, 1966, the American Bar Association instituted the Project on Standards for Criminal Justice in 1968 (Travis & Linz, 2002). This project worked to establish guidelines for lawyers and court officials with regards to the type of statements made in public that could pose a threat to a fair trial. In 2000, the ABA identified six categories of information that should not be disseminated by attorneys prior to and during a trial due to their potential prejudicial effects. These include:

(1) the prior criminal record of the accused; (2) the character and reputation of the accused; (3) the existence of any confession, admission, or statement given by the accused (or the refusal to make a statement); (4) the performance on any examinations or tests (or the refusal to submit to an examination or a test); (5) the possibility of a plea of guilty to the offense charged or to a lesser offense; and (6) any opinion as to the accused's guilt or innocence or as to the merits of the evidence in the case (*Model Rules of Professional Conduct*, 2000). While these guidelines apply to trial attorneys they serve as a caution about the sort of information that, if contained in PTP, could impact a fair trial.

The courts have devised and implemented a number of remedies to help eliminate the potentially biasing effect of this type of information. Social science research has examined the efficacy of some of these remedies, and that work is reviewed here briefly (see also, Greathouse & Kovera, 2009; Studebaker & Penrod, 2005).

**Continuance.** One option that has been suggested to reduce the prejudicial impact of PTP is for the courts to grant a continuance to delay the trial long enough for the publicity to subside and its effects to dissipate (Lieberman, & Arndt, 2000). When

reviewing appeals on the grounds that the PTP was prejudicial in a case, courts review the time between the PTP exposure and the trial to determine whether this may have biased jurors and impeded the defendant's right to a fair trial. In *Sheppard v. Maxwell* (1966) the Supreme Court recommended postponement as a possible remedy for prejudicial pretrial publicity. However, the Court did not spell out the standards for when a postponement may be ordered. It only stated that, "where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates."

Stebly, Besirevic, Fulero, & Jimenez-Lorente (1999, meta-analysis) found effect sizes to be larger when the time interval was delayed as opposed to shortened. At the same time this was for periods of time that were shorter than would be in the real world (the longest delay being one week). It is possible that a longer continuance period could produce significant reductions in the effects of PTP. Davis (1986) found that a 7-day delay, compared with no delay, reduced the impact of factual PTP but not neutral PTP on verdicts. However, they he did not provide jurors with instructions to disregard the PTP and overall there were no significant difference in conviction rates in the two groups. Kramer, Kerr and Carroll (1990) examined the effects of continuance for both factual and emotional PTP with a 12-day or 1-day continuance period. They found that the 12-day delay period was effective for factual publicity but not for emotional publicity. Thus there seems to be some discrepancy between experimental research and meta-analysis results with the question of the effectiveness of a continuance.

**Voir dire.** Once the trial is set to begin, and the case has generated substantial publicity in the media, the courts may expand their normal *voir dire* process to include

additional or specific questioning of potential jurors in an attempt to uncover biases and prejudices against the parties that might have been generated from that publicity, so as to ensure the impaneling of an impartial jury (Studebaker & Penrod, 2005). Psycholegal research has called into some question whether general *voir dire* processes can achieve this goal. The inclusion of jurors with strong, negative pre-existing attitudes and beliefs has the potential to create a biased jury and impede the defendant's right to a fair and impartial trial. The use of extended *voir dire* as a legal remedy has been suggested as a potential safeguard for educating and identifying jurors with particularly strong beliefs (i.e. authoritarianism; Narby, Cutler, & Moran, 1993). However, the empirical literature detailing the effectiveness of extended *voir dire* in identifying potentially biased jurors is limited. Dexter, Cutler and Moran (1992) found that extended *voir dire* was more effective than minimal *voir dire* in decreasing perceptions of defendant culpability, but *voir dire* type failed to significantly reduce the impact of pre-trial publicity. Extended *voir dire* has also been shown to elicit richer data thus explaining greater variation (78%) in juror verdicts than data gathered from minimal *voir dire* procedures (50%; Moran, Cutler, & Loftus, 1990). Further, there is evidence to suggest that attorney conducted *voir dire* procedures result in greater juror candor than procedures directed by the judge (Jones, 1987). However, Dexter, Cutler and Moran (1992) found that mock jurors continued to be more punitive to the defendant after exposure to PTP, in spite of an extended *voir dire* focused on educating jurors and raising awareness.

Freedman, Martin and Mota (1998) found that the negative effects of PTP were increased, as opposed to decreased when jurors were questioned about their pretrial exposure. Additionally, they found differences in post-trial guilt verdicts across

conditions only when jurors were asked to render pretrial verdicts. They interpreted this as participants being reluctant to change their opinions once they had committed to one position. Steblay et al.'s (1999) meta-analysis found greater PTP effects when participants were asked to render pretrial judgments. Thus *voir dire* seems to be a somewhat ineffective tool to control the effect of PTP and may have somewhat of a backfire effect. Ultimately it is a self-report measure of attitudes and biases, and is thus at risk of intentional as well as unintentional deception.

**Sequestering of jurors.** In cases where potentially prejudicially midtrial publicity can be anticipated in advance the presiding judge may choose to sequester the jury. This practice, although given much attention when employed is rarely used by judges due to the high costs involved. When a judge does decide to sequester a jury, it's often because there's a critical piece of inadmissible material being discussed in the press—for example, a suppressed confession.

**Judicial Admonitions.** After the jury is selected, and begins hearing the case, judges will almost always provide daily admonitions and cautionary instructions. For example, “Do not read, view or listen to any accounts or discussions of the case reported by newspapers, television, radio, the internet, or any other news media. In this age of instant electronic communication and research, I want to emphasize that in addition to not conversing face to face with anyone about the case, you must not communicate with anyone about the case by any other means, including by telephone, text messages, email, internet chat or chat rooms, blogs, or social websites, such as Facebook, MySpace or Twitter. You must also not Google or otherwise search for any information about the case, or the law which applies to the case, or the people involved in the case, including

the defendant, the witnesses, the lawyers, or the judge” (New York State, Unified Court System, Pattern Criminal Jury Instructions).

The judge will often instruct jurors to avoid contact with media information about the case after they have been seated. These admonitions are usually given daily and refer to ongoing media coverage of the trial. The majority of research on instructions to disregard PTP has shown its inefficacy. Instructions to ignore inadmissible evidence or prior record have not been shown to reduce levels of bias. For example, Sue, Smith, and Gilbert (1974) presented participants with an article about a case followed by trial evidence and judicial admonitions. The articles contained PTP damaging to the defendant or neutral PTP. Judicial admonitions were ineffective in countering PTP effects, and the damaging PTP created a pro-prosecution bias. Fein, McCloskey, and Tomlinson (1997) also found that admonitions were ineffective in reducing the effects of PTP and hearsay testimony.

**Presentation of trial evidence.** Another foundation percept of a fair and impartial trial is that exposure to evidence can correct for biased. This has been found to be true for a number of biases. At the same time a majority of the studies that have found PTP effects have included little or no presentation of trial evidence. The studies that have included presentation of extensive evidence have revealed mixed results (Dexter et al., 1992, Kramer et al., 1990). Most studies have not focused on whether the influence of PTP gets attenuated by the presentation of trial evidence.

**Deliberations.** At the conclusion of the trial, the process of deliberation is also seen as a safeguard for reducing bias under the assumption that although jurors may hold prejudicial beliefs privately, these may not proliferate the deliberation room if they are

unjustifiable and unsubstantiated (Lieberman & Arndt, 2000). Through a content analysis of jury deliberations, Kramer et al. (1990) found that the mention of PTP was rare and when it was mentioned brief. In addition, when inadmissible publicity was mentioned jurors reminded one another not to consider it. However, the effects of emotional PTP were substantial in verdict decisions, and were actually increased via deliberations. The Steblay et al. (1999) meta-analysis also found that the effects of PTP in the form of anti-defendant verdicts, were accentuated after group deliberations ( $r = .15$ ) as compared to before deliberations ( $r = .09$ ). It is possible that this is a result of group polarization effects whereby the initial opinions of a majority of the jurors gets validated and stronger as the deliberations progress.

**Change of Venue.** The most radical safeguard that is available to the courts is to actually move the entire trial to a different jurisdiction, a strategy that basically concedes that none of the prior safeguards would be effective in seating a fair and impartial jury in the target jurisdiction. As stated in the Federal Rules of Criminal Procedure, such a “change of venue” should be granted if, “the court is satisfied that so great a prejudice against the defendant exists in the transferring district that the defendant cannot obtain a fair and impartial trial there” (Federal Rules of Criminal Procedure, 2002). To implement these mandates, the U.S. Supreme Court uses a “totality of circumstances” standard to assess a trial court’s determination to not grant a change of venue or other remedial action (*Murphy v. Florida*, 1975). According to this test a court must examine *voir dire* responses as well as the media and community atmosphere surrounding the trial. The courts also rely on jurors’ statements of impartiality. Based on the media coverage surrounding the trial, jurors’ exposure to this coverage, and jurors’ responses to

questioning in *voir dire*, the court determines whether prejudice existed in the jury-selection process.

The courts' evaluations and understanding of the effects of publicity on jurors' judgments about a defendant or a plaintiff, and their assessment of the likelihood to which potential jurors' initial perceptions will persist throughout the trial is based on their commonsense thinking about human judgment. Yet, as psycholegal scholars have demonstrated in numerous contexts (see, e.g., judicial instruction literature, admonition literature, expert witness literature), the courts often overestimate the capabilities and underestimate the weaknesses of human inference, information processing mechanisms and decision-making processes when faced with challenging cases (Studebaker & Penrod, 1997; Tans & Chaffee, 1966). These overestimations of juror abilities are exacerbated by judges' propensity to trust what jurors say about their ability to be a fair and impartial juror. As the U.S. Supreme Court stated in *Irvin v. Dowd* (1961), "it is not required that the jurors be totally ignorant of the facts and issues involved." The common belief is that jurors are able to set aside preconceived notions and base their verdicts on the evidence presented at trial. For example, in *Mu'Min v. Virginia* (1991), the Supreme court upheld a lower court decision denying the defense request for a change of venue and individual *voir dire* after the media released biasing information about the defendant including his prior criminal record and indications of a confession, and 8 of the 12 seated jurors admitted they had seen prejudicial media coverage. In the end, the defendant was convicted and sentenced to death. Although the *Mu'Min* trial judge appears to have relied on jurors' self-reported ability to be fair, there is good reason to believe that many jurors

may in fact, be unaware of their prejudices or may fail to disclose prejudices during *voir dire* (Vidmar, 2002; Vidmar, 2003).

Given that the Courts has in put place a number of safeguards in an attempt to counter the influence of negative PTP on juror decision making, it is clear that there is a level of sensitivity to the issue, and an understanding of the harmful effects on decision making. At the same time empirical evidence and the practice of these safeguards in court shows that they may not be effective. Thus in order to assist the legal system in better understanding how to address PTP we need a better grasp of the underlying mechanisms at play.

## **CHAPTER 2: THEORETICAL BASIS OF PUBLICITY EFFECTS**

The belief that jurors can set aside any information they have received pre-trial and base their decisions solely on the trial evidence is counter to much basic research in social cognitive psychology (Fiske & Taylor, 1991; Pennington & Hastie, 1986). Research shows that it is extremely difficult for people to set aside previously acquired information. People tend to make decisions in an integrative manner, and use prior information to guide the interpretation of new information presented to them. People tend to make connections between various pieces of information they have been exposed to and rely on this totality of information to make judgments. At the same time people are guided in their decision making process by pre-determined ideas, thoughts and prejudices. To “set aside” this information, a person must become consciously aware of the prejudicial information, gain mental control over this information, and reverse its biasing effects (Lieberman, & Arndt, 2000). This requires a large amount of cognitive motivation and ability to do so, and even with that it would be difficult to do. This is especially true when people are inundated with new information at a fast pace in an unfamiliar environment such as the courtroom (Jones & Brehm, 1970).

A seminal theory guiding how people make decisions is the elaboration likelihood model (ELM; Petty & Cacioppo, 1986). This theory may be important in understanding how jurors process evidence in the courtroom in light of PTP exposure. ELM posits that when faced with persuasive events individuals process the information either peripherally or centrally. When engaging in central processing people usually analyze the persuasive message and evaluate the quality of the argument set forth. Individuals who use this route are usually strongly motivated to understand the content and render correct judgments.

Central processing most often occurs when arguments are seen as valid and when they are high in quality (Petty & Cacioppo, 1984; Petty, Cacioppo & Goldman, 1991).

Peripheral processing occurs when individuals rely on mental shortcuts or heuristics to make their decisions. In this mode of processing individuals usually rely on decision rules based on cues associated with the argument, such as the length of the argument, or number of arguments from one side or the other, as compared to focusing on message quality or content (Petty & Cacioppo, 1984).

Similar to ELM, heuristic processing models (Chaiken, 1980) propose that individuals may engage various heuristic rules when faced with decisions. One such heuristic is the anchoring and adjustment heuristic. According to Tversky and Kahneman (1974) this is a cognitive shortcut by which an irrelevant number influences one's value estimation of something. In such situations, an individual is typically given an initial estimate of something referred to as the anchor. Research has shown that final judgments are usually correlated with this arbitrary starting point (Chapman & Bornstein, 1996).

This heuristic has been used to study damage award decision making in the area of civil jury research (Daftary & Berry, in press; Green, Bornstein, & Sales, 2003). At the same time the anchoring and adjustment heuristic may serve as an explanation for PTP effects. For instance, jurors exposed to publicity about a case, either pro-prosecution or pro-defense, may form an opinion about the defendant's guilt at the outset of the case. This impression may act as an anchor against which evidentiary information is weighed and influence their final guilt judgments. Thus if a person is exposed to pro-prosecution PTP, they may adjust their opinions as the trial progresses in light of the initial pro-prosecution anchor, and their final decision may be based on this initial anchor that they

were exposed to. At the same time jurors may not be aware of this influence of the initial PTP exposure on their decision making.

Other research on memory and judgment also lends support to the thesis that individuals may not be aware of the influences on their decisions. When people are required to make judgments it would follow that they will retrieve all information relevant to making that judgment. Studies conducted on impression formation show that this may not always be the situation. Early studies in this area examined this phenomenon by giving participants trait descriptions of people and asking them to rate the likability of the people as well as to recall trait adjectives (Derben, Fiske, & Hastie, 1979). Results showed that likeability ratings were affected by the adjectives participants were exposed to earlier in the process, but recall was greater for the later adjectives. Additionally, impression and recall were not correlated. This absence of a relationship was also found in studies on recall and person perception, and judgment of guilt (Fiske & Taylor, 1991).

This research on information processing, and the reliance on heuristics easily translates to how jurors process information and make decisions in a courtroom setting. The legal system often assumes that jurors can set aside extraneous information and can make decisions based on the evidence at hand. Indeed, the constitutional standard of fairness requires that a defendant have “a panel of impartial, jurors. Qualified jurors need not, however, be totally ignorant of the facts and issues involved” (*Irvin v. Dowd*). At the same time theoretical evidence demonstrates that impartiality may not be easily accomplished. Given the integrative nature of human decision making, compartmentalizing information is not an easy task to engage in, requiring significant cognitive effort. Research in heuristic processing has shown that more often than not

people take mental shortcuts and use what they know from prior experiences to inform decision making. Thus, jurors may use what they have heard about the defendant in the press as the basis for their final decisions, unknowingly, thereby undermining the assumptions of the court. Impression formation research also speaks to the underestimation of PTP and PVP effects on decision making. PTP effects may occur when pretrial information initiates some sort of impression regarding the defendant's guilt and this may bias processing of subsequent trial evidence. Thus, numerous factors may influence how jurors process information, influences that may not be controlled via established judicial safeguards and that may, then, influence their ultimate decision.

### **CHAPTER 3: RESEARCH ON THE EFFECTS OF PRE-TRIAL PUBLICITY ON JUROR DECISION MAKING**

Research on the biasing influence of PTP on juror judgments has been ongoing for a number of years. This research has been informed by rich case law leading back to 1807 when Aaron Burr was tried for treason (Abramson, 2000). This section provides a detailed overview of the research that has been conducted specifically in the area of pre-trial publicity and concludes with areas of focus for this study.

What have psychologists learned about the potential biasing effects of pretrial publicity and the implications of that bias for jurors' perceptions and performance that could inform judges' decisions about pretrial publicity? This issue has been of intense interest to legal professionals (see below) in the area as well as to psychologists (see, e.g., Minnow, & Cate, 2001; Moran & Cutler 1991; Imrich, Mullin & Linz, 1995; Otto, Penrod, & Dexter, 1994; Simon, & Eimermann, 1971; Ruva et al., 2007, Studebaker, Robbennolt, Pathak-Sharma and Penrod, 2000). The first wave of research examining PTP effects centered on juror bias, and juror awareness of this bias. These early studies were crucial in establishing the literature that supports the existence of PTP effects as a phenomenon. This foundational research, using basic psychological principles such as priming, and bias formation, helped to demonstrate, that there indeed does exist a PTP effect on juror decision making. This research has been critical in establishing the internal validity of PTP effects and providing the platform for more sophisticated research.

In this early work, little effort was made to examine how and why PTP exerts its biasing effects, and little attention was given to the underlying theoretical mechanisms. More recently researchers have begun to explore the various cognitive mechanisms that underlie these effects. This second wave of research (Hope et al., 2004; Kovera, 2002)

attempts to explain how PTP imparts its biasing effect and is primarily driven by theory (Fulero, 2002; Ruva et al., 2007; Ruva & McEvoy, under review). The courts have often indicated that research does not address the issue of how PTP influences prospective jurors (Moran & Cutler, 1991). This more recent theory driven research can be used to inform courts about the “how” of PTP effects and help in the development of possible remedies. A more extensive discussion of the relevant research follows.

### **Empirical Research on PTP**

Over the past 45 years a substantial body of research has developed, examining the effects of PTP on juror decision making. While some experimental studies suggest that jurors are insensitive to PTP when making judgments about a defendant (Carroll et al., 1986), the majority of past studies indicate that PTP can bias jurors’ perceptions of defendant guilt, criminality and juror sympathy for the defendant both pretrial and after evidentiary presentations (Studebaker and Penrod, 2005).

Tans and Chaffee (1966) were among the first to empirically demonstrate that prejudicial PTP had a biasing effect on mock juror’s perceptions of a defendant’s guilt. They had participants read fictitious newspaper articles on three different types of crimes. Each article contained different types of information such as the presence or absence of a confession, information about the arrest or release of a suspect, and favorable or unfavorable statements made by the prosecuting attorney. They found that participants were more likely to render guilty verdicts when all three elements of the newspaper story were biased against the defendant. This suggests that the more negative information jurors hear about a defendant before a trial, the more likely they are to hold negatively biased perceptions about the defendant’s guilt. In another early study examining the

influence of PTP on juror decision making Sue, Smith, and Gilbert (1974) exposed jurors to either negative PTP regarding the defendant in which the defendant was connected to a gun at the crime scene, or PTP where this connection was not made. This was followed by a four-page trial summary. Participants exposed to negative PTP were more likely to convict (43%) as compared to those exposed to the neutral PTP (23%). The results of this study are hard to interpret, however as there was no control group. Using inadmissible confession evidence as the source of PTP, Padawer-Singh and Barton (1975) found that 72% of jurors exposed to confession evidence voted to convict the defendant whereas only 44% of those in the control condition voted guilty.

Similar studies containing information such as prior criminal record, lie detector test information, and confession evidence have produced parallel findings. Hvistendahl (1979) manipulated four different types of identifying information about the suspect – fictitious address, race, gang membership, and prior criminal record. They found that prior record information led to significantly more guilty verdicts when compared to the other types of information. Similar to Tans and Chaffee (1966), DeLuca (1979) exposed mock jurors to an article containing PTP which included prior arrest information (present, absent), confession evidence (present, absent), and information on whether the suspect passed a lie detector test. They then read a summary of the crime, and responded to questions assessing the defendant's guilt. DeLuca found that jurors receiving articles with biasing information were more likely to find the defendant guilty and that there was an additive effect of additional pieces of evidence. Those exposed to all three negative pieces of information were more likely to render guilty verdicts when compared to those exposed to one or two elements. Recently, Shaw and Skolnick (2004) examined the

influence of physical evidence and witness evidence on decision making. They found that physical evidence PTP produced more guilty verdicts as compared to witness evidence or no PTP.

Otto, Penrod and Dexter (1994) examined the persistence of various forms of PTP on juror decision making. Participants were given newspaper articles containing fictitious publicity about a defendant who had been accused of disorderly conduct. These included defendant characteristics, inadmissible statements by the defendant's neighbor, defendant's prior record and information about the defendant's low-paying job. Results indicated that the influence of PTP persisted throughout the presentation of the evidence, with the strongest effects being found when participants were exposed to the character of the defendant. PTP in this study was however, hypothetical in nature, leaving the question of whether real PTP would have similar effects. At the same time this was an important piece of research as it helped to establish that information obtained before a trial stayed with and influenced participant decision making at later points.

Ruva et al., (2007) explored the potentially biasing effect of PTP on juror decision making. They examined the influence of source memory on juror decision making. Jurors who were confident about the source of the information they remembered were more confident in their decision making. Additionally, they attributed information they had gleaned during PTP as being repeated during the trial, even when it was not. Ruva et al. concluded that this may have led to this information becoming highly salient for them and central to their decision making as they may have given it more importance, given the fact that they thought they were exposed to it multiple times. Along similar lines, Ruva and McEvoy (2008) examined the influence of pretrial publicity and delay on

decision making. They found that exposure to PTP affected verdicts, perceptions of defendant credibility, and ratings of attorneys. Additionally, mock jurors misattributed information presented in the PTP as having been presented at trial. This was one of two studies (see also Kovera, 2002) to examine the influence of both negative and positive PTP and found that both types of PTP influenced juror decisions – that is, participants ratings were affected as a function of type of exposure. Participants exposed to positive PTP were more likely to render a judgment in favor of the defendant, whereas those exposed to negative PTP were more likely to render a judgment in favor of the prosecution.

Other studies have examined potential moderators of PTP effects. Ogloff and Vidmar (1994) examined the influence of medium via which the PTP was delivered – print vs. television. They found that PTP effects were most salient when participants were exposed to both print and television media, followed by television media, and then print media. In an examination of the influence of death penalty attitudes, Butler (2007) found that death-qualified jurors were more likely to feel that the pretrial publicity surrounding a case would have minimal effect on the defendant's right to due process. Kovera (2002) found that attitudes toward rape moderated the relationship between type of PTP exposure (pro-defense, or pro-prosecution exposure) and guilt ratings. Other than these studies no attempts have been made to examine additional moderators of PTP effects.

A line of studies have examined the influence of factual versus emotional case specific PTP (Honesty, Charman, & Levi, 2003; Kramer et al., 1990, Otto, Penrod & Hirt, 1990). Kramer et al. (1990) exposed participants to either factual PTP (prior criminal

record) or emotional PTP (the defendant's involvement in a hit-and-run killing of a child using the same car as the one used in the current crime). They found that participants exposed to emotional PTP were 20% more likely to convict than those not exposed to factual PTP. Honess et al. (2003) examined levels of recall of PTP in an actual case. They found that affective recall but not factual recall was associated with anti-defendant reasoning and confidence in guilt ratings.

In addition to case specific PTP a handful of studies have examined the influence of general PTP (information in the news that is similar to a particular case but does not directly discuss the case facts) (Bradshaw, 2007; Woody & Viney, 2007; Kovera, 2002). It is possible that such information may bias a juror's decision making process. The model of generic prejudice provides a theoretical framework for understanding how certain crimes may activate biases in potential jurors. Generic prejudice is different from other types of biases in the legal system as "the nature of the crime or the type of parties involved cause the juror to classify the case as having certain characteristics, thereby invoking stereotyped prejudices about *any* defendant accused of the crime" (Vidmar, 1997, p. 6). Thus, these are not the specific biases that may be encountered on a case by case basis, but pre-existing prejudicial attitudes and beliefs which facilitate biased categorization and slant the burden of proof in any trial involving a given crime (Vidmar, 2002).

Greene and Wade (1988) examined negative publicity about the wrongful conviction of a serial killer and found it led to a decrease in guilty verdicts of participants who served on an ostensibly unrelated robbery and assault case. Mullim, Imrich and Linz (1996) exposed participants to either general stories of acquaintance rape that portrayed

men as sexual predators or stories about the defendant in the target case. They found that men exposed to the general PTP developed a pro-defense stance whereas women were unaffected. Additionally, case specific PTP had a small impact. In a study to examine the influence of agenda-setting, Kovera (2002) found that individuals exposed to a rape story biased in favor of the defendant wanted more evidence about consent, more evidence from the witness and in general more incriminating evidence overall in order to convict as compared to those exposed to a pro-prosecution rape story. Woody and Viney (2007) found that conviction rates for sexual assault trials were influenced by general PTP. There were significant differences between men and women in conviction rates when no publicity was present but these differences disappeared with the introduction of PTP, such that conviction rates were in the direction of the PTP. These studies provide evidence that PTP may have a broader reaching influence than the immediate case that it concerns. It is possible for publicity regarding one case to influence jurors who serve on ostensibly unrelated cases.

In one meta-analytic review of the literature (Stebly, et al., 1999) 44 empirical tests of PTP effects were examined from articles published between the dates of 1966 and 1997. Stebly et al. (1999) found that participants who had been exposed to biasing accounts of PTP were significantly more likely to prejudge the defendant as guilty when compared to those not exposed to this type of information (average  $r = .16$  in experimental studies, the effect size increases to  $.39$  in survey samples). They also discovered that PTP effects were the strongest when participants were potential jurors as opposed to students, when PTP had multiple accounts of information about the case, when PTP was real as opposed to artificial, and when judgments about the defendant

were made more than one week after the initial PTP was disseminated to participants. Finally, results demonstrate the greatest effects of PTP occur before the trial takes place, yet, effects are still seen post-trial and post-deliberation.

Overall, Steblay et al. (1999) concluded that negative PTP in general increases perceptions of defendant guilt as compared to less negative or no PTP. They found that survey studies had greater effect sizes ( $r = .39$ ) as compared to experimental studies ( $r = .14$ ). A greater effect existed when participants were drawn from the community ( $r = .30$ ) as compared to college populations ( $r = .08$ ). The meta-analysis also shows that longer delays between PTP exposure and judgments were associated with larger effect sizes ( $r = .36$ ). The content of the PTP also resulted in variance in effect sizes. Most importantly, multiple points of information about the crime or the defendant seemed to produce larger effects ( $r = .22$ ) as compared to when one type of PTP is used ( $r = .07$ ). With regard to medium, the greatest effects were seen when medium type was a combination of print and video ( $r = .23$ ) as compared to only print ( $r = .16$ ) or video ( $r = .14$ ).

A potential problem with this or possibly any meta-analysis in the area of PTP research is that the operational definition of PTP varies across studies. The content and amount of PTP is highly variant across studies. The Steblay et al. (1999) meta-analysis did examine the effect sizes of PTP across different types of content, but this was collapsed when calculating other effect sizes, such as those for medium, time sequence, subjects and so on. It is possible that there would have been differing effect sizes for some of these variables depending on type of crime. For example, examining medium (print vs. television) it can be hypothesized that PTP regarding a heinous crime as

opposed to prior record PTP may be more influential when disseminated via television than print media.

Others, mainly in the context of trial consulting research, have examined the effects of publicity through case study research where community members in a jurisdiction in which a high profile case is set to take place are surveyed regarding their opinions (Nietzel and Dillehay, 1983; Simon and Eimermann 1971; Costantini and King, 1980-1981; Moran and Cutler, 1991; Vidmar, 2003). Nietzel and Dillehay (1983) conducted five separate community attitude surveys for five murder cases which were used to support a change of venue. In all five surveys they discovered that more respondents in the trial venue had heard about that case when compared to respondents in different counties. Further, those respondents in the trial venue were more likely to perceive the defendant as guilty when compared to respondents in other counties (these numbers ranged anywhere from 16% to 40%).

In an early attempt to examine the influence of PTP on a community, Simon and Eimerman (1971) surveyed potential jury members one week prior to a murder trial. For this case there had been 25 articles published in the local newspapers spanning a period of 2 months prior to the interviews. The survey revealed that 59% of the venire had heard about the case and were more likely to hold pro-prosecution biases as compared to those who were not familiar with the case. At the same time, all 59% believed that they could act as a fair and impartial juror if called to serve on the case. Constantini and King (1980-1981) found similar results in that there was a significant relationship between the amount of information participants were able to recall about the case and their prejudgments about the defendant.

In a more recent study, Moran and Cutler (1991) surveyed potential jurors on two separate cases regarding their knowledge of the case, attitudes toward the case and general attitudes toward the crime. Greater knowledge of the case was correlated with defendant culpability but this did not influence participants' self-reported ability to be fair and impartial. Arbuthnot, Myers, and Leach (2000) conducted a change of venue survey for a murder case and had similar findings. Case knowledge emerged as a better predictor of defendant prejudice as opposed to case awareness.

In a survey conducted by Vidmar (2003) effects of PTP on juror prejudgments was examined in the John Walker Lindh case. In a change of venue survey, Vidmar selected five locations in which to conduct telephone surveys – Virginia, Illinois, Minnesota, San Francisco and Washington. The telephone survey consisted of a variety of questions concerning terrorism, views about John Walker Lindh, views about the terrorist attacks dealing with September 11, 2001, a variety of questions dealing with jurors' ability to be fair and impartial and several demographic questions. Results demonstrated that more individuals from Virginia held unfavorable opinions about Mr. Lindh and were more inclined to believe he was definitely guilty of the crimes charged against him than jurors from other locations. Overall, results gleaned from these surveys support the results found in experimental studies.

In general, we know that jurors exposed to PTP are more likely to hold opinions about a defendant pretrial, and tend to hold more pro-prosecution attitudes – a finding that is demonstrated by both experimental and field studies. The influence of durability of PTP effects has led to mixed findings. Whereas experimental studies have found no effects, Steblay et al. (1999) found an effect in their meta-analysis, supporting the

hypothesis that the longer the delay between PTP exposure and decision making the greater the effect – this still remains to be demonstrated experimentally. Studies have also shown differential effects of various types of PTP Otto et al. (1994) on verdicts. Additionally, a limited number of studies have examined the influences of attitudes as moderators of PTP effects. These studies have found that case related attitudes moderate PTP effects (e.g. attitudes toward rape in a rape case, Kovera, 2000). At the same time little is known by way of experimental research on the effects of post-venire publicity (PVP). It is possible that PVP functions in a similar manner as PTP as the underlying mechanisms of the effects may be similar. At the same time this has not been tested empirically. An analysis of what is known of PVP effects is expanded on in the next chapter.

## **CHAPTER 4: INFLUENCE OF POST-VERDICT PUBLICITY ON JUROR DECISION**

The courts have recognized that once jurors are seated on a jury they may be exposed to publicity surrounding the case, operationalized here as post-verdict publicity (PVP). As a result, jurors who were not screened out of the jury selection process, and who presumably could, therefore, be fair and impartial, may lose their status if exposed to biasing media about the case once the trial begins. Despite judicial admonitions to ignore the media a Lexis Nexis search revealed over 1500 cases in which midtrial publicity was brought up as a potential issue, between 2004-2009. At the same time, little empirical research on the influence of PVP on juror decision making exists. Given this paucity of research the following section provides an in-depth analysis of case law surrounding PVP that raises a series of empirical questions about the potential influence of PVP on jurors' decisions.

### **Exposure to PVP as Grounds for Appeal in Criminal Cases**

Although jurors are regularly admonished by the court to ignore outside influences such as the media when making decisions. A common instruction given by judges to disregard information in the media at the end of each day of trial is exemplified in *U.S. v. Tolliver* (1995):

I again, remind you, also, most significantly that you refrain from watching any television news reports that might cover this trial and refrain from reading anything in the newspaper that might be written covering this trial. I am relying on you more or less to lock yourselves up at home, if you will, with regard to steering clear of any newspaper reports or news

reports that might cover this trial and please have anyone who lives in your household with you make sure that they cooperate in that effort.

There are a number of documented cases where jurors have either wittingly or unwittingly been exposed to publicity surrounding the case on which they are serving (Vidmar, 2002). When there is suspicion of exposure to publicity during the trial, the defense counsel can request midtrial *voir dire* of jurors. The Court must then decide whether this *voir dire* is necessary. The process of determining whether this *voir dire* is required is spelled out in *United States v. Herring* (1978). The court ruled that the district court must first determine whether the publicity is inherently prejudicial against the defendant. Factors that need to be taken into consideration at this point include the timing of the publication or airing of the news in question, its effects on the defense, and the nature of the material. The next step is for the Courts to consider the possibility that the prejudicial publicity reached the jurors. At this point, the Court must consider the importance of the coverage, its nature, amount, and content. The Court must also consider the nature of warnings that have been given to jurors regarding publicity during the course of the trial. In the event that exposure is a possibility the court should conduct *voir dire* to determine if this exposure actually occurred. Additionally, the Herring court advised that although how this *voir dire* is conducted is at the discretion of the trial court, polling jurors *in camera* seems to be a more effective procedure as compared to polling them *en banc*. This procedure is followed by most federal and state courts around the country.

A number of defendants have, claimed on appeal that publicity exposure midtrial was apparent, and could have possibly prejudiced the jury. There has been substantial

variance in the success of these appeals. An examination of a selection of successful appeals, and some unsuccessful ones will illuminate the issues raised in the PVP context. A number of circumstances have led to successful arguments that midtrial publicity/PVP has sufficiently tainted the jury, that a legal remedy is warranted. In some instances, trial judges have not sufficiently attended to the potential danger of PVP. For example, in *Marshall v. United States* (1959) the 10<sup>th</sup> Circuit reversed a conviction because the jurors had been exposed to two newspaper accounts of the defendant's criminal record during the course of the trial. The trial court questioned jurors individually and even though they admitted reading the articles, the judge concluded that they would not be prejudiced as they claimed they could be impartial in deciding the case. Despite this, the higher court over-turned the conviction on the grounds that jurors' exposure to two newspaper articles regarding the defendant's criminal record was potentially prejudicial.

In *United States v. Aragon* (1992) the defense claimed the trial court erred in refusing to poll the jury concerning an article that was published after the commencement of the trial that could have possibly had a prejudicial effect. This article contained information that was not a part of the official record of the trial, and something that jurors would not have been exposed to in the courtroom. Given that the trial court did not question the jurors, the possible impact of the publicity could not be ascertained. Nevertheless the appellate court believed that there was a high degree of probability that the information reached the jurors. The appellate court found that the court's failure to ascertain the impact of the article was an abuse of discretion and the case was reversed for a new trial.

In *United States v. Disalvo* (1994) the defense claimed that a number of articles had been published detailing the defendant's prior acquittals and reference to him as a "mob lawyer." They argued that the district court abused its discretion when it ruled that these articles were not prejudicial. The appellate court held that there was no abuse of discretion on part of the district court. Additionally, one juror came forth after the case and claimed that other jurors that ignored the court's instructions and read the newspapers as well as discussed the case with family members. On the defense's request the trial court questioned the jurors post-trial *in camera* and found that the jurors were not exposed to any publicity and admonitions given during trial were sufficient to avoid any prejudicial information from tainting deliberations. The appellate court ruled that these steps were sufficient on part of the district court and the conviction was upheld.

In *United States v. McDonough* (1995) the defense appealed on the grounds that following publicity during the trial that was highly critical of the defendant (for example one article described the defendant as, "thin-skinned, irascible, and historically arrogant") the court failed to conduct adequate *voir dire* of the jurors. The court in this case conducted *voir dire* of the jurors individually. Three jurors had started to read the article and stopped, and 4 were aware of its existence, and 1 said her mother had described it to her. The remaining jurors stated they had not seen the article. All stated that the article had not influenced their ability to be impartial. The defense moved for a mistrial but was denied. On appeal the defense claimed that the trial court failed to question the jurors on the content of the article. The appellate court ruled that the *voir dire* conducted in this case was adequate. There was no need for individual questioning as there was no

evidence to the contrary that the jurors responses were not credible, and that they had followed instructions to avoid contact with the media.

In *United States v. Thompson* (1990) after the case closed but before the jury delivered its verdict, an article was published in the local newspaper during a weekend recess discussing a previous plea agreement the defendant had entered into. The agreement was withdrawn before the trial and was not admissible in court. Defense counsel led a motion to *voir dire* the jury to determine whether they had been exposed to the article. The trial court denied the motion, but did ask the jurors whether anything had happened over the weekend that would affect their ability to be impartial. The court did not ask any questions specific to the case, or whether the jurors had read anything about the case. The jury returned a guilty verdict and the defense again asked to be allowed to question the jurors, which was denied. The defense claimed that a new trial was necessary as the court erred in failing to *voir dire* the jury. The appellate court concluded that the general questioning of the jury by the trial judge was not sufficient, and the court should have asked jurors whether they had read the specific article concerning the trial. Using a harmless error analysis the court could not ascertain beyond a reasonable doubt that the article did not come into play when the jury was determining its verdict.

In others, the nature of the material jurors were exposed to trumped judge's reliance on jurors' claimed partiality. In *Government of the Virgin Islands v. William Weatherwax* (1994), the defendant appealed on the grounds of ineffective counsel, stating that his attorney did not bring to the attention of the court the fact that two jurors were seen carrying newspapers into the jury room, and that the jury box contained an article on Weatherwax's testimony from the previous day which had been taken out of context. The

appellate court was concerned that the portrayal of the testimony was extremely close to the actual testimony (with the exception of some key factors), and that jurors may not have been able to tell the distinction. The appellate court ruled that although there was no actual prejudice proven (given that there was no questioning of the jurors) there was room for potential prejudice, which was sufficient to remand the trial for an evidentiary hearing.

In *United States v. Gray* (1985), the trial court denied the request of the defense counsel to question jurors after the publication of a potentially prejudicial article in the local newspaper. The court deemed that the admonition to avoid publicity regarding the case was sufficient. On appeal the appellate court noted that the article was indeed prejudicial in nature and contained information about a previous trial that the defendant was involved in. The details in the newspaper were greater than those to which the jury had been exposed. The appellate court ruled that the failure of the trial court to question the jurors, led to a failure in the ability to determine whether the jury was tainted. As a result the trial court did not take the appropriate steps to ensure a fair trial.

In contrast where the trial court is deemed to have followed adequate procedures to safeguard the defendant's rights or where the nature of the publicity itself is not seen as prejudicial, defendant's appeals have been denied. For example, in *New Jersey v. Harris* (1997) the Supreme Court of New Jersey affirmed a defendant's conviction despite an appeal detailing the prejudicial nature of midtrial publicity against a defendant, and possible exposure of jurors to this publicity. The defendant contended that jurors, in particular one juror, may have been exposed to midtrial publicity. He argued that the Court's failure to conduct individualized *voir dire* of the jurors post-exposure led to a

deprivation of a fair trial. The appellate court disagreed with the defendant ruling that the measures taken by the trial court to question the jurors were adequate. Each time the defense requested *voir dire* of the jurors, the court complied by asking through a show of hands if any of the jurors had read news accounts of the trial garnering no responses. The appellate court found these measures sufficient to find that jurors had not been exposed.

