

DECLARATION OF BRYAN EDELMAN, Ph.D.

I, Bryan Edelman, solemnly, sincerely and truly declare and affirm as follows:

I. INTRODUCTION

I am the co-founder of Trial Innovations, Inc., a national full-service jury research firm. I have worked as a trial consultant for over 15 years and have conducted pre- and post-trial research on both criminal and civil cases across the country. In addition, I have been retained on over 30 high profile cases to assess the impact of pretrial publicity.

Counsel for defendant in *People v. Jason Van Dyke* retained me to make a recommendation to the Court on whether or not any remedial measures, including a change of venue, may be appropriate to protect the defendant's due process rights. As part of my analysis, I evaluated relevant newspaper and television publicity, social media, and conducted a community attitude survey in Cook, Lake, and Madison County.

It is my opinion that the jury pool in Cook County has been exposed to extensive prejudicial news coverage surrounding the Laquan McDonald shooting, the community's reaction, and ensuing political fallout. The coverage often includes powerful and emotional, language; references the dash cam video and what it shows; inadmissible content including the \$5 million settlement with the McDonald family, an alleged cover-up within the Chicago Police Department, the findings from the 13 month DOJ investigation into the Chicago Police Department, and efforts to reform the Department; calls for politicians including Mayor Rahm Emanuel to resign; and demonstrations that broke out after the video was released. The dash cam video—a key piece of evidence toward determining whether or not Officer Van Dyke was in danger of losing his life or suffering serious injury---has received thousands of views online, was played countless times on television, and has been incorporated in political ads and a music video. In addition, reactions on social media including Twitter and Facebook exhibit significant vitriol and anger surrounding the shooting, the defendant, and the Chicago Police Department. There have also been several threats made against Jason Van Dyke since the shooting.

Despite the size of Cook County and the passage of time, the scars left on the community

by this shooting have not healed. Not only is **86%** of the jury pool familiar with the case, but **75%** of these prospective jurors believe Jason Van Dyke is guilty of murder, with **51%** falling into the “definitely” guilty category. In addition, **67%** reported that the defendant would have a difficult time convincing them that he is not guilty of murder.

Seventy-one percent (**71%**) of survey respondents have watched the shooting video. Based on their impressions of what it showed, **79%** believe that Officer Van Dyke was not in danger when he shot Laquan McDonald.

Given the nature of the pretrial publicity—and its apparent negative impact on the jury pool—I believe the presumption of innocence has been undermined. As such, remedial measures are necessary to protect the defendant’s constitutional right to a fair and impartial trial.

II. QUALIFICATIONS

Education and Experience: A copy of my curriculum vitae can be found in Appendix A to this declaration. Upon completion of my undergraduate education, I received an MA and Ph.D. in Social Psychology from the University of Nevada, Reno, and an LL.M. from the University of Kent in the United Kingdom. My graduate studies have provided me with a broad foundation in both qualitative and quantitative research methodologies as well as statistics

The Social Psychology Program at the University of Nevada is unique in that it is one of the few in the country that has an emphasis on the application of social psychological theory to the legal arena. During my studies I specialized in jury related issues and examined how attitudes, race, stereotypes, pretrial publicity, and other factors influence juror and jury decision-making. In this regard, I took coursework addressing topics associated with change of venue motions, the impact of pretrial publicity on jurors’ ability to be fair and impartial, and the steps necessary to conduct a change of venue analysis. The University’s association with the National Judicial College and other government agencies also afforded me the opportunity to conduct research with the Public Defender, District Attorney, Court Services, the judiciary, and others institutions in Washoe County, Nevada.

Research Experience: While at the University of Nevada, Reno I worked as a Research

Assistant and Project Manager at the Grant Sawyer Center for Justice Studies where I assisted with several national surveys, including one that examined the judiciary's understanding and application of the Daubert standard. I also explored how jurors "minimize" what they have read, seen, or heard about high profile cases during voir dire. In addition, I oversaw a study of the Washoe County's pretrial release program and assisted with the development of training programs for foreign justices, court administrators, prosecutors, and defense attorneys who were brought to the United States by the Department of State.

Further, I have conducted and published research on the impact of illegitimate factors on juror decision-making. This research included developing and testing a model that attempted to explain how factors such as race and empathy influence pre- and post-deliberation sentencing decisions in capital cases. My research on juror decision-making in capital cases was later published as a book. Since completing my studies I have also published on the impact of graphic images on jurors, and on methodological issues associated with online survey research.

Jury Research Experience: I began working as a trial consultant in 1998 and cofounded Trial Innovations in 2010. Over the years I have worked on hundreds of criminal and civil cases across the country. As a trial consultant I have conducted mock trials, focus groups, surveys, post-trial interviews, and other research exercises. I have consulted in the courtroom and assisted with jury selection on more than 100 cases. I have also served as a presenter at local bar associations, law firms, national meetings, and conferences. In addition, I have been invited to conduct MCLE courses related to jury selection by the Public Defender, Alternate Defender, and District Attorney in California, Nevada, and New Mexico. I have also served as a guest lecturer at the University of Santa Cruz and Stanford Law School.

Venue Experience: As a graduate student, I was trained by Dr. Ronald Dillehay and Dr. Edward Bronson, two of the leading experts in the country on venue and pretrial publicity. Over the years I have had the opportunity to work with Dr. Bronson on a number of change of venue studies.

I have worked on change of venue issues in several different capacities. As a researcher I

have coded trial transcripts in high profile cases to evaluate how jurors “minimize” their bias and exposure to pretrial publicity during voir dire, and the challenges this phenomenon poses for judges and attorneys. In addition, I examined the impact of television pretrial publicity on prejudgment of guilt. I have also presented as a panelist on change of venue issues at the American Society of Trial Consultants’ annual conference, and been a co-author on the chapter in the “California Criminal Law Procedure and Practice” on change of venue since 2011.

I have conducted content analyses of media coverage on a host of topics, and have designed more than 50 community attitude surveys over the years. I have been retained as an expert to conduct and evaluate change of venue studies, and also to recommend remedial measures for addressing exposure to pretrial publicity outside of a change of venue.

Expert Witness Experience: I have been retained as an expert witness on matters including freedom of religion in China (political asylum hearing), eyewitness identification, and change of venue. I have testified as an expert witness in person or by declaration in California, Idaho, Colorado, Texas, Michigan, Massachusetts, and Nevada, and have been hired by the prosecution and defense. In the majority of cases I have been retained to conduct a change of venue study,¹ I have recommended against a change of venue.

III. THE INFLUENCE OF ATTITUDES ON COGNITION²

There is a substantial body of literature that has accumulated over the years documenting the impact of schemas³ and attitudes on information processing. These cognitive structures have been shown to have an impact on selective attention, the evaluation of new information, and memory recall. This research provides insight into how media coverage may lead to bias in the courtroom.

When media coverage surrounding a case is broad, extensive, and redundant, strong links

¹ These exclude instances where I have been hired to review a change of venue survey, assist with addressing media coverage during *voir dire*, or review trial transcripts and pretrial publicity as part of a post-conviction appeal.

² Cognition is a term referring to the mental processes involved in gaining knowledge and comprehension, including thinking, knowing, remembering, judging and problem solving.

³ Schemas are cognitive structures which represent knowledge about a concept or type of stimulus, including its attributes and the relations among those attributes.

between relevant attitudes and beliefs about the victim, the defendant, and evidence as presented through the media will form. If the pretrial publicity repeatedly links certain attitudes and beliefs, over the course of a trial these attitudes are likely to be automatically activated at a subconscious level. If the pretrial publicity repeatedly links certain attitudes and beliefs, over the course of a trial these attitudes are likely to be automatically activated and serve as a prism through which trial testimony is cognitively processed.

This network of linked attitudes can have an impact on a juror's attention to and evaluation of the evidence and arguments presented in court. As the network of linked attitudes grows, attitudes become more resistant to change. Resistance to revising well-established attitudes has been shown to lead to biased information processing. When attitudes are strong, there is a tendency to favor arguments and information in support of an attitude over arguments which may disprove it. The acceptance of a counterargument can create what has been termed "cognitive dissonance."⁴ In an effort to avoid cognitive dissonance, information that supports attitudes may be selectively attended to and counterarguments may be distorted or dismissed.⁵

Attitudes can also have an impact on attention and recall. Research has shown that information that supports a preexisting attitude is easier to learn, more accurately retained, and easier to recall. The links formed between attitudinally supporting information and preexisting attitudes are stronger than those formed between counterarguments and preexisting attitudes. As a result, the latter is more difficult to retrieve from memory. Further, there is a tendency to produce new beliefs which support attitudes and suppress those that run counter to preexisting attitudes.