In *United States v. Bermea* (1994) the defense filed a motion stating that the judge did not conduct individual *voir dire* of jurors following potential exposure to prejudicial PVP (midtrial publicity) that had been brought to the defense's attention, and this violated the defendant's right to an impartial jury. The court rejected the appeal and concluded that the lower courts decision not to conduct midtrial *voir dire* was not an abuse of discretion. They stated that the judge's admonitions to avoid the publicity were sufficient. The Court wrote, "We have found nothing in our cases to support a rule that midtrial publicity requires individual *voir dire* even after the district judge has made a collective inquiry to the jury and received no positive response" (pp. 1569)

In *United States v. Tolliver* (1995), the defense requested a mistrial on the second day due to coverage of the first day of trial on television. They did not request that the court *voir dire* the jury regarding the publicity. The appellate court ruled that the publicity was an accurate depiction of the events and thus the defense failed to show that it was "innately prejudicial." Additionally, they ruled that the court appropriately admonished the jurors desist from reading or viewing anything in the media about the case.

In *United States v. Nazzaro* (1989) the defense claims that the court erred in refusing to question the jury after the appearance of a newspaper article where police

officers (not related to the case) were convicted on extortion charges. Nazzaro, a police officer, was standing trial on charges of conspiracy to commit mail fraud. The appellate court ruled that the content of the newspaper article did not concern Nazzaro's case, nor one similar to it, and was therefore irrelevant and the potential for prejudice was a big leap. Additionally, they found that the judge had admonished jurors daily to avoid the media. Based on these facts they concluded that the court acted in an appropriate manner and the ruling was upheld.

There are some key distinctions between the “successful” versus unsuccessful” appeals presented here. One of them being the content of the publicity. It would appear as though midtrial publicity that contains information that is not admissible in court is considered to be more prejudicial in nature as compared to a rehashing of the evidence presented. This results in more successful appeals even when it is not certain whether jurors were exposed to the information. Another important point of matter is the extent of questioning of the jurors. Since this is largely up to the trial judge, it is highly variant across cases. Each judge applied his/her individual standards, based on the abuse of discretion standard, in determining whether an article is innately prejudicial and whether this constitutes a need to examine jurors. This decision-making process is ripe for empirical study, as it is not clearly defined as to what constitutes prejudicial material. Although the issue of PVP clearly arises with some frequency there is essentially no scientific study of its prevalence, or the possible effects of such exposure—a problem to be addressed in the proposed research.

## **The Need to Examine Post-Venire Publicity Effects**

Based on the prior reviews of appellate cases, it appears that PVP is indeed a concern in the courtroom and is an issue that is increasingly being brought up on appeal. At the same time decisions made by ruling judges appear to be based on commonsense psychological judgments as opposed to theory and empirical study. Research may aid judicial decision making with regard to procedures to be followed in the event of PVP exposure.

### **Is PVP the Same as PTP?**

One question that can be raised is that – if PVP is merely exposure to publicity during a trial how and why would its effects be any different from those of PTP; effects that have been studied in the literature. The main focus of experimental and survey studies in the area of PTP research has been on establishing the relationship of PTP to judgments of culpability. Although PTP research is relevant to PVP effects, it is unclear whether PTP research findings map perfectly onto PVP and whether they would produce identical or even similar results. PVP can be distinguished from PTP in several ways.

**Timing of exposure.** PTP exposure can occur at any point in time before the start of the trial. The period between the PTP exposure and the commencement of the trial could be anywhere from years, months, weeks to days (and we do not have a solid understand of how much that matters). On the other hand, PVP exposure occurs during the actual course of the trial, after a person has been seated on a jury.

Timing of exposure to stimuli has been shown to be an important factor in PTP research. For instance, a traditional safeguard employed by the legal system is continuance, whereby the trial is started after a forced delay so as to avoid any prejudicial

effects of PTP. Davis (1986) exposed participants to negative PTP regarding the defendant's character 1-week or immediately before exposure to the trial. He found that those in the immediate exposure condition returned more guilty verdicts as compared to those in the delay condition. Kramer et al. (1990) exposed jurors to either factual or emotional publicity. One half of the jurors got this exposure right before the trial, and the other half were exposed 12 days prior to the trial exposure. Jurors who were exposed to factual publicity were more likely to convict the defendant than jurors not exposed when there was no delay between exposure and trial. However, when there was a delay, publicity did not have a significant effect on conviction rates. Thus, it follows that exposure to PVP might be highly influential on decision making, as it occurs during the course of the trial.

**Durability of PTP/PVP in light of trial evidence.** One might initially think that significant insights into PVP effects might be adduced from research, which examines whether PTP effects endure through the presentation of trial evidence. In fact, such research is unlikely to help for several reasons. First, the exact mechanisms through which PTP influences juror and jury decisionmaking is not well understood, so it is difficult to make arguments on purely theoretical grounds about whether the timing of prejudicial publicity matters—maybe it matters more because it appears while decisions are being formulated, maybe it matters less because, if jurors have already heard opening statements and a bit of trial evidence their impressions are already solid enough to resist extraneous influences. Also, the affect may be attenuated as jurors may heed judicial admonitions to ignore publicity surrounding the case. One aspect of understanding PTP effects includes whether PTP effects are sustained through the presentation of trial

evidence. Although a substantial body of research exists in the area of PTP there are no authoritative answers to this question at present.

Otto et al. (1994) found that bias created by PTP was weakened by trial evidence. However, PTP regarding the defendant's criminal record continued to bias jurors' assessment of the defendant's culpability. Although PTP influenced the participants' initial judgments about the defendant, the effect was weakened by the presentation of trial evidence. Similar results were found by Freedman and Burke (1996). Freedman and Burke (1996) found that participants who had been exposed to more PTP were more likely to indicate that they thought the defendant was guilty before they read the script of the trial. However, after reading the trial script the PTP effect disappeared.

**PTP/PVP and information salience.** Another factor that potentially distinguishes PVP from PTP is salience of the information. Information that is acquired pretrial may be given scant attention and as a result may not be easily accessible. On the other hand information that is acquired during the trial process may be highly salient for jurors. This high level of salience will lead to the activation of schemas related to the information; schemas formed regarding the trial. The PVP may then be incorporated into these schemas. Jurors potentially pay more attention to publicity acquired during the trial process as compared to publicity they have been exposed to pretrial. PVP information has the potential to become even more salient if it fits with the story that jurors have developed regarding the fact pattern during the course of the trial.

Research indicates that “the extent to which information about a person influences a judgment is a function of the implicational relationship between the content of that information and the judgment being made” (Hamilton & Fallot, 1974, pp. 444). Thus the

more inline the PVP is with a juror's story, the more potential for influence. Again this is potentially more influential than PTP as PTP exposure occurs before a juror has developed a story for the trial.

### **Empirical Research on PVP**

Although there is no empirical research on the effects of PVP per se, an extensive search of the literature revealed one survey conducted in Australia by Chesterman, Chan, and Hampton (2001) that found that jurors did engage in out of the courtroom investigations, including investigations on the internet. They found that despite judicial instructions to ignore, at least one juror in each of the 34 of the trials followed the daily newspapers. In one of the cases a juror placed a special order for a newspaper that was likely to cover the case. Additionally, in 32 of these trials the coverage was discussed in the jury room. Of all the jurors interviewed 77% reported being exposed to some sort of PVP. Young, Cameron and Potter (1999) conducted extensive interviews with jurors from 48 cases in New Zealand. They found that jurors engaged in similar ex parte investigations, despite being instructed not to do so. Although jurors in both surveys had a high level of exposure to PVP, the majority of them claimed that it did not influence their verdicts. For example, 98 percent of the respondents to the survey by Chesterman et al. (2001) claimed that they could put specific publicity out of their mind, and that this did not influence their ability to assess the evidence in an impartial manner.

Research of a similar nature is needed in the United States. The majority of the studies conducted; experimental or survey, have examined PTP effects only. Secondly, it is possible that publicity in the United States is more inflammatory than that in Australia or New Zealand as these countries have a rules strictly governing dissemination of

publicity, which is not the practice followed in the United States. Publicity in Australia and New Zealand is limited to the trial proceedings and commentary is not allowed. What is clear is that the theoretical framework that could explain PTP effects, particularly their durability, could also help us understand the possible dangers posed by PVP. Moreover, since PVP occurs subsequent to jurors assuming the official juror role and becoming an integral part of the case, the potential prejudicial impact could be even more severe. Questions about the effects for both PTP and PVP underlie the current research.

## **CHAPTER 5: PURPOSE OF STUDY**

Although a substantial body of research exists in both the field and in experimental settings examining PTP effects, there is room to build upon this previous research. In particular some areas which warrant additional research include – the study of durability and persistence of PTP effects through the duration of the trial; the influence of the amount of PTP exposure on juror verdicts; the differential influence of type of PTP (pro-prosecution vs. pro-defense), and the influence of medium of exposure. Other challenges that have not been addressed in past PTP research that are addressed in this study include issues related to external validity and other methodological challenges expanded on below. Finally, virtually no empirical research exists on the influence of PVP effects, which will be addressed in this study.

### **Durability of PTP**

One remedy that has been suggested by the Court's to combat the influence of PTP has been providing continuances for cases. Limited research conducted on the persistence of PTP effects has shown that the passage of time decreases the influence of some type of information – specifically factual PTP, whereas the effects of emotional PTP seem to persist over time (Kramer et al., 1990). At the same time the time delay between PTP and trial exposure in these studies ranged from 7-12 days, substantially shorter than actual continuances. On the other hand Steblay et al.'s (1999) meta-analysis indicates that the influence of negative PTP increases when the time delay between exposure and judgment is greater than seven days. It is possible that these meta-analytic findings are correct and that sleeper effects may account for the increasing influence of PTP over time. Another possibility is that the meta-analytic finding included studies with

no delay as well. Thus it may be possible that other factors in the studies in which delays were introduced varied systematically with delay thereby increasing the influence of PTP. Thus further research is needed to examine the influence of delay on judgments, taking into consideration various manipulations in delay.

### **Type and Quantity**

Most studies employ PTP that is pro-prosecution, anti-defendant in nature. Although this is the most common type of PTP in criminal trials, nevertheless PTP favoring the defendant has been found in a number of trials including but not limited to rape, murder, and those involving police officers as defendants. Additionally, it is extremely common in civil trials. In an extensive review of the literature we identified three studies that used pro-defendant PTP (Greene & Wade, 1998; Kovera, 2002; Woody & Viney, 2007). This PTP in all three studies was general and not case specific in nature. Thus, research is needed to examine the effects of case-specific pro-defendant PTP.

The influence of quantity or amount of PTP exposure has not been examined to date. A majority of the studies do not vary the quantity of PTP participants are exposed to. Burschke and Loges (1999) found that 19% of the cases were covered in 1-5 articles, 18% in 6-10 articles, 16% in 11 or more, and 46% received no coverage. This amount is higher when the case involves high profile crimes (those in which PTP is mostly of concern). For example Studebaker and Penrod (1997) reported that in the 9 months following the Oklahoma City bombing there were 939 articles published in the *Daily Oklahoman*. Thus given that exposure rates vary, it is necessary to examine if there is a differential influence of amount of exposure on juror decision making.

## **Medium of Exposure**

A limited number of studies have examined the influence of print versus television media on verdict decisions. Overall, Steblay et al. (1999) found a greater effect of the combination of both types of media ( $r = .23$ ) as compared to print ( $r = .16$ ) or video ( $r = .14$ ) alone. However, as Steblay et al. noted, once survey studies were removed from the analysis the effect was substantially reduced ( $r = .09$ ). Given this finding it is not clear whether there is a significant difference in the influence of print and television media in experimental studies where the medium is manipulated. Further research is warranted to examine this effect.

## **External Validity**

A major concern that has been raised in the area of PTP research is the external validity of research findings. Empirical studies in the laboratory have been able to link PTP exposure to verdict decisions, albeit at the cost of external validity. At the same time, although case studies and survey research of individual cases are unable to make the direct link between PTP exposure and judgments. Given this research is needed that can blend both experimental and case study methods to provide a more externally valid test of PTP effects.

## **Methodological Challenges**

Both experimental and survey methodologies have positive aspects, for example field studies make use of the actual venire, real cases, and real PTP; experimental studies make use of specific components of PTP so that they can draw strong conclusions regarding what is biasing and what is not. At the same time, these studies have some inherent limitations conducted in isolation of one another.

**Experimental methodologies.** Although these methodologies allow greater control over the conditions under which participants are exposed to PTP, they do not parallel what occurs before or during a real trial. Most experimental studies expose participants to artificial PTP moments before they watch a trial or read a trial transcript and then ask them to render judgments. Given the short time frame in which participants are exposed to the information (ranging from 30 minutes to a maximum of 1 week), it is conceivable that the results are more a function of priming effects. Realistically, potential jurors are usually exposed to PTP weeks, or even months before a case goes to trial.

Additionally, most studies expose participants to one article related to the case (Hope, et al., 1994; Ogloff & Vidmar, 1994; Ruva, 2007). Given the nature of media reporting, and the plethora of information potential jurors are exposed to, this could be a potential limitation to the existing research. Burschke and Loges (1999) examined pretrial reports of first-degree murder cases between 1993 and 1995. They found that 19% of the cases were covered in 1-5 articles, 18% in 6-10 articles, 16% in 11 or more, and 46% received no coverage. Given that they only focused on one type of crime, it is conceivable that this rate exists for other types of crimes, as well as other cases. This amount is even higher when the case involves high profile crimes (those in which PTP is mostly of concern). For example Studebaker and Penrod (1997) reported that in the 9 months following the Oklahoma City bombing there were 939 articles published in the *Daily Oklahoman*. A majority of the studies do not vary the quantity of PTP participants are exposed to. The average amount of PTP exposure is limited to one article, which as mentioned above does not parallel what is seen in the media, especially with regard to high profile cases.

Furthermore, a majority of the studies have made use of student samples, and as pointed out by Steblay et al. (1999) effect sizes of the influence of PTP seem to be higher in community samples as compared to student samples. Additionally, most studies make use of artificial PTP (Otto et al., 1994; Kovera, 2000), and unrealistic case presentations, for example a 1-page summary of a legal case. Therefore, the generalizability of the results gleaned from experimental studies is restricted and researchers such as Carroll et al. (1986) have contended that more realistic studies are needed to fully understand how PTP exerts its effects in real world settings.

**Case studies in the field.** As most case studies rely on survey methodology is it impossible to make causal inferences. Additionally, all the studies surveyed here were done in an advocacy context, and are inherently limited by the goals of the researchers. It is unclear whether exposure to PTP leads to negative perceptions of defendants, or whether certain individuals seek out specific information leading them to develop a pro-prosecution bias (Moran and Cutler, 1991). Community surveys suggest that exposure to PTP leads to prejudgments and bias, but it is unclear if this persists through the presentation of case facts. Most such studies have demonstrated that individuals exposed to PTP, and those that know specific details about the crime including inadmissible information, are more likely to hold pro-prosecution attitudes and prejudge the defendant as guilty (Arbuthnot, Myers and Leach, 2001; Costantini and King, 1980-1981; Nietzel and Dillehay, 1983; Simon and Eimermann 1971). However, case studies do not test whether PTP effects will survive the presentation of trial evidence, argument and instruction.

Overall there exists a substantial body of basic research that examines the effect of PTP on jurors' decision making. A significant amount of fundamental work has been done in this area, and has provided support for some basic psychological principles of decision making. The work on PTP effects so far has shown that this phenomenon can interfere with legal decision making. These PTP effects have been demonstrated consistently in the laboratory setting confirming internal validity, at the same time as mentioned previously, the courts are somewhat averse to accepting these research findings. Given that these findings are well established in the laboratory, we need to examine whether they are replicable in the field. PTP as demonstrated is a phenomenon which can play a significant role in decision making, and it is important as researchers to help the courts see this. Thus, it is important to help establish the external validity of these effects, which is the next logical step in this line of research.

One criticism that is often raised in PTP research is that it is not externally valid, in that most of the PTP is artificially generated, case stimuli, if any are highly abridged and the time delay between PTP exposure and trial evidence is short thereby not being able to test durability of PTP effects. Currently no studies in published literature have examined the influence of PTP effects throughout the course of a real trial. This study built upon prior research by taking advantage of a real high-profile criminal case while it was in session. Multiple measures of juror judgments throughout the course of the trial provided a more complete understanding of decision making process, as well as allowed for the assessment of the persistence of PTP effects. Additionally, the influence of publicity that arose during the course of a trial was examined. High profile cases are usually followed very closely by the media. Jurors who are not sequestered in such cases

(which is the majority of cases) may unwittingly be exposed to information regarding the case in the media – regardless of how much of an attempt they make to avoid it. Thus, examining the influence of this mid-trial exposure becomes relevant, especially given the large number of motions for mistrials on the grounds of juror exposure to media during the course of a trial.

### **Research Questions**

Given the pervasiveness of the media it is difficult if not next to impossible to be unaware of happenings in one's community. This is especially true when a heinous crime is committed, or there is some other violation of the law – be it civil or criminal. Thus, it is difficult to find a venire person who has not have been exposed to some sort of publicity regarding a high-profile case on which they have been called for jury duty. It becomes important then to determine just how much influence this information may have on a person's decision making, if any. An examination of how pre-existing attitudes, and biases formed as a function of exposure to information will allow such an examination.

Overall the research questions were:

*1. To extend previous research in the area of PTP effects by examining the influence of the durability of pro-defense and pro-prosecution PTP on juror verdicts:* The current study extended past research as it examined the durability of these effects in an online fashion through the course of a real trial. Previous research has shown that the influence of PTP, especially factual PTP decreases over a period of time (although the time delays were relatively short – 7-12 days). At the same time, contrary to previous research, Steblay et al. (1999) in their meta-analysis found that the effect of negative PTP increases when the period between exposure and the trial exceeded seven days. Given this

discrepancy, and the fact that delays in actual trials are usually longer than seven days there is a need to examine whether PTP effects will persist throughout the course of a real trial. To examine this, jurors' perceptions of case evidence were evaluated throughout the course of the trial and the influence of these perceptions on final verdicts was examined.

It was hypothesized that jurors exposed to pro-defense PTP will hold more pro-defense attitudes as compared to jurors exposed to pro-prosecution PTP, and vice versa -- this will be reflected in their evaluation of the evidence and witnesses at various time points. Additionally, it was hypothesized that jurors in the pro-defense PTP condition would be more likely to render a not guilty judgment as compared to those in the pro-prosecution PTP condition.

*2. To examine the differences in the influence of experimentally manipulated PTP and natural exposure to PTP:* Participants in the location in which the trial is taking place were not artificially exposed to PTP, whereas the experimental group was exposed to manipulated PTP. This allowed us to examine the differences in evaluations of evidence, and verdict decisions by participants who were been forced to attend to certain information, and those who self-selected the information they paid attention to. An evaluation of the influence of different frames presented – a pro-prosecution frame, a pro-defense frame, and a natural exposure frame, which most likely will contain a mixture of both frames, was made feasible. In line with the Steblay et al. (1999) meta-analysis it was predicted that bias effects would be the strongest pretrial for both experimental participants and for jurors exposed to natural PTP and would taper off during the course of the trial. Because no published research has yet investigated the impact of natural PTP

on jurors' verdict preferences it was unknown whether PTP effects would persist for jurors exposed to natural PTP.

3. *To examine the influence of the amount of PTP exposure on judgments.* Most PTP research exposes participants to one article before the presentation of evidence.

Realistically though, in high profile cases (which are usually the target of PTP related issues in the court) perspective jurors are exposed to more than one point of PTP. In the current study participants were exposed to high and low amounts of PTP in order to examine the effects of amount of PTP exposure on decision making. Previous research has examined the influence of multiple elements of PTP (e.g. Tans & Chaffee, 1966) and found that level of bias increases as the number of elements increase. The current study examined whether the increase in frequency of exposure led to an increase in bias. Specifically, it was hypothesized that those in the high exposure condition would be more likely to be biased in the direction of the exposure as compared to those in the low exposure condition.

4. *To examine the influence of medium of exposure on judgments:* The Steblay et al. (1999) meta analyses found that the effects sizes for print media ( $r = .14$ ) and for video media were similar ( $r = .16$ ). At the same time, this effect size was significantly driven by tests from survey studies. When these were removed the effect size went down to  $r = .09$ . Given this difference in effect sizes with the removal of survey studies. We chose to examine the influence of medium on guilt judgments after media exposure but before exposure to trial material, as well as post-trial to look at the differences in influence. It was hypothesized that participants exposed to pro-prosecution video publicity would be more likely to find the defendants guilty pretrial, but this effect would be mediated by the

presentation of trial evidence. Similarly, participants exposed to pro-defense video publicity would be more likely to find the defendants not guilty pretrial, but this effect would be mediated by the presentation of trial evidence.

5. *To examine the influence of PVP on juror decision making.* It is conceivable that once empanelled jurors are exposed to publicity regarding the case it could influence their perceptions of evidence and their ultimate verdicts. Although this has been recognized as a problem by some courts, it has not been subjected to empirical examination. The current study had three levels of PVP exposure, participants in the low exposure conditions, both, pro-defense or pro-prosecution will be exposed to PVP, in the same direction as the original PTP. Additionally, a group of participants who were not exposed to any PTP, were exposed to pro-prosecution PVP. It was possible that this PVP exposure acted as a booster shot and increased the salience of the slant or frame to which the participants were exposed, thereby influencing verdict decisions. Specifically, participants in the low PTP exposure/PVP condition (pro-defense or pro-prosecution) would be more likely to evaluate the evidence in favor of the frame presented (pro-defense or pro-prosecution) as compared to participants in the low PTP exposure/no PVP condition; and vice versa. Additionally, participants in the low PTP exposure/PVP condition (pro-defense or pro-prosecution) would be more likely to render verdicts in favor of the frame presented (pro-defense or pro-prosecution) as compared to participants in the low PTP exposure/no PVP condition; and vice versa. It was also hypothesized that participants in the control/PVP condition would be more likely to render guilty verdicts as compared to participants in the control/No PVP condition.

## CHAPTER 6: METHOD

### Research Design

The design was a 3 Type of PTP exposure (pro-prosecution TV, pro-prosecution paper, pro-defense paper) X 2 Post-Venire Publicity exposure (present, absent) X 3 PTP Exposure level (High, Low, None) incomplete factorial between groups design plus one natural exposure group. See Figure 2 for the cells tested.

The study employed a panel design allowing for better measurement and assessment of PTP and PVP effects. Panel data is helpful in understanding the dynamics of how opinions and perceptions change. This type of a design is helpful in predicting cumulative effects as the research is not conducted in one sitting, but progresses over a period of time. It thus allows for an examination of the durability of the effects under scrutiny as well as the influence of other, sometimes competing stimuli.

### Case Selection

The target case for this study was a case tried in the Supreme Court of Queens County, New York, *The People of the State of New York v. Michael Oliver, Gescard Isnora, and Marc Cooper*. The defendants, undercover police officers with the New York Police Department were charged with manslaughter in the death of Sean Bell on the morning of his wedding. On the night of the incident the police officers were staking out a nightclub in Queens, to uncover a prostitution ring. At the end of the night, when the club was closing, one officer witnessed an argument between a friend of Sean Bell and another patron of the club in which he thought he overheard Sean Bell's friend say that he was going to his car to get a gun. The police officer radioed his colleagues for back-up. Instead of waiting for his back-up to arrive the officer (who was not in uniform but

dressed to blend into the crowd) approached Sean Bell's car with his gun drawn. When Bell and his companions saw a man approaching them with a gun drawn they revved the engine and tried to escape. In the process the car scraped the officer's leg. Around the same time the back-up van arrived and witnessed this event. The two officers in the van and the officer on the steer opened fire on the car with Bell and his friends, firing a total of 50 shots. Bell's two friends survived – one with 19 shots in his body, but Bell was fatally shot.

There was conflicting testimony from the prosecution and the defense in this case. The prosecution claimed that the officer did not identify himself when he approached Bell's car with his gun drawn, and as Bell and his friends had just been in a fight they feared for their safety. The defense claimed that the officer had his shield displayed and identified himself as the police. They also claimed that the officer believed that the front passenger was reaching for a gun. There was no gun found in the car or the vicinity and all the shots fired were from the officers' guns.

A number of aspects of this case made it particularly suitable to the current study purposes – 1) there was extensive media coverage surrounding this case that revealed biases both for the prosecution and for the defense. The story received local as well as national coverage and became a focal point for the New York public. The day after the incident the Mayor of New York said that he believed that the officers used “excessive force” which led to much controversy. There were a number of protest organized around the time of the incident as well as when the case went to trial. One of the most vocal supporters of the Bell family was Rev. Al Sharpton, a social justice advocate. Sharpton's vocal support on this case led to much debate surrounding the events and motivations

behind these events; 2) the case was racially charged as the three victims were of African-American and Hispanic descent. Many claimed that the police's actions were reflective of racial biases against men of color. The defense refuted this citing the fact that two of the accused officers were of African-American and Hispanic descent; 3) The Police Commissioner and the Union were highly supportive of the officers and there was substantial media coverage in support of the officers as well. Additionally, the defense went somewhat on the offense claiming that the victims were not upstanding citizens of society and highlighted their previous run-ins with the law; 4) The defense in the case filed a change of venue motion with the court claiming that the jury pool had been contaminated due to the extensive media coverage; 5) The prosecution in this case filed a motion in response to the defense motion citing PTP that was supportive of the defense case. The judge denied the change of venue and as a result the defense opted for a bench trial; 6) There was substantial coverage of the case during the course of the trial. There were daily updates on the case in all leading local newspapers, as well as television news channels. There were approximately 20 front-page headlines on the case, providing for substantial PVP.

All these factors, the extensive coverage, the public outrage, the re-victimization of the victims, the support for the police, the pro-defense and pro-prosecution PTP, and the legal responses to this coverage, all led to this case as being ideal for the purposes of this study.

### **Participants**

The study design had two distinct samples of participants. The first sample of participants were in the remote location. This sample, referred to as the "remote" group

was experimentally exposed to PTP via the research design explained above. The second sample of participants were recruited in the same venue as that in which the case occurred and had been possibly exposed to PTP regarding the target case in their natural environment and comprised the local venue group. This method of recruitment was chosen as it allowed an assessment of natural exposure to PTP for those in the local venue as well as an experimental assessment of PTP by selectively exposing individuals from the remote location to natural PTP accumulated from the local venue. Among the experimental group, knowledge about the case was assessed during the registration process. Those who were knowledgeable about the case were tracked and their results were compared to others who had no knowledge of the case. The other participants were randomly assigned to one of the six experimental groups.

Participants were recruited via an advertisement on craigslist.com (see Appendix A), a local area listing website. Participants who answered the advertisement were screened for jury eligibility by completing a series of questions asking them to report their age, country of citizenship, whether they possessed a driver's license or other state registered identification, and whether or not they had a felony conviction. Those who met the eligibility criteria were invited to participate in the study via email. Once a participant agreed to participate they were entered into the study database.

Participants in the remote condition were randomly assigned to one of the 5 experimental conditions. Participants were paid \$8 for each half hour session they completed plus a bonus of \$25 if they complete all 6 sessions. We recruited 130 participants in the local venue and 250 participants for the remote venue. Our final

sample consisted of 115 participants in the local venue (12% attrition rate) and 217 participants in the remote venue (14% attrition rate).

*Local Venue:* Of the 115 participants, 84 (73%) were female and 31 (27%) males. The average age of the participants was 36.92 ( $SD = 12.53$ ) years, with a range of 18 to 72. The sample was ethnically diverse with 66 Caucasians (57.4%), 22 African – Americans (19.1%), 9 Hispanics (7.8%), 7 Asian-Americans (6.1%), and 11(9.6%) who identified as other. Additionally, 43.5% ( $N = 50$ ) of the participants were college graduates, 24.3% ( $N = 28$ ), were high school graduates only, 19.1% ( $N = 22$ ) had a post graduate degree, 10.4% ( $N = 12$ ) had some graduate school training, and 2.6% ( $N = 3$ ) had some high school education. Finally, 85% of the participants were familiar with the Bell Case.

*Remote Venue:* Of the 217 participants, 147 (67.7%) were female and 70 (32.3%) males. The average age of the participants was 33.25 ( $SD = 120.32$ ) years, with a range of 18 to 67. The sample was primarily Caucasian 187 Caucasians (86.2%), 11 African – Americans (5.1%), 11 Asian-Americans (5.1%), 4 Hispanics (1.8%), and 4(1.8%) who identified as other. Additionally, 38.7% ( $N = 84$ ) of the participants were college graduates, 23.5% ( $N = 51$ ), were high school graduates only, 21.2% ( $N = 45$ ) had a post graduate degree, 15.7% ( $N = 34$ ) had some graduate school education, and 0.9% ( $N = 2$ ) had some high school. Finally, 5% of the participants were familiar with the Bell Case (all analyses were conducted with and without these participants. There were no significant differences so the results were collapsed to include all participants).

## **Materials**

**Pretrial Publicity.** Actual media coverage of the Bell case was exhaustively searched. PTP was gathered from news media databases – Lexis-Nexis and Google News and from archives of local newspapers in New York City To date there have been approximately 1000 articles published on this case. To select the experimental set of articles to present to participants, and to be consistent with the external validity goals of the study, the actual change of venue motions that were filed in the case were reviewed. Both the defense in their motion and the prosecution in their reposne including carefully selected articles that were available to make the legal argument that the media was prejudicial and harmful to their case. Hence, we used these same articles as our stimulus material. These included a combination of “hard news” articles as well as editorials, and commentaries taken from local news sources such as The New York Times, The Daily News, The New York Post, and the NY1.com website. These were piloted to ensure that the evaluative slant was in the direction predicted. Articles on average were 501 words in length (See B for sample articles).

**Post-venire publicity.** Participants were exposed to one article at the completion of session 4 which served as the PVP exposure. This article was either one with a pro-defense or pro-prosecution slant, depending on the condition participants were in. The articles were two editorials that represented opposing viewpoints on the evidence that was being presented at trial (See Appendix C). The articles were each 350 words in length and taken from the local newspapers.

**Trial Summaries.** All participants (remote and local) were presented with the same trial summaries in question/answer format as the case progressed. These were

summaries that were prepared by the principal investigator based on actual case testimony. Two graduate students and the main investigator attended all days of the trial. They transcribed testimony as it was delivered and typed up the notes of the testimony at the end of the day. This testimony was then condensed to fit into a 30 minute session by the main investigator. These summaries were presented in 5 sessions (See Appendix D for trial summary).

- Session 2: Participants completed *voir dire* packets and read opening statements by the prosecution and defense attorneys.
- Session 3: Participants read summaries of prosecution evidence and viewed exhibits that had been released to the public.
- Session 4: Participants read summaries of the remaining prosecution witnesses and viewed exhibits that had been released to the public. Participants were exposed to the PVP in this session after they read the testimony and responded to a series of question.
- Session 5: Participants read summaries of defense witness testimony and viewed exhibits that had been released to the public.
- Session 6: Participants read closing arguments from the prosecution and defense, were instructed on the law, and asked to complete a number of judgment questions, along with verdict judgments.

As a part of the study all participants were instructed to avoid the media and any coverage regarding the trial during the duration of the study. At the conclusion of each session participants read pattern instructions regarding pretrial publicity (see appendix E

for judicial instructions). This is typically done in all trials, especially those with high levels of media exposure.

### **Manipulations**

**Type of Publicity.** Remote participants were exposed to either pro-prosecution or pro-defense publicity from the articles mentioned above. Additionally there was a control condition in the remote venue where participants did not receive publicity related to the case.

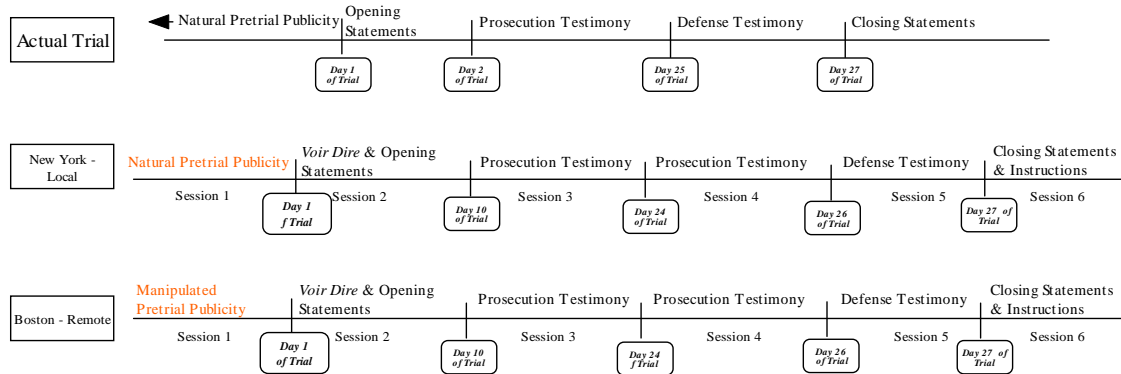
**Amount of PTP.** Remote participants receiving PTP were either in a high exposure (10 case related articles) or low exposure (5 case related articles, 5 non-case related articles) condition. Local venue participants and remote venue control participants read 10 unrelated articles.

**Medium of PTP.** For those who received prosecution slanted PTP the medium of exposure was either via newspaper articles or television clips.

**Post-Venire Publicity.** Participants in the PVP conditions received a newspaper editorial, midway through the trial that was slanted in the direction of their original exposure. That is participants in the pro-prosecution condition received an article with a prosecution oriented slant. A set of control participants who had not been exposed to any PTP also received PVP – slanted toward the prosecution.

## Measures

Below is a timeline of events during the actual trial and study period (Figure 1).



*Session 1:* In session 1 remote participants read articles that constituted the PTP manipulation. Local participants read unrelated articles so as to keep the information load equivalent in all conditions. Following this all completed a series of manipulation check questions to ensure they had read the content of the articles. A sample question for those in the remote condition was: How many shots did the police fire at Sean Bell and his friends?

*Session 2, Voir Dire:* Participants completed two scales measuring their attitudes on various dimensions. Participants completed the Revised Legal Attitudes Scale-23 (Cutler et al., 1999) which is a measure of legal authoritarianism. This is a one factor scale with good reliability,  $r = .71$ . This scale was given to participants as legal authoritarianism has been shown to play a role in legal decision making, and has been shown to influence final verdicts (Cutler et al., 1999).

Participants also completed two subscale of the Perceptions of Police Scale (Hader & Snortum, 1975) – the Police Violence Scale and the Racial Discrimination Scale. The Police Violence Scale measures the perceived use of violence on part of the

police and the Racial Discrimination Scale measures consists of items that refer to police interaction with racial minorities. Both scale have good reliability –  $r = .68$  and  $r = .72$  respectively. This scale was administered as it is relevant to the focal case. The case was related to a police shooting, and we thought it pertinent to measures participants' attitudes regarding the police.

Additionally, participants completed a series of demographic questions including age, gender, ethnicity, and education level.

*Session 2, Opening Statements:* In session 2 participants read shortened versions of the actual prosecution and defense opening statements. The prosecution opening statement was 862 words in length, and the defense opening statement was 859 words in length. Following each statement participants completed measures regarding perceptions of the attorneys as well as guilt leanings.

*Session 3, 4, 5:* In sessions 3, 4, and 5 participants read summaries of witness testimony. The summaries were in question answer format and were based on actual testimony in the courtroom. After the presentation of testimony in each session participants completed a series of questions. These included a series of questions evaluating the witness (e.g. How trustworthy were the prosecution witnesses as a group?), and an open-ended question asking for additional information regarding their opinions. In session 4 participants in the PVP exposure condition were asked to read an article after responding to the questions related to the testimony presented in the session. This article was either pro-defense or pro-prosecution in nature (depending on the condition). Participants were informed that an article had been recently published by the media which was relevant to the case, and

were asked to go to the next page on the website to read it, if they were interested. Those in the no PVP condition read an article unrelated to the case.

*Session 6:* In session 6 participants read the prosecution and defense closing statements. The prosecution statement was 585 words in length and the defense statement was 560 words in length. They then completed a series of questions regarding the prosecution and defense closing statements (e.g. How persuasive was the prosecution's closing argument?; How strong do you feel the prosecution's case was?). Following this they read the judge's instructions. They then rendered their verdicts on the 4 counts of manslaughter, rated their confidence levels for the verdicts rendered and stated the most important piece of evidence related to their decision making.

*Dependent Measures:* The dependent measures in this case were verdict measures related to the charges in the case. Each defendant was charged with manslaughter in the first degree and manslaughter in the second degree. Thus there were four distinct verdicts – Manslaughter in the first degree for defendant 1; manslaughter in the second degree for defendant 1; manslaughter in the first degree for defendant 2; and manslaughter in the second degree for defendant 2. Participants rendered guilty/not guilty verdicts on each count creating dichotomous variables. See Appendix F for all dependant measures.

## **Procedure**

Participants who answered the advertisement on craigslist.com were screened for jury eligibility by completing a series of questions which asked them to report their age, country of citizenship, whether they possessed a driver's license or other state registered identification, and whether or not they had a felony conviction. Those who met the eligibility criteria were invited to participate in the study via email. Once a participant

agreed to participate they were entered into the study database. All eligible participants were sent the link to the study website and once they clicked on the link they were required to read and accept the informed consent before proceeding. The informed consent gave them information about the study, their rights as a participant, and contact information for the principal investigator. Once they accepted the informed consent by clicking a button, they were asked to register by creating a login name and password.

Three weeks before the start of the trial participants were contacted and informed that they would be receiving the first session of the study within a week. The sessions were conducted in the actual time frame in which the trial took place (see Figure 1).

*Session One:* Session 1 was conducted two weeks prior to the start of the trial. Participants read through newspaper articles regarding the case. The evaluative slant of the articles was determined according to their experimental condition. Participants in the local venue and remote control conditions read 10 non-case related articles. Participants in the manipulated high exposure/newspaper conditions read 10 articles depending on the bias condition they were in (pro-prosecution vs. pro-defense). Additionally, if they were in the low exposure condition they read 5 case related articles and 5 non-related articles.

*Session Two:* Session Two was conducted after the first day of the start of the trial. This session assessed participants' knowledge about the target case, attitudes toward the criminal justice system, opinions regarding the defendant, and other case related facts and attitudes. Participants then read through summaries of opening statements given by the prosecuting and defense attorneys. These summaries were taken from the actual testimony in the courtroom. After reading the summaries participants were asked

questions pertaining to the believability, likeability, and persuasiveness of the attorneys as well as their leanings toward guilt or innocence with regard to the defendant.

*Session Three:* In session three participants read summaries of testimony by the prosecution witnesses. These were taken from the actual testimony in the courtroom and presented in question answer format. The participants were then asked to respond to a number of questions regarding believability, likeability, and persuasiveness of the various witnesses, and their current guilt ratings.

*Session Four:* In session four participants read summaries of testimony by the remaining prosecution witnesses. These were again taken from the actual testimony in the courtroom and presented in question answer format. The participants were then asked to respond to a number of questions regarding believability, likeability, and persuasiveness of the various witnesses, and their current guilt ratings. Following this participants in the PVP condition were exposed to an article regarding the case in the evaluative slant of their PTP exposure. Those in the no PVP conditions were exposed to a non case-related article.

*Session Five:* In session five participants read summaries of testimony by defense witnesses. These were also taken from the actual testimony in the courtroom and presented in question answer format. The participants were then be asked to respond to a number of questions regarding believability, likeability, and persuasiveness of the various witnesses, and will be asked for their current guilt ratings.