When a venue is inundated with media coverage surrounding a crime, they will develop case-specific attitudes, which can have an impact on their evaluations of the evidence and arguments presented at trial. When this occurs, attitudinally supporting arguments will be more

⁴ Cognitive dissonance is an uncomfortable feeling caused by holding two contradictory ideas simultaneously. People have a motivational drive to reduce dissonance by changing their attitudes, beliefs, and behaviors, or by justifying or rationalizing them.

⁵ For example, people list more counterarguments for information that refutes preexisting attitudes than information that supports them.

closely attended to, evaluated as persuasive, integrated into the existing network of attitudes and beliefs, and made easily accessible during deliberations. In contrast, counterarguments and evidence conflicting with well-established attitudes may create cognitive dissonance. As a result, jurors will either ignore this evidence or make cognitive efforts to refute it. This evidence will not establish strong links to preexisting attitudes and will not be easily accessible during deliberations. These psychological processes put the defendant at a significant disadvantage, tend to undermine the presumption of innocence, and diminish the prosecution's burden of proof.

The prejudicial impact of preexisting attitudes is accentuated by the fact that the media coverage underlying them is often biased in favor of the prosecution. Furthermore, news content is encoded under very different circumstances from those found in the courtroom. The rules of evidence that are strictly enforced at trial do not apply. As such, the persuasive impact of information presented through the press, including admissible evidence, may be more significant than it would otherwise be following cross-examination.

IV. THE PREJUDICIAL IMPACT OF PRETRIAL PUBLICITY

There is a body of research within the social sciences that attempts to address the impact of pretrial publicity on decision-making in the courtroom. This literature suggests that pretrial publicity influences evaluations of the defendant, perceptions of criminality, sympathy toward the defendant, pretrial judgments regarding guilt, and final verdicts.⁶

Daftary-Kapur, Penrod, O'Connor, and Wallace (2014) conducted a field study that

⁶ See Constantini, E., & King, J. (1980-1981). The partial juror: Correlates and causes of prejudgment. *Law and Society review*, 15, 9-40; DeLuca, A.J. (1979). *Tipping the scales of justice. The effects of pretrial publicity*. Unpublished master's thesis, Iowa State University, Ames; Hvistendahl, J.K. (1979). The effect of placement of biasing information. *Journalism Quarterly*, 56, 863-865; Kline, F.G., & Jess, P.H. (1966). Prejudicial publicity: Its effects on law school mock juries. *Journalism Quarterly*, 43, 113-116; Moran, G. & Cutler, B.L. (1991). The prejudicial impact of pretrial publicity. *Journalism of Applied Social Psychology*, 21, 345-367; Otto, A.L., Penrod, S., & Dexter, H. (1994). The biasing impact of pretrial publicity on juror judgments. *Law and Human Behavior*, 18, 453-470; Padawer-Singer, A. & Barton A.H. (1975). The impact of pretrial publicity on jurors' verdicts. In R.J. Simon (Ed.) *The jury system in America: A critical overview* (pp. 123-139). Beverly Hills, CA: Sage; Simon, R.J., Eimermann, T. (1971). The jury finds not guilty: Another look at media influence on the jury. *Journalism Quarterly*, 48, 343-344; Sue, S., Smith, R.E., & Gilbert, R. (1974). Biasing effect of pretrial publicity on judicial decisions. *Journal of Criminal Justice*, 2, 163-171; Tans, M., & Chaffee, S. (1966). Pretrial publicity and juror prejudice. *Journalism Quarterly*, 43, 647-654.

incorporated real time evidence into the methodology.⁷ Participants included jury-eligible community members who were naturally exposed to pretrial publicity over a 14-month period leading up to the trial. Trial summaries were presented online during six sessions over the course of ten weeks.

The researchers reported a pretrial publicity effect that persisted throughout the actual trial. Despite the admonitions to set-aside prejudicial pretrial publicity, participants were biased by the content of the pretrial publicity. Specifically, those exposed to pro-prosecution oriented articles were more punitive in their guilty ratings across all six sessions compared to those exposed to pro-defense pretrial publicity. The amount of the pretrial publicity participants were exposed to also had a significant effect. In addition, the biasing effect of pretrial publicity did not disappear over time. Thus, neither delay nor trial evidence eliminated the pretrial publicity effect on judgments of guilt.

Stebly, et al. (1999) conducted a meta-analysis⁸ encompassing 44 research studies on pretrial publicity. The authors reported a statistically significant relationship between pretrial publicity and verdicts.⁹ Media coverage addressing the defendant's prior record, the existence of confessions, the heinousness of the crime, and negative character of the defendant have all been shown to have an effect on perceptions of guilt and final verdicts. Furthermore, deliberations may not reduce the biasing impact of pretrial publicity.¹⁰ In fact, Kramer, Kerr, and Carroll (1990), found that deliberations actually accentuated the effects of pretrial publicity on final verdicts.¹¹

⁷ Daftary-Kapur, T., Penrod, S.D., O'Connor, M. & Wallace, B. (2014). Examining pretrial publicity in a shadow jury paradigm: Issues of slant, quantity, persistence and generalizability. *Law and Human Behavior*, 38(5), 462-477.

⁸ A meta-analysis is a statistical analysis of several separate but similar experiments or studies in order to test the pooled data for statistical significance.

⁹ Steblay, Jasmina Besirevic, Solomon M. Fulero, Belia Jimenez-Lorente. "The Effects of Pretrial Publicity on Juror Verdicts: A Meta-Analytic Review", *Law and Human Behavior*, vol.23, no.2, pp. 219-235, 1999.

¹⁰ Otto, A.L., Penrod, S. & Dexter, H.R. (1994). The biasing impact of pretrial publicity on juror judgments. *Law and Human Behavior*, 18(4), 452-469.

¹¹ 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.

Dexter, Cutler, and Moran (1992) also reported a significant relationship between pretrial publicity and views toward guilt. Participants were given pretrial publicity a week before the study began. Negative pretrial publicity increased conviction rates, even for subjects who underwent extensive voir dire addressing pretrial publicity.¹²

As demonstrated by Ruva and McEvoy (2007) exposure to pretrial publicity can influence verdicts by affecting perceptions of defendant credibility, ratings of the prosecuting and defense attorneys, and source attribution errors (i.e., misattributing information learned from the media as evidence presented as trial evidence).¹³

Consistent with the experimental literature on attitudes described above, Hope, Memon, and McGeorge (2004) found that jurors exposed to negative pretrial publicity evaluate prosecution evidence more favorably than its actual probative value, a phenomenon coined “pre-decisional distortion.”¹⁴ Thus, attitudes developed from exposure to pretrial publicity serve as a filter through which later trial evidence is evaluated.

V. MEDIA ANALYSIS

An effort was made to collect the articles published in newspapers with circulation in Cook County to assess the extent of coverage surrounding the case. The search of news databases returned 2124 articles from the *Chicago Tribune* and *Sun Times* that reference the shooting, and 866 additional publications in other local papers between October 20, 2014 and March 25, 2018. A content analysis of a stratified sample of articles from the *Tribune* and *Sun Times* was conducted to assess the nature of the media coverage. Comments on social media including Facebook and Twitter were also analyzed via content analysis.

The media coverage often includes prejudicial content, highlights the racial elements of the case, references potentially inadmissible material (e.g., \$5 million settlement, cover-up,

¹² Dexter, H., Cutler, B.L., & Moran, G. (1992). A test of *voir dire* as a remedy for the prejudicial effects of pretrial publicity. *Journal of Applied Social Psychology*, 22, 819-832.

¹³ Ruva, C.L., & McEvoy, C. (2008). Negative and positive pretrial publicity affect juror memory and decision-making. *Journal of Experimental Psychology: Applied*, 14(3), 226-235.

¹⁴ Hope, L., Memon, A. & McGeorge, P. (2004). Understanding pretrial publicity: Predecisional distortion of evidence by mock jurors. *Journal of Experimental Psychology: Applied*, 10, 111-119.

criminal charges against officers at the scene, the Department of Justice investigation), provides descriptions of the shooting, chronicles the controversy over the release of the dash cam video, details what it shows (i.e., McDonald was walking away from the officers), and follows the community's response and political fallout that ensued.

The coverage often incorporates emotive and powerful language when describing the shooting and events that followed. This type of language can generate strong attitudes that are more persistent over the passage of time. Examples of this type of language include:

- Young man being shot down like a dog in the street; as if he were a dog; an execution of a young man that should have been and could have been avoided; a young black male unjustifiably killed by police is the Emmett Till of our time
- Laquan McDonald's blood is spilling all over City Hall
- Atrocity; the grotesque undervaluing of human life; tragic death; incident is horrible on so many levels; this horrific and shocking event; mayor declared Van Dyke's conduct "hideous"
- The 17-year-old's police execution; it was like an execution; gratuitous execution as well as a hate crime
- Misfortune of crossing the path of a brutal Chicago cop; a statue did not shoot 17-year-old Laquan McDonald 16 times, a white cop did; if they had done something about this cop in our case, this young boy would still be alive
- Pumping 16 bullets into the teenager; pumping 16 rounds into McDonald's body; 16 bullet holes; unloaded 16 bullets into him; why a police officer needed to shoot this young man 16 times; \$1 million for each bullet fired into Laquan McDonald
- Cops letting the teenager lie dying in the street, unaided, uncomforted, almost unnoticed; as he lay helpless on the street; continued to shoot him after he crumpled to the middle of Pulaski Road; only movement is the puffs of smoke

coming from the teen's torso and his head

- It rocked him to the core; outpouring of rage after the McDonald shooting; furious reaction; there's a lot more than the number of bullets fired that we all should be outraged about when it comes to the killing of Laquan McDonald; outrage over the response to the Laquan McDonald shooting; shattered public trust in the Chicago Police
- The city is bleeding; Chicago is bleeding; this is Chicago's shame; Chicago exploded over the Laquan McDonald police shooting; Chicago sitting on the edge of widespread community unrest; Chicago is grappling with the aftermath of the shooting
- The grisly video; outraged by the "execution" video; considered the video so outrageous; extremely disturbing
- Ongoing furor over the Laquan McDonald shooting video; unrelenting furor over the video; ongoing furor over the police shooting of Laquan McDonald; unrelenting furor that followed the release of the Laquan McDonald shooting video; political furor over the mayor's handling of the Laquan McDonald shooting video; would not have been the powder keg that it has been
- We are looking for justice; if Laquan had shot the policeman 16 times, he wouldn't have been at a desk job 13 months later

The release of the dash cam video rocked community residents and led to widespread outrage over the excessive use of force by members of the Chicago Police Department. The newspaper coverage is replete with references to the Laquan McDonald shooting video, its controversial release, and descriptions of what it shows. Many articles mention how the video refutes accounts by officers at the scene. This coverage often mentions that Laquan McDonald was walking away from officers when he was shot and was not a threat, which goes to one of the core issues of the case. This type of coverage—some of which may be inadmissible—can be particularly caustic if it erodes the presumption of innocence standard. References to the video

include:

- Potentially incendiary video; incendiary video; incendiary shooting video; incendiary power of the video
- Infamous video; 2015's Laquan McDonald video fiasco
- It is 6 minutes and 33 seconds of horror; graphic
- Viewed around the world; went viral; placed Chicago at the center of the national debate over policing and race; the release of the video is the leading news item across the country
- It exposed for all to see the racist police violence and the code of silence and cover-ups that have been endemic; fear and anticipation that could change now that the video has been played and replayed; before it's clear whether the shock of the video's release will make a real and lasting difference
- The city does not want you to see video of the shooting; more than a year trying to keep the video under wraps; trying to keep the video under wraps until after the election; critics have been saying that Rahm Emanuel held that video back because he was going through a process of reelection
- The city had fought in court to keep that video under wraps; objections from Mayor Rahm Emanuel's administration; city officials for years refused to release dashboard camera video; declined to release the video to the public; City Hall fought for the next eight months against releasing it to reporters
- Furor over Emanuel's questionable involvement in the delayed release; some members argued that the tape should have been released before the election; doesn't excuse not releasing the tape as soon as possible
- Court's order forced the city to publicly release the video; 13 months after the shooting; released, only after a judge ordered the city to do so; over Emanuel's objections
- McDonald appeared to be walking away; appears to show McDonald was

walking away from Van Dyke and Walsh; show McDonald was walking away from the officers when he was shot; walking away from officers; moving away from police; Laquan was angling away; as the black teenager appeared to be walking away from him; appeared to be walking away from the cop; while the black teenager was walking away from police with a knife in his hand; the knife-wielding McDonald was walking away from the officers

- At odds with the account initially released by the police union; at odds with accounts of officers at the scene; this is not what happened
- Showing a white police officer pumping sixteen rounds into the body of a black teenager; white police officer pumping 16 rounds into McDonald's body; a white police officer Jason Van Dyke unloading 16 rounds; showing him pumping 16 bullets into black teen Laquan McDonald; an unarmed 17-year-old being shot 16 times by a Chicago Police officer; depicts, in vivid detail, a 17-year-old being shot multiple times as he lay helpless on the street; Chicago Police officer unleashing the barrage of gunfire that killed McDonald; pumping sixteen rounds into the body of 17-year-old Laquan McDonald, the officer pumping 16 bullets into the teenager; in a matter of seconds; captured the 16 shots fired by Chicago Police Officer Jason Van Dyke; firing 16 shots into McDonald's body; showing Van Dyke firing shot after shot at McDonald

The newspaper coverage also mentions potentially inadmissible material such as reports about the \$5 million settlement, a cover-up of the shooting within the Chicago Police Department, the destruction of evidence (i.e., Burger King video footage), intimidation of witnesses, falsifying reports of what happened, charges against officers who were at the scene, and investigations into the Chicago Police Department. Examples of this type of publicity include:

- Hush money; \$5 million settlement; City Council authorized a \$5 million

settlement even before a lawsuit was filed;

- Johnson moved to fire seven officers who allegedly tried to cover up the shooting; seeking to fire seven officers for lying in their accounts; Van Dyke's partner is one of those officers Johnson is seeking to fire; recommended for firing for signing reports that said McDonald, holding a knife, was walking toward officers when he was shot 16 times; moving quickly to rid the department of officers who covered up the shooting; called the move to fire the officers a "powerful statement"
- Police accounts of the shooting conflict with what the dash cam video; officers who lied on police reports; reports seem to differ from the video; prove officers falsified reports; confirms McDonald did not "lunge toward police; police reports showed officers' narratives did not agree with what was on video; official narrative approved at the highest levels that the video showed was a lie
- Cops on the scene indicated that McDonald was threatening them with a knife; refused to drop the knife; armed with a knife continued to approach and refused all verbal direction; swung the knife at the officers in an "aggressive manner"; Camden: an officer shot him in the chest when he refused to comply with orders to drop the knife; Camden: McDonald lunged at officers; Walsh: McDonald continued to advance on them, ignoring commands to drop a knife in his hand
- [City Hall] is where the cover up took place; contrary to the false statements the City allowed the F.O.P. spokesman to spin to the media; Bernie Sanders: any elected official with knowledge of any cover-up in the release of the video should resign
- Chicago detectives went in [Burger King] and removed 86 minutes of surveillance footage from all the cameras

- Jesse Jackson: talk that Van Dyke was in danger was "just propaganda"
- One witness whom the police reports alleged did not see the shooting told multiple police officers that he saw the shooting; they were held against their will for hours; intensively questioned by detectives; repeatedly pressured to change their statements; investigating officers simply fabricated civilian accounts in the reports; told her what she witnessed was not what really happened; told her they had video that contradicted her account; officers demanded Benitez surrender her phone [tried to take videos and photos]; filed a federal lawsuit claiming officers detained her illegally to pressure her to change her story
- It laid bare years of civil rights violations by officers; portrayed a biased police department stuck in the Stone Age; found police misconduct; Chicago Police Department has performed in an often unprofessional, slipshod and corrupt manner
- Treating people in minority communities with a particular disregard for civil rights; verbally abusing minorities; the result been a Police Department that is not trusted by the very people it is supposed to serve and protect; especially in African-American and other minority neighborhoods

The newspaper coverage also follows the political fallout that occurred after the shooting and details organized protests, efforts to reform the Chicago Police Department, and calls for political figures to be fired or removed from office:

- The mayor's political fate may ultimately rest on whether Chicago Police Officer Jason Van Dyke is convicted; "I just worry about where this trial is headed and what happens if he's acquitted," the alderman said; if he gets off, it'll impact the mayor and the entire City Council
- The video also "shattered trust" in the City Council; constituents are furious; they were asleep on the job when it came to police misconduct