*Session Six:* In session six participants read summaries of prosecution and defense attorney closing statements. Following closing arguments participants were asked to rate the strength of each closing argument, the strength of the overall case presented by each

side, read jury instructions, render judgments about defendants' guilt and answer questions related to the evidence presented throughout the duration of the trial. This was done before the actual verdict in the case was announced in the media.

## CHAPTER 7: RESULTS

### Data Analytic Strategy

Analyses were conducted in four stages:

- 1) The first stage of the analysis was to create various composite variables to be used in the analysis. This included the creation of a verdict variable, and a series of composite variables. Measures of witness perceptions, strength of the evidence, and verdict were then examined using confirmatory factor analyses to develop composite variables for verdict and other ratings of evidence and credibility of witnesses. This was done so as to avoid problems associated with multicollinearity, as well as preserve degrees of freedom.
- 2) The next stage of the analysis was to conduct descriptive analysis to provide an overview of participant characteristics, perceptions of defense and prosecution witnesses, and verdict.
- 3) In the third stage, bivariate correlations were computed for all variables in the analyses. A correlation matrix is presented in Table 1.
- 4) Path analyses were conducted and structural models developed using the statistical program AMOS, using maximum likelihood estimation. The paths estimated in the model were theoretically driven. Remote and local venue samples were analyzed using multi-group methods. Model fit indices reported include the Incremental Fit Index (IFI), Comparative Fit Index (CFI) and Root Mean Square Error of Approximation (RMSEA). The IFI is a relative fit index which compares the chi-square of the model tested to that of the baseline model. It is relatively unaffected by sample size. The CFI and RMSEA are non-centrality based indices.

IFI and CFI value close to 1 indicate a very good fit of the data to the model, and a value of .08 or less for the RMSEA would indicate a reasonable error of approximation (Kline, 1998).

*Moderator variables:* Along with the main variables of interest we also examined the influence of other moderating variables in the model. These included gender, ethnicity, education level, and relevant attitude measures. Little attention has been given to these variables in past PTP research, with the exception of Kovera (2002) who examined gender effects. She found that in making their decision women requested evidence regarding the defendant's credibility more often than men did. Of course, the trial stimulus was a rape case which could have been the sole reason for the produced effects. Thus, given that little attention has been paid to these variables it is important examine their effects, if any. In the context of the present study, it is possible that ethnicity of the participant could account for a substantial amount of the variance. As explained in the methods section, this trial was surrounded by racial undertones, as the victims in the case were African-American and Hispanic men. Additionally, there have been continuous tensions between the New York Police Department (NYPD) and critics with regard to racial profiling in shootings, and the NYPD "stop-and-frisk" policy where African-American men are mostly targeted (NYCLU, 2008). Thus we thought it prudent to examine any influence of participant ethnicity on decision making. Finally, education level has not been examined as a moderator of PTP effects in prior research. We chose to include this variable to investigate whether levels of education would influence people's perceptions and processing of PTP.

## **Stage 1: Composite Variable Development**

### ***Verdict Variable.***

The primary dependant measures were the verdicts rendered by the participants. Participants rendered 4 verdicts related to the different counts the defendants were charged with (see Table 2). An exploratory factor analysis was conducted on the 4 verdicts and one factors emerged. Factor 1 consisted of the manslaughter in the first degree and second degree charges and accounted for 58.12% of the total variance. Thus, one verdict variable was constructed which ranged from 0-4 (that is, guilty on no counts, to guilty on all counts).

### ***Composite Variables.***

To analyze the impact of credibility ratings of the witnesses on participants' verdicts, we created three composite variables. These variables were based on the measures that asked participants to evaluate the witnesses after the presentation of testimony in session 3, 4, and 5. Factor and reliability analyses were conducted on the four questions relating to trustworthiness, persuasiveness, believability, and level of influence that were asked after each set of testimony. The specific composites were – prosecution composite 1, after the first session of prosecution testimony (Cronbach's  $\alpha = .90$ ); prosecution composite 2, after the second session of prosecution testimony (Cronbach's  $\alpha = .95$ ); and defense composite, after the session of defense testimony (Cronbach's  $\alpha = .92$ ). Given the high factor loadings, participants' scores were averaged on the four measures, for each set of testimony, resulting in three composite variables. Higher scores indicated more positive ratings.

***Exposure bias variable.***

To measure the influence of bias of PTP exposure (pro-prosecution or pro-defense) and amount of PTP (10 articles vs. 5 articles) on verdict decisions for remote sample participants, a scalar variable was created ranging from -2 to +2 (with -2 indicating high exposure defense bias, -1 indicating low exposure defense bias, 0 indicating no exposure, +1 indicating low exposure prosecution bias, and +2 indicating high exposure prosecution bias).

As local venue participants were not directly exposed to a particular slant of the news, an attempt was made to examine possible exposure to biased news. Participants were asked to indicate the names of newspapers that they read on a daily basis. Additionally, they were asked to indicate how much they had read about the target case on a 7-point Likert type scale ranging from “not at all” to “a lot.” Based on a content analysis of articles regarding the target case in the local newspapers a bias scale was created to measure the slant of each particular newspaper. Two graduate students, blind to the purpose of the task, coded articles that were published regarding the target case in the New York Times, The Daily News, Newsday, The New York Post, and the AM New York. All articles published from Nov. 2006 – Feb 25<sup>th</sup>, 2008, and that were accessible through various search engines such as Lexis Nexis, Google News, and newspaper website archives were coded (see Figure 2 for number of articles published at different time points). Articles were coded for a general prosecution or defense bias. Coders were blind to the source of the articles. Coders coded the same 20 articles to establish inter-rater agreement which was high,  $\alpha = .93$ . Overall, 56.5% of the articles in the New York Times were biased in favor of the prosecution, 45.8% of Daily News articles, 35% of the

AM New York articles, 31.3% of the New York Post articles, and 29.8% of the Newsday articles. Based on the newspaper participants read on a daily basis a percentage bias score was assigned to them. This was weighted by the amount they had read about the target case, resulting in a scale ranging from low to high, higher scores indicating a greater prosecution bias. The two bias variables were standardized so as to allow analysis of a multi-sample model across remote and local venues.

## **Stage 2: Descriptive and Univariate Analyses**

Descriptive analyses on all mediating and outcome variables included to be included in the path model were conducted. These are presented in Tables 3-10. Below the pattern of descriptives for each variable is discussed.

*Guilt ratings after prosecution opening:* The first piece of trial information that participants were exposed to was the prosecutor's opening statement. Following the prosecution opening statements, participants were asked to indicate their opinions of guilt toward the defendants. Specifically, participants were asked to rate defendant guilt on a 9-point Likert scale ranging from 1 – not at all guilty, to 9 – extremely guilty. Table 3 displays the average ratings as a function of PTP exposure, level of PTP exposure, and medium of exposure. Overall, the pattern of means indicates that participants exposed to pro-prosecution PTP ( $M = 6.73, SD = .65$ ) had higher guilt ratings as compared to those exposed to pro-defense PTP ( $M = 4.79, SD = .88$ ),  $F(1, 172) = 8.14, p < .01$ .

Additionally, participants with pro-prosecution, high exposure had higher guilt ratings ( $M = 6.83, SD = .92$ ) when compared to those with low exposure pro-prosecution PTP ( $M = 6.33, SD = .76$ ),  $F(1, 105) = 4.38, p < .05$ . The opposite pattern was seen for those with

pro-defense exposure – participants with high pro-defense exposure had lower ratings as compared to those with low exposure.

*Guilt ratings after defense opening:* Following the defense opening statements, participants were asked to indicate their opinions of guilt toward the defendants.

Specifically, participants were asked to rate defendant guilt on a 9-point Likert scale ranging from 1 – not at all guilty, to 9 – extremely guilty. Table 4 displays the average ratings as a function PTP exposure, level of PTP exposure, and medium of exposure.

Overall, the pattern of means was highly similar to the measure of guilt ratings after the prosecution opening statements such that those participants exposed to pro-prosecution PTP had higher guilt ratings ( $M = 6.22, SD = 1.12$ ) as compared to those exposed to pro-defense PTP ( $M = 5.56, SD = 1.09$ ),  $F(1, 172) = 6.04, p < .01$ .

*Prosecution Time 1 Composite:* Following the presentation of the prosecution testimony at Time 1, participants were asked to evaluate the witnesses on a number of dimensions.

This included statements such as “How believable were the prosecution witnesses as a group” on a Likert type scale from 1 – not at all believable, to 9 – very believable. There were four statements on which participants were asked to rate the witnesses including perceptions of believability, persuasiveness, trustworthiness, and likeability. Table 5 displays the means. Overall, the pattern indicates that those exposed to pro-prosecution PTP ( $M = 6.52, SD = .88$ ) rated the witnesses more favorably as compared to those exposed to pro-defense PTP ( $M = 5.05, SD = .65$ ),  $F(1, 172) = 4.56, p < .05$ .

Additionally, ratings of those exposed to pro-prosecution PTP were more favorable than those exposed to no PTP, although this was non-significant PTP  $F(1, 149) = .827, p =$

.14. Overall means were similar for those exposed to low and high amounts of pro-prosecution PTP.

*Prosecution Time 2 Composite:* A similar composite variable was constructed from evaluative variables after the second set of prosecution testimony. Table 6 displays the means. Overall, the pattern indicates that those exposed to pro-prosecution PTP ( $M = 6.13$ ,  $SD = 1.12$ ) rated the witnesses more favorably as compared to those exposed to pro-defense PTP ( $M = 5.53$ ,  $SD = .97$ ),  $F(1, 172) = 2.38$ ,  $p < .09$ . Additionally, ratings of those exposed to pro-prosecution PTP were more favorable than those exposed to no PTP  $F(1, 149) = 3.21$ ,  $p < .09$ . Overall means were similar for those exposed to low and high amounts of pro-prosecution PTP.

*Defense Composite Variable:* Following the defense testimony participants were asked to evaluate the witnesses on a number of dimensions. This included statements such as “How believable were the prosecution witnesses as a group” on a Likert type scale from 1 – not at all believable, to 9 – very believable. There were four statements on which participants were asked to rate the witnesses including perceptions of believability, persuasiveness, trustworthiness, and likeability. Table 7 displays the means. Overall the patterns indicate that participants with pro-prosecution PTP exposure ( $M = 5.28$ ,  $SD = .74$ ) rated the defense witnesses less favorably as compared to those with pro-defense PTP exposure ( $M = 5.48$ ,  $SD = 1.09$ ), although this was non-significant,  $F(1, 172) = 1.73$ ,  $p = .12$ . Additionally, those with high pro-defense exposure tended to rate the witnesses more favorably than those with low defense exposure  $F(1, 64) = 4.33$ ,  $p < .05$ .

This was also the stage in which the PVP manipulation was measured.

Participants were either exposed to a pro-defense or pro-prosecution biased article at the

end of session 3. Thus it was expected that this exposure would influence ratings in session 4. Although the means were in the direction predicted there was no significant effect. For instance, those with pro-prosecution PVP exposure had an average of 5.16 with respect to evaluation of the defense witnesses, whereas those without PVP exposure had a mean of 5.68.

*Strength of Prosecution Case:* Following the closing arguments, participants were asked to rate the strength of the overall prosecution case on a 9-point Likert type scale ranging from 1 – not at all strong to 9 extremely strong. Table 8 displays the means. Similar to the patterns elucidated above, participants exposed to pro-prosecution PTP ( $M = 6.82, SD = 1.71$ ) were more likely to rate the prosecution's case as stronger as compared to those exposed to pro-defense PTP ( $M = 5.96, SD = .91$ ),  $F(1,172) = 9.24, p < .01$ . For those exposed to pro-prosecution PTP there were no differences in the means as a function of medium of exposure or amount of exposure. Those exposed to PVP rated the prosecution as slightly stronger as compared to those exposed to no PVP, although this finding was not significant  $F(1,106) = 2.58, p = .11$ . At the same time, those who were exposed to no PTP but were exposed to PVP rated the prosecution case as being stronger as compared to those who were exposed to no PTP or PVP – although the finding was non-significant,  $F(1, 41) = .09, p = .76$ .

*Strength of Defense Case:* Following the closing arguments, participants were asked to rate the strength of the overall defense case on a 9-point Likert type scale ranging from 1 – not at all strong to 9 extremely strong. Table 9 displays the means. Participants exposed to pro-defense PTP ( $M = 5.56, SD = .78$ ) were more likely to rate the defense's case as stronger as compared to those exposed to pro-prosecution PTP ( $M = 5.04, SD = .80$ ),

$F(1, 172) = 3.35, p < .05$ . For those exposed to pro-prosecution PTP there were no differences in the means as a function of medium of exposure or amount of exposure. Those exposed to PVP rated the defense as slightly stronger as compared to those exposed to no PVP, although this finding was not significant  $F(1, 40) = .315, p = .57$ . Figure 4 provides a pictorial representation of all means over time across groups.

### **Stage 3: Bivariate Correlations**

Table 1 provides an overview of correlation coefficients among all variables in the analyses along with their means and standard deviations. Overall the correlations reported are moderate. The largest correlation was between guilt ratings for the defendants after prosecution and defense opening statements ( $r = .63$ ). Collectively, this matrix indicates that many relationships exist at a bivariate level in theoretically explained directions, and the small to moderate magnitude of these relationships indicates that problems with collinearity are not likely to exist in the multivariate models described below.

### **Stage 4: Path Analysis**

A multiple-group analysis was conducted in AMOS to examine for differences between the local and remote samples. We first estimated the same model for both groups, with no equality constraints (i.e. we allowed separate parameter estimates in each group). We then imposed equality constraints on all relevant paths and ran the model. To compare the two models we conducted a chi-square difference test. There was no significant difference in the fit of the two models ( $\chi^2_D(20) = 28.24$ ).<sup>2</sup> Given the lack of a significant difference between the two groups, we collapsed the data for further analyses.

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<sup>2</sup> This was less than the critical value required for significance (31.41)

The overall model is depicted in Figure 5. Variables in this model included the exposure bias variable; attitude variables – scores on the RLAQ-23, and the police perception scale; level of participant case familiarity; moderating variables including gender, education level, and ethnicity; measures of pre-guilt ratings; guilt ratings after opening statements; evaluation of witnesses in various stages of the trial; perceptions of overall strength of defense and prosecution cases; and verdicts. The model is a 7-step model in which specified theory-driven paths were estimated. Figure 3 depicts standardized coefficients of the direct effects. Only significant paths are shown in the figure. All direct, indirect, and total standardized coefficients are presented in Table 11. Model fit indices indicate that the model had good fit to the data (RMSEA = .056, 90% CI (.047, .066); CFI = .85, IFI = .83).

Moderating variables such as gender, education level (scaled low to high), and ethnicity (coded 0 = Caucasian, 1 = other) were related to various attitudinal variables. Gender of the participant had a significant relationship with perceptions of police violence such that females were more likely to view the police as being excessively violent in their actions as compared to males ( $\beta = .15, p < .05$ ). There were a number of relationships between participant ethnicity and priori attitudes, such that those who identified themselves as African-American or Hispanic were more likely to believe that police were racist in their policing duties as compared to those who identified themselves as Caucasian ( $\beta = -.35, p < .01$ ). Additionally, African-American and Hispanic participants were more familiar with the Bell case as compared to Caucasian participants ( $\beta = .33, p < .01$ ). It should be noted that the majority of the participants from the Boston area were Caucasian (86.2%) as compared to New York (57.4%), and there were lower

rates of familiarity amongst the Boston participants overall. This may have led to the significant effect of ethnicity on familiarity with the case. There was also a significant indirect path from ethnicity to verdict such that those who identified as African-American or Hispanic were more likely to find the defendants guilty as compared to those who identified as Caucasian ( $\beta = .11, p < .05$ ).

Verdict was related to the various attitudinal scales administered. Specifically, individuals who scored high on the racial bias scale, indicating that they did not believe that police in general are racist in their actions were more likely to render not guilty verdicts as compared to those who scored low on the scale ( $\beta = -.15, p < .05$ ).

Additionally participants who scored high on the police violence scale, indicating that they believed that police are excessively violent in their actions toward suspects, were more likely to render guilty verdicts than those who believed that police did not engage in excessive violence ( $\beta = .15, p < .05$ ).

Most importantly there was a significant relationship between the exposure bias scale and guilt judgments, such that those who had high exposure levels of pro-prosecution PTP were more likely to render guilty verdicts as compared to those with higher levels of exposure to pro-defense PTP ( $\beta = .19, p < .05$ ). There was also a significant total path from the exposure bias scale variable to verdict ( $\beta = .27, p < .05$ ). Results of the model also indicate that this exposure slant was related to guilt ratings for prosecution opening statements, such that those who had high exposure levels of pro-prosecution PTP were more likely to rate the defendants guilty as compared to those with higher levels of exposure to pro-defense PTP ( $\beta = .13, p < .05$ ). A similar relationship was found with guilt ratings after defense opening statements ( $\beta = .15, p < .05$ ). There

was also a standardized direct path of exposure slant on perceptions of strength of the prosecution case ( $\beta = .17, p < .05$ ). The exposure bias scale had significant indirect relationship with interim guilt ratings, and perceptions of prosecution and defense witnesses. Specifically, there was a significant indirect path from exposure bias to the evaluation of prosecutions witnesses variable after Session 3 (which included presentation of direct and cross examination of prosecution witnesses) such that those who had high exposure levels of pro-prosecution PTP were more likely to rate the prosecution witnesses favorably as compared to those with higher levels of exposure to pro-defense PTP ( $\beta = .08, p < .01$ ). There was a marginally significant indirect path from exposure bias to evaluation of prosecution witnesses after Session 4 (which included presentation of direct and cross examination of prosecution witnesses) such that those who had high exposure levels of pro-prosecution PTP were more likely to rate the prosecution witnesses favorably as compared to those with higher levels of exposure to pro-defense PTP ( $\beta = .04, p = .08$ ). There was a significant indirect path from exposure bias to evaluation of defense witnesses after Session 4 (which included presentation of direct and cross examination of defense witnesses) such that those who had high exposure levels of pro-prosecution PTP were more likely to rate the defense witnesses unfavorably as compared to those with higher levels of exposure to pro-defense PTP ( $\beta = -.04, p < .05$ ). Similar effects were found for ratings of the strength of the prosecution case ( $\beta = .05, p = .09$ ), and strength of the defense case ( $\beta = -.06, p < .05$ ).

Additionally, there were standardized total effects of exposure bias on guilty ratings prosecution and defense opening statements such that those who had high exposure levels of pro-prosecution PTP were more likely to rate the defendants guilty as

compared to those with higher levels of exposure to pro-defense PTP ( $\beta = .13, p < .01$ ;  $\beta = .14, p < .01$ , respectively). Additionally, there was a standardized total path from exposure bias on perceptions of strength of the prosecution case such that those who had high exposure levels of pro-prosecution PTP were more likely to rate the prosecution scale as being very strong as compared to those with higher levels of exposure to pro-defense PTP ( $\beta = .12, p < .05$ ).

Overall, the model indicates that there were significant relationships between exposure slant and mid-trial guilt ratings, evaluations of witnesses, and verdict. This was evident at various stages of the trial via direct, and mediated paths of bias to guilt ratings, evaluations of witnesses, and evaluations of the strength of the prosecution and defense cases.

### **Hypotheses Testing**

This regression model tested specific hypotheses as outlined in the introduction.

#### *Hypothesis 1: Durability of PTP effects*

It was hypothesized that exposure to biased PTP (defense, prosecution) would bias mock jurors perceptions of witnesses and case evidence, and this would be reflected in their evaluations, and ultimately verdicts. This hypothesis was supported. Participants' perceptions of guilt and evaluation of witnesses were influenced by the biased nature of the PTP to which they were exposed as illustrated above.

#### *Hypothesis 2: Examine the differences in the influence of experimentally manipulated PTP and natural exposure to PTP*

We set out to examine differences, if any, between participants naturally exposed to PTP and those artificially or experimentally exposed. There is a concern in the courts that

laboratory studies on PTP effects lack external validity and do not generalize to the actual jury pool, in that artificial exposure to PTP does not operate in the same manner as natural exposure. We tested this proposition by comparing differences in evaluations of witnesses, evidence, and verdicts in the local and remote samples. The model revealed no significant differences between the local and remote samples. To further examine for differences in the influence of exposure on decision making we used BetaDiff (Enzmann, 2008) software which tests the significance of the difference of two beta-coefficients from independent samples. The beta coefficients for the influence of exposure on verdict in the remote and local samples were  $\beta = .19$ , and  $\beta = .17$ , respectively. The BetaDiff test revealed no significant difference between the two samples,  $\beta = .02$ ,  $p = .73$ . This provides support for the hypothesis that bias functions in the same manner across methodologies. That is, the influence of bias is similar regardless of whether exposure is natural, or via experimental methodologies.

*Hypothesis 3: Examine the influence of the amount of PTP exposure on decision making.*

We sought to examine whether amount of exposure (high or low) would influence decision making. It was hypothesized that those with a higher level of exposure to PTP would be more influenced by the content, and as a result be more biased in the direction of the bias of the PTP. This hypothesis was supported. Results from the model revealed that the higher the level of exposure the more likely were participants to be biased in the direction of the exposure.

*Hypothesis 4: Examine the influence of medium of exposure on judgments:* There was no significant relationship between medium of exposure (newspaper vs. TV) and pre-trial determinants of guilt ( $\beta = .08$ ,  $p = .10$ ), nor was there any relationship with mediating

variables such as ratings of guilt after opening statements ( $\beta = .05, p = .15$ ), or final verdict decisions ( $\beta = .07, p = .21$ ). Although the finding was not significant, descriptive analyses revealed that those exposed to newspaper articles were more likely to rate the prosecution witnesses higher, more likely to rate the strength of the prosecution case higher, as well as more likely to find the defendants guilty – although the findings did not reach the level of significance. This finding could possibly be attributed to the content of the newspaper articles as compared to the television newsclips. Although efforts were made to parallel the information as much as possible, the content across mediums was not kept constant as real newspaper articles and media clips were used to enhance external validity. It is plausible that the written media was more influential with respect to content as compared to the newsclips.

*5. Examine the influence of PVP on juror decision making.* It was hypothesized that participants in the low PTP exposure/PVP condition (pro-defense or pro-prosecution) will be more likely to evaluate the evidence in favor of the frame presented (pro-defense or pro-prosecution) as compared to participants in the low PTP exposure/no PVP condition; and vice versa. This hypothesis was not supported. There were no significant differences in evaluation of evidence and witnesses as a function of PVP exposure as described above. At the same time descriptive analyses reveal that the means were in the direction expected.

Additionally, it was hypothesized that participants in the low PTP exposure/PVP condition (pro-defense or pro-prosecution) will be more likely to render verdicts in favor of the frame presented (pro-defense or pro-prosecution) as compared to participants in the low PTP exposure/no PVP condition; and vice versa. This hypothesis was not supported.

There were no significant differences in evaluation of evidence and witnesses as a function of PVP exposure. At the same time descriptive analyses reveal that the means were in the direction expected.

Finally, it was hypothesized that participants in the control/PVP condition will be more likely to render guilty verdicts as compared to participants in the control/No PVP condition. This hypothesis was not supported. There were no significant differences in verdict as a function of PVP exposure. At the same time descriptive analyses reveal that the means were in the direction expected as demonstrated by the univariate analyses.

### **Measures of Media Exposure**

After completing session 6 participants were queried on media exposure during the course of the study. This was done so as to determine the amount of exposure participants had to the case outside of the information that was sent to them via the study. To help elicit truthful responses from participants the following instructions were given before we queried them on their level of media exposure. “The following questions are to gauge your exposure to the media regarding the Sean Bell case during this study. There are no right or wrong answers and we ask you to be honest in your responses. We realize that even though you may try to avoid media coverage of a certain series of events, it is sometimes difficult to do so, given the proliferation of information. Your honest responses are appreciated and important to the success of this research project.” Results are presented separately for those in the local venue and remote venue.

*Local Venue:* Participants were asked whether they had read or heard any information about the case in media while participating in the study. 53.5% ( $N = 61$ ) responded that they had not heard anything in the media, whereas 46.5% ( $N = 53$ ) indicated that they

had. Of those who indicated that they had been exposed to some media account regarding the case, we asked them to indicate what information they had read or seen. Responses were coded into four categories:

1. Case progress (responses that indicated that participants were exposed to updates on the progress of the case and what stage it was at) e.g. “General updates on how the trial was progressing.”
2. Attempts at avoidance (participants reporting that as soon as they realized that the newscast or article was regarding the Sean Bell case they stopped reading/watching) e.g. “I heard a few updates of the case on NPR – things like, ‘closing arguments are being made today in the case of Sean Bell.’ I would turn to another station when I heard that.”
3. Recaps (participants reporting that the information they saw/heard was a recap of the days events in court) e.g. “A few brief recaps on the previous day’s testimony.”
4. Basic case facts (Participants reporting that they only news they heard saw were the basic case facts) e.g. “Just that some cops were on trial in the wrongful death of Sean Bell.”

Two graduate students coded participants’ open-ended responses for the above mentioned themes. To establish inter-rater agreement, coders coded 15%<sup>3</sup> ( $N = 12$ ) of the same comments. Based on this we established good inter-rater agreement  $\alpha = .89$ . Of all 53 responses, 21 (39.6%) were coded as case progress comments, 16 (30.3%) were coded as attempts at avoidance comments, 12 (22.6%) comments were recaps of testimony, and 4 (7.5%) were comments regarding basic case facts.

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<sup>3</sup> This included open-ended responses from participants in the local and remote venue.

Participants were then asked whether they had discussed the case with anyone including friends, relative, co-workers etc. 97% of participants indicated that they had not done so. Participants were asked to report the approximate number of headlines they had seen regarding the case during the course of the trial. Over 78% reported that they had not see any headlines regarding the trial<sup>4</sup> with a average rate of .60 ( $SD = 1.85$ ). When asked to report the number of articles participants had read regarding the case (other than those provided by the researchers)58% indicated that they had not read any articles, whereas for those who did report reading any articles the mean was 1.30 ( $SD = 2.52$ ). Participants were also queried on the number of newscasts/newsclips they saw related to the case. 76% reported that they did not see any whereas, of those who did report viewing a newscast/newsclip the average was 1.43 ( $SD = 1.12$ ). Participants were also asked whether they had heard any radio spots regarding the trial – 99% indicated that they had not. Finally, participants were asked whether they had researched the case online and 100% indicated that they had not indulged in any research outside of the information that they were exposed to through the study.

*Remote Venue:* In the remote venue 86.6% ( $N = 188$ ) responded that they had not heard anything in the media, whereas 13.4% ( $N = 29$ ) indicated that they had. Of all 29 responses, 2 (6.8%) were coded as case progress comments, 8 (27.5%) were coded as attempts at avoidance comments, 3 (10.3%) comments were recaps of testimony, and 4 (13.8%) were comments regarding basic case facts. Finally, there was an additional category in which participants indicated that they did not see any news coverage of the case (6 (20.7%) participants indicated as such). Six participants provided no response. Participants were asked whether they had discussed the case with anyone including

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<sup>4</sup> There were approximately 20 front-page headlines in the local newspapers during the course of the trial.

friends, relative, co-workers etc. 93% of participants indicated that they had not done so. Participants were asked to report the approximate number of headlines they had seen regarding the case during the course of the trial. Over 92% reported that they had not see any headlines regarding the trial with a average rate of .16 ( $SD = .66$ ). When asked to report the number of articles participants had read regarding the case (other than those provided by the researchers) 97% indicated that they had not read any articles, whereas for those who did report reading any articles the mean was .11 ( $SD = .66$ ). Participants were also queried on the number of newscasts/newsclips they saw related to the case. 97% reported that they did not see any whereas, of those who did report viewing a newscast/newsclip the average was .04 ( $SD = .29$ ). Participants were also asked whether they had heard any radio spots regarding the trial – 96% indicated that they had not. Finally, participants were asked whether they had researched the case online and 100% indicated that they had not indulged in any research. Table 13 and Table 14 compares local and remote venue participants on the measures outlined above.

## CHAPTER 8: DISCUSSION

The current study built upon the body of PTP research by examining durability of PTP effects, differences in experimental and natural exposure to PTP, medium of exposure, and influence of amount of exposure to PTP. We also attempted to examine the influence of midtrial publicity on the decision making processes. Additionally, this study attempted to establish external validity of PTP effects by demonstrating the similarity of decision making employed by mock jurors who are naturally and experimentally exposed to PTP. As mentioned previously judges view laboratory research somewhat skeptically, so we chose to extend the research to a field setting to help reduce these concerns. We chose to do this in several ways. First, the target case was an actual case that had case received a substantial amount of local publicity. Second, we were able to present jurors with real PTP taken from local newspapers. While this method is still very controlled and does not account for the fact that real jurors have the ability to self-select the news to which they attend, we were able to provide jurors with a significant amount of PTP about the case. Further, a second sample of jurors was obtained. This sample took advantage of jurors from New York who had been exposed to PTP in a natural condition. Thus, we were able to compare verdict preferences across these two different groups of participants. Third, jurors were presented with summaries of trial testimony that were taken from the actual trial.

There are several key findings that warrant discussion.

### **Durability of PTP Effects**

The current study provided support for the durability of PTP effects. PTP exposure occurred 2 weeks prior to the start of the trial, and 10 weeks prior to rendering

of final verdicts by participants. Thus there was approximately a 10 week delay between PTP exposure and final verdicts for the remote participants. For local participants this delay was substantially longer. The incident that was the focus of this trial took place in November 2006, whereas the trial took place in February 2008. The peak of publicity surrounding the incident was in December 2006. There were a number of articles published leading up to the trial, but these were less prejudicial and more procedural with regard to the impending trial.

Exposure slant had a significant effect on guilt ratings after prosecution and defense opening statements, in the expected direction. There was also a significant effect of exposure slant on perceptions of the strength of the prosecution and defense case in the expected direction. At the same time there was no direct effect of exposure slant on evaluation of witnesses at different points in the trial, although there were significant indirect and total effects. Thus there was a significant influence of PTP effects at various points during the trial providing support for the durability of the influence of PTP. In practice courts rely on admonitions to disregard information with the goal that it will lead jurors to set aside prejudicial PTP when making decisions. This approach was not supported as despite admonitions, mock jurors wittingly or unwittingly were biased by the content of the PTP in their decision making.

This finding lends support to already established PTP effects in the literature and lends empirical support to the Steblay et al. (1999) meta-analytic finding that the longer duration between PTP exposure and judgment decisions, the more salient the PTP effect.

### **Influence of Type of PTP on Decision Making**

Results from the structural equation model indicate that PTP had a significant total effect on verdict preferences ( $\beta = .19$ ) such that those in the pro-prosecution PTP slant condition were more likely to render guilty verdicts as compared to those in the pro-defense PTP slant condition. When compared to the effect sizes obtained in the Steblay et al. meta-analysis, the results obtained in our study are consistent. Overall, Steblay et al. (1999) found a mean effect size of  $r = .16$ . Importantly, there was no significant difference in effect sizes across remote and local samples. This finding provides tentative support to the external validity of laboratory studies on PTP effects. The lack of significance between the two samples provides support that bias once formed influences decision making, regardless of the manner by which this bias is formed – whether it be via natural exposure to information or via experimentally manipulated exposure. This has potential implications for the use of scientific research in the courts regarding PTP by providing support to the use and validation of findings from laboratory research.

### **Influence of Quantity of PTP**

This study examined the influence of quantity of PTP on juror verdicts. Given the proliferation of the media, the amount of PTP that potential jurors may be exposed to is substantial. This exposure may occur through multiple sources – newspapers, television, the radio, the internet, and friends and family. The effect of amount of PTP has not been studied in the literature to date. Typically participants in studies are exposed to one point of PTP (one article, news clip etc.) before exposure to trial stimulus. We chose to examine the influence of multiple points of exposure as this proliferation of exposure is what leads to many defense claims of prejudicial media coverage. PTP is brought to the

attention of the court as a biasing factor when coverage is considered not only biasing but also expansive in nature. The results of this study indicate that the greater the quantity of exposure, the more biasing the effects. That is, participants who received 10 articles biased in a particular direction were more likely to conform to the bias that was presented than those who received 5 articles in the same direction. This provides support to the claim that the more expansive the PTP coverage, the more harmful the effect on potential jurors. There is potential for further research in this area. This study did not examine what elements of PTP were the most influential. It is probable that certain types of information would have a significant impact regardless of the quantity of exposure. At the same time, other factors may not be as influential until and unless a person has been exposed to the information multiple times. Future research should take this into consideration and examine specific components of PTP. For example, Otto et al. (194) found that defendant characteristics was one of the most influential categories of PTP, and its influence persisted throughout the course of a trial. Research using actual PTP can expand on these findings (Otto et al. utilized artificial PTP) to increase external validity claims of PTP effects.

### **Medium of PTP exposure**

An additional purpose was to examine the medium of exposure on juror decision making. PTP exposure was in the form of either newspaper articles or television news clips. Previous research has found that television media is more influential than print media, but this difference becomes negligible once survey research is removed from the analyses leaving only experimental studies (Stebly et al., 1999). At the same time the experimental findings are based on three studies. Given this small effect size in

experimental research, but larger effect in survey research, we chose to examine the effect in the current study that combined both methodologies. We found no significant effect of medium of exposure. This provides some support to the notion that it is not the way information is conveyed that matters, but the content of information. One limitation is that in efforts to increase external validity we made use of naturally occurring newspaper articles, and televisions news clips. Although an effort was made to match content as much as possible, the type of content was not identical. Future studies that are interested in testing the influence of medium controlling for other factors should consider parallel content for both mediums. Additionally, studies should examine the influence of other mediums such as the internet, chat rooms, blogs, and so on.

### **External Validity**

One of the main purposes of this study was to examine the influence of PTP on decision making by enhancing the external validity of the design. Traditionally, PTP effects have been studied using experimental and case study methodologies (see Studebaker and Penrod, 2000). Both experimental and casestudy/survey methodologies have positive aspects, for example field studies make use of the actual venire, real cases, and real PTP; experimental studies make use of specific components of PTP so that they can draw strong conclusions regarding what is biasing and what is not. At the same time, these studies have some inherent limitations conducted in isolation of one another. For example, although experimental methodologies allow greater control over the conditions under which participants are exposed to PTP, they do not parallel what occurs before or during a real trial. Most experimental studies expose participants to artificial PTP moments before they watch a trial or read a trial transcript and then ask them to render

judgments. Given the short time frame in which participants are exposed to the information (ranging from 30 minutes to a maximum of 1 week), it is conceivable that the results are more a function of priming effects. Realistically, potential jurors are usually exposed to PTP weeks, or even months before a case goes to trial (Hope, et al., 1994; Ogloff & Vidmar, 1994; Ruva, 2007). Given the nature of media reporting, and the plethora of information potential jurors are exposed to, this could be a potential limitation to the existing research.

With regard to case studies, most rely on survey methodology is it impossible to make causal inferences. Additionally, all the studies surveyed here were done in an advocacy context, and are inherently limited by the goals of the researchers. It is unclear whether exposure to PTP leads to negative perceptions of defendants, or whether certain individuals seek out specific information leading them to develop a pro-prosecution bias (Moran and Cutler, 1991). Community surveys suggest that exposure to PTP leads to prejudgments and bias, but it is unclear if this persists through the presentation of case facts. Most such studies have demonstrated that individuals exposed to PTP, and those that know specific details about the crime including inadmissible information, are more likely to hold pro-prosecution attitudes and prejudge the defendant as guilty (Arbuthnot, Myers and Leach, 2001; Costantini and King, 1980-1981; Nietzel and Dillehay, 1983; Simon and Eimermann 1971). However, case studies do not test whether PTP effects will survive the presentation of trial evidence, argument and instruction.

Overall a significant amount of fundamental work has been done in this area, and has provided support for some basic psychological principles of decision making. These PTP effects have been demonstrated consistently in the laboratory setting confirming

internal validity, at the same time as mentioned previously, the courts are somewhat averse to accepting these research findings. Given that these findings are well established in the laboratory, we chose to examine whether they are replicable in the field.

Given these concerns, this study built upon prior research by taking advantage of a real high-profile criminal case while it is in session. Multiple measures of juror judgments throughout the course of the trial provided a more complete understanding of decision making process, as well as allowed for the assessment of the persistence of PTP effects. Additionally, we examined the influence of publicity that arises during the course of a trial. High profile cases are usually followed very closely by the media. Jurors who are not sequestered in such cases (which is the majority of cases) may unwittingly be exposed to information regarding the case in the media – regardless of how much of an attempt they make to avoid it. Thus, examining the influence of this mid-trial exposure becomes relevant. In addition to building upon the external validity of PTP findings by integrating field and experimental methodologies, we also validated previous PTP findings in the laboratory. To do this we employed mock jurors both in the venue in which the trial occurred, as well as a jurisdiction that was a remote location. Those in the remote location received manipulated PTP, whereas those in the local venue did not receive any PTP – all exposure was self-selected but a measure was created to determine the level of pro-prosecution, and pro-defense exposure. We found no significant differences amongst those artificially (remote participants) or naturally (local participants) exposed to PTP. This finding provides support for the external validity of PTP research in the laboratory. Given that those who were naturally exposed to certain biases did not differ in their decision making as compared to those who were artificially

exposed is significant. This provides some evidence for the Courts to support the validity of the findings of past PTP research.

### **Influence of Post-Venire Publicity**

In this study we explored the effects of Post-venire publicity exposure on decision making. PVP refers to any publicity empanelled jurors may be exposed to wittingly or unwittingly. The nature of today's media makes it very difficult to avoid news and information especially in high profile cases. This was very apparent in the target case in this study. Throughout the trial headlines were splashed across the local television news, radio, and newspapers. As some of the participants indicated, although they tried to avoid the media, at times they were exposed to information. Given this we chose to examine the influence of PVP on decision making.

There was no significant effect of PVP exposure on participants' guilt judgments in this study. Participants were exposed to an article that was either biased toward the prosecution or the defense between the presentation of the prosecution and defense testimonies. This exposure was immediately following the prosecution testimony but one week prior to exposure to the defense testimony. Additionally, exposure was in the same direction as initial PTP exposure. That is, participants who had been exposed to pro-prosecution PTP were exposed to pro-prosecution PVP and similarly participants exposed to pro-defense PTP were exposed to pro-defense PVP. A final exposure group was participants exposed to pro-prosecution PVP who were not exposed to any PTP.

There are a few reasons why the PVP exposure may not have produced significant results in this study. Firstly, the PVP exposure immediately followed the prosecution testimony. As such this information was salient in participants' minds and may have

influenced interpretation of the PVP. Future studies should look to expose participants to PVP at various time points to counter for this problem. Additionally, the PVP exposure was in the same direction as the initial PTP exposure. It is possible that participants were already sufficiently biased in a particular direction and the PVP did not increase this level of bias. For those who had no PTP exposure their guilt ratings of the defendants did increase, providing some evidence that the PVP had some influence, but this increase did not reach a level of significance. Finally, the nature of the PVP itself may have differential impacts. In this study the PVP consisted of editorials that were biased in either direction. It is possible that other types of PVP such as defendant behavior, or incriminating information against the defendant that comes out in the news but is not allowed in the courtroom will have a greater impact on decision making. Finally, the method of PVP exposure may have led to a backfire effect. Participants were informed after reading the prosecution testimony that an interesting article regarding the case had recently been published and were asked to click a button to read it. As participants had been instructed to ignore any publicity during the course of the trial, they may have discounted the information contained in the articles. Thus it is possible that although PTP has an effect, once instructed any additional information participants are exposed to does not influence their decision making. Further studies are necessary to test this hypothesis. Additionally, studies should explore other methods to expose participants to PVP that are seemingly unlinked to the core study.