- Emanuel has been under fire for keeping the incendiary video under wraps until after the mayoral runoff; must restore the public trust he lost because of his handling of the video; desperate attempt to contain the political fallout from the video; remains under siege for his handling of the Laquan McDonald shooting video; trying desperately to rebuild trust with African-American voters shattered by his handling of the video; handling of the Laquan McDonald shooting video weakened the mayor politically
- Demands for the mayor's resignation; Mayor Rahm Emanuel faces increasing calls to resign; demand the resignation of Mayor Rahm Emanuel;
- Alvarez and Police Superintendent Garry McCarthy have so far borne the brunt of the outrage over the McDonald video; said Emanuel, McCarthy and Alvarez all must go for their treatment of police misconduct and shooting cases; led to calls for the resignation of top officials
- McCarthy, who lost his job the fallout of the McDonald case; Garry McCarthy was fired
- Police Supt. Garry McCarthy also failed Laquan McDonald; McCarthy's spirit is not right; the man is a cancer; an Adolf Hitler type of guy
- Alvarez has faced blistered criticism for the time it took her office to charge Chicago Police Officer Jason Van Dyke; taking 13 months to charge Officer Jason Van Dyke with murder; been on the hot seat ever since over her decision to wait more than a year to charge Van Dyke with murder; was a miscarriage of justice that she took so long to bring the charge; how long does it take to investigate something that's on tape
- In a race largely defined by questions about the Laquan McDonald shooting; Foxx even used a segment of the McDonald video in a campaign ad; withered under the weight of the Laquan McDonald shooting; likely cost Anita Alvarez her bid for reelection

- Led to widespread protests across the city; city exploded into days of protests; protesters took to downtown streets; protest after the video's release; latest demonstrations sparked by the release of dashcam video; sign-waving protesters
- Thousands helped shut down Michigan Avenue to shoppers on Black Friday; Michigan Avenue protests; About 300 to 400 protesters angry about McDonald's killing took to the streets; hundreds of demonstrators took to the streets to protest the shooting; hundreds of protesters demanding police accountability; about 70 people gathered in Woodlawn to protest McDonald's fatal shooting; Friday's protests; several dozen protesters gathered at City Hall; marched on City Hall; protest groups have arrived and will begin to mass at City Hall
- Sparked the public outrage; public outcry that followed the release of that video
- Confrontation between protesters and police broke out; scuffles and arrests; brief scuffle ensued before officers retreated; the scuffle ended; three protesters were hauled into a police wagon'; I was also told we should prepare for more aggressive, direct action, confrontations with CPD

The reaction on social media following the shooting has been significant. A content analysis was conducted on **729** Facebook posts from three hearings, which were live-streamed by Fox 32 Chicago and ABC 7 Chicago. The analysis also included **303** tweets from the Chicago area that included #JasonVanDyke or #LaquanMcDonald. Most of the responses on social media are negative and exhibit strong bias against the defendant, reference upcoming court dates, contain threats to the defendant's life, discuss the alleged cover-up, inadmissible content including prior complaints, and the likely public reaction if Van Dyke is acquitted:

- #JasonVanDyke is a murderer
- He looks like the devil

- Kill this racist murdering pig
- Racist murderer.
- This should be an easy GUILTY.. come on 16 shots...video..there is no way he can say he felt threatened
- The Chair!! What's most egregious is the fact he used the public trust and power to execute a teen for no cause and then covered it up. He is the worst type of human being on earth. Let him die and not waste tax dollars.
- They know if he walks ain't no way I'm hell the the streets gone allow him to walk so u home either way Fam
- Chicago thugs should take care of this case already
- If they don't find him guilty it's gone be a riot so they better do what as what's best
- How could he ever get off? He shot an unarmed young man not one, but 16 times!!! If he goes to prison, they'll get him there. If he somehow get's off, there will be a price tag on his head.
- They are going to let him off and he clearly deserves the death penalty.
- Let's not waste the Court's time in the judge just put him in jail for life
- Give this cowardly murdering cop life in prison for breaking the public trust!!! WE need a conviction...Period!!!
- He look nervous I hope and pray he get the time he deserve no one deserves to be shot 16 times
- Prison for life is too good for this Murderer with a Badge, & he needs to be kept in general population so all the Brothers can pay their 'respects'.
- There is nothing "alleged" about the shooting of #LaquanMcDonald. It's a matter of fact, that **#JasonVanDyke** executed a child.
- Ppl are sitting in jail for weeks&months for petty crime/traffic tickets.Yet this murderer is allowed to go free...despicable #JasonVanDyke
- Liar. And coward. Killer.

- And you will see riots never seen before in Chicago
- FRIDAY 9AM: Stand with **#LaquanMcDonald's** family & community at his killer's court date.
- Officer **#JasonVanDyke**, as seen on video brutally executing **#LaquanMcDonald**, has a court date on Dec 18 at 12pm (26th & California, Room 101)
- The lynching of **#LaquanMcDonald** isn't solely the responsibility of Jason Van Dyke. Multiple higher ranking officers signed off on false reports of the shooting. The whole Chicago police department & Rahm Emmanuel are responsible.
- The 3 officers indicted in the murder of **#LaquanMcDonald** are out on a \$50K I bond. We know that they followed the Blue code **#IndictTheSystem** – at Cook County Department of Corrections
- 3 Chicago officers indicted on conspiracy charges in alleged cover-up of **#LaquanMcDonald's** fatal police shooting. <http://apne.ws/2sejjws>
- How was **#JasonVanDyke**, who shot **#LaquanMcDonald** 16 times, allowed to continue policing with 18 complaints on him?
- What's worse, the **#JasonVanDyke** video, or the City of Chicago trying desperately to bury the **#JasonVanDyke** video?
- The man that seemed to rubber-stamp the **#LaquanMcDonald** cover-up...who participated in the "code of silence" that governs police violence in the city of Chicago...now he wants to be elected mayor. The city deserves better. @common @chancetherapper @KofiAdemola @BLMChi
- If you lie on a police report, remain silent about killer cops like **#JasonVanDyke** you are also a dirty killer. Most cops are not good!
- **#JasonVanDyke** is in a lawsuit about ANOTHER cover-up. No, Emmanuel Lopez did not try to run police over w/ his car.

The analysis of the media coverage and reactions on social media surrounding the case suggests that the pretrial publicity is pervasive and contains prejudicial content that has the

potential to impact the jury pool. A community attitude survey was conducted to better assess if the coverage has had an effect on the venue or led to well-formed opinions among prospective jurors about Jason Van Dyke or his guilt.

VI. THE TELEPHONE SURVEY

A telephone survey was conducted in Cook, Lake, and Madison County designed to assess awareness surrounding the police shooting of Laquan McDonald. *Sentenium Inc.*, which is based in Pleasant Hill, California, was hired to conduct the telephone survey. Standard methodological practices related to the development of the instrument, interviewer training, sampling, and callbacks were closely followed. The survey instrument was developed after a preliminary review of the pretrial publicity.¹⁵ All recognition questions were designed in an effort to describe the case using the language found in the media coverage. The survey was in the field in March of 2018. Ultimately, 399 jury eligible Cook County residents completed the survey.

It is my opinion that the results of the telephone survey indicate that there is bias in the Cook County jury pool against the defendant stemming from exposure to pretrial publicity. Despite the size of the county and the passage of time since the shooting occurred, **86%** of jury eligible respondents were familiar with the case. Comparison surveys conducted in alternate venues found a **75%** recognition rate in Lake County and **29%** in Madison County.

In addition, **75%** of prospective jurors in Cook County who were familiar with the case believe that Jason Van Dyke is guilty of murder, with **51%** reporting that he is “definitely” guilty. The media coverage has also undermined the presumption of innocence. Sixty-seven percent (**67%**) of respondents who have been exposed to media coverage reported that the defendant would have a difficult time convincing them that he is not guilty of murder.

Members of the Cook County jury pool recognized some of the more prejudicial details widely reported in the coverage. Seventy-six percent (**76%**) of respondents were familiar with at least three of the six media items incorporated into the survey. For example, **62%** had read,

¹⁵ See Appendix B.

seen, or heard that Officer Van Dyke was charged with murder after a police dashboard camera video of the shooting was released to the public. In addition, **59%** were aware that several officers who were at the scene allegedly lied about the shooting to protect Van Dyke, and **87%** knew that there were weeks of protests in Chicago after the video was made public. Another **55%** had read, seen, or heard that Mayor Rahm Emanuel tried to prevent the video of from being released, and **67%** knew that the shooting led to an investigation by the DOJ into civil rights violations and abuses within the Chicago Police Department.

Not only have prospective jurors retained case-specific knowledge years after the shooting occurred, but most (**71%**) of Cook County residents who were familiar with the case had already viewed the video of the shooting. Of this group, **79%** reported that Officer Van Dyke was not in danger of losing his life or suffering a serious injury, and **68%** believed McDonald was walking away from Van Dyke when he was shot. These findings are particularly concerning as they suggest that many prospective jurors will enter the courtroom with preconceived notions about the key issues they will have to resolve during deliberations. This also puts the onus on the defendant to change jurors' opinions and prove that the shooting was justified.