## **Relation between attitudes and verdict decisions**

Participants' attitudes were significantly related to their final verdict decisions. Specifically there were direct effects of the Police Perceptions Scale on verdicts. There was also a direct effect of the scale measuring attitudes regarding racist policing. Participants who believed that police officers were not racists in their actions were less likely to render guilty verdicts ( $\beta = -.17$ ). Additionally participants who believed that the police were excessively violent in their actions, were more likely to render guilty verdicts ( $\beta = .14$ ). Thus attitudes played a significant role in verdict determination independent of exposure to PTP.

The current findings are consistent with Otto et al. (1994) in that they reached a similar conclusion that PTP influences jurors' initial judgments about a defendant's guilt. This is also consistent with the evidence plausibility hypothesis extended by Linz and Penrod (1992). The present results add to the existing literature by showing how this bias once formed unfolds over the course of presentation of testimony. The results demonstrate that PTP has a prejudicial effect on the evaluation of evidence, and this online method of evaluation of evidence and witnesses at different time point in the trial allowed us to examine a bias, either toward the defense or the prosecution, as it unfolded.

## **Anchoring Effects**

This study provides support for the anchoring effect in decision making. Participants exposed to PTP in a certain direction may have been influenced by the biased nature of the information. This influence was then reflected in their decision making regarding guilt of the defendants. Thus it is possible that this exposure functioned as an anchor or a weight against which mock jurors weighed evidence presented in the case.

This is reflected in participants' evaluations of witnesses throughout the trial. Consistently, participants who were initially exposed to pro-prosecution PTP evaluated the prosecution witnesses more positively as compared to the defense witnesses and vice versa. Additionally participants' evaluations of the strength of the prosecution and defense cases was influenced by their initial PTP exposure. Participants who were exposed to pro-prosecution PTP believed that the prosecution had a stronger case at the completion of the evidentiary stage of the trial, whereas those exposed to pro-defense PTP believed that the defense had a stronger case. Thus it is possible that participants adjusted their opinions about the trial actors inline with their initial exposure or anchor.

### **Significance for the Courts**

These findings have implications for understanding how PTP exerts its effects in the courtroom. Although the judiciary has engaged in conversation about the effects of PTP, there is a belief that the concerns over the effects of news coverage on jurors is exaggerated and that judicial remedies are effective. Additionally, "judges consider jurors to be candid and conscientious, and believe that jurors can set aside preconceived notions and remain impartial (Carroll et al., 1986, 192). Additionally, judges at times disregard social science research due to what they believe is the lack of external validity. An example of this is *Lockhart c. McCree (1986)* in which the Court evaluated social science research on juror decision making in capital cases. The Court concluded that the research was not relevant because the studies did not measure the effects of death qualification on jurors' determinations of guilt and innocence, did not include actual jurors as participants, did not study an actual case, and did not include deliberations. Although this decision was not with regard to news coverage effects, it provides an example of how courts value

social science research in general. This study is one attempt to address some of these concerns by the court by having community member participants, using an actual case with real PTP, and using natural as well as experimental exposure to PTP. Through our study design we attempted to enhance external validity, thereby addressing some of the concerns of the Court.

### **Limitations and Future Directions**

The current research advances research on PTP effects by using a real case as it unfolded. At the same time there are a number of limitations associated with this methodology. First, we were able to successfully track participants' individual perceptions through the course of the trial; however, the present study did not incorporate jury deliberations into the design. It is unclear how PTP plays a role during the deliberation process but there is some support that the effect does persist, and may be stronger after the deliberation process. For example, the effect size obtained for PTP after deliberations in the Steblay et al. (1999) meta-analysis increased from ( $r = .10$ ) post-trial, pre-deliberation to ( $r = .15$ ) post-trial, post-deliberation. Further, in a comprehensive PTP study, Kramer, Kerr, and Carroll (1990) looked at the effects of factual and emotional PTP on juror and jury pre and post-deliberation judgments of defendant culpability. Post-deliberation assessments revealed that high levels of emotional PTP produced 20% more convictions than those not exposed to this information. Clearly, these results call for future research that investigates the effects of deliberations on verdict preferences is warranted.

Secondly, although we were able to employ jurors across New York City and Boston, this was done at the expense of some measure of experimental control. As the

jurors were online and we did not have control over their surroundings when they were completing study sessions, we cannot account for distractions and level of attention. Although this is a possible limitation, post study debriefings with participants revealed that they were highly vested in the study. The researchers received numerous emails from study participants with follow up questions about the case. Thus it is believed that for the most part participants were genuinely interested in the research and participated as requested in the informed consent (Studebaker et al. 2002; O'Neil et al., 2004). There are several advantages of Internet research including the ability to access a more diverse population than that afforded by student populations, increased anonymity (Joinson, 1999), and elimination of manual data entry. Web-based research also allows researchers to effectively control for incomplete responses. To date, Penrod and his colleagues have conducted more than a dozen studies using the Internet, including a study involving the trial of Timothy McVeigh, a Texas death penalty case which was on appeal to the U.S. Supreme Court, another death penalty case decided by the U.S. Supreme Court (*Jones v. United States*, 1999), and two others involving death penalty and jury issues (O'Neil, Penrod, Bornstein, & Claussen-Schulz, 2004). The results obtained from past research support internal validity of this methodology.

Third, given that participants were participating in the study as the case was being tried in the courts, mid-trial exposure to publicity – wittingly or unwittingly -- was a possibility, especially for participants in New York city. Headlines regarding the case were a constant feature in the local area newspapers, and the case was periodically featured on the news. Given this it is highly likely that participants were exposed to some media while they participated in the study, even though they were admonished to avoid

stories on the case during the course of the trial. This could have possibly influenced their decision making.

Future studies should account for not only pro-defense or pro-prosecution PTP, but should also examine the influence of mixed PTP. This is crucial given that in this information day and age, people are exposed to information from a large number of sources including the television, radio, and internet and many a times these sources have conflicting view-points on the same topic. Thus it is highly likely that exposure to publicity in a case is not limited to bias in one direction.

In conclusion, the results from this study speak to the concerns expressed by past researchers. The substantive findings from this research demonstrated that PTP does have the potential to work its influence through the duration of a trial. The effect of PTP remained consistent from pretrial judgments to post-trial guilt judgments for both local and remote jurors. These findings reinforce the idea that new procedures that address problems associated with potentially biasing PTP should be adapted – particularly because social science research has demonstrated that trial continuance, judicial instructions to disregard PTP, extended voir dire and jury deliberations have not been successful in eliminating PTP effects (Dexter, Cutler & Moran, 1992; Kramer, Kerr, & Carroll, 1990; Lieberman & Arndt, 2000; Bornstein, Whisenhunt, & Nemeth, 2002). Literature has demonstrated an established effect of PTP on juror decision making (Stebly et al., 1999). This study built on this established effect by demonstrating (1) that this effect is durable and persists throughout the length of a trial, (2) the effect generalizes to jurors who have been naturally exposed to PTP outside of a laboratory setting, (3) no differences between those naturally and experimentally

exposed to PTP demonstrating the validity of previously conducted laboratory studies, and (4) provided support for the validity of laboratory studies of PTP effects by extending the external validity of the methodologies used to study this phenomenon.

Table 1. Means, Standard Deviations, and Correlations of all Variables in Remote Sample Models.

Variable	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	
1. Gender	1																		
2. Ethnicity	.1	1																	
3. Education	.11	-0.02	1																
4. Law Enforcement	-.05	-0.07	0.05	1															
5. Police Violence	.12	0.07	-0.07	-0.07	1														
6. Race	-.02	-.25*	0.03	0.03	-.36*	1													
7. RLAQ-23	.21*	-0.01	0.07	-0.03	.51*	-.38*	1												
8. Exposure Bias	-.01	0.06	-0.03	0.16	-0.09	0.02	0.02	1											
9. Case Familiarity	-.05	0.09	0.01	0.1	0.04	0.03	-0.05	-0.07	1										
10. Pre-trial Guilt	-.05	0.09	0.01	0.1	0.04	0.03	-0.05	-0.07	.18**	1									
11. Guilt after P open	.07	-0.2	-0.21	-0.01	-0.09	0.12	0.14	0.03	-0.08	0.08	1								
12. Guilt after D open	-.02	.18*	-0.07	0.04	.27*	-.20*	0.27	.19*	-0.03	-.03*	.63*	1							
13. Pros. Testimony 1	.05	.23*	-.13*	-0.07	0.09	-0.03	-0.01	0.02	0	0	.26*	.38*	1						
14. Pros. Testimony 2	.05	.14*	-0.06	0.02	.21*	-.25*	.23*	0.06	0.03	0.03	.29*	0.47	.49*	1					
15. Defense Testimony	.10	-0.04	-0.03	-0.04	-.24*	.30*	-.27*	-0.06	-0.03	-0.03	-.22*	-.32*	-0.09	-.23*	1				
16. Strength pros. Case	.13*	.13*	-0.02	0.01	.30*	-.19*	.16*	.19*	-0.06	-0.06	.42*	.49*	.43*	.53*	-.35*	1			
17. Strength Defense case	.03	-0.09	-0.07	-0.06	-.21*	0.07	-.21*	-.11*	0.02	0.03	0.08	-.34*	-.24*	-.32*	.42*	-.55*	1		
18. Verdict	-.06	0.12	-0.01	0.09	-.13*	-.25*	.20*	.19*	-0.06	0.06	.21*	.35*	.21*	.27*	-.42*	.37*	-0.33	1	
Means	.46	3.82	3.45	0.29	12.9	14.65	90.31	0.24	1.21	3.95	6.53	7.1	6.55	5.88	4.95	6.78	5.84	1.43	
Standard Deviations	.24	1.34	1.19	0.39	2.55	2.83	15.82	1.21	0.34	0.84	1.66	2.15	1.12	1.56	1.51	2.25	1.68	0.85	

\* $p < .05$ .

*Table 2. Factor Analysis of Counts*

<u>Counts</u>	<u>Factor 1</u>
	Alpha = .91
Manslaughter 1st Degree, D1	<b>.85</b>
Manslaughter 1st Degree, D2	<b>.85</b>
Manslaughter 2nd Degree D1	<b>..66</b>
Manslaughter 2nd Degree D2	<b>.64</b>

Table 3. *Guilt Ratings After Prosecution Opening*

PTP Exposure	Remote Exposure Type of Publicity					
	Pro-prosecution-TV		Pro-prosecution Paper		Pro-Defense Paper	
	PVP Present	PVP Absent	PVP Present	PVP Absent	PVP Present	PVP Absent
High		<i>M</i> = 6.50 ( <i>SD</i> = 1.83)		<i>M</i> = 6.23 ( <i>SD</i> = 1.98)		<i>M</i> = 5.37 ( <i>SD</i> = 1.49)
Low	<i>M</i> = 7.00 ( <i>SD</i> = 1.27)	<i>M</i> = 6.57 ( <i>SD</i> = 1.96)	<i>M</i> = 6.89 ( <i>SD</i> = 1.14)	<i>M</i> = 6.95 ( <i>SD</i> = 1.27)	<i>M</i> = 6.78 ( <i>SD</i> = 1.31)	<i>M</i> = 5.86 ( <i>SD</i> = 1.71)
None			<i>M</i> = 7.36 ( <i>SD</i> = 1.53)	<i>M</i> = 6.79 ( <i>SD</i> = 1.15)		

\*\* Means are based on a 9-point Likert type scale ranging from 1 = not at all guilty, to 9 = extremely guilty

Table 4. *Guilt Ratings After Defense Opening*

PTP Exposure	Pro-prosecution-TV		Remote Exposure Type of Publicity Pro-prosecution Paper		Pro-Defense Paper	
	PVP Present	PVP Absent	PVP Present	PVP Absent	PVP Present	PVP Absent
High		$M = 6.50 (SD = 1.31)$		$M = 6.00 (SD = 1.12)$		$M = 4.91 (SD = 1.81)$
Low	$M = 5.83 (SD = .83)$	$M = 6.23 (SD = 1.57)$	$M = 6.15 (SD = 1.53)$	$M = 6.54 (SD = 1.23)$	$M = 6.15 (SD = 1.34)$	$M = 5.73 (SD = 1.98)$
None			$M = 5.89 (SD = 1.55)$	$M = 6.12 (SD = 1.22)$		

\*\* Means are based on a 9-point Likert type scale ranging from 1 = not at all guilty, to 9 = extremely guilty

Table 5. *Prosecution Time 1 Composite Ratings*

PTP Exposure	Pro-prosecution-TV		Remote Exposure Type of Publicity Pro-prosecution Paper		Pro-Defense Paper	
	PVP Present	PVP Absent	PVP Present	PVP Absent	PVP Present	PVP Absent
High		<i>M</i> = 6.45 ( <i>SD</i> = 1.36)		<i>M</i> = 6.01 ( <i>SD</i> = 1.13)		<i>M</i> = 5.13 ( <i>SD</i> = .89)
Low	<i>M</i> = 5.72 ( <i>SD</i> = .89)	<i>M</i> = 6.08 ( <i>SD</i> = 1.27)	<i>M</i> = 5.97 ( <i>SD</i> = 1.14)	<i>M</i> = 6.65 ( <i>SD</i> = 1.32)	<i>M</i> = 5.88 ( <i>SD</i> = 1.62)	<i>M</i> = 5.89 ( <i>SD</i> = 1.14)
None			<i>M</i> = 6.47 ( <i>SD</i> = 1.03)	<i>M</i> = 6.35 ( <i>SD</i> = 1.14)		

\*\* Means are based on a composite of 5 evaluative variables ranging from 1 = unfavorable evaluations to 9 = very favorable evaluations

Table 6. *Prosecution Time 2 Composite Ratings*

PTP Exposure	Pro-prosecution-TV		Remote Exposure Type of Publicity Pro-prosecution Paper		Pro-Defense Paper	
	PVP Present	PVP Absent	PVP Present	PVP Absent	PVP Present	PVP Absent
High		<i>M</i> = 5.91 ( <i>SD</i> = .91)		<i>M</i> = 6.01 ( <i>SD</i> = 1.11)		<i>M</i> = 5.69 ( <i>SD</i> = 1.69)
Low	<i>M</i> = 5.18 ( <i>SD</i> = 1.13)	<i>M</i> = 6.85 ( <i>SD</i> = 1.12)	<i>M</i> = 5.94 ( <i>SD</i> = 1.13)	<i>M</i> = 6.35 ( <i>SD</i> = 1.12)	<i>M</i> = 6.15 ( <i>SD</i> = 1.17)	<i>M</i> = 5.78 ( <i>SD</i> = 1.17)
None			<i>M</i> = 6.43 ( <i>SD</i> = 1.49)	<i>M</i> = 6.85 ( <i>SD</i> = 1.79)		

\*\* Means are based on a composite of 5 evaluative variables ranging from 1 = unfavorable evaluations to 9 = very favorable evaluations

Table 7. *Defense Composite Ratings*

PTP Exposure	Pro-prosecution-TV		Remote Exposure Type of Publicity Pro-prosecution Paper		Pro-Defense Paper	
	PVP Present	PVP Absent	PVP Present	PVP Absent	PVP Present	PVP Absent
High		<i>M</i> = 4.72 ( <i>SD</i> = 1.01)		<i>M</i> = 5.59 ( <i>SD</i> = .11)		<i>M</i> = 7.19 ( <i>SD</i> = .69)
Low	<i>M</i> = 4.87 ( <i>SD</i> = .53)	<i>M</i> = 5.19 ( <i>SD</i> = .53)	<i>M</i> = 5.68 ( <i>SD</i> = .17)	<i>M</i> = 5.16 ( <i>SD</i> = .83)	<i>M</i> = 6.89 ( <i>SD</i> = .69)	<i>M</i> = 6.16 ( <i>SD</i> = .85)
None			<i>M</i> = 5.12 ( <i>SD</i> = 1.03)	<i>M</i> = 5.98 ( <i>SD</i> = .79)		

\*\* Means are based on a composite of 5 evaluative variables ranging from 1 = unfavorable evaluations to 9 = very favorable evaluations

Table 8. *Ratings on Strength of Prosecution Case*

PTP Exposure	Pro-prosecution-TV		Pro-prosecution Paper		Pro-Defense Paper	
	PVP Present	PVP Absent	PVP Present	PVP Absent	PVP Present	PVP Absent
High		$M = 7.16 (SD = .97)$		$M = 6.79 (SD = .69)$		$M = 5.45 (SD = .71)$
Low	$M = 6.81 (SD = .92)$	$M = 7.14 (SD = 1.03)$	$M = 6.52 (SD = .18)$	$M = 7.47 (SD = .76)$	$M = 5.63 (SD = .95)$	$M = 6.26 (SD = 1.18)$
None			$M = 6.68 (SD = 1.19)$	$M = 6.54 (SD = 1.47)$		

\*\* Means are based on a 9-point Likert type scale ranging from 1 = not at all strong to 9 = very strong

Table 9. *Ratings on Strength of Defense Case*

PTP Exposure	Pro-prosecution-TV		Remote Exposure Type of Publicity Pro-prosecution Paper		Pro-Defense Paper	
	PVP Present	PVP Absent	PVP Present	PVP Absent	PVP Present	PVP Absent
High		$M = 4.58 (SD = .83)$		$M = 5.57 (SD = .28)$		$M = 6.75 (SD = .89)$
Low	$M = 5.08 (SD = .13)$	$M = 4.80 (SD = .88)$	$M = 4.84 (SD = .113)$	$M = 5.17 (SD = .48)$	$M = 6.15 (SD = 1.01)$	$M = 6.12 (SD = .29)$
None			$M = 5.73 (SD = 1.69)$	$M = 4.83 (SD = 1.85)$		

\*\* Means are based on a 9-point Likert type scale ranging from 1 = not at all strong to 9 = very strong

Table 10. *Verdict Distribution*

PTP Exposure	Pro-prosecution-TV		Remote Exposure Type of Publicity Pro-prosecution Paper		Pro-Defense Paper	
	PVP Present	PVP Absent	PVP Present	PVP Absent	PVP Present	PVP Absent
High		$M = 1.00 (SD = .14)$		$M = 1.09 (SD = .14)$		$M = .75 (SD = .68)$
Low	$M = 1.00 (SD = .25)$	$M = .81 (SD = .90)$	$M = .91 (SD = .69)$	$M = .98 (SD = .22)$	$M = .73 (SD = .19)$	$M = .91 (SD = .29)$
None			$M = 1.10 (SD = .13)$	$M = .91 (SD = .94)$		

\*\* Verdict ranges from 0-2

Table 11. *Direct, Indirect, and, Total Standardized Effects on Verdict*

Variable	Direct		Indirect		Total	
	Effect	S.E.	Effect	S.E.	Effect	S.E.
Bias	.19*	.04	.08	.03	.27**	.05
Gender	.00	.00	.00	.02	.00	.02
Ethnicity	.00	.00	.11**	.03	.11**	.03
Education	.00	.00	.00	.03	.00	.02
Familiarity with Case	.00	.00	.02	.02	.02	.02
RLAQ-23	.10 <sup>+</sup>	.00	.02	.02	.13**	.05
Police Race Scale	-.15**	.02	-.05*	.02	-.20**	.05
Police Violence Scale	.11*	.02	.05	.03	.16	.06
Pre-guilt	.03	.04	.02	.04	.05	.06
Guilt after Prosecution opening	-.06	.04	.23**	.06	.17**	.05
Guilt after Defense opening	.15**	.04	.15**	.04	.30**	.07
Prosecution Evaluation Time1	.02	.03	.11**	.03	.13**	.05
Prosecution Evaluation Time2	.00	.03	.13**	.04	.13*	.06
Defense Evaluation	-.19**	.03	-.07	.02	-.26**	.06
Strength of Prosecution Case	.28**	.03	.03	.02	.31**	.06
Strength of Defense Case	-.08	.04	.00	.00	-.08	.06

\* $p < .05$ , \*\* $p < .01$ , <sup>+</sup> $p < .08$

*Table 12. Media Exposure during trial for Local and Remote Participants*

<i>Media Exposure</i>	<i>Local*</i>	<i>Remote*</i>
Read/heard anything about Bell Case in media while participating	46.5%	13.4%
Seen headlines	22%	8%
Read articles	42%	3%
Viewed newscasts	24%	3%
Listened to radio spots	1%	4%
Read online news	0%	0%
Discussed case with others	3%	7%

\*Percentages indicate percent of all participants responding "Yes" to statement"

Table 13. *Coding of Responses to Query on Type of Media Exposure*

	Local	Remote
Coding: Case Progress	39.6%	6.8%
Coding: Attempts at avoidance	30.3%	27.5%
Coding: Recaps of testimony	22.6%	10.%
Coding: Basic case facts	7.5%	13.8%
Coding: No news coverage	0%	20.7%

Figure 1. *Timeline of Trial and Study Progression*

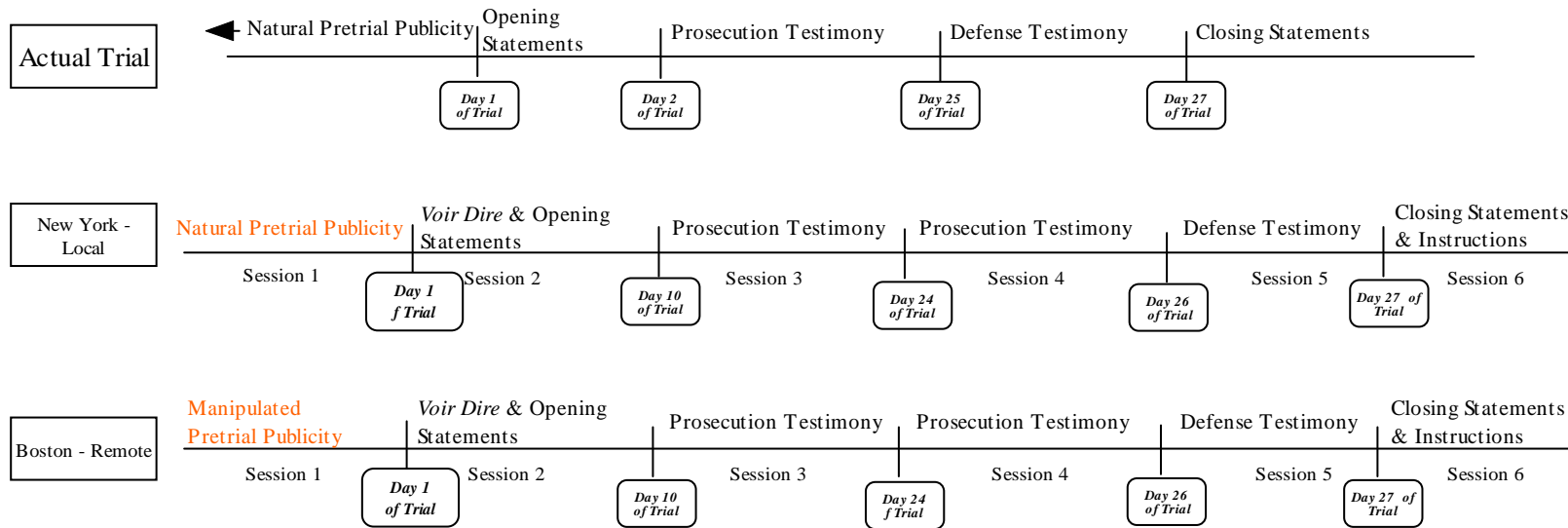
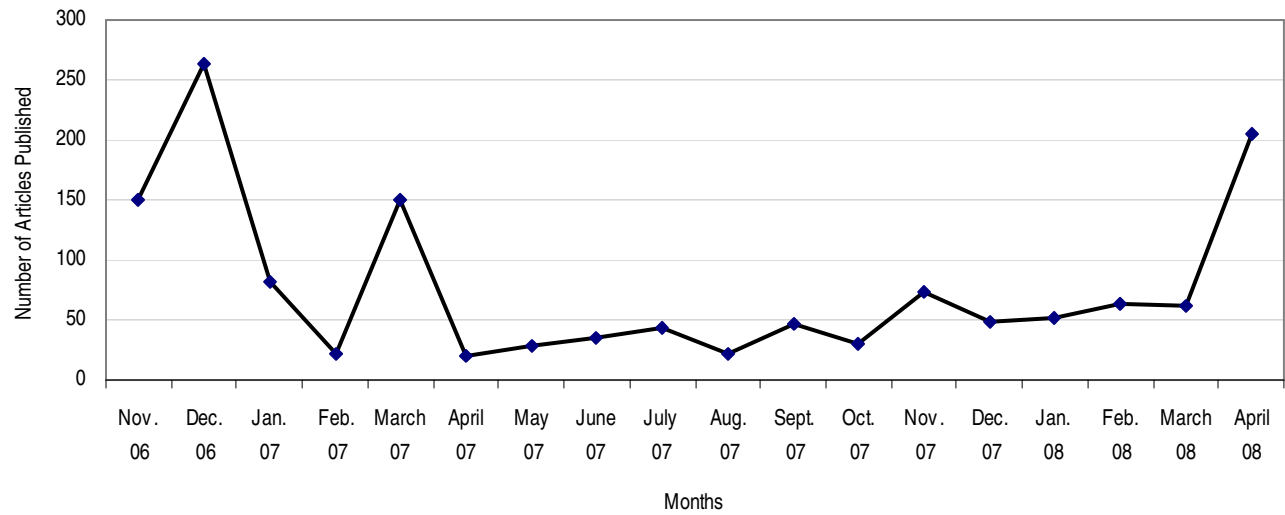


Figure 2. *Study Design. Shaded Cells were tested.*

PTP Exposure Level	Pro-prosecution-TV		Publicity Bias Pro-prosecution Paper		Pro-Defense Paper	
	PVP Present	PVP Absent	PVP Present	PVP Absent	PVP Present	PVP Absent
High						
Low						
None						

Figure 3. *Articles published on the Sean Bell case from November 2006 to March 2008 (Sources Lexis Nexis and Google News).*



Note. Peaks are indicative of major events surrounding the case. The shooting took place on Nov. 25, 2006; Grand Jury indictments were issued in March 2007, and the trial verdict was announced in April 2008.

Figure 4. *Party Leanings at Each Stage in the Trial*

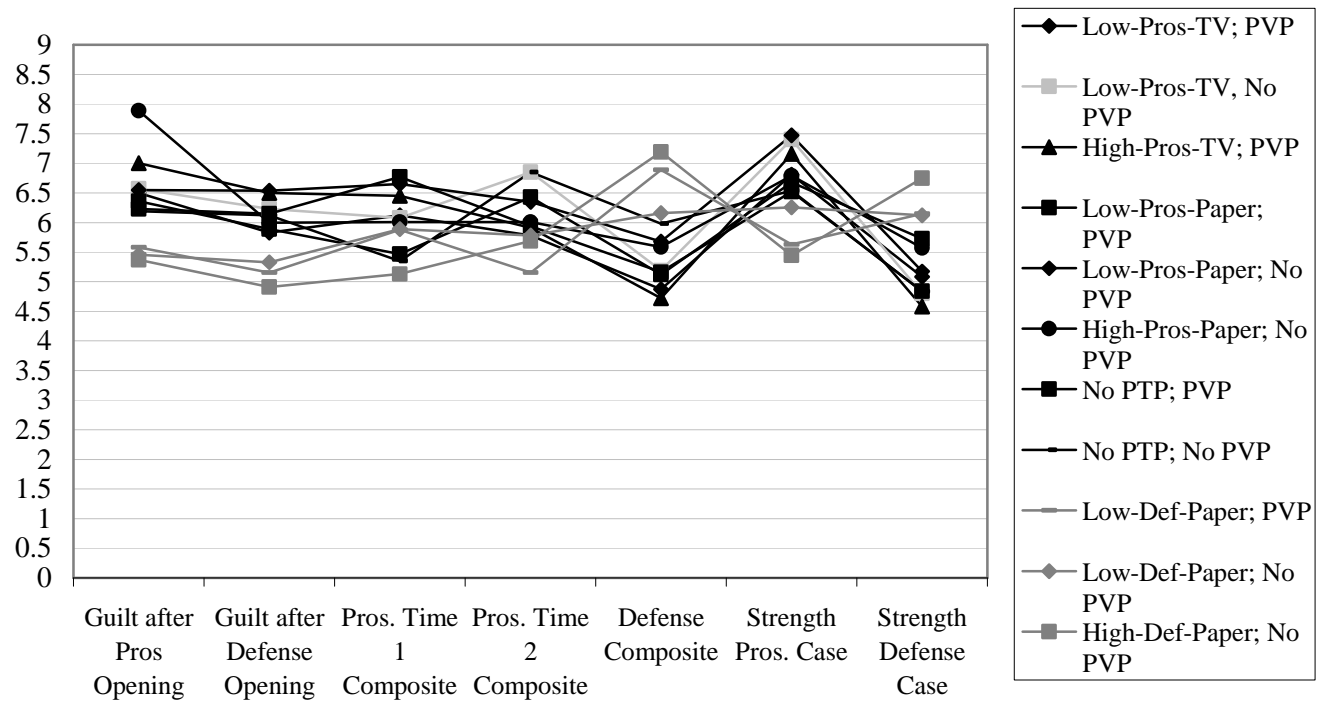
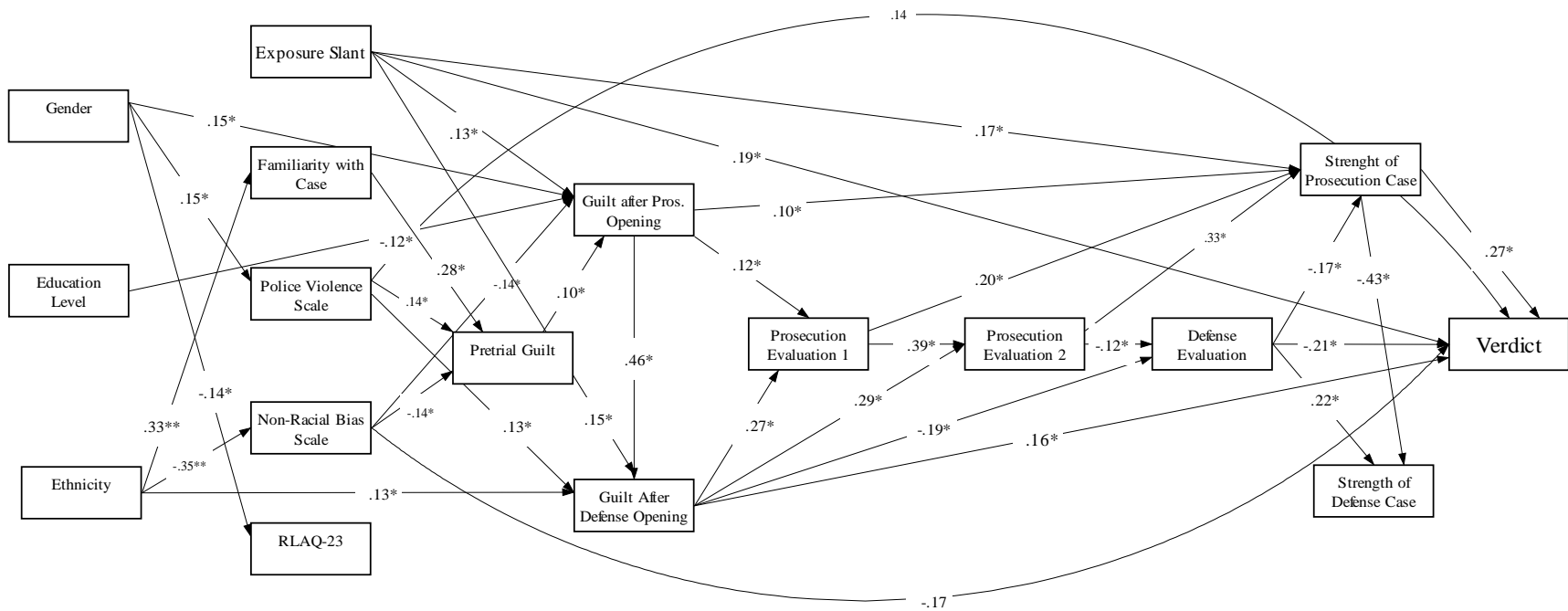


Figure 5. Path model to assess the influence of evaluative slant, amount of exposure, moderating and mediating variables on verdict. Numbers shown are standardized coefficients. Paths not shown are non-significant. \* $p < .05$ , \*\* $p < .01$ . RMSEA = .056, CFI = .85, IFI = .83.



## Appendix A. Advertisement Posted on Craigslist

### ***Opportunity to Participate in University Funded Jury Research***

Would you like the opportunity to participate in a research study for CASH? Read on...

Researchers at a local University are currently involved in studying juror decision making in criminal cases. We are currently soliciting participation in a shadow jury study to act as jurors in a real trial!

Requirements: To participate in this study you must be over 18 years of age, a US citizen and have valid Identification. Additionally, you must have regular access to a computer and the internet, as well as have a valid e-mail ID.

As a shadow juror in the study you will be committed to 6 half hour online sessions over 3-4 weeks (total of 3 hours). For each session you will be sent an e-mail asking you to log-on to a website (details below). You will then read some trial evidence and answer a series of questions about a current criminal trial. You can complete the sessions anywhere, anytime in the specified time period!

The study is set to start Sept. 15<sup>th</sup>, 2008. Register now and save your spot in the participant pool. If there are any changes in the date you will be notified via email. Since we are following a real trial as it happens, there may be some adjustments in the start date.

You will receive \$48 for your participation which is a total of 3 hours and a completion bonus of \$25 for a total of \$73. You will also be entered into a number of drawings for additional prizes including gift cards upto \$750!!!

To participate in the study click on the link below that will direct you to the study website. Once you have reached the study website you will need to create a log-in ID and a password. Please keep these safe and do not lose this information! You will then be directed to a registration page.

All information will be kept strictly confidential and will not be used for any other purpose except for the current study.

Link to study: <http://www.jjcresearch.com/ptp/>

Please e-mail us with any questions at [jurystudy@gmail.com](mailto:jurystudy@gmail.com).

John Jay College Jury Research Team.

## Appendix B.

### Sample Pro-Prosecution Article

#### *New York police kill unarmed man, wound two others*

On Saturday, November 25, a few hours before his wedding, Sean Bell, 23, was shot to death in his car by undercover New York City police officers in Jamaica, Queens. Police bullets struck the former UPS driver twice, once in the neck and once in the arm.

Police fired 50 rounds from semi-automatic weapons even though Bell and his two companions in the car were unarmed. One of them, Joseph Guzman, 31, remains in critical condition with 11 bullet wounds to the neck and leg.

According to the *New York Post*, Guzman was handcuffed to his bed after the shooting and was released from the restraints only after press inquiries. The other passenger, Trent Benefield, 23, received multiple wounds in the assault and was handcuffed and shackled to his hospital bed.

The three men had left the Kalua Cabaret nearby at about 4:00 a.m. after attending a bachelor party for Bell. Undercover detectives had been in the bar at the time, followed the trio out, and allegedly heard Guzman refer to a gun during a minor altercation.

After the three had gotten into the car, another detective confronted them, put his foot on the car, and pointed his weapon at them, ordering them out of the vehicle. Bell reportedly drove his car at the officer, slightly injuring him, and then rammed a white, unmarked police van that had come around the corner.

The detective fired 11 rounds at the car, and another detective who had jumped out of the van fired 31 rounds, indicating that he reloaded. Three other officers also fired their weapons.

The first cop had allegedly shouted into his walkie-talkie, "It's getting hot on Liverpool! For real, I think there's a gun!" In other words, the mere suspicion of a weapon was the cause of disproportionate force on the part of the police.

Friends of the three victims argue that the men mistook the police for robbers. According to Trini Wright, a dancer at the club who witnessed the incident, the police did not identify themselves before they opened fire. Speaking to the *Daily News* she said, "The minivan came around the corner and smashed into their car. And they [the cops] jumped out shooting. No 'stop.' No 'freeze.' No nothing."

Another witness, China Flores, quoted in the *Daily News*, said that it was only after the shooting had started that the police identified themselves. When Trent Benefield staggered out of the car, she said, "He's shouting, 'Stop shooting at me! Stop shooting at

me!” According to Flores, police officers continued firing at Benefield even after he lay down on the ground.

The killing of Sean Bell has sparked outrage throughout the city. On Sunday hundreds attended a vigil and rally in Queens to protest the shootings. The *New York Post* quoted Denise Ford, Bell’s mother, as saying, “Something needs to be done about them. They do things and get away with it. It’s not right or fair to us. Something needs to be done and I’m going to start.” Another protest is planned in front of police headquarters on December 6.

Republican billionaire Mayor Michael Bloomberg phoned Democratic Party notables, including US Representative Charles Rangel and former mayor David Dinkins, from his vacation house in Bermuda following the shootings, undoubtedly to ask them to control the situation, and in a show of concern meant to distinguish himself from his predecessor Giuliani.

The Rev. Al Sharpton, held two press conferences in front of the hospital where the victims had been taken, but said nothing about the social causes of this crime, which would require raising the responsibility of the Democratic Party, of which he is a leading member.

Bloomberg addressed a news conference Monday afternoon at City Hall following a meeting with elected officials and religious leaders from the area where the three men lived. Stopping short of placing blame, the mayor described the events surrounding the shooting as “unacceptable,” “inexplicable” and “deeply disturbing.”

While describing the three men as “victims” and stating, “It sounds to me like excessive force was used” against them, Bloomberg expressed confidence in Commissioner Kelly and said he expected the police chief to keep his job for the rest of his mayoral term.

The *Daily News* gave empty tributes to the groom who had been gunned down on his wedding day, exploiting the grief of his bride and family. The *New York Times* offered an explanation of “contagious shooting” by policemen. The police, by this reasoning, are scared too.

Describing the behavior of the police as if taking place in a vacuum, the media and political establishment make no reference to the social crisis in the city. Yet disregard for human life, fear, suspicion and contempt mingled together on Saturday morning because the police force encounters an increasingly impoverished and angry population

Sample Pro-Defense Article

*CRIMINALIZING TRAGEDY*

Three of New York's Finest were arraigned yesterday on felony and lesser charges in the Sean Bell case - a tragedy steeped in the chaos and danger that city cops face daily.

The three - Detectives Michael Oliver, Gescard Isnora and Marc Cooper - pleaded not guilty to the eight counts against them. Oliver and Isnora face charges of manslaughter, assault and reckless endangerment; Cooper is accused of reckless endangerment.

Now it's up to Queens DA Richard Brown to prove those charges.

He'll have his hands full.

Sure, the usual racial troublemakers already have convicted the three - and locked them up for good.

On the night in question, Bell and his pals were celebrating his upcoming wedding at the Kalua Cabaret, a skeezy strip joint known for drugs, prostitution and guns. The cops were there gathering evidence in an effort to shut the place down.

When Bell and his buddies left, chaos erupted. Bell rammed his car into a police van and clipped Isnora, who was the first to fire his weapon.

In a statement, Commissioner Kelly said that about 4 a.m. a group of men confronted a man outside the strip club and that one man in the group yelled, "Yo, get my gun."

The altercation broke up, and the men separated into two groups, with an undercover officer following one group. The men being followed by the undercover officer got into the Altima that then hit the minivan.