Consistent with the social science literature, case knowledge was significantly related to prejudgment. For example, **84%** of respondents who were familiar with four or more of the media items leaned toward guilt. Prospective jurors who regularly follow the local news are more likely to harbor strong bias against the defendant. This finding is particularly concerning because residents who regularly follow the news tend to be more involved in their communities and typically make excellent jurors. Survey respondents who watch and read the local news at least several times a week were significantly more likely to be familiar with the case (**92%**) and prejudicial details reported by the media. Eighty-six percent (**86%**) of these survey respondents recognized at least three or more of the media items in the survey.

Survey respondents who were familiar with the case were asked to provide their thoughts or feelings about the defendant, the victim, and the shooting. A number of comments show the

impact the media coverage has had on the jury pool. There were **141** negative comments about the defendant, for example:

- Officer had a shoot first-ask questions later mentality.
- I think he is a horrible person.
- Nothing but a murderer.
- I feel that he targeted that young man and shot him down like an animal.
- Officer Van Dyke was out of control and he has some type of mental problem.
- I believe that the officer made a decision to shoot the young man the minute he came up on the scene because of the situation and his race.
- The officer had something else going on in his head. It was racially motivated. They have a rush to kill. Laquan was executed in the street. The officers shoot first and ask questions later when it comes to people of color.
- I think that Van Dyke murdered that kid and think it's appalling that they tried to cover it up.
- Office Van Dyke should go to prison.
- I think he is guilty and the family has not seen justice and I believe incidents like those are recurring. There isn't enough non-corrupted officers to keep black and Hispanic men and women safe and there is an issue in the police department.
- I think that the officer should be held accountable. I hope they put him in maximum security. I think he should get the death penalty.
- I think he should get the same that he has given. The death penalty, and everyone who is helping him should be penalized as well. Going to jail is not good enough for him.
- He should get the electric chair.
- Officer Van Dyke is guilty of sin. She should go for the death penalty.

Other prospective jurors exhibited well-developed opinions about the excessive nature of the shooting (78 comments), details surrounding the case commonly reported by the media, the video, race, or potentially inadmissible content (e.g., cover-up) including:

- There was a prior incident with the victim and he has a record but 16 shots is excessive.
- I think it was a little bit over kill; a knife vs. gun and shot 16 times is a little excessive.
- Well, I don't think he had a reason to shoot. Especially 16 times because the guy walking with the knife didn't give him a reason to shoot him. The guy didn't give him a reason to shoot.
- I think that it was unnecessary to use that much force and would not have occurred if Laquan was white.
- I think that excessive use of force plus racial profiling against racial communities is dangerous in Cook County.
- Unbelievable he would do that overkill and why. Everybody's got a camera.
- I think it was reprehensible and shouldn't have happened.
- I think it's uncalled for. And why someone had to be shot that many times. I wonder why didn't shoot him in the leg.
- The officer didn't have to end his life. He could've done so many different things rather than kill him.
- The officer could have used a better way to arrest the victim. Didn't need to shoot him 16 times.
- I don't think it took 16 shots to slow down somebody with a little bitty knife.
- Pretty clear in the footage that the victim was walking away. Officer shot victim in back. Murder.
- Watched video, over did it, history with Laquan, got out of vehicle and unloaded weapon.

- He didn't take his time to get out his car to assess the situation, meanwhile other officers are on the scene outside their cars. He jumped out of the car like he was superman.
- From the video it is clear that the officer is not in danger. McDonald is walking away.
- My feeling about that case is that we live in a world of prejudice and race. I feel like part of him shooting was that he profiled that young man to justify shooting him. He used the knife to excuse the shooting. The victim was a ward of the state.
- Shot a teenager with a weapon. May have been in danger but he is a cop, trained in this situation. If he had a gun or semi automatic, maybe different cop may be racist and saw opportunity.
- The officer had something else going on in his head. It was racially motivated. They have a rush to kill. Laquan was executed in the street. The officers shoot first and ask questions later when it comes to people of color.
- I believe that Van Dyke was not justified in using lethal force and the attempted cover up. Hold of the video was highly inappropriate. Shows how the police are not for the city of Chicago or protecting the people.
- I think that Van Dyke murdered that kid and think it's appalling that they tried to cover it up.

Much of the pretrial publicity focused on questions surrounding the alleged cover-up, efforts to prevent the release of the video to the public, and the ensuing political fallout. Participants were asked for their thoughts and feelings about the response to the shooting by the Chicago Police Department and the Mayor's office. Once again, survey responses show that coverage has had a prejudicial impact on the jury pool. There were **164** negative comments about the police department, **182** negative comments about Mayor Emanuel, and **83** references to a cover-up, for example:

- Response wasn't good enough. Cops protecting one another when things like this happens.
- This is Chicago and we have a very typical Old Boys Club mentality within the Chicago Police Department.
- Should have acted quickly and without question. Hold them both responsible. Police Union, police department and Van Dyke for twist delivery of justice.
- I think that Van Dyke murdered that kid and think it's appalling that they tried to cover it up.
- Not surprised about the cover up of shooting a child 16 times who only had a pocket knife and used a military assault weapon. That is not how you handle a situation with a child and we can't trust our own police.
- It was a cover up. It has been going on for a long time. I feel they enter the force to beat down black men.
- The police department tried their best to cover it up like they did in the past. Due to technology and camera phones, it came out. And due to that, the mayor had no choice but to release it.
- I feel like they aren't firing the right people. They are firing people who know too much and so they won't say anything...It's all a big cover up.
- I think someone else should step in Rahm Emanuel's place. It trickles down from the top. The way the police officers are trained. And how they respond to people of color.
- The mayor knew about it and didn't address it because it was too close to election time.
- Typical politician. He is a bastard.
- Rahm Emanuel is the most corrupt mayor I have ever seen. Covering up for next election. Horrible person.
- Tried to hide the video

- Handled it improperly. The minute they got the information and done their investigation it should have been released to the public, not delayed. It looks like they were trying to protect the officers who are not doing their job of protecting and serving.
- I remember Rahm Emanuel would not release the footage until after he was re-elected.
- I think they should have released the video sooner than they did. I will not vote for Rahm Emanuel if he had anything to do with withholding the release of the video.
- Rahm Emanuel is working with the officers to cover up evidence. White officers are favored by the mayor.
- I think the Mayor tried to cover it up, he didn't want it to get out.
- Honestly, I think he knew. I believe he knew about the cover up. And I think he just said what he thought the people wanted to hear.

Survey respondents who had viewed the shooting video were asked to describe what it showed. Seventeen (17) respondents reported that the officers were not in danger. An additional 47 mentioned that Laquan McDonald was walking away from the officers when he was shot. Many respondents exhibited detailed opinions surrounding the video, which can further undermine the burden of proof as demonstrated by some of the comments below:

- It showed murder. It was not self-defense of the officer. It seems like Van Dyke is the one who had the PCP in him.
- A murder, I'm a military guy. Code of conduct. The other police officers that were with him are just as guilty because they didn't stop him and arrest the guy immediately, they just let him do it.
- It was horrible! People go to jail for shooting an animal in the wrong season and he tortured that young child; be shooting him 16 times.
- Cold blooded

- The shooting was in execution style.
- It kind of reminds me of a war scene in a movie or TV show. Excessive use of force with a weapon, without thought. That's how a gang member would shoot a rival gang member to take them out, the way that police officer fired his weapon.
- It was really devastating seeing an officer of the law handle the Laquan the way he did with only holding a knife.
- Cold blooded murder
- A guy that had no reason to be killed. Terrifying.
- Disturbing. I saw an innocent person gunned down by police.
- Highly disturbing, no one deserves to be shot all those times.
- One of the worst things in the world that I have ever seen. I hope nobody ever dies like that again. It reminded me of killing a dog.
- It shows a person shooting another person deliberately. There is no reason a person should shoot someone sixteen times in the back.
- Definitely excessive force and could've handled it a better way. It didn't have to happen.
- The video shows that he was walking away and then the officers opened fire and when that is the case there should not have been shots fired.
- Disturbing, and shocking, and should of had common sense to stop the crime better. It was way over excessive force.
- It is extremely violent and 16 shots by he officer was uncalled for especially when the victim was already on the ground.
- Very dangerous man. 16 times. Was not in touch with reality.
- Kid running away. Even if he had a weapon he was running away. Shot 16 times.
- There is no reason to shoot someone 16 times when they are walking away

from you.

- Shows Laquan walking away from the officer. No threat to officer even if he had a knife.
- So it seems bits and pieces were left out of the video but he was not coming at the police officer with the knife.
- Disturbing. I saw an innocent person gunned down by police.
- Kid running away. Even if he had a weapon he was running away. Shot 16 times.
- An excessive way to shoot a child.
- Murder in the first degree, over kill of black teenager. They deserve better.
- It showed him walking away from the officer. The officer was not in any danger and the officer was shooting at him. Why was the officer shooting when the child was walking away?
- It shows a young black man walking away from the officer.
- Cops were not in danger.
- I think that the police took advantage of him. I do not think the officer was in moral danger he was just a hot-head.
- The dash cam video showed that Laquan McDonald was not in close proximity to the officer. It did not seem that any of the officers were in any danger. Laquan McDonald was shot once and then went down. Officer Van Dyke continued shooting after he was down.
- Shows what doesn't look like a threatening situation to lots of gunfire.
- Victim was walking away from them.
- I saw a young man walking in the middle of the street and walking away from police and watching his body drop.
- Kid running away. Even if he had a weapon he was running away. Shot 16 times.

- The man was walking away when police opened fire on him.
- It could have been handled quite differently, he did not have to shoot the victim, the boy had a knife and was walking away from him, he was not confrontational.
- Black teenager walking towards police officer.
- The video shows the victim approaching the officer holding a knife of five to seven feet and not directly attacking Van Dyke and the officer brandished his weapon to discharge.
- I saw the crazy guy walking down the street waving a knife, and the cop confronted him.
- Heavy set black kid waving a knife not close didn't.

The quantitative and qualitative survey data indicate that neither the size of Cook County nor the passage of time have ameliorated the prejudicial impact of pervasive media coverage surrounding the McDonald shooting on the jury pool. This case remains seared in the public's consciousness. Not only are prospective jurors in Cook County familiar with prejudicial details widely reported by the media, but have developed strong opinions regarding the shooting video and Jason Van Dyke's guilt. As prospective jurors reported, the defendant would have a difficult time convincing them that he is not guilty of murder. This creates an untenable scenario where the defendant bears the burden of proving his innocence. Given these findings, it is my opinion that a change of venue is appropriate to protect the Jason Van Dyke's rights to a fair and impartial jury.

VII. ABILITY TO SELECT A FAIR AND IMPARTIAL JURY IN VENUES SATURATED WITH MEDIA COVERAGE

When a jury pool has been saturated with media coverage, the Court and parties are faced with unique challenges, which are not present in most cases. Many prospective jurors enter the courtroom with extensive knowledge and attitudes about the case. However, it is often difficult for prospective jurors to predict how case-specific knowledge and opinions may affect them over

the course of a trial. Others may unintentionally omit exposure to specific media items during voir dire when asked what they recall hearing about the case. However, these items may become salient and recalled from memory once witness testimony begins. Research also shows that information learned from media exposure can be misattributed as evidence presented as trial evidence.¹⁶

Some prospective jurors in high profile cases enter the courtroom with ulterior motives, for example, “stealth jurors” who want to make it onto a high profile jury for various reasons (e.g., potential television interviews, public attention). Others may feel a sense of obligation to the victims and community as a whole to make sure a certain verdict is reached.

Given these factors, it is important to ferret out the full extent of exposure to pretrial publicity, case-specific attitudes, and potential motivations to serve through voir dire. However, the prejudicial effects of preexisting attitudes can occur at both a conscious and subconscious level, meaning jurors who profess impartiality may not be fully aware of their bias or how it may affect them as the trial unfolds. This can make it difficult to identify potential prejudice during the jury selection process. In rare cases such as this, the Supreme Court has recognized the limitations of the voir dire process in identifying potentially biased jurors:

No doubt, each juror was sincere when he said that he would be fair and impartial to petitioner, but the psychological impact requiring such a declaration before one's fellows is often its father. Where so many, so many times, admitted prejudice, such a statement of impartiality can be given little weight. As one of the jurors put it, "You can't forget what you hear and see." With his life at stake, it is not requiring too much that petitioner be tried in an atmosphere undisturbed by so huge a wave of public passion and by a jury other than one in which two-thirds of the members admit, before hearing any testimony, to possessing a belief in his guilt.¹⁷

Research on voir dire shows that the Justices’ concerns are well founded. Jurors are often reluctant to disclose relevant experiences, relationships, or opinions that may lead to bias.

¹⁶ Ruva, C.L., & McEvoy, C. (2008). Negative and positive pretrial publicity affect juror memory and decision-making. *Journal of Experimental Psychology: Applied*, 14(3), 226-235.

¹⁷ *Irvin v. Dowd*, 366 U.S. 717, 727-28 (1960).

Fahringer (1980), for example, found that while 71% of jurors had a fixed opinion regarding guilt, only 15% admitted so during the voir dire.¹⁸ Marshall (1983) obtained questionnaires from 277 ex-jurors in two counties. She found that 18% of jurors admitted to withholding information during voir dire.¹⁹ Seltzer (1991) reported that approximately 39% of jurors who were interviewed after trial should have come forward in response to questions regarding crime victimization or knowledge of police officers during jury selection, but failed to do so.²⁰

Many aspects of the large group voir dire setting can serve to deter juror candor. Federal Court Judge Gregory Mize (1999) published his findings after experimenting with an expanded voir dire procedure in 30 federal criminal trials over a nine-month period, which included individual interviews with every venire member who failed to respond to his general opening questions. Mize reported that approximately 28% of members of each panel failed to respond to the dozens of questions posed in open court, an average of about 16 people per trial. However, when questioned in private, one in five of these silent jurors disclosed personal information that was relevant to the case. In 90% of the trials, one and as many as four of these silent jurors expressed bias that led to their removal for cause.²¹

A quick search of the appellate record shows that these are not idle concerns. For example, in *US v. Colombo* (1989),²² a juror failed to disclose when asked during voir dire that her brother-in-law was a lawyer for the government. She did not mention this fact during voir dire because she wanted to sit on the case. In *Dyer v. Calderon* (1998)²³, Jessica Freeland answered “no” when the panel was asked if anyone had ever been the victim of a crime. After

¹⁸ Fahringer, H.P. (1980). In the valley of the blind: A primer on jury selection in a criminal case. *Law and Contemporary Problems*, 43, 116-136.

¹⁹ Marshall, L.L. (1983). Juror, judge, and counsel perceptions of voir dire. Ph.D. dissertation, Boston University.

²⁰ Seltzer, R. (1991). Juror honesty during the *voir dire*. *Journal of Criminal justice*, 19, 451.462.

²¹ Mize, G.E. (1999). On better jury selection: Spotting UFO jurors before they enter the jury room, *Connecticut Review Spring*, 33.

²² *United States v. Colombo*, 869 F.2d 149 (2d Cir. 1989).

²³ *Dyer v. Calderon*, 151 F.3d 970 (9th Cir. 1998).

the guilt phase, the defense learned that her brother had been shot and killed six years earlier. When questioned, she told the judge that she answered “no” because she, “thought the shooting was an accident, not a crime.” Her brother had been pistol-whipped four times and shot in the back of the head. In *Apple v. Samsung* (2012),²⁴ the jury foreman, Velvin Hogan, failed to disclose in voir dire that he was involved in 1993 litigation with a former employer that led him and his wife to declare personal bankruptcy.

Problems such as these have also been reported in high profile cases. For example, in the 2012 murder trial of Matthew Stebbins, who had been charged in a shooting death at a homeless shelter, a mistrial was declared after a Juror No. 1 announced during deliberations that she had a previous issue with violent crime. One of her children had been shot in the head. She failed to raise her hand during jury selection when asked if anyone had been a victim of a violent crime. According to her, “She did not think it was going to be an issue.”²⁵

A \$6.5M judgment was overturned in the high profile police corruption lawsuit against the Public Defender surrounding the Rampart Division in Los Angeles County. It was uncovered after the verdict that one of the jurors—Jennifer Salinas—had concealed knowledge of the scandal during voir dire. She did not raise her hand when asked if anyone had some knowledge of events surrounding the Rampart Division. Later it was discovered that Salinas had played a prominent role in a movie titled “Gang Warz” that was based on the Rampart Division. Other jurors corroborated that she was very familiar with the scandal, and discussed aspects that were not in the evidence.²⁶

Finally, a juror was recently removed during the ongoing high profile murder trial of Aaron Hernandez, former player for the New England Patriots. That case had received substantial pretrial publicity. During the trial, it was uncovered that the juror had expressed an

²⁴ United States District Court for the Northern District of California, Case No. 11-CV-1846

²⁵ Villarreal, M. (2012, March 12). Judge declares mistrial in Corpus Christi murder case. *Corpus Christi Caller Times*. Retrieved February 10, 2015, from <http://www.caller.com/news/local-news/crime/judge-declares-mistrial-in-corpus-christi-murder>.

²⁶ Ellis, S.M. (2008, January 22). Appeals court orders new trial in suit against public defender. *Metropolitan News-Enterprise*. Retrieved February 12, 2015, from <http://www.metnews.com/articles/2008/ovan012208.htm>.

interest in serving on the jury, discussed several items of evidence that had been ruled inadmissible, and her opinion that it would be hard to convict Hernandez without a murder weapon. It was also uncovered that she had attended more Patriots games than she had disclosed in her juror questionnaire.²⁷

Prospective jurors in cases with extensive media coverage enter the courtroom with case-specific knowledge gleaned from the media and discussions with friends, family members, and coworkers. Uncovering the full extent of jurors' case-specific knowledge and opinions in high profile cases can be extremely difficult.