The police said that one officer who leaped from the minivan, a 12-year police veteran, fired 31 times, and an undercover officer with nine years on the force fired 11 times. The other officers fired three, four and five times. Shell casings from the officers' 16-shot, 9-millimeter semiautomatic weapons littered the street; at least 40 were later recovered. A fourth person may have been in the Altima, police said.

Shortly after 3 a.m., Commissioner Kelly said, the undercover officer inside overheard a club dancer complain about a patron who appeared to be armed, and she went out to alert her supervisor and the backup team of possible trouble. About 4 a.m., as Mr. Bell and some of his friends left, a fight erupted outside. It was unclear who was involved, but it ended and those involved split into two groups.

Four men were then observed getting into Mr. Bell's Nissan Altima, which drove a half block east on 94th Avenue and turned south into Liverpool Street. There it plowed into

the unmarked police minivan on the driver's side, apparently just missing a head-on collision. Witnesses said the car suddenly went into reverse, backing up onto a sidewalk where the undercover officer was positioned, then pulled forward and rammed the minivan a second time. That's when the police opened fire, Mr. Kelly said.

When it was over, five officers had fired 50 shots; Bell was dead, his pals seriously injured.

But we must note that crime in the city has gone down remarkably. The bulk of the credit goes to the men and women of the NYPD, who are on the streets in the wee hours, at places just like the Kalua Cabaret - risking their lives, and futures - for the citizens of New York City.

They are *not* perfect. They make mistakes.

Detective Michael Oliver perceived, that he and his comrades were under deadly fire. And in any cop's handbook, you know that under fire, you return all the fire until deadly force is removed.

Bell's car "was still moving as shots were fired, and it struck an undercover officer twice," said Mike Palladino, president of the Detectives Endowment Association.

"This is a bad message to all detectives, all cops. You fire once, twice, you won't get indicted. But you respond [with more bullets], and you are looking at 25 years in jail."

"It's a very dark day for all our detectives and the NYPD," said Michael Palladino, president of the Detectives' Endowment Association. "This is more chilling than I had originally thought. . . . If you can't get it done in three shots or less, you're in trouble."

There are many who believe that the accused officers are the victims of an enormous injustice. That they were simply doing their jobs under dangerous circumstances. That to charge them is to engage in unconscionable second-guessing. That a cop should not have to worry about going to jail for making a good-faith, if tragic, mistake.

Most of the charges leveled yesterday require that intent to do harm be proved beyond a reasonable doubt if a conviction is to be obtained.

The fact is, sometimes police officers must fire their guns. And when that happens, the consequences can be tragic.

But criminalizing tragic outcomes serves only to embolden criminals and to hamstring the police.

## Appendix C. Post-Venire Publicity Article

### Pro-prosecution Article

#### *Victim Persecuted in Death*

On February 27, the so-called trial for the police who murdered Sean Bell opened in New York City. And as the trial began, Sean Bell—the victim of police murder—was being persecuted even after his death.

Only three of the five cops who fired 50 bullets at Sean and his companions were indicted for anything. And that was only because thousands of people took to the streets in righteous anger in the days and weeks after Sean Bell was murdered. It was three months before indictments came down. All three cops have been out of jail the entire time—two on bail and one released without posting bail.

Now, 15 months later, the trial of these three cops has begun. Two, Michael Oliver and Giscard Isnora, are being tried for manslaughter, and the third, Marc Cooper, on only a misdemeanor.

#### The Police Defense: They Killed a “Negative Element”

What does the “prosecution” case consist of when for once charges are supposedly being pressed against a few of these murdering enforcers? Assistant District Attorney Testagrossa’s perfunctory opening statement on the first day of the trial reduced what happened to a “tragedy” caused by “carelessness verging on incompetence,” and he attributed it to police preparation for a raid that “fell far short.”

Even so, initial testimony from a woman who had worked as a dancer at the club where Sean Bell was murdered exposed the police story. She testified that a plainclothes cop in a van “got out and started shooting” without identifying himself. “This is causing me so much pain,” she told reporters, “But I decided to tell the truth and do the right thing.” The woman, who now works as a medical assistant, appeared in court wearing blue scrubs. The Associated Press story on her testimony attacked her with the headline, “Stripper Testifies at NYC Shooting Trial.” The dancer (now a medical assistant) refuted police claims that a tense situation in the club justified the shooting of Sean Bell. She testified that the club was busy that night but nothing seemed amiss, that “everybody was having fun.”

The lawyers defending the police laid out their case in two hours of opening statements on Monday, February 25: They said they will prove that the police did what “any reasonable person” would have done under the circumstances. Here’s what they are claiming was reasonable: Five cops shot 50 bullets at Sean’s car. One of the three cops on trial, Michael Oliver, fired 16 times, reloaded and fired 15 more times. Giscard Isnora,

who started the shooting, fired his weapon 11 times. Sean Bell, who was already dead, and his two friends Trent Benefield and Joseph Guzman, who were seriously injured, were then handcuffed on the ground. Benefield and Guzman were kept handcuffed to their hospital beds until outraged visitors intervened.

In their opening arguments, lawyers for the police repeated the theme the system has run since the killing—that Sean Bell and his friends were at fault for being the victims of a fifty-bullet assault by police. The attorney for Isnora, one of the indicted cops, argued to the judge that Sean and his friends were part of the “negative element” at the club where they held the bachelor party. Because they drank there. Because they may have had a beef with someone else at the club. Because the cops claim they “thought” someone in Sean’s party had a gun—the phantom gun that was never found.

When an attorney for these murdering police turns to the judge and reminds him that people like Sean Bell are part of the “negative element,” what does he mean by that? You be the judge.

#### Pro-defense Article

##### *The Sean Bell Curveball For Cops on Trial*

A week into the trial of three cops in the Sean Bell case, the prosecutors' theory that two of the cops were "acting in concert" when the bridegroom was gunned down in a hail of police bullets is striking a sour note with some observers.

For Judge Arthur Cooperman, to convict on the top counts of first- and second-degree manslaughter, he'd have to believe "that they planned it and they all had the same mind-set," says veteran defense attorney Marvyn Kornberg. "And that's ludicrous."

If anything, the prosecutors undercut their own theory during the first week of the trial by stressing the lack of planning by the accused officers' unit on the night of the shooting and the chaos that followed.

The "acting-in-concert" idea underlies both of the manslaughter counts, which some attorneys with experience in such cases believe will have little chance of succeeding, especially with a generally pro-cop judge like Arthur Cooperman.

Right off the bat, knock Marc Cooper, a detective who couldn't shoot straight, out of the discussion. Cooper faces only a misdemeanor count of reckless endangerment because his aim was so bad: One of his shots crashed through an AirTrain window 200 feet away.

The two other detectives standing trial, Gescard Isnora and Michael Oliver, face charges of first- and second-degree manslaughter. Those two are thought to be responsible for 42 of the 50 shots fired.

It's the theory behind those charges that's the real head-scratcher, because it implies that there was some sort of plan by the cops.

"There has to be a common purpose that's agreed upon among the players," says John Patten, who successfully defended Officer Sean Carroll in the Amadou Diallo murder trial. "This thing goes down so quickly it's hard to imagine they had an agreed-upon common purpose."

Asked to formulate an acting-in-concert scenario for the Bell case, a city prosecutor, speaking on the condition of anonymity, starts—then stops, noting: "I gotta say, it probably is a stretch." A sitting city judge, also speaking on condition of anonymity, agrees, saying: "It's a tough thing to charge if you figure the cops were only acting as cops."

Gary Farrell, a former prosecutor with the Brooklyn District Attorney's Office who is now a defense lawyer, says the second-degree manslaughter charge under the acting-in-concert theory is especially difficult to understand.

"How do you act in concert with somebody who you're saying is acting recklessly?" Farrell says. "It doesn't make sense."

Queens District Attorney Richard Brown's office declined to comment for this article. But Farrell says the acting-in-concert charge is so unusual that perhaps the D.A. tried to get a murder indictment, but this was all the grand jury left prosecutors with.

A likelier scenario, other lawyers tell the *Voice*, is that the prosecutors decided not to file murder charges, so the acting-in-concert theory was the only way to make the more serious charges fit for Isnora, who initiated the incident and fired 11 shots. Prosecutors can tie one of the two deadly shots that could have killed Bell to Oliver's Sig Sauer handgun. But Isnora was firing the same type of standard-issue pistol as the three other cops who fired their weapons; that made it impossible to determine who fired the other deadly shot. Under the acting-in-concert theory, you don't need to establish that.

## Appendix D. Trial Transcript

You will now read opening statements in the case of *People of New York v. Michael Oliver, Gescard Isnora and Marc Cooper*. The first opening statement will be presented by the assistant district attorney Mr. X. Please read the statements carefully as you will be asked to respond to some questions at the end.

THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. NOW, WE ARE IN OPEN COURT WITH COUNSEL AND DEFENDANTS.

EACH DEFENDANT HAS ENTERED A PLEA OF NOT GUILTY TO THE CHARGES IN THIS CASE.

THIS PART OF THE TRIAL INVOLVES ALLOWING THE PARTIES, IF THEY WISH TO DO SO, TO MAKE AN OPENING STATEMENT. THE PURPOSE OF AN OPENING STATEMENT IS TO PROVIDE YOU WITH A BRIEF OUTLINE AS TO WHAT THE PARTIES ANTICIPATE THE EVIDENCE WILL SHOW DURING THE COURSE OF THE TRIAL. I NEED TO CAUTION YOU, I NEED TO ALERT YOU, THAT THIS PART OF THE TRIAL IS NOT TO BE CONSIDERED AS EVIDENCE. AND YOU NEED TO TAKE WHATEVER PRECAUTIONS ARE NECESSARY TO PRECLUDE THIS PORTION FROM BEING VIEWED AS EVIDENCE. AND WE START WITH THE PEOPLE.

Prosecutor: Good morning your honor. We stand before you today to charge two men Detective Michael Oliver, and Detective Gescard Isnora with the following charges:

To Wit Count 1: Felony charge of manslaughter with intent to cause physical injury.

To Wit Count 2: Felony charge of assault with intent to cause serious injury with a weapon

To Wit Count 3: Felony charge of manslaughter to recklessly cause death

To Wit Count 4: Felony charge of Reckless endangerment.

Detective Marc Cooper is charged with one Count of Reckless endangerment.

This case is about 3 New York City Police officers who acted without justification and fired 50 rounds of bullets. And that is all there is to it. This is a case of carelessness verging on incompetence on the part of the officers, who without provocation opened fire on three young men, killing one, and injuring the others. The police squad that night the police had been careless and desperate to make an arrest because their vice unit was about to be disbanded.

Ladies and Gentlemen, once the evidence is heard it will be clear that what happened cannot be explained away as a mere accident or mistake - it can only be characterized as criminal. On the night of the shooting, the officers were told by a superior officer: "This might be our last night together. Let's make it count."

Sean Bell and his group of friends were at Club Kalua, enjoying the night out, the night before he was to be married to his high school sweetheart Nicole Paultre. Little did he know that he would never make it to the alter but die at the hands of New York's "finest."

The vast majority of these bullets struck the car of an innocent young man who was about to be married that day, and several struck other, uninvolved vehicles. Sean Bell, the

young man to be married that day was struck by 4 bullets, 2 of which were fatal. One was in his neck which perforated tissue and continued into the shoulder, and the other was in the torso going in to the liver and the diaphragm.

On the night of this tragic shooting the police officers involved attempted to stop the Nissan Altima that Sean Bell was driving, in which with him were his friends Joseph Guzman and Trent Benefield. The officer believed Bell and his friend had a gun - no such gun was ever found. The officer Michael Isnora who approached the car had no bold flashlight, no uniform and did not display a badge – how then were these young men supposed to know he was a police officer? They were under the impression that he was someone out to rob them and they reacted as such.

Detective Michael Oliver who was in a police van that crashed with Sean Bell's car fired 31 round – 31! He emptied two magazines, bullets from his gun were recovered from all the victims. He fired on Joseph Guzman because he believed that Detective Isnora was firing at him. He believed that Guzman had a gun, yet he could not see his hands to be sure of this. He did not fire, stop to reassess the situation, and then determine whether additional fire was needed – NO. He continued to fire until he emptied one magazine, and reload and fired again. Oliver NEVER attempted to take advantage of the cover provided, to reassess the situation in safety. Had he done so he would have seen no fire coming from the vehicle that Sean Bell and his friends were in. The intent was to fire, to strike Guzman, and to kill or disable him. Oliver had the same intent for Sean Bell – 3 out of the 4 bullets that struck Sean came from Oliver's gun.

Det. Isnora who has been on the force for over 9 years, thought he overheard the men in the car talking about a gun. Instead of waiting for back up, an ordinary tactic in which he had been trained, he approached the Altima himself. He had no idea where his back up was, nor did he give his back up officers any information about what action he was about to take. He did not display his shield, he did not identify himself to the men in the car. He approached them confrontationally from the front of the vehicle, not the side. He did not take advantage of his cover. The young men thought he was a threat. And to protect themselves drove forward, in the process of which they bumped Isnora.

Isnora after being bumped immediately started to fire , EVEN though the vehicle was not a threat to him, and emptied 11 rounds without pausing to reassess.

Ladies and Gentleman of the Jury, we will show you by the weight of the evidence that the defendants are indeed guilty. Oliver and Isnora were reckless in firing so many times at a car with three passengers. We will prove to you beyond a reasonable doubt that they caused the death and injury of these three men by criminal conduct, execution style, without justification.

Thank you for your time and patience.

THE COURT: THANK YOU COUNSEL, WOULD THE DEFENSE LIKE TO MAKE AN OPENING STATEMENT?

Defense attorney: We would your honor. Good morning ladies and gentlemen of the jury. Nov. 25, 2006 was a tragic day with a tragic, devastating shooting. This is a case about what happened and why. This was a conflict which ended in a tragic death. This is indeed a tragedy, but Ladies and Gentleman, this was no crime. Something abnormal must have happened that night, for 5 long time police officers to believe that they were being fired on. Not one of these officers in their long careers had ever fired a weapon. Was this an execution? Did the officers just start shooting? Did they fail to identify themselves? You will hear evidence for this from the so called eyewitnesses.

But the question you must ask yourself - were these officers presented with facts that would lead any reasonable person to believe that deadly force was necessary? You will hear two stories, one of execution and the other of justification. You must decide this case based on credibility, and in doing this use the expert, scientific and medical testimony as a roadmap.

Club Kalua was on a targeted list of clubs by the police. There had been two arrests earlier that week for narcotics and prostitution. The undercover officers were there that night to run another such operation, but their plan changed when they thought danger was lurking in the form of a gun.

At 3:45 a.m. Michael Oliver who was in an unmarked police van received a transmission from Det. Isnora who had observed a man he believed to be carrying a gun. This man was heavy set and wearing a White Sox cap. Det. Oliver waited, he then got a second instruction – to move closed to the Club, around 4 a.m. He received a third transmission letting him know that the man was leaving the club. Det. Oliver cruised past the club, didn't see the man and turned on the corner of Liverpool. (Please refer to exhibit at end of statement for location). He then saw Det. Isnora standing in front of the Altima, on the passenger side. Events that follow were fast, and on impulse – and shocking.

Det. Isnora approached Bell's car, he identified himself, raised his gun and asked for a show of hands. He is an experienced undercover cop. He has been in these situations before. Guzman tells Bell, "Drive, go, go." Isnora has to jump out from being "squashed." This is testimony you will hear from a friend of Bell. He did not fire on the first attempt to run him over. He did not fire when they reversed. He had no intent to shoot. He did not act recklessly.

On the other side, Oliver hears high pitched screeching, sees the car pull out, and it crashed head on with the van. It appeared as if though the car had struck Det. Isnora. After crashing, it shifted into reverse, sped backwards, mounting the sidewalk. It then came back full speed at the van. Oliver will testify that Det. Isnora said "He's got a gun." He stood in the street with his arms stretched pointing at the front passenger seat. He saw Guzman reach for a gun, and fired – 11 shots 5 seconds.

Oliver heard a shot and saw the passenger side window, where Guzman was seated shatter. He then believed that Guzman was firing at Det. Isnora. As he was trained to

protect his fellow officers he jumped out of the van and started firing. These events he observed provided justification.

I submit to the Court, that I will show evidence that Det. Oliver's description of the events, the collision, and the fact that Det. Isnora was struck will all be corroborated with forensic evidence.

Why is my client Det. Oliver here? It is because he fired 31 shots. Police Officer Kenny who was there that night fired 3 shots, he saw the same thing, but he stopped firing, not because he thought the threat was eliminated, but because he saw Isnora in his line of fire. He did not want to accidentally shoot him.

The evidence will show a flaw in the People's case – they are fixated on the number of shots. We know now that no gun was found, so how could they do it – how could they fire 50 shots! Hindsight wisdom, Ladies and Gentlemen does not work in a Court of Law. Base your decision on facts, not on what we know now.

When does a veteran policeman become a criminal? When does he cross the line. This will not be proven beyond a reasonable doubt. It takes 9-12 seconds to discharge 31 shots. The circumstances did not change during those seconds. Nothing caused the officers to realize that deadly force was not necessary.

The officers actions were justified throughout. At the end – this was a tragedy, no doubt about it, but no crime was committed. I submit to you that the people will fail to prove the absence of justification beyond a reasonable doubt.

Thank you.

You will now read testimony from Prosecution Witnesses in this case. This is true testimony, but it is in an abridged form. Due to time constraints we cannot present everything that was said in court but what is presented is an accurate representation. The testimony from some witnesses is not presented directly, but summary information is presented. Following the testimony you will be asked to answer a few questions regarding your opinions.

Prosecutor: Your honor, we would like to call our first witness to the stand, Nicole Paultre Bell.

Judge: You may proceed.

Prosecutor: Please state your name for the record.

Bell: Nicole Paultre Bell.

Prosecutor: And how do you know Sean Bell?

Bell: We were to be married the day he was killed.

Prosecutor: And when did you meet Sean?

Bell: We met in 2000 in high school in the 10th grade, he was in the 11th.

Prosecutor: And how long were you a couple?

Bell: 6 years

Prosecutor: And what date were you set to marry?

Bell: Nov. 25, 2006

Prosecutor: And the night before you were to marry did you hear about a bachelor party for Sean?

Bell: Yes that was a last minute decision his friends made that evening.

Prosecutor: Who was the host?

Bell: No one really, they all just decided together.

Prosecutor: Now, did Sean borrow your car that night?

Bell: Yes he did, a Nissan Altima.

Prosecutor: And were the windows tinted on your car?

Bell: No. But the driver's window got stuck when it was lowered, so we kept it in the up position.

Prosecutor: Now, when was the last time you saw Sean alive?

Bell: When he dropped me to my sister's house that evening for my bridal shower.

Prosecutor: Now I would like to draw your attention to Saturday, Nov. 26th, where were you at 5 a.m.?

Bell: I was asleep at my mothers' house, when she woke me up.

Prosecutor: Then what happened?

Bell: She told me Sean had been shot and we drove to Jamaica hospital.

Prosecutor: How long were you there?

Bell: Till about 11 a.m. I talked to the doctors about Sean's status.

Prosecutor: And did you see Sean at that time?

Bell: Yes I did.

Prosecutor: And where did you see him?

Bell: (sobbing) In the morgue.

Prosecutor: Thank you Ms. Bell, your honor I do not have any more questions.

Defense: Your honor, we do not have any questions for this witness.

Judge: Alright, Will the prosecution please call their next witness.

Prosecutor: Thank you your honor, we call Det. Brian Skelton of the New York Crime Scene Unit Division.

Prosecutor: Good morning Det. Skelton, could you please give us an overview of your professional background?

Skelton: Good morning, Prior to working for the Crime Scene Unit (CSU) I started in the police department working patrol for 2 years, 2 years in the anti-crime unit, I was 2 years in homicide and now I have been detective for 5 months.

Prosecutor: When did you start at the CSU?

Skelton: In March of 2006. I have handled over 110 cases and assisted on an additional 100.

Prosecutor: Now were you working on Nov. 26, 2006?

Skelton: Yes, I was dispatched to a crime scene around 4 p.m. The focus of the run was to take pictures of the interior of the Kalua Club which had been part of a shooting the night before. We did a walk through of the club, took measurements, as well as pictures.

Prosecutor: Could you describe the club?

Skelton: Yes as soon as you come through the front door you enter a vestibule area. This is where you pay to get into the club. Once you walk inside there are some sofas and arcade games on the left and a bar area on the right. You can go through this area to a back room which has a stage where the dancers perform.

Prosecutor: Now I would like you to take a look at this picture you took inside the club. It is of a sign that states

"Must Buy 1 drink every half hour." Did you take this picture?

Skelton: Yes sir.

Prosecutor: What did this mean to you?

Skelton: That patrons had to buy a drink every half hour to stay in the club.

Prosecutor: Did it indicate what type of a drink?

Skelton: No sir?

Prosecutor: So it could be anything alcoholic, a soda, juice, as long as it was a drink?

Skelton: I believe so.

Prosecutor: Thank you I have no further questions.

Judge: Defense counsel, would you like to cross examine the witness?

Defense: No your honor.

Judge: The prosecution will now call their next witness.

Prosecutor: Thank you your honor, we now call Sean Spencer to the stand.

Spencer: Good afternoon.

Prosecutor: Mr. Spencer, have you ever been convicted of a crime?

Spencer: Yes sir, of 2 felonies. The first for possession of cocaine, and the second for dealing cocaine.

Prosecutor: And did you serve any time?

Spencer: For the second, I was sentenced to three years in prison, and an additional year as my previous probation was revoked.

Prosecutor: And are you currently employed?

Spencer: Yes sir, as security at Kalua Club. Have been for 4 years.

Prosecutor: Now on the night of Nov. 24, 2006, where in the club were you working?

Spencer: I was working security at the front door.

Prosecutor: And what were your responsibilities?

Spencer: I checked ID's. Searched customers for any weapons - guns, knives, and anything else that might be dangerous. I sometimes used a metal wand when it got busy.

Prosecutor: And what was your policy for customers who left the club and re-entered after a while?

Spencer: I patted them down again if they left my eyesight, otherwise I let them back in.

Prosecutor: Now that night, how did you become aware of the Sean Bell party?

Spencer: A customer - Bone, he told me. He was a frequent visitor of the club, and he came to the door with 4-5 other people.

Prosecutor: Now did you search all of them?

Spencer: Yes sir, I did, they were all frisked, and that's when Bone introduced me to Sean Bell.

Prosecutor: Now what time did the club close that night?

Spencer: Around 4 a.m.

Prosecutor: And what time did Sean Bell and his friends leave?

Spencer: Around 4:10 a.m. Sean Bell was the last one to walk out. He then came back because he left something inside, his hat.

So he went back in and came right back out in a few seconds.

Prosecutor: Did Sean Bell seem sober to you?

Spencer: Yea, he did not look intoxicated.

Prosecutor: What did you do when he left?

Spencer: I closed and locked the door and went back in, this was around 4:12 a.m.

Prosecutor: Then what happened?

Spencer: Well, one of the dancers, Trninity wanted to leave, so I let her out the front door. A few minutes later I heard multiple gunshots. About 25-30, then a 10-15 second pause, and then another round. So I called another security gaurd to come to the front.

Prosecutor: Did anyone try and come back to the club?

Spencer: Trinity. She came running to the front door and banging on it. So I let her back in, but I did not go back out. I then left the club about 15-20 minutes after the incident.

Prosecutor: What if anything did you see then?

Spencer: I saw a bunch of people gathered around, an ambulance. But my car was parked in the opposite direction so I walked toward it and went home.

Prosecutor: Thank you your honor. I have no further questions.

Judge: Would you like to cross examine this witnesS?

Defense: Yes your honor. Mr. Spencer, You indicated that you worked the front door security the night of the incident?

Spencer: Yes sir

Defense: Now, when Sean Bell left and returned to the club, he was in your sight the whole time?

Spencer: Yes sir.

Defense: But he didn't just leave and come right back in did he. He walked off to the right first and stood there for a while?

Spencer: Yes sir.

Defense: But you did not frisk him when he re-entered?

Spencer: No sir.

Defense: Now did you see some guy standing by an SUV when the Bell party was leaving?

Spencer: Yes sir.

Defense: Was he talking to anyone, to Sean Bell?

Spencer: I don't know.

Defense: Did anyone argue with the SUV guy?

Spencer: I don't know, I didn't see it.

Defense: Ok, now you told us you were in the club when you heard gunshots?

Spencer: Yes sir

Defense: And you heard a pause between shots?

Spencer: Yes, 10-15 seconds.

Defense: Ok, now I have before me your sworn testimony from the Grand Jury hearing in this case, where it says you thought the pause was 5-10 seconds. Do you remember saying that?

Spencer: Could have, I don't remember.

Defense: So was it 5-10 seconds, or 10-15 seconds?

Spencer: I don't know, all I know was that there was a pause.

Defense: Now when these shots went off Trinity came back and you let her in?

Spencer: Yes.

Defense: Now you had an interview with Det. Ness, the day after the shooting and you said, "there was a pause in the gunfire. I then let Trinity in, because she was banging on the door, and then I heard more shots being fired." You remember saying that?

Spencer: No

Defense: Do you think your recollection is better today or the day after the incident?

Spencer: it is better today.

Defense: Thank you your honor, no further questions.

The next witness was Ms. Payne (a.k.a. Trinity)Testified she last saw Mr. Bell turn on his headlights on Liverpool Street and pull away from the curb. She was to follow him and his friends to a diner for breakfast after her long night of dancing. "As he came out, a minivan came from behind me and they crashed," she said. "The driver of the minivan

got out of the car. He got out and he started shooting.” She said she was close enough to see the muzzle flash from his pistol. “I saw the fire like three times and I turned and I ran,” she said, adding that she crouched in someone's shrubs. “I waited for the gunshots to stop. It was about three seconds, and I started to get up, and the gunshots started again.” On cross exam said she never saw Detective Isnora approach Mr. Bell's car with a gun, and never saw Mr. Bell back up after hitting the minivan, strike a wall and charge forward, hitting the van again. She said she never heard anyone shout, “Police,” and never heard any shouts or screams. She said she ran back to the Club Kalua and told the bouncer, “They're shooting down the block! They're killing those boys!” Then, after two or three minutes, she said, she ran back to her car so she could move it before the police arrived, but she was too late, arriving to see paramedics pulling bodies from Mr. Bell's car. When the police questioned her, she repeatedly denied having seen or heard anything before finally giving detectives a statement that night, she said. “I don't need this drama in my life,” she said.

Judge: We will now hear from the next prosecution witness.

Prosecutor: Thank you your honor, we call Hugh Jensen to the stand. Good morning Mr. Jensen.

Jensen: Good morning.

Prosecutor: Now, you were with Sean Bell the night of his bachelor party at Club Kalua, is that correct?

Jensen: Yes sir.

Prosecutor: And how long have you known Sean Bell?

Jensen: About 5 years

Prosecutor: Now, you left the club with Sean at the end of the night?

Jensen: Yea me and Lorenzo, another friend were standing outside the club talking to one of the dancers.

Prosecutor: Now did you see Sean Bell and Joe Guzman talking to a man standing by an SUV?

Jensen: Yes

Prosecutor: And what if anything did you overhear in that conversation?

Jensen: Well they seemed to be arguing but I couldn't hear much, at some point Sean turned toward me and he had a sarcastic grin on his face, but I didn't hear much. I was talking to my lady friend and wasn't really concentrating on their conversation.

Prosecutor: Did anything happen after that?

Jensen: Nothing came out of the altercation. We were all heading out and Sean and a couple of the other guys walked off toward the end of the block to get their cars.

Prosecutor: Then what happened?

Jensen: Well Lorenzo and I continued talking to the girl, and then Trinity and another guy walked by. Right after that a friend of the SUV guy walked by and he said I was a lucky guy. He just kept walking to the end of the block.

Prosecutor: Did you see anyone else?

Jensen: I saw two other guys, one bald, who had been hanging around. He started to follow in the direction of Sean and the guys. [He then identifies Det. Isnora at the defense table as the bald man.]

Prosecutor: Did anything else happen after that?

Jensen: We were still talking, A Green caravan passed by going toward Liverpool street. It was going pretty slow. I saw one guy in there, a white guy, looking at us. It looked like an undercover police car. I think it turned the corner but I am not sure. I stopped paying attention after it passed us. A few seconds later, I heard gunfire. It sounded like 2-3 shots from 1 gun, then another. I was not sure how many shots. It was like pop pop pause pop pop pop.

Prosecutor: What did you do then?

Jensen: Well I thought of my friends, you know, cause they had just gone that way, so I started going toward the corner. But then I stopped cause I heard more gunfire, and I didn't have anything to protect myself.

Prosecutor: And what if anything happened then?

Jensen: Trinity, the dancer, she ran by us away from the gunfire, but I didn't talk to her. Lorenzo and I then got to the corner, he was a little ahead of me, and we saw some cars that had crashed into one another. I saw Sean Bell in the driver's seat with his head hanging to the side. There was a cop next to the drivers side, he had a gun and turned it on us yelling, "Get the fuck off the block."

Prosecutor: How did you know they were officers?

Jensen: Well we just figured they were, they had their guns drawn, and directed in our direction.

Prosecutor: Did you see them wearing any shields or badges?

Jensen: No I couldn't see anything.

Prosecutor: Did you at any point see the bald guy again?

Jensen: Yes, I saw him come running up the block and he ran into a doorway. It looked like he was talking on his cell phone. I then saw a tall white man on a walkie talkie yelling the address calling for an ambulance and then he ran into the middle of the block.

Prosecutor: Then what did you do?

Jensen: Well I started yelling to the cops, "Is he dead." But they ignored me. I finally went up to a uniformed cop and tried to get some details, but he said he did not know anything. So I just stood around waiting, and then saw someone being taken out on a stretcher. I didn't know who it was and then the ambulance pulled out. I then saw Joe Guzman in an ambulance. I could see his foot. We then waited 5-10 minutes more and then headed to the hospital.

Prosecutor: Thank you, I have no further questions.

Judge: Defense counsel, would you like to cross examine the witness?

Defense: Yes your honor. Mr. Jensen, now when you left the club, did Sean look drunk to you?

Jensen: No he seemed sober.

Defense: So he wasn't stumbling around?

Jensen: NO

Defense: Now outside the club your attention was on the young lady you were talking to, correct?

Jensen: Yea

Defense: So you weren't paying much attention to the altercation between Sean and the SUV guy?

Jensen: Not really, but it didn't seem to be anything.

Defense: So you didn't see your friends get heated and swarm around the SUV guy?

Jensen: No

Defense: Now the gentleman in front of the SUV, did it look to you like he had a weapon?

Jensen: Well he had his one hand in his pocket. He seemed to be acting like maybe he had one. He could have been fronting. But I had no idea if he had one or not.

Defense: Ok, now the men in the green van, you could tell they were cops?

Jensen: Well they were driving real slow, and the man was looking at us, the white guy in the front, so yea, I thought maybe they were undercovers.

Defense: Now when you got to the corner the gunfire had stopped is that right?

Yes sir.

Defense: So you didn't really see any of the police officers on the scene fire a weapon did you

Jensen: No, but..

Defense: Thank you, your honor I have no further questions for this witness.

Prosecutor: We now call Anthony Rudnick to the stand, good morning Mr. Rudnick  
Rudnick: Good Morning

Prosecutor: Could you please tell us your occupation?  
Rudnick: I am an emergency medical technician.

Prosecutor: And were you working the morning of Nov. 25, 2006?  
Rudnick: Yes I was, I was on duty when I was called to a scene of a shooting around 4:16 a.m.

Prosecution: And what was the first thing you saw when you go to the scene?  
Rudnick: I saw two cars collided on Liverpool street, so I parked behind them and approached the Altima. I saw a man's upper body hanging out of the driver's side, and his hands were cuffed. I introduced myself to the man and asked him if he was ok. He said he was ok but he was worried about his friend underneath him.

Prosecutor: And did you learn the identity of this man?  
Rudnick: Yes his name was Joseph Guzman

Prosecutor: Then what happened?  
Rudnick: I then leaned down and saw that Guzman was not the driver of the car, but that there was another man, in the driver's seat who was underneath Guzman, who'd fallen into the driver's seat atop him. Sean Bell was the driver. Bell was ashen gray and did not appear to be breathing. I was unable to find a pulse and realized he was in traumatic cardiac arrest. My partner, Walsh, worked to remove Guzman from the car, immobilizing him then sliding him across the front seat and out the passenger's side, so I could work on Bell. I cut off Bell's shirt so that he could see his wounds.

Prosecutor: What did you see at that time?  
Rudnick: I found a bullet entry wound to the right side of his neck and another to the right side of his chest. I put a cervical collar on Bell to immobilize him, reclined his seat, which was already partially reclined, as far back as it would go, and began performing CPR and artificial pulmonary resuscitation on him. Another EMT then arrived and took over from me.

Prosecutor: What if anything did you do then?  
Rudnick: I then concentrated my efforts on Guzman. As I placed Guzman into the ambulance, Guzman said, "I can't believe the police shot my friend." Guzman was still in cuffs at that time. I got into the ambulance, cut off Guzman's clothes and had the cuffs removed so he could properly treat him. Guzman had multiple wounds to his face, chest, abdomen, legs, and back, and was in critical condition, with a collapsed lung. I began sealing the wounds and monitoring Guzman's vital signs as the ambulance proceeded to Mary Immaculate hospital.

Prosecutor: Thank you I have no further questions.

Judge: Would you like to cross examine the witness, counsel?

Defense: Yes your honor. Now Mr. Rudnick, did you tell Mr. Guzman the police had shot Mr. Bell?

Rudnick: No

Defense: Did you see anyone tell Mr. Guzman the police had shot Mr. Bell?

Rudnick: No

Defense: Then how did he know the police had shot Bell?

Rudnick: I do not know how Mr. Guzman would know that, I am not in his head.

Defense: Did you know they had been shot by police?

Rudnick: No

Defense: Now when you were assisting the passenger seat patient, who we now know is Joe Guzman, did you hear any bullets falling from his shirt?

Rudnick: No

Defense: See any ballistic evidence in the region?

Rudnick: No

Defense: Now you told us you walked around the car to the driver's side, did you notice any ballistic evidence then?

Rudnick: No, I was concentrating on the patients.

Defense: I have no further questions.

Prosecution: The prosecution will now call Det. Hispolito Sanchez to the stand.

Good morning Detective, could you tell us a little but about your career with the NYPD.

Sanchez: Sure, I have been with the NYPD since 1990. I started as a patrol officer in the Bronx for 2 years, and then moved to Brooklyn North Narcotics as an undercover for 3 years. I have been working as an undercover in various precients for the past 12 years.

Prosecution: How many undercover operations have you been a part of?

Sanchez: Over 200 - as a primary undercover, a ghost, and an investigator.

Prosecution: And when were you assigned to Club Initive?

Sanchez: That was in Sept. 2006

Prosecution: And what is Club Initiative?

Sanchez: It is an operation that was designed to close down troublesome clubs. Those associated

with prostitution and narcotics. The inital focus was on the Chelsea area but moved out to

Queens in Oct. of 2006.

Prosecution: Now prior to Nov. 24th, had you taken part in any operations at Club Kalua?

Sanchez: Yes, the Tuesday before. I worked as an undercover ghost that night. we successfully completed a prostitution sting and arrested two females.

Prosecution: Now during this entire evening of the sting you communicated a number of times with your back up?

Sanchez: Yes, via cell phone.

Prosecution: Now turning to the night of Nov. 25th, was a meeting held prior to the operation?

Sanchez: Yes, at around 11:30 p.m. with the whole team.

Prosecution: And what was discussed?

Sanchez: Well we talked about the various clubs we could target that night, equipment, what roles all of us would play - undercover, ghost, arresting officer.

Prosecution: Did you discuss the future of the Club Initiative?

Sanchez: Yes, Det. Napli, who was our commanding officer, told us that this was the last night before we would be disbanded, that this was our last operation together.

Prosecution: And were any goals discussed?

Sanchez: Yes, we were going to go to Kalua first because we had one arrest, and another one would give us the opportunity to close the club down.

Prosecution: Now what were the various roles the officers were playing that night?

Sanchez: I was assigned as an undercover along with Isnora. and Det. Oliver was driving the prisoner van in which arrested prisoners were transported.

Prosecution: Now how many cars were involved?

Sanchez: Det. Oliver was driving the P-Van, Det. Napli and Henly were in the leader car, and Ghram, Isnora, Hendez and I were the undercovers going in.

Prosecution: Did you know that Det. Cooper was riding with Det. Napli at that time?

Sanchez: No sir.

Prosecution: Now when you went in the club did you have a gun or shield with you?

Sanchez: No sir. Bringing it as an undercover is a personal decision. But none of us took them

in that night, as we knew we would be searched at the door.

Prosecution: What time did you get to Club Kalua?

Sanchez: We got there around 12:30 p.m. and waited for the ok from Det. Napli to go in. Once I got that we entered the club, that was around 12:45 a.m. When I got inside I tried to call the Lutenient to let him know I had got in, but I couldn't hear anything so I stepped outside to make the call. I then told him to send in the rest.

Prosecution: Then what happened?

Sanchez: The other detectives came in and Det. Isnora sat next to me. I commented to him that the club was much louder and rowdier than it had been the last time we were there, and a lot more noisier

Prosecution: Did there come a time soon after that you called Lt. Napli?

Sanchez: Well a dancer came up to me and kept insisting that I buy her a drink. I told her I would get her one a little later. She then started talking to Det. Isnora. The club felt very different that night, lot more rowdy. I didn't have a good feeling. So I called Lt. Napli to let him know how I was feeling.

Prosecution: Now did you notice any fights in the club that night?

Sanchez: Yes, I saw a female throw a drink at a male, and then he threw a drink back at her. She slapped him twice and then they were escorted out of the club by security.

Prosecution: Did you witness any other arguments?

Sanchez: Yes I noticed a tall, drak skinned man who seemed to be having a heated discussion with someone. I couldn't hear what he was saying.

Prosecution: At any point in time did you learn the identity of this gentleman?

Sanchez: Yes, Joseph Guzman.

Prosecution: Then what happened?

Sanchez: I went outside to update Lt. Napli. I didn't tell him about the argument because I didn't think it was significant.

Prosecution: What if anything did you do next?

Sanchez: Well I went back inside and moved to the middle of the bar. Det. Isnora came up to me and said he thought someone had a gun in the bar. A dancer had come up to him and told him that she had been talking to a guy about some trouble she had, and he had told her not to worry and pointed at his waistband. She didn't see a gun, but thought that was what he meant. Det. Isnora described him as tall, black, wearing a white sox cap, and a black jacket.

Prosecution: Then what happened?

Sanchez: I then went back out to update Lt. Napli, this was around 2:30-3 a.m. I went back inside and couldn't find Det. Isnora, or Cooper. It was around closing time, and I didn't know if they had left the club or not.

Prosecution: Ok, now how many drinks did you have that night?

Sanchez: I had two beers.

Prosecution: Right, now what did you do when the club started to close?

Sanchez: well, I went outside, and called Lt. Napli. This was around 3:30. I then saw Det. Isnora and Det. Cooper standing outside. I talked to Isnora and he said that he had retrieved his gun and was re-armed. He thought the guy in the white hat was still inside the club, so I re-entered to see whether I could spot him. I walked around the club, didn't see him, so left the club again.

Prosecution: When you left the club were there any other people outside?

Sanchez: yes there were about 15-20 people standing around.

Prosecution: Were there any vehicles?

Sanchez: There was a black SUV with tinted windows, directly outside the club entrance. I saw an individual standing on the passenger side of the car.

Prosecution: What if anything did you observe then?

Sanchez: Well, I saw a group of guys who were standing close to us, with one female. She looked up the block and said, "I'm not fucking all of you." Then one of the guys said, "I'll go get another girl." I saw the group continuing to talk, and then the guy in front of the SUV looked at them and said something and raised his hand. He was directing it at Joseph Guzman who was also part of the group. Guzman said something back, and the two started going back and forth. I couldn't hear what they were saying but they were talking back and forth.

Prosecution: Then what happened?

Sanchez: Then one of the men in the group to my right came across and went to the front of the argument and said, "Let's fuck 'em up."

Prosecution: Did you at some point learn the identity of this man?

Sanchez: Yes, his name was Sean Bell.

Prosecution: What if anything did you see then?

Sanchez: I heard Guzman who was part of the group I had been observing yell, to his friends, "Yo go get my gun." The SUV guy then looked at Sean Bell and Sean Bell walked away. The SUV guy had one hand in his pocket and the other was visible. To me it looked like he may have had a gun.

Prosecution: What happened next?

Sanchez: Bell walked away and then came back a few seconds later and again said, "Let's fuck 'em up." The SUV guy looked at Bell and was very stiff. Sort of stared him down.

Prosecution: Did it seem to you that the SUV guy had a gun?

Sanchez: Yes it was my impression he had a gun in his pocket. But at that point Sean Bell and his friends walked away toward Liverpool and that was the end of the encounter with the SUV guy.

Prosecution: During this time did you ever see a gun?

Sanchez: No

Prosecution: What did you do next?

Sanchez: I called Lt. Napli to update him on the encounter and then handed my phone to Det. Isnora. He continued to talk to Lt. Napli, while walking toward Liverpool following Bell and his group.

Prosecution: Then what did you do?

Sanchez: Well I started walking toward Liverpool slowly, talking to a female, to maintain cover. I then saw the SUV guy get into the drivers seat and drive off. I waited for the guy in the white hat to come out of the club but didn't see him, so I just hung around observing the group standing outside of the club.

Prosecution: Now at this point you had a number of subjects who you thought may have a gun?

Sanchez: Yes

Prosecution: So then why did you continue to watch the group outside the club?

Sanchez: Well they were originally talking to Guzman

Prosecution: But not anymore right? Guzman had moved on?

Sanchez: Yes

Prosecution: What happened next?

Sanchez: Well I walked toward Liverpool and was about 20 feet from the corner when I started to hear shouts. I couldn't understand what was being said, but heard people shouting.

Prosecution: Did you hear the words "police" "stop" "show your hands"?

Sanchez: No

Prosecution: Then what did you hear?

Sanchez: I heard something that sounded like a loud collision. By that time I had reached the corner. I looked onto Liverpool and saw the rear of the police van.

Prosecution: Did you see people in the street? Other cars?

Sanchez: No

Prosecution: What did you do then?

Sanchez: I took a couple of steps toward the corner and after 1-2 seconds heard pop pop and then faster pop pop pop.

Prosecution: Gunfire?

Sanchez: Yes sir.

Prosecution: What did you do then?

Sanchez: I ducked and ran toward the south east corner of Liverpool. I saw what appeared to be a silhouette in the street on the driver's side of the P-Van, but I couldn't tell who it was.

Prosecution: What happened next if anything?

Sanchez: I ducked into a doorway and called Det. Graham and told her to call Central. I then dialed 911.

Prosecution: Was gunfire continuing during this time?

Sanchez: Yes

Prosecution: We will now play Det. Sanchez's 911 call for the court.

[Det. Sanchez called 911 and did not know his location, or the address of where he was. He was not able to give any information about the location, what had transpired, who was shot, if anyone was down, if the officer was down, the number of people that were down "We've got two perps shot," he finally told the 911 operator during the call.]

Prosecution: Now at the time you made the call, you had no idea where you were?

Sanchez: Correct.

Prosecution: Earlier that evening when you had your meeting was location discussed?

Sanchez: No sir.

Prosecution: Did you see any members of your team at the time of the gunfire?

Sanchez: No sir

Prosecution: Did you see anyone else?

Sanchez: No sir.

Prosecution: How long did the gunfire last?

Sanchez: It lasted probably 2 minutes. It was continuous but sporadic. At one point I thought it had stopped but it kept going. It seemed to pause but started again.

Prosecution: Now at some point that night you saw your team again?

Sanchez: Yes sir, it was about 10 minutes after the gunfire had ceased.

Prosecution: Now when you were on the 911 call did you see Det. Olivier?

Sanchez: Yes sir I saw him come run out of the block and run back in.

Prosecution: Did you recall seeing his shield displayed?

Sanchez: No

Prosecution: Did anyone else had their shields displayed?

Sanchez: Maybe, but I am not sure.

Prosecution: Did you have a conversation with your fellow officers at that time?

Sanchez: Yes sir. Det. Isnora's leg was scrapped. So we looked at that but we didn't talk about anything else. Just wanted to make sure everyone was ok.

Prosecution: Thank you, I have no further questions.

Judge: Defense counsel, would you like to cross examine the witness?

Defense: Yes your honor. Det. Sanchez, when you were at the Kalua, were you thinking of your other undercover jobs or just trying to do the best at that time?

Sanchez: Just trying to do my best sir.

Defense: Now when you heard Guzman say "go get my gun" you were looking right at him correct?

Sanchez: Yes

Defense: And you witnessed an aggressive conversation?

Sanchez: Yes

Defense: Now when you were walking toward Liverpool you heard people shouting?

Sanchez: Yes sir.

Defense: Now in your Grand Jury testimony you said you heard "commands." Did you hear commands that night?

Sanchez: Yes

Defense: And those commands proceeded the gunfire?

Sanchez: Yes sir.

Defense: And you heard multiple commands?

Sanchez: Yes sir.

Defense: Thank you no further questions.

Prosecution: Judge, I have a few more questions. Det. Sanchez you just indicated that you heard commands?

Sanchez: Yes sir.

Prosecution: But you couldn't make out even ONE word?

Sanchez: No sir

Prosecution: Then how did you know they were commands?

Sanchez: Well it was a short verbal statement so thats what I thought.

Prosecution: But you couldn't tell us a single word that was said?

Sanchez: No sir.

Prosecution: Thank you your honor. I have no further questions.

The next witness, Police officer Donald Kipp testified that he spoke to and retrieved the guns of the four detectives on scene of the shooting who fired their weapons. Said Detective Paul Headley told him he did not know if he fired his weapon. He found 15 rounds in Detective Headley's gun, which could hold 16 bullets. Said Detective Michael Oliver told him he fired his weapon and gave him two empty magazines. Each magazine could hold 15 rounds plus a bullet in the chamber. Said Detective Giscard F. Isnora told him he did not know if he had fired his weapon. Testified that Detective Isnora gave him an empty gun and said he was not sure where the magazine was. Said Detective Marc Cooper told him he did now know if he fired his weapon. Testified that Detective Cooper's gun, which could hold up to 16 rounds, had only 12 bullets in it. Said Detective Oliver was wearing a shield but he was not sure about the other detectives. Testified that he never received any communications about a missing suspect or a missing weapon. On cross examination When asked if he was certain that Detective Oliver was wearing his shield, responded, "Absolutely, no question." Said Detective Oliver was complaining of ringing in his ears.

Testified that all the detectives "were walking normally." Said he was mistaken when he said earlier that Detective Cooper told him he was not sure if he fired his weapon: "Cooper said he did fire. I thought I did say he did fire."

Detective Chris Florio (Crime Scene Unit) testified that he took photographs of the detectives after the incident. He took a photograph of Det. Isnora's shin. Det Isnora had been struck by Bell's car. Isnora sustained a two inch cut on his left shin. He did not sustain any other injuries.

The next witness to testify was Dr. Pazola, Director of Crime Lab, Accident reconstructionist.

Prosecution: Good morning Dr. Pazola, can you please tell us when you started work on the reconstruction of the accident scene?

Pazola: December 1, 2006

Prosecution: And did others assist you?

Pazola: Yes we set up a task force as requested by the DA's office. Some members of the crime scene unit also assisted in the process.

Prosecution: As a part of the task force what were some of your duties?

Pazola: One of the things I worked on was assisting with the trajectory analysis. We also searched all the vehicles for ballistics. We used computerized mapping to assist the trajectory of the bullets as well as created a scale diagram on the scene. In addition we looked for recognizable patterns of firearm discharge and viable trace evidence.

Prosecution: Now when you first inspected the car what was the status of the tyres on the car?

Pazola: The front driver's side tyre was flat, and the two rear tyres were deflated. Ultimately they were removed from the car and inspected for ballistics. We found one bullet in the driver's side tyre.

Prosecution: After this step did you work with reference to the bullet trajectories?

Pazola: Yes, we examined each bullet hole, and examined its site of entry and possible exit site. We also examined the object the bullet may have gone through, for example a seat, or console, as well as where the bullet may have terminated. We also looked at the elevation of the bullets in terms of trajectory.

[The prosecution then shows the witness multiple photos of the Nissan Altima Sean Bell was driving, and the witness points out all the bullet holes in the car -- a total of 27. In addition the witness points out the possible trajectories of the bullets entering the car. At the end of the testimony is a picture of the inside of bell's Altima, the driver's side is shown with the trajectories of the bullets directed at the driver's seat marked with yellow rods.]

Prosecution: Now with reference to the car seats, did you have any idea in what position they were at the time of the incident?

Pazola: Well, they had been moved in the rescue process, so based on trajectories, and by lining up bullet holes in the car seats and the console we were able to reconstruct the position of the car seats.

Prosecution: And were these straight up or reclined?

Pazola: They were straight up at the time of the incident.

Prosecution: Now, based on your reconstruction, did you have conclusions as to whether there were any firearms discharged from within the car?

Pazola: No we were not able to detect any firearm discharge from inside the car.

Prosecution: And what about the airbags in the car?

Pazola: There were two airbags, one on the driver's side and one on the passenger side. Neither of them were inflated.

Prosecution: Did you ask for any other work to be conducted on the cars?

Pazola: Yes after receiving photos of the undercover van that collided with the Altima, I asked for paint analysis for the bumpers of both the van and the Altima. On examining the bumper there were traces of paint from the Altima on the bumper of the van.

Prosecution: Now you also examined a rolldown gate on Liverpool street?

Pazola: Correct

Prosecution: And what did you find?

Pazola: Yes there were traces of paint of the frame of the gate. On analysis I concluded that the paint originated from the Altima.

Prosecution: Now the bumper of the Altima was tested and what was the summary of your report?

Pazola: There was some paint on the bumper which could have originated from the police van. There was also some fabric embedded on the bumper which may have originated from the fabric on Det. Isnora's pants. This could have resulted from an impact between Det. Isnora and the Altima.

Prosecution: Can you tell us at what speed the Altima would have been going when this impact occurred?

Pazola: No I cannot determine the speed of the car.

Prosecution: Ok, now based on your analysis, did you come to any conclusion about the sequence of events that led to this bumper damage?

Pazola: Yes, there was an initial impact on the right side of the police van bumper corresponding to the central portion of the Altima. The Altima then backed up on the sidewalk and made ultimate contact with the van. In addition, it also made contact with the rolldown gate when it backed up after the first impact.

Prosecution: Thank you, no further questions.

Cross-examination

Defense: Now Dr. Pazola, the prosecutor just asked you about the sequence of events, correct?

Pazola: That's correct.

Defense: And that opinion was based on your experience and your study of the evidence?

Pazola: That's correct.

Defense: Now, what you didn't tell us was that somewhere between the 1st and 2nd impact the Altima came in contact with Det. Isnora?

Pazola: Well, I did testify that the fabric on the bumper was consistent with the fabric of Det. Isnora's pants.

Defense: Ok, now would you describe that impact as "clipped?"

Pazola: Well, that is an ambiguous term. I can't really say that because it can mean multiple things.

Defense: Ok, but there had to be a substantial amount of heat generated for the fabric trace to be left, correct?

Pazola: Correct.

Defense: Alright, just a couple more questions. Now sometimes when a bullet is fired it can ricochet and end up somewhere where it is not intended at all, correct?

Pazola: Well, it can ricochet, but there is a reasonable estimate of where it can terminate. It can't just end up anywhere.

Defense: I see, now in your final report of this crime scene you wrote, "Some of the discharges from the officers' guns may have been interpreted from coming from within the Altima, or close to the exterior of the Altima. This can be further exacerbated from the lighting conditions, thus making it difficult to know where exactly the discharge is coming from." Is that correct?

Pazola: Yes, I have done some research in this area, and sometimes even when you know where the fire is coming from, depending on the lighting conditions, you may imagine the source to be different.

Defense: Thank you, no further questions.

**Witness: Michelle Miranda**

NYPD criminalist Michelle Miranda, testified about ballistic damage to Sean Bell's car. Miranda identified the clothes of Trent Benefield, Joseph Guzman, and Sean Bell and pointed out the various bullet holes that were tested for gunshot and lead residue.

Miranda continued, saying that all bullet holes found in all of the clothing tested negative for gunshot residue, meaning that the shooter was not standing "near" or "in close proximity to" the three men in the car during the shooting. No gunshot residue was found inside the Altima; so, there's no evidence any gun was ever fired from within Bell's car.

**Witness: Michelle Cort, Assistant District Attorney**

She testified about her interview with Det. Cooper. With respect to the immediate incident, Cooper stated that he was in the Camry, when, suddenly, he heard a crash, followed by gunshots. Detective Headley, who was driving, stopped and exited the car. Cooper slowly opened the passenger-side door, and stepped outside of the car with his right foot, keeping his left foot in the Camry. With his right arm extended out and around the Camry's door and leaning on the door, crouching behind it, Cooper peeked around to see the Altima's back window blown out. He fired one shot in the direction from which

he heard the shots coming — the Altima, which he had his gun trained on. Cooper, according to Cort, had said that he fired for cover. Cooper never saw Isnora.

Cooper then saw Benefield running down the street, past the Camry. Headley began to chase him, and Cooper joined in the chase. Because he saw nothing in Benefield's hands, Cooper never shot at him.

**Witness: Fabio Coicou**

Q: What neighborhood do you currently live in?

A: Far Rockaway

Q: What do you do?

A: I'm an emergency medical technician

Q: Do you remember November 24, 2006?

A: Yes, I went to the club that night with Latoya my girlfriend who is a dancer there.

Q: What did you do when you left?

A: I got my car and parked in front of the club waiting for her, around 4 a.m.

Q: As you waited, did you observe people leaving?

A: Several men, but they didn't leave, they just stood in front of the building

Q: What did you do then?

A: I stepped out of the vehicle and went to the passenger side.

Q: And then what happened?

A: I stood by the door, and saw several men, and one of them pulled the door of the club open.

Q: Do you know the name of the person who opened the door?

A: Yes, Sean Bell

Q: Before Bell opened the door, did you say anything?

A: I made a remark to myself

Q: What was that remark?

A: That alcohol was taking control of people

Q: When they came out, did they say anything?

A: Benefield said he's not letting alcohol take control, he said that to me directly

Q: When you say alcohol was taking control, were you referring to anything regarding drunkenness?

A: I can't tell if anyone was drunk, I don't have a breathalyzer, I just noticed they were drinking

Q: When he said this to you, how far apart was he?

A: We were chest to chest

Q: Did anyone say anything to you after Bell?

A: No

Q: The next thing that was said, was it said by you or Bell?

A: I made a reference to waiting for my girlfriend and that's why I was standing there

Q: Did Bell respond?

A: No, he gave me an understanding look and went around me and talked to his friends

Q: Then what happened?

A: They stood there and I proceeded to back up, Bell and his friends had a conversation and he asked me where I was from. I told him that I was staying in Far Rockaway.

Q: During this exchange, do you recall your posture?

A: I had both my hands in my vest pocket

Q: What else did you say?

A: I recall saying that I wasn't there to fight, and Guzman said, you're from Far Rockaway, I'm from Far Rockaway

Q: Then what happened?

A: They started walking away

Q: Can you describe what you observed then?

A: I stayed in front and seen everyone scatter and saw people looking back

Q: Then what happened?

A: I wondered why the people scattered and then I thought I should get out of there, so I got back in my vehicle and drove around the block and came back

Q: In the front of the club, were there any threats?

A: No, no threats

Q: Did you ever refer to or use the word gun?

A: No

Thank you very much.

**Cross Examination**

Q: Now when you had your hands in your pocket you were indicating that you didn't want to fight?

A: Yes

Q: You wanted them to stay calm?

A: I didn't give no orders

Q: Yes or no – your hands were in your pocket because you wanted them to stay calm?

A: I only wanted peace

Q: You thought they were being rowdy?

A: Yes

Q: Making a scene right?

A: Only with the door, yes

Q: You thought opening the door would make the police come?

A: Yes, if the door is locked and a person opens it, it's illegal

Q: The situation was escalating and need to be diffused, yes or no?

A: It wasn't a confrontation, so no.

Q: Did you tell the DA at the meeting that Bell, Benefield, Guzman, and about 4 more were all ready to charge me, yes or no?

A: I don't recall

Q: Did you tell the DA in the same meeting that Bell seemed ready to go at you?

A: I don't recall

Q: Do you recall a man in a tan jacket saying we could take you out right now?

A: No, I don't remember

Q: Didn't put your hands in the air saying I don't have anything or put your hands in front?

A: No

Q: Did you take your hand out and push your pocket in the direction of Bell?

A: No

Q: Did you ever give or try to give the impression of a gun in your pocket?

A: No

Q: Did you say if you come near me I'll shoot you?

A: No

Q: Was there any profanity?

A: There were only a couple of words

Thank you, no further questions.

**Witness: James Kellore**

The witness testifies to events preceding the incident – that he came to the club with his friends to enjoy the bachelor party. We present for you his testimony of the actual shooting. We pick up where Sean and his friends were in the car and Kellore was walking toward his own car.

P: What did you observe at that time?

W: A Toyota drove past Sean's car and stopped.

P: Then what happened?

W: There was a collision and a man came out of the van. He was a tall, slim, white guy, holding a gun.

P: What if anything happened then?

W: I saw some flashing and heard gunfire.

P: Did you see anyone else near the Altima besides Joe/Sean?

W: No.

P: After you heard gunfire, you say Sean's car went in reverse?

W: Yes.

P: Did you hear a collision?

W: Yes, with a fence.

P: Then what did you see if anything?

W: Sean's car tried to swerve around the van.

P: Now, you saw a white man get out and fire?

W: More than once, on one knee.

P: Did he have a shield?

W: No.

P: At any time you were on Liverpool Street did you hear any police commands?

W: No.

P: How long did the gunfire last?

W: About a minute.

P: As you were standing, what happened to you?

W: I heard gunfire hit the two cars near me.

He then indicates that he ran away with his friend Johnell. After the gunfire ceased they tried to call Benefield on his cell phone and couldn't get through. They walked back to the scene and were told their friends had been taken to the hospital so they got in a cab and went to Jamaica Hospital.

### **Cross-examination**

D: The man who owned the SUV was by Johnell and Sean?

W: Not when I walked out, he was by his truck.

D: When you were walking, you turned?

W: Yes.

D: Something caught your eye?

W: No, it was instinct.

D: Your friend Jean, he started walking with you?

W: Yes.

D: You saw Sean and the SUV guy face to face having words?

W: Yes.

D: You didn't hear anything though?

W: The music was blasting so I couldn't hear anything.

D: You were concerned because of body language?

W: Yes.

D: Did you go up to the man and say "I'm going to take the gun away from you?".

W: Not that I recall.

D: Did you or anyone else say "lets go back and fuck 'em up?"

W: No.

D: Did you ever hear anyone in your group say Gat?

W: Possibly, yes.

D: So is it fair to say, that's a term your group uses?

W: Maybe.

Thank you no further questions.

**Witness: Gescard Isnora**

**The Grand Jury Testimony of Detective Gescard Isnora is read out loud in the courtroom.**

The testimony starts with Isnora giving a narrative of the events followed by questioning.

Narrative:

We went to the Kalua club at around 1 a.m. Det. Sanchez was the first to go inside. Once I got the green light from him I also entered the club. A female came to talk to me and I bought her a drink. She mentioned there was an individual who was harassing her. She spoke to a guy in a white sox hat, and told him someone was harassing her. He told her he'd take care of it if it continued \*placed her hand on a bulge on his hip.\*

I then left the club, it was around closing time and went to retrieve my shield and gun. I was waiting outside the club for the guy in the white sox cap. Sanchez then exited and handed me his phone. Lt. Napoli was on the phone and I started talking to him. At that point I heard Guzman say "get my gun. Let's get this guy." The group then started to walk off. Det. Napoli told me to follow. I clipped my shield up around the collar. I approached the men once they had gotten in their car and said, "Police, don't move!" They took off toward me and struck my leg with the car. The passenger kept going for his waistband. I yelled gun to the detectives in the police van which had come around the corner. It all happened so fast. In all my time as an undercover, I never fired my weapon, I had no choice here, I pray for everyone involved. I am so sorry for all the pain caused.

The DA then starts to question Isnora.

P: Now, when you approached Bell's vehicle, did you stand directly in front of the car?

W: Yes, a little closer to the passenger side.

P: You can't say whether they saw your shield?

W: The lights were glaring. As soon as I said "Police, don't move!," they floored it.

P: Then there was a collision.

W: Yeah, they hit the police van.

P: Did you give any other orders?

W: Yes, "Show your hands, hands up!"

P: You saw waist movements?

W: Yes.

P: Could it be a seatbelt?

W: No, because a seatbelt is like this, whereas a gun is like this \*\*\*gestures\*\*\*.

P: When you saw the arm coming up, could that have been to show you his hands?

W: Maybe, but I took into account all preceding events. I saw the arm coming up and said "Gun."

P: Where did you direct your fire?

W: At Guzman.

P: How many rounds did you fire?

W: 11.

P: Why did you put on a shield, and cover it up with your jacket?

W: I didn't want to tip people off, but I knew I'd need it soon.

P: Did it occur to you the people in the Altima might consider you part of the threat the SUV man posed?

W: Maybe, but I'm pretty sure they could see my shield.

P: Nothing further.

*Witness: Michael Oliver*

**The Grand Jury Testimony of Detective Michael Oliver is read out loud in the courtroom.**

Q: Now I have here that you have chosen to give a narrative at this point, so please continue.

A: Yes. We got to Kalua and parked at 1:30. From that time to around 4 a.m. we parked there and did not hear from the rest of the team. Around 3:45 a.m. Lt. Napli sent a communication over the radio and said that a man with a gun was inside the club. At 4 a.m. he radioed a description of the man as being black, wearing a black jacket and a white sox cap. He said that he had a gun and we were going to move in soon. So we pulled around a few feet closer. I pulled out my vest and put it on and put on my shield. At 4:15 Lt. Napli sent a communication that the male was exiting the club, and we were going to move in. Police Officer Carey and I drove around the corner. We saw the club but we did not see any male wearing a White Sox cap, so we kept driving slowly looking for the male. We then turned on Liverpool Street. We were still looking right and left for the male. We didn't see him and when I turned to my left I saw Det. Isnora standing at a car – A Nissan Altima. Then I saw tires screeching, the car came forward and smashed into us. It then went into reverse, and Det. Isnora jumped out of the way, it hit a building in the rear, and then came back at me. I saw Isnora with his arms out yelling, "He's got a gun." The next thing I saw was the passenger window blow out. The car hit us and the engine started to rev, like it was trying to push us back. I thought shots were coming from the car. I jumped out of the van and yelled "Police don't move." I saw the passenger raise his right arm as if he was reaching for a gun. I started to fire. It only took a few seconds. I ran out of bullets, and I didn't want to die. I saw the passenger lifting his arms up again, so I re-loaded, and fired again. There were still shots going on and I had no idea where they were coming from. The next thing I saw was the rear passenger window blow out, so I turned my attention on him and fired back. I then ran out of bullets. I told Police Officer Carey to cover me because they were still moving and I thought there might still be a threat. I called central and gave them the address and told them I needed a bus (ambulance).

Q: Alright, what type of weapon were you using?

A: A 9 millimeter

Q: And how many round does one magazine hold?

A: 16, I had two with me.

Q: Prior to the collision, did you hear any shouting?

A: I don't recall. I just remember screeching and the car coming at me.

Q: What happened then?

A: The vehicle reversed, and backed into the building.

Q: Did you see Isnora at that time?

A: Yes, he jumped out of the way of the car. His gun was in his hands. He yelled, "He's got a gun." And then the car came at my vehicle again and struck us.

Q: Did you see a gun?

A: No

Q: What else did you see?

A: Well right before it hit my car I saw the window of the passenger side blow out.

Q: And right before you saw the window blow out you saw Isnora with a gun correct?

A: Yes

Q: When the car struck the second time you jumped out of the car?

A: Yes

Q: Then it did not move again?

A: No, I got out of my car, and I had my gun out. I yelled "Police Don't Move" I then walked about 6 feet away from the car across from the front passenger door. I started firing from there. I could see the occupants, since the window had been blown out.

Q: Could you see the driver?

A: No I could only see the passenger. He was my target.

Q: And did you know if Isnora had already fired at this point?

A: I had heard shots but I didn't know where they were coming from.

Q: Did you see a gun in the car?

A: No

Q: Did you hear any commands other than your own?

A: No

Q: Did Isnora have his shield on?

A: I can't recall

Q: What if anything did you see Joe Guzman doing at that time?

A: He kept moving as if to indicate like he was trying to raise his arm. I didn't want him to get it up. I was not about to let him get his right arm up. He would kill me.

Q: You fired when you first saw this motion?

A: Yes I directed my fire to center mass.

Q: Now you noticed an individual in the back of the car?

A: Yes

Q: And you saw the rear window blow out?

A: Yes it happened during my second magazine. I moved to a better spot then so I could get a better line and fired again. I moved away from the car and fired at the passenger in the back. I believed that he was shooting at members of my team.

Q: Now, the motion of the passenger, could it have been consistent with him trying to avoid being hit.

A: To me it looked like he was reaching for a gun.

Q: Now you directed some of your second round at the passenger in the rear, did you see a weapon?

A: No

Q: See any other officers?

A: No

Q: Now during the whole incident you never stopped to reassess?

A: Yes

Q: At any point did you consider pausing to see if fire was coming from the car?

A: I heard shots the whole time. They could have been coming from the car. I don't know

Q: Was your intent to kill or disable the individuals in the car?

A: My intent was not to be killed myself.

Q: Now you fired direct through the window correct?

A: Yes

Q: There were a lot of vehicles around and you could have taken cover, why did you not?

A: I felt like I didn't have enough time.

Q: You gave up cover of your own vehicle isn't that true?

A: Yes

Q: Isn't it also true that if you seek cover you can reassess the situation?

A: Yes

Q: So you were out in the open, and vulnerable to fire?

A: Yes

Q: At the same time you perceived a threat from the passengers in the car?

A: Yes

Q: Then WHY did you not seek cover?

A: I put myself in harms way to protect my team

Q: BUT you did not see anyone from your team during the entire incident did you?

A: No

Q: So it is possible that the fire you heard was coming from them isn't it?

A: I suppose

I have no further questions.

**Witness: Dr. Michael Greenberg**

The next witness who testified was Dr. Michael Greenberg, with the Office of the Medical Examiner. He described the autopsy of Mr. Bell. He described the four bullets that pierced Bell's body. Dr. Greenberg said Mr. Bell's blood-alcohol level was .16, and tests on his urine and the fluids in his eyeball were as high as .23. He also said that Mr. Bell's vocal chords were severed by one of the bullets impairing his ability to speak. He also testified that Guzman's level was .04, below the legal limit.

*Witness: Trent Benefield*

Mr. Benefield recounts the events earlier that evening. He recalls having 3 drinks and enjoying a good time with his friends. We pick up his testimony as he gets into Sean Bell's car.

Q: Now, at some point you got into Sean's car?

A: Yes I got into the backseat on the driver's side.

Q: Do you recall whether the windows were open or closed?

A: Closed

Q: What happened next?

A: Sean started the car, and we saw a man coming at us from the front of the car on the passenger side. He had a gun drawn and pointed at Sean.

Q: Was he wearing a shield?

A: No

Q: Did you hear him say anything?

A: No

Q: Then what happened next?

A: Joe told Sean to drive, so he started to take off and I heard a collision.

Q: What did you do if anything?

A: I covered my face up, with my forearm across my eyes.

Q: Where were you in the car when the collision took place?

A: I was still in the rear seat, behind the driver's side. I couldn't see what we had collided with.

Q: Then what happened?

A: I heard shots.

Q: Did you see who fired the shots?

A: No

Q: Did you feel yourself getting shot?

A: Yes in my two calves.

Q: What if anything did you do then?

A: I jumped out of the car and started running south on Liverpool.

Q: What happened as you ran?

A: I was shot again, in my right thigh

Q: What happened next?

A: I fell to the ground. I looked up and saw a dark skinned man walking toward me, but I had no idea who he was.

Q: Did this man say anything to you?

A: He told me to stay down. I told him that I didn't do anything and that I had been shot.

Q: You were told to stay down, what happened next?

A: I was handcuffed behind my back. I told them I needed help. I was pleading with the guy pointing the gun at me and kept telling him I didn't do nothing.

Q: What happened next?

A: They told me an ambulance was coming, but they had to take care of someone else first.

Q: Did you get help at some point?

A: Yes some EMT's came over. They took my clothes off, put me on a stretcher and took me to the hospital.

Q: Now, going back to when you were running, did you hear any shouting?

A: No

Q: Hear any police commands?

A: No

Q: Ok, now do you have any permanent injuries from the shooting?

A: Yes I have a rod in my left leg from knee to ankle.

Q: And when did you learn that the 3 men who shot you were police officers?

A: When I was in the hospital.

Q: Since the incident have you been able to work?

A: No

Q: Have you received any financial aid?

A: Yes from the National Network – 4 payments of \$2500

Q: And have you filed a lawsuit in this matter?

A: Yes against New York City for \$50,000,000

Thank you I have no further questions.

*Cross Examination*

Q: Were you told in the hospital that your blood alcohol level was .11?

A: No

Q: Were you intoxicated that night?

A: Yes

Q: Now, moving forward, during the whole incident you sat in the passenger seat behind Sean Bell?

A: Yes

Q: Were you ever on the passenger side?

A: No

Q: You were not moving at all?

A: No

Q: Then can you explain how your blood got on the passenger side headrest?

A: I don't know

Q: You didn't move your arm to the passenger side?

A: No

Q: Ok, now the man who came up to the car, he was pointing a gun at Sean Bell?

A: Yes

Q: Had you ever seen him before?

A: No

Q: Did you have any problem seeing the man with the gun?

A: No

Q: You didn't hear him say, "Let me holler at you!"?

A: No

Thank you no further questions.

**Witness: Joseph Guzman**

He is question about his prior felony convictions for reckless endangerment and selling crack cocaine. Guzman talks about the early part of the evening. He states that he is a diabetic and had only one drink as it was Sean's bachelor party. We pick up his testimony from when he leaves the club and encounters the man in the Black SUV.

Q: Was there any vehicle by the entrance?

A: Yeah, a black expedition

Q: Did you notice anyone standing by the expedition?

A: Yes, a black male. He had his hand in his pocket.

Q: The way he held his hand – did that indicate anything to you?

A: Yeah, that he had a gun

Q: What did you hear, if anything, the SUV guy say?

A: He said I'll fight you

Q: What did hear, exactly?

A: I come out of the club, he backing up saying I'll fight, so I'm looking at him saying what's going on? Kallore says I'll take that gun from you, he got about 10 feet from us – I'm saying hold up, we not getting into this, we had a good time, we out with our friends, he said I'm from Far Rock, I said yeah, me too that don't mean anything, then I said we out and we walked away.

Q: Did you ever say I'm going to get my gun?

A: No

Q: After this conversation, what happened?

A: We walked to the corner and got in our car

Q: Then what happened?

A: As we pulled out, we drove towards the street, a minivan comes down the same side of the street and we hit the front of the van

Q: What did you next observe?

A: A black male with a silver gun. He was standing by the windshield on the passenger side.

Q: Did you hear him say anything?

A: No, when I saw him he shot me

Q: Did he say anything indicating who he was?

A: No

Q: You said he shot you, where?

A: My upper right shoulder

**\*\*Shows bullet wound to the court\*\***

Q: Do you recall reaching at your waist for anything?

A: No

Q: After you were shot, what happened next?

A: Everything for me slowed down, I'm looking in his eyes, he shot me, everything slowed down, he continued to shoot me, I said let's go, this isn't a robbery they trying to kill us.

Q: Was there another round of shots?

A: Yes, after the first shooting, he continued to shoot

Q: Did you see who fired the shot?

A: Yes

Q: Who?

A: That kid over there (indicating Det. Isnora)

Q: What did Sean Bell do?

A: I told him let's do it and he put the car in reverse

Q: What happened next?

A: Naturally I tried to go across the car

Q: How?

A: I tried to get out of the driver side window

Q: You indicated Sean Bell put the car in reverse, what happened with the car?

A: He hit something

Q: What happened with respect to the gunfire while the car was in reverse?

A: It was continuous

Q: What's the next thing you recall after the car reversed?

A: He put it back in drive, tried to get around the minivan, but he hit it again

Q: What happened with respect to the gunfire?

A: That's all there was gunfire, nothin else.

Q: What position were you in when the gunfire ended?

A: My arms and head were out of the driver side window

Q: Where was Sean Bell?

A: Below me. There wasn't much left of him.

Q: Did you have an occasion to speak to Sean during the shooting?

A: Yes. I said I love you S, he whispered back and said I love you too – then he stopped moving, he stopped talking.

Q: After the shooting stopped, what happened?

A: A uniformed police officer came up and said let me see your fucking hands and he handcuffed me.

Q: What did you do?

A: I could only move my arms, nothing else, so I tried to move my arms

Q: Then what happened?

A: The uniformed officer pulled the door open. My face hit the pavement on the ground, I didn't feel it at the time – I thought it was over

Q: Were you removed from the Altima?

A: Yes. The paramedics got there and they opened the door and pulled me out through the passenger side and took me to the hospital.

Q: Now as a result of the incident, what injuries did you sustain?

A: I was shot 16 times, I had 19 holes in my body because I had 3 exit wounds, I got drop foot and nerve damage in my right leg. In my left leg I got a permanent metal rod. From when I was initially shot to this day I have 4 bullets in me now.

Thank you no further questions.

### **Cross Examination**

On cross the defense questions Guzman extensively about his prior criminal convictions.

Q: Now, when Sean pulled out of the parking space, the van came down and there was a collision?

A: Yes

Q: Did the van run into your car or did Sean hit the van?

A: They came on our side of the street and hit us

Q: Before Sean pulled out of the spot, did you see Det. Isnora in front of the Altima standing in front of the windshield pointing a gun?

A: No

Q: Did you tell Sean to drive man drive – go go go?

A: No

Q: Did you hear shouting or yelling by anyone in the vicinity of the Altima?

A: No

Q: Were you on the phone at that time?

A: Its 4 am, who am I going to talk to?

Q: You indicated at the same time as the collision – the car stopped when you were shot?

A: Simultaneously

Q: After you were shot, did you yell to Sean let's do it?

A: Yes

Q: He put the car in reverse and backed up?

A: Yes

Q: After you were shot the first time, you leaned to Sean and tried to get out?

A: The first shot slows everything down for me, I'm lookin in his eyes, after the 2<sup>nd</sup> shot I tried to get out

Q: As the car was gong backwards?

A: NO, I'm trying to get across the car as it's in reverse

Q: You're on top of Sean between Sean and the sidewalk?

A: At the end, yes

Q: There was a 3<sup>rd</sup> collision – with the van?

A: Yes

Q: Sean tried to get around the van while you were between him and the steering wheel?

A: How can he drive if I'm between him and the steering wheel?

Q: Is it fair to say you were leaning across Sean Bell?

A: At the end of the day – I was shot in my butt and my ankles

Q: You're not saying as the car was moving towards the van that your butt was between Sean and the steering wheel – whether your butt was on the car seat or not?

A: I have no idea when I was between Sean and the steering wheel

Q: When it stopped, did you continue to hear shots?

A: I was being shot

Q: Was Sean's head leaning toward the driver side window?

A: It was leaning against the door

Q: You testified on direct you didn't know the police were involved in the incident until you heard a police officer say put your fucking hands out the window?

A: He said let me see your fucking hands

Q: At that point in time Sean was under you?

A: Yes

Q: And he said I love you too?

A: Yeah, I thought we was dead – I knew when they pulled him out of the car he was dead

Q: He said that when all the shots were over?

A: When all the shots were shot – then he stopped moving

Q: When the police officer came to the car – the white uniformed police officer – 1 of the first things you said was we don't have no gun in the car and we don't have no gun?

A: No, what I said was officer y'all killin us for no reason

Q: Who was y'all you were referring to because you didn't know who "that kid" was?

A: I don't know who he was – when the police came to the window I knew it was the police, they got there too quick

No further questions.

**Dr. Daniel Friedman**, a 79-year-old Queens optometrist, examined Sean Bell's eyes in May 2006. Sean had come to him at that time to possibly buy a contact lens for his right eye. Without a correction, Sean's vision in that right eye was poorer than 20/400, making him extremely nearsighted in that eye, with an astigmatism as well. The vision in his left eye, however, was 20/30, so only slightly nearsighted. Legal blindness, according to the doctor, was vision worse than 20/200. So, without the correction Sean would have been legally blind in the right eye but not the left. The Department of Motor Vehicles only mandates that one's vision must be at least 20/40 in one eye, so, because of his left eye,

Sean would have been able to obtain a driver's license and drive legally without a correction. He never bought any corrective lenses from Dr. Friedman.

You will now read testimony from Defense Witnesses in this case. The defense put forth 4 witnesses in this case. This is true testimony, but it is in an abridged form. Due to time constraints we cannot present everything that was said in court but what is presented is an accurate representation. Following the testimony you will be asked to answer a few questions regarding your opinions. You may take notes as you read if you would like to.

**Witness: Michael Carey**

The defense questions him about his police background. He has worked foot and radio duty, and narcotics. He had made over 150 arrests and assisted in 100. He has specialized training in plain clothes and 'snoop' training, identification of narcotics, vice training, and how to interact with undercover policemen.

D: Have you ever fired a gun before 2006?

W: No.

D: The night of Nov. 26<sup>th</sup>, were you given a special assignment?

W: I was to ride passenger in the prisoner van on our sting at Kalua.

D: Did you take any equipment?

W: Handcuffs, flashlight, Mace, and bullet-resistant vest.

D: Kel transmitter?

W: No the undercovers knew they would be frisked so they didn't take one.

D: Did you ever communicate with the detectives inside the club?

W: No.

D: What happened that night?

W: At 3:40 a.m. we hear a communication about a possible prostitute and a large black male who may have a gun.

D: Then what happened if anything?

W: We got another communication, that the prostitute was negative. But they still believed there was a gun. We got orders to move in closer to the club. Detective Oliver then put his vest on.

D: What happened next.

W: We heard that our undercover was now following the man with the baseball cap away from the club. I asked which direction and got no response. Then I saw one of our cars, the Lieutenant's, and we followed it. It was heading east.

D: When you started following the Lieutenant's vehicle, what were you looking for?

W: The two undercovers, Isnora and Sanchez, on the street.

D: Then what happened?