Jury selection as a judicial remedy to address such bias relies on two factors: 1) that jurors are able to access their source of bias, and 2) are willing to report it. Dexter, et al. (1992) tested the effectiveness of extended voir dire.²⁸ Participants in the experimental condition were exposed to pretrial publicity a week before the experiment. Prior to viewing a trial, they were subjected to minimal or extended voir dire. The attorney in the extended voir dire condition explained how pretrial publicity may inappropriately impact decision-making, asked jurors to hold each other accountable for not discussing pretrial publicity, obtained public commitments to base their verdict solely on the evidence presented in court, and to ensure that fellow jurors did the same. Educating jurors on the potential impact of pretrial publicity did not eliminate the effects of pretrial publicity,

Another unique challenge that high profile cases pose during jury selection is what Bronson (1989) coined as the Minimization Effect. Prospective jurors attempt to minimize their exposure and knowledge of information gleaned from the media before the onset of the trial (Bronson, 1989²⁹; Vidmar, 2002³⁰). During voir dire prospective jurors try to downplay their

²⁷ Associated Press (2015, February 3). Judge removes one juror from Aaron Hernandez murder trial. *Boston Herald*. Retrieved February 4, 2015, from http://www.bostonherald.com/news_opinion/local_coverage/2015/02/judge_removes_juror_from_aaron_hernandez_murder_trial.

²⁸ Dexter, H. R., Cutler, B. L., & Moran, G. (1992). A test of voir dire as a remedy for the prejudicial effects of pretrial publicity. *Journal of Applied Social Psychology*, 22, 819- 832.

²⁹ Bronson, E. (1989). The effectiveness of voir dire. In *Discovering Prejudice In High Publicity Cases: An Archival Study of The Minimization Effect*.

(continued...)

knowledge of the case using qualifiers such as, “just,” “nothing other than,” “only,” “a little bit,” and “that’s all.” Often times, if follow-up questioning is sought, prospective jurors who use such qualifiers reveal that they know much more than they previously led on to. (Bronson, 1989). In an archival study that analyzed the jury selection transcripts from five high profile cases, 69% of prospective jurors used minimization language when questioned by the judge or attorneys.³¹

In addition, as reported by Vidmar (2003),³² professions of impartiality are not always reliable. There was no difference between jurors with little case-specific knowledge, and the majority (70%) of jurors who had either reported extensive detail about the case or had prejudged the defendant as guilty in terms of their ability to set-aside their bias.

Both jurors with little case-specific knowledge, and the majority (70%) of jurors who reported extensive detail about the case and/or prejudged the defendant as guilty, indicated that they could set aside their bias.

Kerr, Kramer, Carroll, and Alfini (1991) also examined the effectiveness of voir dire.³³ This study explored the ability of attorneys and judges to identify juror bias in high profile cases. During Phase I, participants were exposed to pretrial publicity (test conditions), completed a juror questionnaire, observed a video of a trial, and deliberated as groups of six before reaching a verdict. The sample was drawn from the jury rolls. A number of randomly selected participants were asked four publicity related questions in a nearby room (e.g. Has any of the publicity you've seen or any other information caused you to form an opinion or judgment as to the guilt or innocence of the defendant?).

In Phase II, a random sample of defense attorneys, prosecutors, and judges were selected

(continued)

³⁰ Vidmar, N. (2002). Case studies of pre- and midtrial prejudice in criminal and civil litigation. *Law and Human Behavior*, 26, 73-105.

³¹ Edelman, B., Dahir, V.B., & Dillehay, R. (2011). Paper presented at the meeting of the American Society of Trial Consultants.

³² Vidmar, N. (2003). When all of us are victims: Juror prejudice and “terrorist” trials. *Chicago-Kent Law Review*, 78, 1143-1178.

³³ Kerr, N. L., Kramer, G. P., Carroll, J. S., & Alfini, J. J. (1991). On the effectiveness of voir dire in criminal cases with pretrial publicity: An empirical study. *American University Law Review*, 40, 665-701.

from Divisions 1, 8, and 22 of the American Bar Association. Ultimately, 87 members participated in the study. Each participant watched a video of the voir dire interviews of eight prospective jurors. They were asked to imagine that they were the trial judge, defense attorney, or prosecuting attorney in the armed robbery trial of Ernest Bryant. Participants were told that jurors may have seen some or all of the news reports and that the general level of familiarity with the news was high. Attorneys were told they could peremptorily challenge up to four jurors. Participants also had copies of the questionnaire that the jurors had filled out that they reviewed before watching the video recording of each juror's responses to the four pretrial publicity related questions. They then made three ratings: 1) how likely they were to seek a cause challenge, 2) how likely they were to use a peremptory challenge on that juror, and 3) to estimate which way that juror would lean at trial.

The researchers reported that there was no relationship between defense attorney experience and effective use of peremptory challenges. Defense attorneys' judgments of which way jurors were leaning were also unrelated to juror behavior. In addition, their peremptory challenges were not associated with juror verdicts. Defense attorneys would have done "no worse in exercising their peremptory challenges had they flipped coins rather than analyzing the responses jurors made to questions about their exposure to pretrial publicity."³⁴

The study also looked at the effectiveness of voir dire in eliminating jurors biased by exposure to pretrial publicity. If voir dire is an effective remedy, those exposed to media coverage who survive all challenges, should reach verdicts similar to those who never viewed pretrial publicity. The data do not support this conclusion. Participants exposed to pretrial publicity and excused by one of the parties (e.g., defense attorney) were no different in their inclination to convict than those who were not excused. In addition, participants who had been exposed to media coverage and survived the voir dire process (i.e., not excused) were more likely to convict than the group of jurors who had never been exposed to pretrial publicity. Challenged jurors exposed to pretrial publicity were just as likely to convict as those who had not

³⁴ *Id.* at 685.

been challenged. In addition, both groups were more likely to convict than the group of jurors who had not been exposed to pretrial publicity.

This study's findings highlight the challenge pretrial publicity presents. The judges' and defense attorneys' evaluations of jurors often relied on juror self-reports of their ability to disregard pretrial publicity. However, these self-reports were not related to juror verdicts. Those who admitted forming an opinion from media exposure that could not be set aside were no more or less likely to convict than those who did not report such opinions.

In sum, Kerr, et al. found that defense attorneys' challenges were not effective, and that the pretrial publicity effects survived the jury selection process. This increases the risk that a defendant's fair trial rights will be undermined at the start of trial.

Part of the challenge excessive media coverage presents surrounds jurors' efforts to guess how exposure to pretrial publicity may affect their evaluations of the evidence. Given the difficulties that such a guess poses, it is not surprising that claims of impartiality in high profile cases have been found to be unreliable. For example, Sue, Smith, and Pedroza (1975)³⁵ examined the influence of pretrial publicity, and jurors' ability or willingness to disqualify themselves for bias. Participants who had been exposed to damaging media coverage, but reported that they had not been biased by the coverage were more likely to convict than jurors who had not viewed this coverage, 53% vs. 23% respectively.

Moran and Cutler (1991) found that 61.8% of jury eligible residents said they could be fair and impartial and decide the case solely on the basis of the evidence presented. Yet, only 38.6% said they could put knowledge of the media out of his or her mind.³⁶

There is a well-documented tendency for individuals to respond in a manner that will be viewed favorably by others, which has been coined the social desirability effect. This

³⁵ Sue, S. Smith, R.E., & Pedroza, G. (1975). Authoritarianism, pretrial publicity, and awareness of bias in simulated jurors. *Psychological Report*, 37, 1299-1302.

³⁶ Moran, C., & Cutler, B.L. (1991). The prejudicial impact of pretrial publicity. *Journal of Applied Social Psychology*, 21(5), 345-367.

phenomenon has been found in a multitude of settings including the courtroom. Socially desirable responses are more likely to occur when individuals become focused on the public aspects of themselves. Public awareness of oneself can become particularly salient in a courtroom setting where prospective jurors are asked questions by an authority figure in front of a public audience. Jones (1987), for example, reported that participants appeared to alter their answers to reflect what they thought a judge wanted to hear rather than what they actually thought.³⁷ When potential jurors learn through the jury selection process that the law requires them to be fair and impartial, there is a risk that they will overstate their ability to set aside their knowledge and beliefs in order to create a favorable public impression.