W: I saw Isnora on the East sidewalk, he had his gun raised, was walking in front of a car with its headlights on, he was yelling "Police, show your hands! Police, show your hands!"

D: What type of car was it?

W: Nisan Altima.

D: Tell us what happened next.

W: Detective Isnora, has his gun raised and was shouting commands, the Altima came forward at the fastest rate it could, and hit his leg a few feet in front of the car. Then it came forward full speed, and hit us head on. It then backed up, made almost a right turn and collided with a metal roll-down gate.

D: What happened following that?

W: I believed at this point, with Isnora still shouting and others shouting, there would be no further actions. But, instead of escaping with a right turn the car moved forward again, I believe in an attempt to hit Detective Isnora. It hit our van again, I was halfway out of the van, and the hinge hit my knee. Isnora had walked towards the passenger side. I heard "He's got a gun."

I stepped out and fired three rounds. I saw Detective Isnora walking in to the line of fire, so I stopped shooting. I ducked behind my door, and while doing so, I saw a back-passenger get out of the car and run, he was limping. I remembered my training, that doors are not good cover, so I went around back of the van, around the driver's side, but by then the gunfire had stopped. I was still yelling "Police, show your hands." In the silence I was still yelling, due to the tenseness of the situation. I wanted to be sure the two men inside wouldn't cause any further damage. I was able to see all four hands, I believe both men to be deceased. I didn't see a weapon, so I tried to unlock the door on the passenger side. I saw Lieutenant Napoli on the driver's side, and stepped back at that point.

D: Did you see Detective Olive at this point?

W: He was running back to the van, took the radio, ran to the cross streets to check the names, and called for an ambulance. I was impressed by this, this was the farthest thing from my mind.

D: Then what happened?

W: One of the officers took me to the hospital.

D: Now when you fired, who did you shoot at?

W: The front passenger, he started moving back and forth, and was moving towards the driver's side.

D: Tell Judge Cooperman, why you thought it was necessary to fire on the passenger.

W: Several factors, he presented a danger, I had seen detective Isnora get hit, and then they hit us twice. Another thing was the maneuvers of the driver. Also, the earlier reports about a gun. Because of the driver's maneuver's, I knew his hands were busy, no threat there so I fired at the passenger.

D: Now what was the duration of the shots being fired?

W: 8 seconds, roughly.

D: How many shots were fired?

W: 15ish.

D: What was the duration of the whole incident?

W: 15-20 seconds.

D: Did you believe the threat had abated?

W: No, but I didn't want them to hit Isnora.

D: When you saw detective Isnora from the front view did he have his shield on?

W: Yes, on the collar of his sweatshirt.

D: As he approached the Altima, what happened?

W: Isnora shouted "Show your hands!," they didn't.

D: Now did the van strike the Altima or vice versa?

W: The van was stopped in position.

D: Why did you not give any commands when you got out?

W: The shooting had started and I had already seen their nonobservance of orders.

D: Was there ever a time when you realized there was no firing coming from inside the car?

W: No.

D: Did you fire just because Detective Isnora was firing?

W: No, I made my own decision based on several factors.

Thank you, no further questions.

### **CROSS EXAMINATION**

P: If the trajectory of your rounds were lower than intended, they would have struck the front part of the vehicle?

W: Yes.

P: The passenger-side headlight?

W: Yes.

P: You know one of your rounds was found on Liverpool street?

W: Yes.

P: Did you ever believe that you yourself were being fired on?

W: No.

P: The fact that you saw no civilian with a weapon wasn't a cause?

W: No

P: Now all civilian cars were used in the operation?

W: Yes.

P: Everyone was in plain clothes?

W: Correct.

P: Nothing about the clothes would indicate you were police?

W: Correct.

P: You didn't see a shield on any member of your team while this incident was taking place?

W: Correct, but...

P: Yes or no question.

W: I couldn't see anyone's front.

P: You saw the passenger moving toward the driver's side?

W: Yes.

P: You didn't see him raise his hands up?

W: No.

P: Would it be fair to say the Altima was turning into the street?

W: Yes.

P: So, if he had wanted to hit someone, he could have driven forward and crushed someone against a car behind them?

W: Yes.

P: You can't speak to intent, only what you observed?

W: Yes.

P: Who were you looking for in terms of a suspect?

W: Man wearing a White-Sox cap, large black male.

P: Did you know the description was given by the undercovers?

W: Yes.

P: Now, you left the scene very rapidly correct.

W: Yes.

P: What was it that caused you to leave?

W: I was urged by Delegate from the Police Union, a uniformed officer.

P: Did you discuss anything with him?

W: No

P: Now when the P-Van was hit, was it stopped or about to stop?

W: Can't say definitively.

P: What'd you say to Detective Oliver when the collision happened?

W: Don't recall, something of surprise.

P: You didn't fire until both feet were on the ground?

W: Yes.

P: You had an identified target in your mind?

W: Yes.

P: No intention of shooting the driver?

W: No.

P: Now, Detective Oliver got out after the final collision?

W: Yes.

P: No more movements from either car after this right?

W: Yes.

P: When you got out, you didn't have a shield on?

W: Not displayed, no.

P: Is it fair to say that a shield not displayed is as good as one in your pocket?

D: Objection.

J: Sustained.

P: You gave no orders?

W: No.

P: Now behind your van is good cover correct?

W: Yes.

P: Detective Isnora didn't go behind a vehicle?

W: No.

P: You didn't see Detective Oliver fire?

W: No.

P: You're are aware he fired 23 times?

W: Yes.

P: Did you know which officers were armed that night?

W: No.

P: Now did you attend a department meeting after this?

W: Yes.

P: Do you recall this question from Captain Davis: "Did he(Isnora) fire first or yell gun first?" and you said fired first.

W: I don't recall saying that, but I may have.

P: When you fired, your intent was to kill or disable the passenger?

W: My objective was to disable the threat

P: You intended to stop the individual by wounding or killing him?

W: Correct.

P: As the man jumps out of the backseat and runs south, was he injured?

W: He had a heavy limp, hobbling and almost dragging a leg.

P: He had no weapon correct?

W: Correct.

P: No reason for anyone to have fired on him?

D: Objection.

J: Sustained.

P: When you use an undercover vehicle in an arrest situation, there are usually raid jackets to identify the policemen correct?

W: Yes

P: Did you have any that night?

W: No

Thank you, no further questions.

**Witness: Nelson Rafael**

D: Good morning Mr. Rafael, how old are you?

W: 21 years old

D: And what do you do?

W: I am a college student

D: Now on Nov. 26<sup>th</sup>, 2006, where did you live?

W: On Liverpool Street in Queens

D: And where was your apartment?

W: We were living on an apartment on the second floor. The living room windows faced Liverpool Street.

D: Now early morning on Nov. 25<sup>th</sup> did you hear anything?

W: Yes a lot of yelling and then gunshots.

D: Did you make any calls?

W: I called 911.

D: Now, the yelling you heard were you able to make out any words?

W: No.

D: How far is your house from the middle of the block of Liverpool between 94 and 95 Avenue?

W: About half a block.

D: And you heard yelling from your apartment?

W: Yes.

D: Did you hear more than one voice?

W: Yes.

D: And after the yelling you heard gunshots?

W: Yes.

D: Then what did you do?

W: Waited a few seconds, and then I looked out the window and saw an officer arresting someone.

D: Do you know anyone involved in this case?

W: No.

Thank you very much. Your honor I have no further questions.

*CROSS EXAMINATION*

P: How long did you live on Liverpool Street?

W: One year.

P: Now where were you when you heard the noise?

W: I was in my living room watching TV.

P; And I presume you had the volume on?

W: Yes, it was late though, so it wasn't too loud.

P: Now do you think you heard the shots from the beginning?

W: Yes.

P: And they lasted two seconds?

W: No, I said a couple of seconds.

P: Now, Mr. Rafael, you heard shouting?

W: Yes.

P: And you were certain it was more than one person?

W: Yes.

P: Did you hear any collisions?

W: No.

Thank you no further questions.

**Witness: Alexander Jason**

D: Good morning sir, how old are you?

W: 60 years old

D: And where do you reside?

W: San Francisco, CA

D: And what is your current profession?

W: I am a certified crime scene analyst. I work on reconstruction and analysis of shooting incidents as an independent consultant

D: And for how long have you been engaged in this profession?

W: 25 years

D: And how much are you being compensated for your work on this case.

W: I am being paid at the rate of \$250 an hour

D: Can you give us a background on your education and training?

W: I went to graduate school in operations research. I attended the San Francisco Police Academy to learn the basic crime scene procedures. I was also the Vice President of a major body armor corporation. I assisted there in the development of penetration and

ballistic standards. I also worked at the boom ballistic lab of the Army research Center. I have attended a number of seminars including the Advanced Field Evidence Seminar, Reconstruction Analysis course, long range shooting analysis seminar and crime scene reconstruction seminars.

D: Have you ever taught any courses?

W: Yes for the Professional Education Corporation.

D: Have you ever produced any teaching materials?

W: Yes, several teaching guides for law enforcement and medical groups. These are on deadly weapons, forensic firearms analysis, and the effects of deadly weapons.

D: Have you done any research on the dynamics of bullets and automotive glass interaction?

W: Yes, I have examined how different bullets go through different types of glass and the dynamics of those relevant interactions.

D: Have you been qualified as an expert witness before?

A: Yes

D: And in what areas?

W: In the areas of crime scene analysis, shooting incident reconstruction, boom ballistic and blood splatter interpretation.

D: How many times have you testified?

W: About 40-50 times

D: Now when you testify who are you called upon by?

W: About 70% of the time it is the prosecution, and about 30% it is the defense

D: Your honor I will now offer Mr. Jason as an expert.

Judge: Accepted

D: Now what did the attorneys in this case ask you to do?

W: I was asked to do a shooting incident analysis to see what we could determine about what took place the night of the incident from the physical evidence.

D: And what did you rely on to do this?

W: I relied on the NYPD crime scene reports, photos and surveys. I also relied on autopsy reports and lab reports, as well as my own examination of the crime scene and the cars involved.

D: Based on the data did you prepare digital images of the scene of the shooting?

W: Yes

D: Now what weapon was used by Det. Oliver?

W: A Sig Sauer 9mm. It is a double action handgun which is standard issue of the NYPD.

D: And how many shots can it hold

W: 15 in the magazine and one in the chamber.

D: Now did you conduct any experiments concerning the speed with which the gun used can be fired?

W: Yes, at a shooting range. I fired 31 rounds as fast as I could to gauge the minimum time it would take to fire. I used an acoustical gun timer, which starts recording time when the first shot is fired. I was able to shoot 31 shots in 12.3 seconds.

D: How long did it take you to shoot your first magazine?

W: 4.5 seconds

D: And did you conduct this only once?

W: No I did it multiple times

D: And what was your quickest time?

W: It was 12.3 seconds, and my slowest time was 14.6 seconds.

\*\*Defense then introduces a sentence of testimony from a witness who did not testify that has been agreed upon by both parties. This is testimony from the Detective who examined Oliver's gun. He stated that it would require 9-10 pounds of weight for Det. Oliver's gun to discharge.\*\*

D: Now, Mr. Jason, was there any difference between your handgun and that of Det. Oliver's?

W: Yes, mine had a heavier trigger, it was 11-12 pounds.

D: And what is the consequence of this?

W: The heavier the trigger the longer it would take to fire

D: So with a 9-10 pound trigger...

W: I could shoot much faster.

D: Now have you done any research on bullet and automotive glass interactions?

W: Yes

D: And are you familiar with blow back phenomenon related to glass?

W: Yes. When a pane of glass is shot, the bullet will push through, and make a hole. The glass will then be projected in the direction of the bullet as well as back toward the shooter.

D: And is this a common result?

W: Yes

D: And have you done any experiments to test the affect of bullets being fired at glass?

W: Yes

[Witness identifies a graphic of images depicting an experiment of shooting through car windows. Please see image below.]

D: Now can you tell us what this image depicts?

W: Yes, there is a car door with a glass panel that has just been shot from left to right through the window. There is blow back glass projection from the bullet piercing the glass. We used headlights from a car for illumination as we wanted to simulate the lighting conditions from that night.

D: And what observations did you make after the firing?

W: We saw glass on both the right side and the left side of the door.

D: Ok doctor, moving on, did you examine documents relating to the gunshot wounds on Trent Benefield?

W: Yes

D: And you examined documents of the bullet holes in Trent Bnefield's jeans?

W: Yes

D: Now, do you have any opinions as to whether his wounds are consistent with him being shot inside or outside the vehicle when he suffered all the shots – in his calves, and his right thigh?

W: Yes, the physical evidence is consistent with him being inside the vehicle when he sustained the wounds. There are blood splatter marks on the inside of the Altima which are consistent with him being shot in the car.

D: Was his bullet wound in the thigh consistent with him getting shot when he was standing or running?

W: No the physical evidence is consistent with him sitting down.

D: Ok, moving on, you examined the damage to the P-Van correct?

W: Yes, I examined two areas where there was tire transfer.

[Witness identifies picture of the P-Van]

D: Can you please explain this graphic.

W: Yes, this shows the right front bumper of the P-Van. The point here is to depict that there was initial contact, but the tire ultimately came to rest in a different position right of the initial area. This shows that the Altima struck the van, it had some motion and it struck the van again.

D: Ok, now you are familiar with the bullet that hit the glass of the Air Tran Station at Jamaica?

W: Yes. I have looked at the NYPD reports. I also took measurements at the scene from the various shooting locations and at the Air Tran station.

D: And please tell us what your findings were.

W: Well, if the impact of the bullet with the glass at the Air Tran station was a primary impact, and was fired by Det. Cooper who was standing near the Camry, which is a distance of 250 feet, the gun would have had to have been elevated by 14 degrees.

D: And what would this be in terms of lateral movement?

W: The aiming of the gun was directly down the middle of the street, but it was just 14 degrees to high. The gun was aimed correctly at the Altima but it was just held too high. A small change in the angle makes a huge difference in terms of height.

D: Is that shot also consistent with the bullet possibly being deflected off a hard object and then going toward the terminal?

W: Yes, there could be other trajectories, it is possible that it could have ricocheted, but I don't know.

D: Can you state with certainty what path the bullet took?

W: No

Thank you I have no more questions.

### *CROSS EXAMINATION*

Q: Did you appear as an expert for the defense in a murder case involving Justin Barber in Florida in June 2006?

A: Yes

Q: During the course of the trial, you acknowledged you accidentally marked a piece of evidence with 4 red dots using a red sharpie while you were marking 4 bullet holes?

A: Sort of, I overlaid an exemplary garment on top of a shirt in evidence and some ink bled through to the garment in evidence, I made a mistake, yes

Q: SO you made a mistake?

A: Yes

Q: How many officer involved shootings have you been involved in?

A: A lot, over 100

Q: Do you usually work with the officers involved in the shooting or with prosecution?

A: Most of the cases are civil cases in which the city or the police department are being sued and I work for the city or the police department – so it's not what you've described

Q: In civil cases – are you on the side of the police officers?

A: Yes

Q: Have you ever been on the side of the plaintiff or prosecution?

A: Both

Q: How many times?

A: I don't know – I'd say about 20% of the time in civil work with the plaintiff suing the police officers

Q: My question is in criminal cases, have you ever testified against an officer?

A: I don't know

Q: Now, moving on did you conduct measurements of the crime scene?

A: Yes

Q: What did you use to measure?

A: Leitz laser ranger finder

Q: IS that hand held?

A: Yes

Q: It's not on a tripod?

A: No

Q: Did you confer with other crime scene detectives?

A: I didn't confer with anyone, I think I met Det. Cunningham, but I did not confer with him.

Q: Did you review his work?

A: I reviewed the work of all the detectives who did work

Q: Now, if you were drawing a diagram and placing ballistic evidence on the diagram, is that what you recovered?

A: I did not recover any ballistic evidence

Q: So you relied on the data of others?

A: I did rely on the data to make my diagrams, yes

Q: Do you remember being asked about the exhibit with glass fragments?

A: The window was struck by a bullet, and fragmented in both directions, yes

Q: Once a bullet goes through a window, what happens to the window?

A: The window is perforated and if its tempered glass, there will be a grazing action which causes the window to become translucent – not transparent, so you'll have a window that's no longer transparent

Q: It would typically break like a pebble?

A: Yes, little chunks

Q: Once it breaks into chunks, there's no window?

A: I think I'm confused – once the window is shot does it break out completely?

Q: Sure

A: No, it doesn't happen like that. It can – I shot 1 window 8 times and got 8 discriminatory holes and the window was still there

Q: What type of window?

A: Tempered glass

Q: What part of the vehicle?

A: The passenger side

Q: Where?

A: The front passenger side

Q: Ok – concerning Sean Bell, you saw a photo of the Altima?

A: Yes

Q: Was the window intact after the shooting?

A: No

Q: Assume the bullet went through the window and passed through – there would be no window?

A: If all the glass collapsed, you can't always assume that – you may be surprised, but you can shoot a tempered glass window with a bullet and you'll make a discriminatory hole and the rest of the window will still be intact.

Q: Yes, but you've seen the pictures and there's no window?

A: No glass in the window, yes

Q: And pebble like glass chunks around?

A: Yes, the glass was on the floor, seats, etc

Q: Now, said to inform yourself you looked at medical records?

A: Yes

Q: You have no degree in medicine?

A: No

Q: You were asked to reconstruct the wounds suffered by Mr. Benefield?

A: Yes

Q: Were you ever asked to reconstruct the wounds of Guzman?

A: No

Q: Do you know the number of wounds suffered by Guzman?

A: I forgot, about 15 maybe

Q: Were you ever asked to construct a diagram for Sean Bell?

A: No

\*\*Identifies diagram of Trent Benefield in car he created\*\*

\*\*Identifies diagram of male standing with left foot forward he created to exemplify bullet wounds\*\*

Q: So Benefield could have received his wounds standing up?

A: First of all, this diagram is the anatomically correct way of showing wounds, to have been shot where he was while standing, someone would have to have been standing on his plane

Q: But he could have obtained them standing up?

A: If the shooter was to the right or left of him.

Q: Now, moving on you calculated the slope of the trajectory that went into the AirTran window?

A: Yes

\*\*Identifies air train diagram\*\*

Q: Is it drawn to scale?

A: No, I did a graphic representation. I calculated the angle based on the real scene, the important thing here is the calculations I did – not the diagram.

Q: You selected Det. Cooper's gun for the diagram?

A: Yes

Q: There are 2 glocks here?

A: Yes

Q: Who does the other gun belong to?

A: Det. Isnora

Q: Were you able to rule out Det. Isnora?

A: I did not rule that out, the bullet markings were not able to show it came from a specific gun, just from a glock. All this is useful for is to show what the trajectory would be if fired from Det. Cooper's location.

Q: Yesterday when you said you had no idea who fired the bullet, you did have an idea, it was either Det. Cooper or Det. Isnora?

A: Yes.

Q: The detective on this diagram is Det. Cooper?

A: The detective is not in the diagram – I'm saying that **if** it was fired from there, this is the trajectory – I'm not saying it **was** fired from there.

Q: Now you say the bullet broke apart?

A: I believe so

Q: Is it possible when it passed through the glass it remained intact and it didn't break until it hit the wall?

A: It's possible

Q: It's important when doing trajectory analysis to work with two points, correct?

A: True

Q: So to accurately portray this, you got up on a ladder and took a photo?

A: You should not use the impact mark once the bullet goes through glass, you do not have any confidence that by passing through the glass the bullet didn't change it's trajectory.

Q: You said it could stay intact?

A: Intact, yes – but I'm not sure it wouldn't change it's trajectory

Q: It's not something you considered?

A: I considered it and considered it to be unreliable

Q: Is it important to maintain control of a weapon when firing?

A: You try to, yes.

Q: Now, when you fired the weapon in your experiment, you used two hands in your experiment?

A: Yes

Q: You had to use two hands to maintain control?

A: Well, the weapon recoils upward and you have to bring it down and re-align to shoot

Q: Each time you pulled the trigger, is it with your own volition?

A: Yes

Q: You constantly had to fight the weapon?

A: The gun did not change, it's a hard weapon to fire, so my hand got tired

Q: Have you heard of the New York trigger?

A: Yes

Q: What is it?

A: It makes guns difficult to shoot, so the guns shot by the NYPD are extra heavy to shoot

Q: What was the difference between your weapon and the New York trigger?

A: None, my weapon was the New York trigger

Q: Did you fire at a target?

A: No

Q: What did you fire at?

A: A bank

Q: You made all your shots at the same place?

A: Pretty much

Q: When firing on a city street, is it best to use both hands?

A: I would prefer it, but at times you don't have time for that

Q: Should you always have a target?

A: Yes, you always want to have a target

Thank you, I have no further questions.

**Witness: Neftels Agostr.**

D: Good morning Mr. Agostr, how old are you?

W: 61 years old

D: And do you know Det. Isnora?

W: Yes

D: How?

W: I have been his family pastor for 20 years, and our families are very close friends.

D: How did he come in contact with the church?

W: His mother used to bring him with her as a young boy. After a certain age he stopped coming, and about one and a half years ago he started attending again.

D: Now what was your reaction when he joined the NYPD?

W: I was surprised knowing that he is very quiet, non-confrontational and a soft natured person.

D: During the time you have known him have you ever discussed his reputation for peacefulness?

W: Yes, everyone agrees to it. He has a favorable, honest reputation in the community.

Thank you I have no further questions.

*CROSS EXAMINATION*

P: Now you spoke about Isnora's reputation for peacefulness?

W: Yes

P: Who did you speak to?

W: Members of the church and family members

P: Now you have affection for Isnora?

W: Yes

P: Because of that you have an interest in the outcome of the case?

W: No.

Thank you I have no further questions.

Mr. Martin, attorney for defendant Marc Cooper, presented the first closing statement.

If it may please the court.. Your honor, at some point during this trial I started to reflect on these proceedings, and some of the dramatics, and I started to question the criminal justice system. I became angry, as I questioned how the prosecution could come before you and say Marc Cooper was guilty. I came to question how they could say Marc Cooper was not justified. I believe it was a lapse, and as I thought about it, I realized we have a justice system not based on what the prosecution may think, but based on what the must prove.

And what can the prosecution prove here beyond a reasonable doubt? It would be disingenuous to suggest that I have not followed the coverage of this trial. This trial is not about the life of a thug, one who was drinking, not about where you are from, and not about a cold-blooded killing.

This case is about what the prosecution must prove beyond a reasonable doubt. Has the prosecution proven that Marc Cooper acted recklessly? Have they proven he was not justified? The answer is No. The prosecution has failed to prove that Marc Cooper created a substantial risk, that he was not just, that he was grossly deviant from a standard of conduct of a reasonable police officer. I submit that they haven't even proven that he

fired the shot into the Air Train! There is no direct evidence linking him to that shot that struck the Air Train.

You heard from our expert Alexander Jason. He told you that the Air Train shot could have been a ricochet. The prosecution did not present ONE witness to rebut his testimony. This alone is an inference consistent with Not Guilty. Now assuming Marc Cooper did fire the shot, did he create a substantial risk? No. he was responding to risk! He heard gunfire and responded to deadly physical force. In a manner any New York Police Officer should. How can we expect them not to? He was not the catalyst for these events, he was the responding party. Is this gross deviance from police standards? No.

You heard from Officer Michael Carey – he told you that he heard gunfire, saw windows blow out, he was not sure where the fire was coming from, so he fired. He thought it was necessary to use deadly physical force. He acted in a manner consistent with a police officer. And the prosecution obviously came to the conclusion that he was justified as he was not indicted! He acted in the same manner as Marc Cooper.

Now turning to our defense of justification, how can we say he was not justified? The prosecution called numerous witnesses, I would like to hear from one of them that substantiated that he should not have fired. Did he believe deadly physical force was necessary? Ladies and Gentlemen, was there anything else he could believe?

Which witness did you hear from who told you he should not have fired? You heard from Dr. Pazoli, a prosecution witness, and he said that it could have been perceived that gunfire was coming from inside the car. Jason Alexander said the same thing, but you don't need an expert. Common sense dictates that Marc Cooper would believe that gunfire was coming from the car. He thought gunfire was coming from the car? Was his belief reasonable? It takes no scientists to determine this, just common sense.

Based on the District Attorney's opening statement, he said that Marc Cooper was not acting reasonably. He was not prudent. He was unsteady, and shot at an unidentified target. Consider these statements when considering the testimony of Trent Benefield. There was gunfire all over Liverpool. Trent books out of the Altima toward the Camry. What does March Cooper who is in the Camry do in that instant? Does he fire? Unload his clip? No, he did as he was trained. He looked, assessed, saw nothing in his hands, holstered his weapon, and gave chase. Is that the actions of a fumbling detective? Is that an individual who is not acting reasonably? He RESPONDED APPROPRIATELY.

He had EVERY reason to believe that deadly physical force was necessary. There is no evidence whatsoever that he wasn't justified. Think about the precedent this would set for police officers. What the prosecution is saying that next time wait until your hand is steady, next time wait until your feet are stable, next time wait until you are more balanced, next time – you're dead.

There is a saying Ladies and Gentleman, what happens in the dark comes to light. It is morning time now. Time for light for the people of Queens. The prosecution did not

prove their case, and on these facts I submit to you that my client Marc Cooper is not guilty.

Mr. Ricco, attorney for defendant Gescard Isnora, presented the second closing statement.

Good morning Ladies and gentleman. It is very difficult for me to find a place to start in this case. This has been a struggle. I thought about what to say, and what troubled me was that there was too much to say. I am not going to recite every contradictory fact in this case. There are far too material inconsistencies that go to the burden of the prosecution proving their case beyond a reasonable doubt. I would ask the Court to look at the testimony. To look at what the witnesses said, and saw and things others did not. Listen to what was said on direct and brought out on cross.

I would like to turn to Isnora. What did he do so that the whole community turns their backs on him? He grew up in the neighborhood, went to school, he doesn't sell crack where he lives, he is not a felon, he doesn't own illegal firearms, and doesn't stash guns in his car.

And what does he do everyday? He puts his life on the line so that my kids can be safe. He does this with dignity and grace. His pastor told you about him. You can't fake what he is made of. Dignity that is undeniable. And the first time he made a mistake the whole community turned their backs on him.

He is trying to make a difference and we say to him – to hell with you. Trent Benefield referred to Gescard in his interview with the police as a “nigger with a gun.” Trent Benefield, who worked in a tire shop, smoked marijuana daily, drank 4 beers daily, and came in here with a rented suit. All dressed up by the prosecution. We take his word over that of a good kid who was trying to help the community.

The District Attorney said that Gescard was incompetent and careless. Of all the witnesses you heard from, who ever said that? Sanchez, his fellow undercover said he was an excellent officer. Not one bad word about him. His lieutenant told us he was always in line on duty. This is not the image of the man Sean Bell's friends testified about. They said he walked up to the car and emptied his 9 mm – execution style. At one point the DA alluded that the Unit Gescard was a part of was being disbanded, I guess that's a good reason to empty a gun! What they have asked you to believe Ladies and Gentleman did not happen!

One of the prosecution's own witnesses will tell you what happened. Sean Bell's dear friend Gene Nelson. He wasn't about to lie on the stand like the rest of them. He contradicted a number of his friend's statements, but he was not here with an agenda. Fabio Coicou, the SUV guy on the other hand, lied and committed perjury. He contradicted his previous statements to the DA completely. Gene Nelson told us that Coicou said to Bell outside the club, “I'll shoot you.” Why would he make that up? He

has no incentive to lie. It is because of something inside him. He told us Sean Bell was drunk. Why would he say that? Every one of his other friends said he wasn't. But they lied; they wanted you to buy their story. Gene Nelson said he gets belligerent and hyper when drunk. He was disoriented that night. NO ONE in the court wants to hear that! He said Sean said to Cociou, "I'll take that from you." Why would he make that up?

This was a real escalating event. I believe that Cociou knew that Gescard who was standing around was a cop. I think Joe Guzman caught the hint too. That's why he turned and walked away. He says to his friend Jensen – "take me to my bitch's house." He said it loud in that way because he knew Isnora was a cop and he was trying to throw him off.

Once Guzman got in the car he saw Isnora and he reacted to that. He told his young friend Sean, "Go! Go." Tells him to take off. He encouraged his friend to use the car as a weapon to run over a New York City police officer! But what does Joe Guzman tell you? I never saw him. But Trent Benefield in the backseat saw him. He saw him clearly. And Guzman tells you he can't see him from the front seat! He knows the consequences of what seeing Isnora means, and so he is lying to us. He tried to kill a guy and he used his friend to do it. Ladies and Gentleman, Guzman is the reason we are here today. He was the catalyst to these events.

This was a terrible thing. But as you go through this process you have to be prepared to hear the truth. We ask kids to grow up and be somebody, and that is what Isnora was trying to do. You have to decide whether he was justified and had a reasonable belief that deadly physical force was about to be used on him. What else was he supposed to think after he heard Guzman outside the club say, "Yo go get my gun"?

Now, did he fire when he approached the car? No. Was he reckless then? No. Did he deviate from a standard of conduct? No. He used enormous restraints. He was struck by a car – and that hurts! His pants are embedded in the front bumper. Did he start firing then? No. The car crashed into the P-Van, reverses and crashes into a gate. According to Guzman he was being fired on at that point. So if you are being fired on turn away and drive off. But No! Instead they car drove right back at Isnora and crashed into the P-Van again. What was he supposed to be thinking? Officer Carey who was in the P-Van said at this time, and only at that time did he see Isnora go for his gun. The question before the Court is that when he made that observation did he reasonably believe that Guzman was going to fire – the same guy he had heard talk about a gun, who tried to kill him with his car? What logic, you tell me, should Gescard have applied?

Now the big question that has been brought up in this case is did Gescard identify himself. Det. Sanchez testified that he heard shouts that morning. He said he heard commands. He has nothing to lie about. There is no proof to the contrary. It corroborates what Isnora told us he said, "Police, Don't Move! Show your hands!" Did anyone else hear this? Yes. The people who live on Liverpool street told us they heard shouting. The sequence was yelling, followed by shots. NO ONE else in this courtroom testified that they were yelling themselves. So who's left? Gescard Isnora. He was yelling loudly. When a cop pulls a gun out he doesn't need commands! But yet he said, "Stop! Show

your hands!” There is only one person in this case who admits to yelling on the street – him!

All the men with Sean Bell had been convicted of serious felonies. They were witnesses for the prosecution - a parade of convicted felons, crack dealers and men who were not strangers to weapons. So when Isnora decided that these guys seemed to be a threat he was following the right instincts. Joseph Guzman never told you that his previous charge of reckless endangerment was for firing a gun. That came out on cross-examination. He didn't want you to think he was capable of firing a gun!

Your honor, I submit that the People have not disprove justification beyond a reasonable doubt. No one who was called showed that he wasn't afraid of deadly physical force. He showed enormous restraint. His bullet was not even responsible for Sean Bell's death! I came here to represent a fine, dignified, young man; and now my job is done. His fate is in your hands.

Mr. Cullerton, attorney for defendant Michael Oliver, presented the final closing statement.

Ladies and Gentleman, we have examined an incident that took at best 30 seconds. Split second life and death decisions were made by everyone. And yet, it all boils down to credibility. Now that we learned was that 5 police officers all believed they were being fired upon, and all returned fire. After 7 weeks you must be convinced that these detectives DID NOT participate in a cold-blooded execution. The prosecution must disprove justification. I submit to you the actions, decisions, beliefs of these detectives were reasonable under the circumstances and justified.

Now I will focus on the witnesses. The first witness I would like to talk about is Trent Benefield. Det. Oliver is charged with assault with respect to Trent Benefield. He said as soon as he saw a man in front of the Altima, he covered his eyes, felt a bump, got shot, jumped out of the Altima and ran down the sidewalk. BUT in his interview with police 2 hours later at 6:30 a.m. he contradicted his trial testimony on core issues. When confronted he said, "I made it up." EVERYTHING he said was a fabrication. Now what he claims he made up in his interview – he said in his interview that the car went back and forth, that he "must" have been shot when he was running, never said he covered his eyes with his hands, only heard 8 shots – and he denied all this during trial. YOU must decide if he is credible.

Now why did he say he had his eyes covered? It is because it would go to prove that Oliver turned his weapon on someone who was unarmed. He would have seen this man was not a threat. I submit to you his hands were NEVER over his eyes. The scientific evidence shows he didn't have his hands over his eyes. His blood was on the headrest of the passenger side. He told us he NEVER moved from behind the driver. So how does his blood end up on the passenger side? Was he moving around or just sitting in one spot? His movement caused my client to believe that Trent Benefield was using deadly physical force.

Another fact with Trent's testimony is that he claimed he was shot in his leg while running down the sidewalk. The inference the prosecution wants you to draw is that my client's bullets which were found down the street struck Trent Benefield when he was running. I submit to you, based on the expert testimony of Alexander Jason, the shot was impossible. No one saw Oliver shooting down the block. I would like the Court to assume that his bullets down the block could be ricochets.

Now, Joseph Guzman saw Officer Carey who was in the P-Van after the first impact. He claims he was being shot at after the first impact, and as the car was going in reverse he was trying to crawl over Sean Bell. Again, Carey said this did not happen. There is no evidence to support that the shooting started after the first impact. Gene Nelson, a friend of Joe, put a lie in his testimony. He said no shots were fired when the car went into reverse. Joe Guzman was NOT being shot at.

Michael Oliver testified in the grand jury. His testimony was not tailored, it was not based on witness accounts, nor was it based on forensic reports. He told you why he believed deadly physical force was necessary. The threat NEVER ceased during the 10-12 seconds that he fired. Adrenaline can cause people to act in ways they can't perform in everyday circumstances. You heard his voice on the 911 tape. He didn't sound like he had just carried out an execution. He was examined by the prosecution in the Grand Jury and he told of his decisions, why he believed deadly physical force was necessary, the threat of the man in the White Sox hat, and the radio communications with his supervisor.

Now Ladies and Gentleman, what should Det. Oliver have done? Should he have ducked and hidden or come to the aid of his fellow officer whole life he believed to be on the line? He put himself in harm's way. Where is the crime? He moved away from cover to help abate the threat, he put HIS life in jeopardy – is that a crime?

Finally, during the 9-12 seconds, when did my client go from being a hero cop, who jumped to save the life of a fellow officer, who reasonably believed he was being shot at, to being a criminal? There was no defining moment in this case. Nothing happened that would have caused my client to believe that deadly physical force was not necessary. This is a sad case, Ladies and Gentleman, but no crime was committed. The people did not prove the absence of justification beyond a reasonable doubt, and therefore I submit that the Court should find my client not guilty.

Mr. Testgarosa, attorney for the prosecution presented the final closing statement.

Every man stands equal in the eyes of justice. We have charged officers with the responsibility to protect us. Given them the right to carry weapons, to use deadly physical force. No other man is guaranteed this. BUT this does not give them a blank check. They need to use deadly physical force under the right circumstances. The defense says they were justified. Before we pass out medals to the officers, lets look at what happened. The defense says they acted in the most appropriate fashion, and yet we have one man dead, and two wounded in an unarmed car. Fired upon 50 times!

Ladies and Gentleman, I ask you to pay attention to the law on justification which the defense has raised. It states in part “police officer or a peace officer, in the course of effecting or attempting to effect an arrest, or of preventing or attempting to prevent the escape from custody, of a person whom he or she reasonably believes to have committed an offense, may use physical force when and to the extent he or she reasonably believes such to be necessary to effect the arrest, or to prevent the escape from custody.” The officers were not attempting to arrest anyone; they did not see a weapon; they did not identify themselves; no one was resisting arrest, no offense had been committed, no felony – so I ask you HOW were the justified?

In this case people are starting to loose sight of the fact that the men in the car were victims. And victims flea when they see an armed gunman! It is common sense!

The People submit that the force used was excessive and much beyond what was necessary to defend others and themselves. They based their conclusions on unreasonable beliefs. Isn't it ironic that the only people who heard Guzman say, “Go get my gun” outside the club were detectives Isnora and Sanchez. None of the other eyewitnesses heard this, and Guzman denies saying it. Many conflicts in testimony have been brought up, but Ladies and Gentlemen, they are not evidence in chief.

Isnora saw the argument outside the club end peacefully. Now, whether he beloved that Guzman was going to get his gun, and there was going to be a drive by, that is all a fabricated reason for the justification defense. If the concern existed, then he would have paid attention to the movement of the SUV as it drove away, but he didn't. He didn't even see it turn on Liverpool street.

Turning to the shooting. The defense claims that the justification comes from the fact that Guzman was trying to raise his arms while being fired upon. We submit that this never occurred to two reasons. Firstly it defies common sense and logic. Why would someone reach for their waist when under fire? Secondly even if he was he could have been doing it in response to the command (if ever said) of “show your hands!”

Oliver tells us that he could look into the car and see the occupants. There are shell casings on top of the hood of the P-Van. This is forensic evidence that shows us how close Oliver was to the Altima when he was firing... just feet away!

We submit that Oliver and Isnora did not believe that fire was coming from within the car, and that is why they did not take cover. Cover was readily available all down the block in the form of cars and the engine block of the P-Van. If they were so afraid common sense would dictate that the would take cover! But they were not afraid.

Isnora's conduct when trying to stop the car initially was not sufficient. According to the defense the movement of the Altima constituted cause to shoot. The car itself does not give rise to justification. Trent Benefield who was in the backseat was not noticed until the end of the incident. He posed no threat. The defense suggests he was reaching for his

waist when the car was under fire, giving justification to shoot at him. This is ludicrous. Fire is supposed to be reasonably necessary – it was not reasonable here, it was excessive and unwarranted.

A number of witnesses testified that there was a pause in the shooting. Even Det. Sanchez said there was a pause. The People submit that this is more than sufficient to show that the force used was not reasonable. Take Guzman, the defendants continued to fire upon him even when he was trying to twist away from the gunfire. This is corroborated by the placement of the gunshots in his clothing. He has 6 bullet wounds in his back. We submit that these are not exit wounds, because if they were there would be holes in the backrest of the seat where the bullets came to rest. But there were no holes. Guzman, as he was twisting to the driver's side, we submit, was getting shot in his back – this is excessive force!

Ladies and Gentleman, when an armed man confronts civilians, when a weapon is visible, and he is in street clothes, then victims have a RIGHT to flee and a RIGHT to use deadly physical force to defend themselves!!

The People don't believe that the defendants were justified in shooting a single shot that night. If after shooting the first couple of shots Isnora had turned away he would have seen that there was no threat. Bell had not been struck at that time. He could have survived. If the defendants thought they were facing danger, they put themselves in that position. Would a reasonable police officer not stop to reassess before emptying two magazines?

Now the defense has harped on the fact that witness testimony in this case is not consistent. Well, some were paying attention and others were not. Some don't remember the confrontation outside the club, because it was not planned and ended peacefully. But for the events that took place later, some may not have remembered anything at all! The defense has attempted to make this encounter much more sinister than it was. The only witnesses who saw it as sinister were Isnora and Sanchez – the ones who have the most motivation to lie. How ironic that the people they attributed the most menacing statements to outside the club were the ones in the Altima.

Now the defense expert Jason Alexander told us that it took him 9-12 seconds to fire 31 shots. He was not in a combat situation. He neglected to tell us that he was able to do so at that rate because he was not firing at a target and not aiming! We can't say Oliver was not aiming!

Moving on, our witness Dr. Pazoli of CSU did a trajectory analysis of the bullets. He testified that the contact of the Altima with Isnora was a little more than casual contact with a vehicle – a little more than just leaning on a car! And from the extent of Isnora's injury, an abrasion, the kind little children get on the playground, we know it was just that.

Bell, Ladies and Gentlemen, was legally blind in his right eye. When he was pulling his vehicle out his right eye was ahead in the direction of Isnora, and he left eye was on the street. We submit that he did not see Isnora and bumped him by accident.

Now, turning to the interview Trent gave 2 hours after the incident which the defense has tried to use to impeach him. Yes, it is not consistent with some of his in court testimony, but it was two hours post incident. He was in great pain. He had been given a morphine drip 10 minutes before the interview, which had to be stopped to stop his bleeding! Any wonder he doesn't clearly remember the details of the incident? He is the personification of an innocent victim. He had no part in the argument that night, and he was just in the car to get a ride home! And he gets shot, rear-cuffed, a rod in his leg for life, and is treated like he is on trial!

Joe Guzman, your Honor, never said "Go get my Gun." Isnora says he does to cover his actions. Joe saw Isnora after the first collision. He didn't see him earlier and that is no fault of his. Sometimes we don't pay attention to what is going on outside a car. It was late and he was just trying to get home. Isnora fires and hits him. He doesn't reach for his waistband! He tells Sean, "They are trying to kill us. Let's go!" People submit that Isnora did not identify himself, used street talk, if anything, and had no shield visible. SO is it reckless for Guzman to say lets get out of here to escape from a gunman who just shot him? And when he tries to escape out the driver's window he sees officer Carey with a gun, who again, as he admitted in court, had no shield displayed.

Ladies and Gentleman, the defendants were acting in concert. Police officers work as a team. When Isnora said, "He's got a gun," he said it to seek help from his fellow officers. If Oliver fired his weapon when he heard this, how is he not acting in concert?

Isnora fired because he thought Guzman was going for his waistband. He yelled gun and fired. He didn't see anything in Guzman's hands. He is the proximate cause of Sean Bell's death because he acted recklessly. He got help from other police officers in acting out his imagined scenario. He never communicated to his fellow officers that he was not following the man in the White Sox hat and his target had shifted. He claims he clipped his shield to his jacket, leaving its observation to the vagaries of other people. It was not displayed prominently. He attempted to stop the vehicle in plain clothes even though he knew backup was coming. He opened fire when he knew there was no escape for the vehicle. He never reassessed! I ask you – use all this to determine whether his conduct was reckless.

Now, on to Det. Oliver. He hears Isnora say, "Gun." Does not recall any shouting on the street. Sees no gun, Could see passenger and driver clearly. Did not see Isnora fire. BUT he takes aim and shoots directly at the passenger. He claims that Guzman kept trying to raise his arm the WHOLE TIME. He directed his first magazine at Guzman, and then when he saw Benefield moving he directed his fire at him. Somehow both of these unarmed men were apparently moving their arms in a manner consistent with drawing a weapon – according to Det. Oliver. He never paused to reassess and he never directed his fire at Sean Bell.

Oliver fired 31 shots, 31 pulls of the trigger, 31 separate decisions to pull that trigger, 31 chances to use deadly physical force, 31 adjustments against recoil, 31 opportunities to pause and reassess whether firing was necessary.

Sean Bell may still be alive if he had stopped after 1 magazine. But he didn't. He took aim as he fired, and that is evident by the well-lined up shots on the car door – “Bam Bam Bam Bam” and re-aim, “Bam Bam Bam Bam.”

Everyone is entitled to justice. On Nov. 25, the men in the car had no idea who these defendants were. They didn't have a role to play. It is ironic how these group of friends who walked away from a fight are somehow the aggressors, when all they wanted to do was go home and get some sleep before Sean's big day.

There were no weapons that night, no drugs. Sean didn't attempt to run over Isnora. His actions were consistent with trying to get out of a parking spot. Sean didn't see him. He was legally blind in his right eye, which is acceptable by the DMV.

The men were trapped in a car under fire. They tried to steer around the P-Van and they could not. All they could do was try and turn away from the gunfire.

Finally, Ladies and Gentlemen, what motivated these defendants? Fear? Panic? But was it reasonable? The People submit it was not. The actions of other officers that night, who did not fire or ceased to fire such as Carey, show it was not.

Were they motivated by rage? Because the occupants did not comply with their commands? Two full magazines poured into a motionless vehicle of unarmed passengers speaks of rage!

We ask the plice to risk their lives to protect others, not risk our lives to protect their own.

Thank you your honor, and I ask you Ladies and Gentlemen, Let Justice Reign.

## Appendix E. Jury Instructions

**You will now read the judge's instructions in this case. Please read these carefully as they will guide you in your decision making.**

Ladies and Gentleman of the jury, there are 3 defendants before you and we are thus conducting 3 trials in one. It is your obligation to evaluate the evidence as it applies, or fails to apply, to each defendant separately. Each instruction on the law must be considered by you as referring to each defendant separately. You must return a separate verdict for each defendant. And those verdicts may be, but need not be, the same.

We now turn to the fundamental principles of our law that apply in all criminal trials—the presumption of innocence, the burden of proof, and the requirement of proof beyond a reasonable doubt. Throughout these proceedings, the defendants are presumed to be innocent. As a result, you must find the defendant not guilty, unless, on the evidence presented at this trial, you conclude that the People have proven the defendants are guilty beyond a reasonable doubt.

The law uses the term, "proof beyond a reasonable doubt," to tell you how convincing the evidence of guilt must be to permit a verdict of guilty. The law does not require the People to prove a defendant guilty beyond all possible doubt. A reasonable doubt is an honest doubt of the defendant's guilt for which a reason exists based upon the nature and quality of the evidence. It is a doubt that a reasonable person, acting in a matter of this importance, would be likely to entertain because of the evidence that was presented or because of the lack of convincing evidence. Proof of guilt beyond a reasonable doubt is proof that leaves you so firmly convinced of the defendant's guilt that you have no reasonable doubt of the existence of any element of the crime or of the defendant's identity as the person who committed the crime.

The defense in this case has raised a defense of justification: A police officer or a peace officer, in the course of effecting or attempting to effect an arrest, or of preventing or attempting to prevent the escape from custody, of a person whom he or she reasonably believes to have committed an offense, may use physical force when and to the extent he or she reasonably believes such to be necessary to effect the arrest, or to prevent the escape from custody, or in self-defense or to defend a third person from what he or she reasonably believes to be the use or imminent use of physical force; except that deadly physical force may be used for such purposes only when he or she reasonably believes that:

(a) The offense committed by such person was a felony or an attempt to commit a felony involving the use or attempted use or threatened imminent use of physical force against a person; or

(b) Regardless of the particular offense which is the subject of the arrest, the use of deadly physical force is necessary to defend the police officer or peace officer or another

person from what the officer reasonably believes to be the use or imminent use of deadly physical force.

2. The fact that a police officer or a peace officer is justified in using deadly physical force under circumstances prescribed in paragraphs (a) and (b) of subdivision one does not constitute justification for reckless conduct by such police officer or peace officer amounting to an offense against or with respect to innocent persons whom he or she is not seeking to arrest or retain in custody.

You are allowed to consider this instruction in your decision making.

Whatever your verdict may be, it must not rest upon baseless speculations. Nor may it be influenced in any way by bias, prejudice, sympathy, or by anything you may have seen or read that is not evidence and not presented at trial.

Below are the charges against each defendant and what constitutes those charges.

Count 1: Michael Oliver and Gescard Isnora are accused on manslaughter in the first degree for acting in concert, each aiding the other, on or about Nov. 25, 2006, in the County of Queens, with intent to cause serious physical injury to Joseph Guzman caused the death of Sean Bell by shooting him with a loaded piston. *A person is guilty of manslaughter in the first degree when with intent to cause serious physical injury to another person, he causes the death of such person or of a third person.*

Count 2: Michael Oliver and Gescard Isnora are accused on manslaughter in the second degree for acting in concert, each aiding the other, on or about Nov. 25, 2006, in the County of Queens, recklessly caused the death of Sean Bell by shooting him with a loaded pistol. *A person is guilty of manslaughter in the second degree when he recklessly causes the death of another person.*

Count 3: Michael Oliver and Gescard Isnora are accused on assault in the first degree for acting in concert, each aiding the other, on or about Nov. 25, 2006, in the County of Queens, with intent to cause serious physical injury to Joseph Guzman caused such injury to Joseph Guzman by means of a deadly weapon. *A person is guilty of assault in the third degree when with criminal negligence, he causes physical injury to another person by means of a deadly weapon.*

Count 4: Michael Oliver is charged with assault in the first degree, on or about Nov. 25, 2006, in the County of Queens, with intent to cause serious physical injury to Trent Benefield, caused such injury to Trent Benefield by means of a deadly weapon.

Count 5: Count 4: Gescard Isnora is charged with assault in the second degree, in that he recklessly caused serious physical injury to Trent Benefield by means of a deadly weapon.

Count 6: Michael Oliver, Gescard Isnora, and Marc Cooper are charged with reckless endangerment in the second degree. The defendants acting in concert, recklessly engaged in conduct which created a substantial risk of serious physical injury to another person by discharging pistols multiple times on Liverpool Street while other persons were present on Liverpool Street. *A person is guilty of reckless endangerment in the second degree when he recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.*

Count 7: March Cooper is charged with reckless endangerment in the second degree for creating substantial risk of serious injury, to another person, by discharging a pistol, thereby causing a bullet to pass through a window of an occupied Air Train Station.



Please DO NOT print this information. You must complete this session online or your responses will not be recorded! Thank you.

Are you a United States Citizen?

Yes

No

Are you a registered voter?

Yes

No

You will now be asked for your opinion on a number of statements. There are no right or wrong answers. Please be honest in your responses.

The responsibility for the improvement of police-youth relationships lies mainly with the police

Strongly Agree

Agree

Neutral

Disagree

Strongly Disagree

Everything changes so quickly these days that I often have trouble deciding which are the right rules to follow.

Strongly Agree

Agree

Neutral

Disagree

Strongly Disagree

People blow police brutality way out of proportion

Strongly Agree

Agree

Neutral

Disagree

Strongly Disagree

Policemen are more rough with black people than with any other minority

Strongly Agree

Agree

Neutral

Disagree

Strongly Disagree

A few strong leaders could make this country better than what all the laws talk about

Strongly Agree

Agree  
Neutral  
Disagree  
Strongly Disagree

Any black person who becomes a policeman is sold out and should not be trusted  
Strongly Agree  
Agree  
Neutral  
Disagree  
Strongly Disagree

Some people don't understand anything but force  
Strongly Agree  
Agree  
Neutral  
Disagree  
Strongly Disagree

Most policemen are out to get race minorities  
Strongly Agree  
Agree  
Neutral  
Disagree  
Strongly Disagree

Any man who insults a policeman has no complaint if he gets roughed up in return  
Strongly Agree  
Agree  
Neutral  
Disagree  
Strongly Disagree

There is substantial racial discrimination on the part of the police  
Strongly Agree  
Agree  
Neutral  
Disagree  
Strongly Disagree

The police frequently use more force than they need to when carrying out their duties  
Strongly Agree  
Agree  
Neutral  
Disagree  
Strongly Disagree

Policeman do an excellent job enforcing the law

Strongly Agree

Agree

Neutral

Disagree

Strongly Disagree

What is your racial background?

African American/Black

Asian American/Pacific Islander

Caucasian

Hispanic

Other, Please describe \_\_\_\_\_

What is your age?

\_\_\_\_\_

What is your gender?

Male

Female

What is your educational level?

Some High School/GED

High School Graduate

College Graduate

Some Graduate School

Post Graduate Degree

Do you know anyone who works in law enforcement?

Yes

No

Have you yourself worked in law enforcement?

Yes

No

If yes, what did you do \_\_\_\_\_

What is your primary and most important source of news?

TV

Radio

Newspapers

Internet

Friends/family

None, I do not follow the news

How often do you read the newspaper in print or online?

- Very frequently (almost daily)
- Frequently (one to two times per week)
- Somewhat Frequently (a few times per month)
- Rarely
- Don't read the newspaper

How often do you watch the news on television?

- Very frequently (almost daily)
- Frequently (one to two times per week)
- Somewhat Frequently (a few times per month)
- Rarely
- Don't read the newspaper

Have you ever served on a jury before?

- Yes, on a civil case
- Yes, on a criminal case
- Yes, on both civil and criminal cases
- No, I have never served on a jury before

---

Unfair treatment of underprivileged groups and classes is the chief cause of crime

- Strongly disagree
- Moderately disagree
- Slightly disagree
- Neutral
- Slightly agree
- Moderately agree
- Strongly agree

Too many obviously guilty persons escape punishment because of legal technicalities

- Strongly disagree
- Moderately disagree
- Slightly disagree
- Neutral
- Slightly agree
- Moderately agree
- Strongly agree

Evidence illegally obtained should be admissible in court if such evidence is the only way of obtaining a conviction.

- Strongly disagree
- Moderately disagree
- Slightly disagree
- Neutral
- Slightly agree

Moderately agree  
Strongly agree

Search warrants should clearly specify the person or things to be seized.

Strongly disagree  
Moderately disagree  
Slightly disagree  
Neutral  
Slightly agree  
Moderately agree  
Strongly agree

No one should be convicted of a crime on the basis of circumstantial evidence, no matter how strong such evidence is.

Strongly disagree  
Moderately disagree  
Slightly disagree  
Neutral  
Slightly agree  
Moderately agree  
Strongly agree

There is no need in a criminal case for the accused to prove his innocence beyond a reasonable doubt.

Strongly disagree  
Moderately disagree  
Slightly disagree  
Neutral  
Slightly agree  
Moderately agree  
Strongly agree

Any person who resists arrest commits a crime.

Strongly disagree  
Moderately disagree  
Slightly disagree  
Neutral  
Slightly agree  
Moderately agree  
Strongly agree

When determining a person's guilt or innocence, the existence of a prior arrest record should not be considered.

Strongly disagree  
Moderately disagree  
Slightly disagree

Neutral  
Slightly agree  
Moderately agree  
Strongly agree

Wiretapping by anyone and for any reason should be completely illegal.

Strongly disagree  
Moderately disagree  
Slightly disagree  
Neutral  
Slightly agree  
Moderately agree  
Strongly agree

Defendants in a criminal case should be required to take the witness stand.

Strongly disagree  
Moderately disagree  
Slightly disagree  
Neutral  
Slightly agree  
Moderately agree  
Strongly agree

All too often, minority group members do not get fair trials.

Strongly disagree  
Moderately disagree  
Slightly disagree  
Neutral  
Slightly agree  
Moderately agree  
Strongly agree

Because of the oppression and persecution minority group members suffer, they deserve leniency and special treatment in courts.

Strongly disagree  
Moderately disagree  
Slightly disagree  
Neutral  
Slightly agree  
Moderately agree  
Strongly agree

Citizens need to be protected against excess police power as well as against criminals.

Strongly disagree  
Moderately disagree  
Slightly disagree

Neutral  
Slightly agree  
Moderately agree  
Strongly agree

It is better for society that several guilty men be freed than one innocent one wrongfully imprisoned.

Strongly disagree  
Moderately disagree  
Slightly disagree  
Neutral  
Slightly agree  
Moderately agree  
Strongly agree

Accused persons should be required to take lie-detector tests.

Strongly disagree  
Moderately disagree  
Slightly disagree  
Neutral  
Slightly agree  
Moderately agree  
Strongly agree

When there is a “hung” jury in a criminal case, the defendant should always be freed and the indictment dismissed.

Strongly disagree  
Moderately disagree  
Slightly disagree  
Neutral  
Slightly agree  
Moderately agree  
Strongly agree

A society with true freedom and equality for *all* would have very little crime.

Strongly disagree  
Moderately disagree  
Slightly disagree  
Neutral  
Slightly agree  
Moderately agree  
Strongly agree

It is moral and ethical for a lawyer to represent a defendant in a criminal case even when he believes his client is guilty.

Strongly disagree

Moderately disagree  
Slightly disagree  
Neutral  
Slightly agree  
Moderately agree  
Strongly agree

Police should be allowed to arrest and question suspicious looking persons to determine whether they have been up to something illegal.

Strongly disagree  
Moderately disagree  
Slightly disagree  
Neutral  
Slightly agree  
Moderately agree  
Strongly agree

The law coddles criminals to the detriment of society.

Strongly disagree  
Moderately disagree  
Slightly disagree  
Neutral  
Slightly agree  
Moderately agree  
Strongly agree

The freedom of society is endangered as much by overzealous law enforcement as by the acts of individual criminals.

Strongly disagree  
Moderately disagree  
Slightly disagree  
Neutral  
Slightly agree  
Moderately agree  
Strongly agree

In the long run liberty is more important than order.

Strongly disagree  
Moderately disagree  
Slightly disagree  
Neutral  
Slightly agree  
Moderately agree  
Strongly agree

Upstanding citizens have nothing to fear from the police.

Strongly disagree  
 Moderately disagree  
 Slightly disagree  
 Neutral  
 Slightly agree  
 Moderately agree  
 Strongly agree

---

***Prosecution opening statements***

Please respond to the questions below to the best of your ability. There are no right or wrong answers. Please respond to ALL questions.

Consider only the information that you have just read. Who do you currently favor?

Strongly favor Prosecution							Strongly favor Defense	
1	2	3	4	5	6	7	8	9

Based on everything that you have seen, read or heard about this case, what is your opinion about the defendants?

Not at all Guilty							Definitely guilty	
1	2	3	4	5	6	7	8	9

Again, consider all of the information you know about the Bell case. In your opinion, who would you identify as the current leader?

- Strongly identify the prosecution
- Somewhat identify the prosecution
- Identify with neither the prosecution nor the defense (neutral)
- Somewhat identify the defense
- Strongly identify the defense

How confident are you, in terms of percentage, that your current favored leader will eventually win the case?

50    55    60    65    70    75    80    85    90    95    100

***Defense opening statement***

Consider only the information that you have just read. Who do you currently favor?

Strongly favor Prosecution									Strongly favor Defense
1	2	3	4	5	6	7	8	9	

Based on everything that you have seen, read or heard about this case, what is your opinion about the defendants?

Not at all Guilty									Definitely guilty
1	2	3	4	5	6	7	8	9	

Again, consider all of the information you know about the Bell case. In your opinion, who would you identify as the current leader?

Strongly identify the prosecution  
 Somewhat identify the prosecution  
 Identify with neither the prosecution nor the defense (neutral)  
 Somewhat identify the defense  
 Strongly identify the defense

How confident are you, in terms of percentage, that your current favored leader will eventually win the case?

50    55    60    65    70    75    80    85    90    95    100

*Session 3*

**Questions after Prosecution witnesses**

**1. How trustworthy were the prosecution witnesses as a group?**

Not at all trustworthy									Very trustworthy
1	2	3	4	5	6	7	8	9	

**2. How persuasive were the prosecution witnesses as a group?**

Not at all persuasive									Very persuasive
1	2	3	4	5	6	7	8	9	

**3. How believable were the prosecution witnesses as a group?**

Not at all believable Very believable  
1            2            3            4            5            6            7            8            9

**4. How influential were the prosecution witnesses as a group?**

Not at all influential Very influential  
1            2            3            4            5            6            7            8            9

**5. Please consider only the information you have just heard. Which side does the information favor.**

Strongly favors the defendant's case Strongly favors the prosecution case  
1            2            3            4            5            6            7            8            9

**7. Consider all the information you have received up to this point. Which side would you identify as the current "leader"**

Defense Prosecution  
1            2            3            4            5            6            7            8            9

**8. How confident are you that the party currently in the lead will win the case?**

Even between parties Current leader is clear likely winner  
50%            60%            70%            80%            90%            100%

**9. Any additional information you would like to share with us at this time related to your opinions in this case?**

---

10. What additional information would you need to hear to find the defendants' guilty in this case, if any?

**Questions after Prosecution witnesses**

**1. How trustworthy were the prosecution witnesses as a group?**

Not at all trustworthy  
1            2            3            4            5            6            7            8            9  
Very trustworthy

**2. How persuasive were the prosecution witnesses as a group?**

Not at all persuasive  
1            2            3            4            5            6            7            8            9  
Very persuasive

**3. How believable were the prosecution witnesses as a group?**

Not at all believable  
1            2            3            4            5            6            7            8            9  
Very believable

**4. How influential were the prosecution witnesses as a group?**

Not at all influential  
1            2            3            4            5            6            7            8            9  
Very influential

**5. Please consider only the information you have just heard. Which side does the information favor.**

Strongly favors the defendant's case  
1            2            3            4            5            6            7            8            9  
Strongly favors the prosecution case

**7. Consider all the information you have received up to this point. Which side would you identify as the current “leader”**

Defense							Prosecution		
1	2	3	4	5	6	7	8	9	

**8. How confident are you that the party currently in the lead will win the case?**

Even between parties						Current leader is clear likely winner
50%	60%	70%	80%	90%		100%

**9. Any additional information you would like to share with us at this time related to your opinions in this case?**

---

10. What additional information would you need to hear to find the defendants’ guilty in this case, if any?

---

*Session 5*

**Questions after Defense Witnesses**

**1. How trustworthy were the defense witnesses as a group?**

Not at all trustworthy							Very trustworthy		
1	2	3	4	5	6	7	8	9	

**2. How persuasive were the defense witnesses as a group?**

Not at all persuasive							Very persuasive		
1	2	3	4	5	6	7	8	9	

**3. How believable were the defense witnesses as a group?**

Not at all believable Very believable  
1            2            3            4            5            6            7            8            9

**4. How influential were the defense witnesses as a group?**

Not at all influential Very influential  
1            2            3            4            5            6            7            8            9

**5. Please consider only the information you have just heard. Which side does the information favor.**

Strongly favors the defendant's case Strongly favors the prosecution case  
1            2            3            4            5            6            7            8            9

**7. Consider all the information you have received up to this point. Which side would you identify as the current "leader"**

Defense Prosecution  
1            2            3            4            5            6            7            8            9

**8. How confident are you that the party currently in the lead will win the case?**

Even between parties Current leader is clear likely winner  
50%            60%            70%            80%            90%            100%

**9. Any additional information you would like to share with us at this time related to your opinions in this case?**

*Session 6*

**After prosecution closing**

1. Please consider only the information you have just heard. Which side does the information favor.

Strongly favors the defendant's case							Strongly favors the prosecution case	
1	2	3	4	5	6	7	8	9

2. Consider all the information you have received up to this point. Which side would you identify as the current "leader"

Defense								Prosecution
1	2	3	4	5	6	7	8	9

3. How confident are you that the party currently in the lead will win the case?

Even between parties							Current leader is clear likely winner
50%	60%	70%	80%	90%	100%		

**After defense closing**

1. Please consider only the information you have just heard. Which side does the information favor.

Strongly favors the defendant's case							Strongly favors the prosecution case	
1	2	3	4	5	6	7	8	9

2. Consider all the information you have received up to this point. Which side would you identify as the current "leader"

Defense								Prosecution
1	2	3	4	5	6	7	8	9

3. How confident are you that the party currently in the lead will win the case?

Even between parties					Current leader is clear likely winner
50%	60%	70%	80%	90%	100%

How persuasive was the prosecution closing argument? (scaled 1-7)

- (1) Not at all persuasive
- (7) Very persuasive

How persuasive was the defense closing argument? (scaled 1-7)

- (1) Not at all persuasive
- (7) Very persuasive

How strong do you feel the prosecution's case was? (scaled 1-7)

- (1) Not at all strong
- (7) Very Strong

How strong do you feel the defense's case was? (scaled 1-7)

- (1) Not at all strong
- (7) Very Strong

We will now ask you to render your verdicts in this case:

Count 1: For Defendant Michael Oliver, on the charge of manslaughter in the first degree with intent to cause physical injury, do you find the defendant:

- Guilty
- Not Guilty

Count1: For Defendant Gescard Isnora, on the charge of manslaughter in the first degree with intent to cause physical injury, do you find the defendant:

- Guilty
- Not Guilty

Count 2: For Defendant Michael Oliver, on the charge of manslaughter in the second degree to recklessly cause death, do you find the defendant:

- Guilty
- Not Guilty

Count 2: For Defendant Gescard Isnora, on the charge of manslaughter in the second degree to recklessly cause death, do you find the defendant:

- Guilty

Not Guilty

Count 3: For Defendant Michael Oliver, on the charge of assault with intent to cause serious injury with a weapon, do you find the defendant:

Guilty

Not Guilty

Count 3: For Defendant Gescard Isnora, on the charge of assault with intent to cause serious injury with a weapon, do you find the defendant:

Guilty

Not Guilty

Count 4: For Defendant Michael Oliver, on the charge of assault in the first degree, do you find the defendant:

Guilty

Not Guilty

Count 5: For Defendant Gescard Isnora, on the charge of assault in the second degree,, do you find the defendant:

Guilty

Not Guilty

Count 6: For Defendant Michael Oliver, on the charge of reckless endangerment in the second degree, do you find the defendant:

Guilty

Not Guilty

Count 6: For Defendant Gescard Isnora, on the charge of reckless endangerment in the second degree, do you find the defendant:

Guilty

Not Guilty

Count 6: For Defendant Marc Cooper, on the charge of reckless endangerment in the second degree, do you find the defendant:

Guilty

Not Guilty

Count 7: For Defendant Marc Cooper, on the charge of reckless endangerment in the second degree, do you find the defendant:

Guilty

Not Guilty

How confident are you in your verdict choices? (Scaled 1-7)

(1) Not at all confident

(7) Very confident

What piece of evidence was the most influential to you in making your final decision?

The following questions are to gauge your exposure to the media during this study. There are no right or wrong answers and we ask you to be honest in your responses. We realize that even though you may try to avoid it, sometimes the media is difficult to ignore!

While you were participating in this experiment, did you hear any information about this case in the media?

Yes  No

If "YES," What did you hear?

If "YES," Where did you hear this information?

While you were participating in this experiment, did you discuss this case with anybody (parents, friends, teachers, co-workers, etc.)?

Yes  No

If "YES" What topics did you discuss?

Approximately how many headlines did you see regarding this case during the trial?

Approximately how many articles regarding this case did you read during the trial if any?

Approximately how many newscasts did you see regarding this case during the trial?

Approximately how many radio sports did you hear regarding this case during the trial?

Did you research this trial on the internet?

If so which sites did you visit?

Of all the publicity you read, what percentage favored the prosecution?

Of all the publicity you read, what percentage favored the defense?

Of all the publicity you read, what percentage was neutral?

In your opinion, what was the general bias of the media?

Prosecution

Defense

Neutral

We will now show you a list of headlines regarding this case. Please indicate your level of familiarity with these articles if any:

Fury and Tears- Sean Bell's Fiancé cries as trial opens  
AM New York

I have read the article briefly  
I have read the article carefully  
I just read the headline and not the article  
I did not see this headline

Three Men Who had no Reason to Run  
New York Times

I have read the article briefly  
I have read the article carefully  
I just read the headline and not the article  
I did not see this headline

Sean Bell friend testifies that he begged cops not to shoot him  
New York Daily News

I have read the article briefly  
I have read the article carefully  
I just read the headline and not the article  
I did not see this headline

Fearing the would die, Sean Bell and friend said goodbye  
AM New York

I have read the article briefly  
I have read the article carefully  
I just read the headline and not the article  
I did not see this headline

I didn't want to die!  
New York Post

I have read the article briefly  
I have read the article carefully  
I just read the headline and not the article  
I did not see this headline

Shoot or Die: Bell Cop Tells Why I had to fire 31 Bullets  
New York Post

I have read the article briefly  
I have read the article carefully  
I just read the headline and not the article  
I did not see this headline

***50 shot victim: "Cop out of his mind."***

***New York Post***

I have read the article briefly  
I have read the article carefully  
I just read the headline and not the article  
I did not see this headline

With Trial Near End, Sean Bell's Fiancée Envisions the Day He Died  
New York Times

I have read the article briefly  
I have read the article carefully  
I just read the headline and not the article  
I did not see this headline

Do you believe you were a fair juror in this case? \_\_\_\_ YES \_\_\_\_ NO

## References

- Abramson, J. (2001). *We the jury*. Harvard University Press: Cambridge, Massachusetts.
- Arbuthnot, J., Myers, B., & Leach, J. (2002). Linking juror prejudgment and pretrial publicity knowledge: Some methodological considerations. *American Journal of Forensic Psychology, 20*(3), 53-71.
- Bradshaw, G. S. (2007). *Exploration into the effect of general pretrial publicity on juror decision making*. US: ProQuest Information & Learning.
- Bruschke, J., & Loges, W. E. (2004). *Free press vs. fair trials: Examining publicity's role in trial outcomes*. Mahwah, NJ, US: Lawrence Erlbaum Associates Publishers.
- Carlson, K. A., & Russo, J. E. (2001). Biased interpretation of evidence by mock jurors. *Journal of Experimental Psychology: Applied, 7*(2), 91-103.
- Chesterman, M., Chan, J., Hampton, S. (2001). *Managing Prejudicial Publicity* (Justice Research Centre, Sydney)
- Costantini, E., & King, J. (1980-1981). The partial juror: Correlates and causes of prejudgment. *Law and Society Review, 15*, 9-40.
- Davis, R. W. (1986). Pretrial publicity, the timing of the trial, and mock jurors' decision processes. *Journal of Applied Social Psychology, 16*(7), 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(10), 819-832.
- Dixon, T. L., & Linz, D. (2002). Television news, prejudicial pretrial publicity, and the depiction of race. *Journal of Broadcasting & Electronic Media*, 46(1), 112-136.
- Federal Rules of Criminal Procedure (2002)*. Retrieved from <http://www.law.cornell.edu/rules>.
- 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(11), 1215-1226.
- Fein, S., Morgan, S. J., Norton, M. I., & Sommers, S. R. (1997). Hype and suspicion: The effects of pretrial publicity, race, and suspicion on jurors' verdicts. *Journal of Social Issues*, 53(3), 487-502.
- Fiske, S. T., & Taylor, S. E. (1991). *Social cognition (2nd ed.)*. New York, NY, England: McGraw-Hill Book Company.
- Freedman, J. L., & Burke, T. M. (1996). The effect of pretrial publicity: The Bernardo case. *Canadian Journal of Criminology*, 38(3), 253-270.

- Freedman, J. L., Martin, C. K., & Mota, V. L. (1998). Pretrial publicity: Effects of admonition and expressing pretrial opinions. *Legal and Criminological Psychology*, 3(2), 255-270.
- Fulero, S. M. (2002). Afterword: The past, present, and future of applied pretrial publicity research. *Law and Human Behavior*, 26(1), 127-133.
- Greene, E., & Wade, R. (1988). Of private talk and public print: General pre-trial publicity and juror decision-making. *Applied Cognitive Psychology*, 2(2), 123-135.
- Hadar, I., & Snortum, J. R. (1975). The eye of the beholder: Differential perceptions of police by the police and the public. *Criminal Justice and Behavior*, 2, 37-54.
- Hamilton, D. L., Falloot, R. D., & Hautaluoma, J. (1978). Information salience and order effects in impression formation. *Personality and Social Psychology Bulletin*, 4(1), 44-47.
- Hope, L., Memon, A., & McGeorge, P. (2004). Understanding pretrial publicity: Predecisional distortion of evidence by mock jurors. *Journal of Experimental Psychology: Applied*, 10(2), 111-119.
- Jones, R. A., & Brehm, J. W. (1970). Persuasiveness of one- and two-sided communications as a function of awareness there are two sides. *Journal of Experimental Social Psychology*, 6(1), 47-56.
- Kahneman, D., & Tversky, A. (1984). Judgments under uncertainty: Heuristics and biases. *Science*, 185, 1124-1131.

- Kline, F. G., & Jess, P. H. (1966). Prejudicial publicity: Its effects on law school mock juries. *Journalism Quarterly*, 43, 113-116.
- Kovera, M. B. (2002). The effects of general pretrial publicity on juror decisions: An examination of moderators and mediating mechanisms. *Law and Human Behavior*, 26(1), 43-72.
- Kramer, G. P., Kerr, N. L., & Carroll, J. S. (1990). Pretrial publicity, judicial remedies, and jury bias. *Law and Human Behavior*, 14(5), 409-438.
- Lieberman, J. D., & Arndt, J. (2000). Understanding the limits of limiting instructions: Social psychological explanations for the failures of instructions to disregard pretrial publicity and other inadmissible evidence. *Psychology, Public Policy, and Law*, 6(3), 677-711.
- Marshall v. United States 360 U.S. 310 (1959).
- Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974).
- Minnow, N.N. & Cate, F. H. (2001). Who is an impartial juror in an age of mass media? *American University Law Review*, 40, 631-664.
- Moran, G., Cutler, B. L., & Loftus, E. F. (1990). Jury selection in major controlled substance trials: The need for extended voir dire. *Forensic Reports*, 3(3), 331-348.
- Moran, G., & Cutler, B. L. (1991). The prejudicial impact of pretrial publicity. *Journal of Applied Social Psychology*, 21(5), 345-367.

Mu'Min v. Virginia, 500 U.S. 415 (1991).

Murphy v. Florida, 421 U.S. 794, 799-802 (1975).

Narby, D. J., Cutler, B. L., & Moran, G. (1993). A meta-analysis of the association between authoritarianism and jurors' perceptions of defendant culpability. *Journal of Applied Psychology, 78*(1), 34-42.

Nelson, T. E., Clawson, R. A., & Oxley, Z. M. (1997). Media framing of a civil liberties conflict and its effect on tolerance. *American Political Science Review, 91*, 567-583.

New Jersey v. Harris, 282 N.J. Super. 409 (1995).

New York Civil Liberties Union (2008, May 25). NYCLU Analysis of NYPD Reports Reveals Troubling Patterns in Police Shootings, Lack of Diversity in NYPD Leadership. Retrieved from <http://www.nyclu.org/node/1756>.

Nietzel, M. T., & Dillehay, R. C. (1983). Psychologists as consultants for changes of venue: The use of public opinion surveys. *Law and Human Behavior, 7*(4), 309-335.

Near v. Minnesota, 283 U.S. 697 (1931).

*Newcomb v. State* 800 P.2d 935 (1990).

Ogloff, J. R. P., & 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*(5), 507-525.

- Olsen-Fulero, L., & Fulero, S. M. (1997). Commonsense rape judgments: An empathy-complexity theory of rape juror story making. *Psychology, Public Policy, and Law*, 3(2), 402-427.
- Otto, A. L., Penrod, S. D., & Hirt, E. R. (1991). The influence of pretrial publicity on juror judgments in civil cases. Unpublished manuscript.
- Otto, A. L., Penrod, S. D., & Dexter, H. R. (1994). The biasing impact of pretrial publicity on juror judgments. *Law and Human Behavior*, 18(4), 453-469.
- Pennington, N., & Hastie, R. (1992). Explaining the evidence: Tests of the story model for juror decision making. *Journal of Personality and Social Psychology*, 62(2), 189-206.
- Posey, A., & Wrightsman, L. S. (2005). *Trial Consulting*. New York, NY, US: Oxford University Press.
- Rideau v. Louisiana, 373 U.S. 723 (1953).
- Russo, E. J., Medvec, V. H., & Meloy, M. G. (1996). The distortion of information during decisions. *Organizational Behavior and Human Decision Processes*, 66(1), 102-110.
- Ruva, C. L., McEvoy, C. (Under Review). Negative and positive pretrial publicity affect juror memory and decision making.

- Ruva, C. L. (2002). *Effects of collaboration and pretrial publicity on juror bias and source monitoring errors*. US: ProQuest Information & Learning.
- Ruva, C., McEvoy, C., & Bryant, J. B. (2007). Effects of pre-trial publicity and jury deliberation on juror bias and source memory errors. *Applied Cognitive Psychology*, 21(1), 45-67.
- Schenck v. United States, 249 U.S. 47 (1919).
- Sheppard v. Maxwell, 384 U.S. 333, 362 (1966).
- Seltzer, R., Lopes, G. M., & Venuti, M. (1990). Juror Ability to recognize the limitations of eyewitness identification. *Forensic Reports*, 3, 121-137.
- Simon, R. J., & Eimermann, T. (1971). The jury finds not guilty: Another look at media influence on the jury. *Journalism Quarterly*, 48, 343-344.
- Smith, V. L. (1991). Prototypes in the courtroom: Lay representations of legal concepts. *Journal of Personality and Social Psychology*, 61(6), 857-872.
- 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(2), 219-235.
- Stuart, A.E., & Blanton, H. (2003). The effects of message framing on behavioral prevalence assumptions. *European Journal of Social Psychology*, 33, 93-102..

- Studebaker, C. A., & Penrod, S. D. (1997). Pretrial publicity: The media, the law, and common sense. *Psychology, Public Policy, and Law*, 3(2), 428-460.
- Studebaker, C. A., & Penrod, S. D. (2005). Pretrial publicity and its influence on juror decision making. In N. Brewer, & K. D. Williams (Eds.), *Psychology and law: An empirical perspective*. (pp. 254-275). New York, NY, US: Guilford Press.
- Studebaker, C. A., Robbennolt, J. K., Pathak-Sharma, M. K., & Penrod, S. D. (2000). Assessing pretrial publicity effects: Integrating content analytic results. *Law and Human Behavior*, 24(3), 317-337.
- Sue, S., Smith, R. E., & Gilbert, R. (1974). Biasing effects of pretrial publicity on judicial decisions. *Journal of Criminal Justice*, 2(2), 163-171.
- Sue, S., Smith, R. E., & Pedroza, G. (1975). Authoritarianism, pretrial publicity, and awareness of bias in simulated jurors. *Psychological Reports*, 37(3), 1299-1302.
- Tanford, S., & Cox, M. (1988). The effects of impeachment evidence and limiting instructions on individual and group decision making. *Law and Human Behavior*, 12(4), 477-497.
- Tans, M., & Chaffee, S. (1966). Pretrial publicity and juror prejudice. *Journalism Quarterly*, 43, 647-654.
- Unites States v. McVeigh, 918 F. Supp. 1467 (1996).
- United States v. Thompson, 904 F.2d 702 (1990).

- United States v. Aragon, 962 F.2d 439 (1992).
- United States v. Bermea, 30 F.3d 1539 (1994).
- United States v. DiSalvo, 34 F.3d 1204 (1994).
- United States v. Gray, 788 F.2d 1031 (1985).
- United States v. Herring, 568 F.2d 1099 (1978).
- United States v. McDonough, 56 F.3d 381 (1995).
- United States v. McVeigh, 918 F. Supp. 1467 (1996).
- United States v. Nazzaro, 889 F.2d 1158 (1989).
- United States v. Thompson, 904 F.2d 702 (1990).
- United States V. Tolliver, 61 F.3d 1189 (1995).
- Vidmar, N. (1997). Generic prejudice and the presumption of guilt in sex abuse trials. *Law and Human Behavior*, 21(1), 5-25.
- Vidmar, N. (2002). Case studies of pre- and midtrial prejudice in criminal and civil litigation. *Law and Human Behavior*, 26(1), 73-105.
- Vidmar, N. (2003). Symposium: III. The jury in practice: When all of us are victims: Juror prejudice and “terrorist” trials. *Chicago-Kent Law Review*, 1143, 1-42.
- Virgin Islands v. William Weatherwax, 20 F.3d 572 (1994).
- Woody, W. D., & Viney, W. (2007). General pretrial publicity in sexual assault trials. *Psychological Reports*, 101(2), 527-530.