Data from a survey conducted by Neil Vidmar (2003)³⁸ in the John Walker Lindh (i.e., the American Taliban) change of venue motion highlights the problems associated with responses to the set-aside question in high profile cases. Vidmar incorporated a fair and impartial question for the purpose of showing how unreliable responses can be. According to Vidmar, 74% of respondents reported that they could be fair and impartial. However, many of these same respondents reported that Lindh was definitely guilty, that a not guilty verdict would be unacceptable, would sentence him to death (even though it was not sought), and that Lindh was responsible for 9/11. Examples of inconsistent responses included:

- “I am an open-minded and fair man. I could, I would look at the evidence.”
 - I believe he is innocent until proven guilty.
 - He was involved with the enemy; he is as bad as Bin Laden; definitely a traitor; probably a terrorist.
- “I would consider all the evidence presented by the court and give a fair opinion. We all have to be careful as to what we say about Mr. Lindh.”
 - He is definitely guilty because he was in a conspiracy with the Taliban

³⁷ Jones, S. (1987). Judge versus attorney conducted *voir dire*: An empirical investigation of juror candor. *Law and Human Behavior*, 11(2), 131-146. Responses were inconsistent with what had been reported earlier in a questionnaire.

³⁸ Vidmar, N. (2003). When all of us are victims: Juror prejudice and “terrorist” trials, *Chicago Kent Law Review*, 78 (3), 1143-1178.

against the United States to kill and do harm to our people; definitely a traitor; definitely a terrorist.

These conflicting statements suggest that a juror's professed ability to be fair and impartial should not be taken at face value in cases where there is substantial pretrial publicity. This is less of an issue when dealing with the tangential experiences, limited case knowledge, and the general attitudes jurors typically bring with them into the courtroom. However, there is little evidence to suggest that individuals can forget or dissociate themselves from specific attitudes, emotions, and beliefs about the defendant and case developed from exposure to significant amounts of media coverage.

X. CONCLUSION

Given the level of prejudice in the jury pool it is my opinion that *voir dire* would not provide a reasonable safeguard for protecting the defendant's fair trial rights. As such, a change of venue is the most appropriate prophylactic measure for ensuring a trial by an impartial jury where the presumption of innocence remains intact.

While a change of venue should never be taken lightly, it is my opinion that the facts in this case merit such a remedial measure. The media coverage has been pervasive and contains prejudicial material, including lengthy descriptions surrounding the controversial release of the video and how it refutes reports from officers at the scene of the shooting. The coverage also contains and potentially inadmissible content including the alleged cover-up, \$5 million settlement, DOJ investigation into the Chicago Police Department, and efforts to reform the police department.

The survey data show that this case remains seared in the community's consciousness, despite the passage of time. A large percentage of prospective jurors recognize the case, are familiar with prejudicial details widely reported by the media, and have formed opinions about the case and the defendant's guilt. These appear to be strong opinions as respondents reported that the defendant would have a difficult convincing them that he is not guilty of murder.

Looking at the totality of the evidence, it is my opinion that the defendant would be put in the untenable position of having to prove his innocence if tried in Cook County. As such, it would be most appropriate to transfer this case to a venue where prospective jurors have not been exposed to extensive prejudicial media coverage, are less likely to have viewed the shooting video or developed opinions about what it shows, and are not deeply invested in the outcome of the case, or driven by a desire to hold the Chicago Police Department accountable for what has been described as a history of discriminatory conduct.

I declare under penalty of perjury under the laws of the State of California that the foregoing facts are true and correct, except as to facts stated upon information and belief, which facts I believe to be true.

Executed on July 2, 2018



Bryan Edelman

APPENDIX A: CURRICULUM VITA

BRYAN EDELMAN, PH.D.

6257 Westover Dr. • Oakland, California 94611
(415) 944-9989 • bryan@trialinnovations.com

PROFESSIONAL EXPERIENCE

- Trial Innovations**, Oakland and Los Angeles, California **2011-Current**
Co-founder
- Design and implement jury research
 - Conduct community survey research on jury issues
 - Serve as expert witness on venue, survey jury issues, & eyewitness identification
 - Assist with jury selection, juror questionnaire design, etc.
 - Provide trial consulting services
 - Provide in-house legal education
 - Conduct post-trial juror interviews
 - Conduct consumer insight research for fortune 500 companies (e.g., Facebook, Yahoo!, Google)
- The Jury Research Institute**, Alamo, California **2005-2010**
Senior Trial Consultant
- Conducted multi-stage qualitative and quantitative research (e.g., focus groups, mock trials, shadow juries)
 - Served as expert witness (e.g., change of venue motions)
 - Designed and conducted telephone and online survey research
 - Conducted post-trial juror interviews
 - Provided trial consulting services
 - Analyzed qualitative and quantitative data
 - Served as speaker and visiting lecturer at conferences, universities, law firms, and Bar Associations
- The National Jury Project**, Oakland, California **2005**
Associate Trial Consultant
- Conducted qualitative and quantitative research
 - Analyzed quantitative and qualitative data from prospective juror questionnaires
 - Interpreted research results and developed strategy recommendations
 - Assisted with crafting opening statements and closing arguments
- Trial Science, Inc.**, Reno, Nevada **1999-2003**
Associate Trial Consultant
- Conducted focus groups and mock trials
 - Analyzed quantitative and qualitative data
 - Presented findings and recommendations to trial team
 - Developed jury selection profiles
- Grant Sawyer Center for Justice Studies**, Reno, Nevada **2000-2003**
Project Manager, “Predicting Failure in Pre-trial Release Programs in Washoe County”
- Designed and implemented an evaluation of the Washoe County pre-trial release program
 - Oversaw data collection (over 40,000 cases) and analyzed data
 - Served as an ombudsmen between trial courts, police departments, Court Services, and the judicial sub-committee
 - Presented findings to the Court Services Sub-Committee and at international conferences

Research Associate. “Minimization of Pre-Trial Publicity Knowledge during Voir Dire”

- Co-developed research methodology
- Performed content analysis of trial transcripts from high profile cases
- Analyzed data

Research Associate. “Science in the Courtroom”

- Co-developed survey codebook
- Completed content analysis of judges’ responses regarding the Daubert standard

Research Associate. “Judicial Workload Pilot Project”

- Completed telephone interviews with judges
- Conducted content analysis of qualitative data from interviews

EXPERT WITNESS & VENUE EXPERIENCE³⁹

People v. Brian Cooks (2017). Conducted community attitude survey. Recommended remedial measures during jury selection.

People v. Johnathan Feit (2017). Conducted community attitude survey. Recommended change of venue.

People v. Jonathan Renfro (2017). Conducted community attitude survey. Did not make recommendations regarding remedial measures.

People v. Kenneth Rossy (2017). Conducted preliminary media analysis. Recommended moving forward with community attitude survey.

Angelo Harmon et al. v. The Salvation Army, et al (2017). Conducted community attitude survey. Did not make any recommendations.

United States v. Charles Banks (2016). Conducted community attitude survey. Recommended change of venue.

United States v. Jessie Con-ui (2016). Conducted community attitude survey. Recommended remedial measures during jury selection.

People v. Lubrin, et al. (2016). Conducted community attitude survey. Recommended remedial measures during jury selection.

Melissa Mays, et al., v. Rick Snyder, et al. (2016). Conducted community attitude survey. Recommended change of venue.

People v. Balsler and Robinson (2016). Conducted preliminary media analysis. Recommended against moving forward with venue study.

United States v. Dredd (2016). Conducted community attitude survey. Recommended remedial measures during jury selection.

People v. Romero (2016): Conducted preliminary media analysis. Recommended against moving forward with venue study.

³⁹ This is not an exhaustive list, and does not include cases which are still pending.

People v. Morales (2016). Conducted community attitude survey and content analysis of media coverage. Testified at change of venue hearing. Recommended remedial measures during jury selection [Granted].

People v Williams (2015). Conducted community attitude survey. Recommended against a change of venue.

Commonwealth v. Chism (2015). Approved by Court to assist with crafting juror questionnaire to address pretrial publicity.

U.S. v. Blankenship (2015). Conducted community attitude survey for the DOJ.

U.S. v. Sablan (2014). Conducted community attitude survey and submitted a declaration. Recommended a change of venue [Granted].

People v. Bealer (2014). Conducted community attitude survey and content analysis of media coverage. Testified at change of venue hearing and transfer hearing. Recommended a change of venue [Granted].

People v. Ware, et al. (2014). Conducted content analysis of media coverage and grand jury transcript. Submitted a declaration recommending that the grand jury transcript remain sealed [Granted].

People v. Castillo (2014). Conducted community attitude survey [Venue hearing denied].

People v. Shirakawa (2014). Conducted community attitude survey Recommended against a change of venue.

People v. Holmes (2014): Conducted content analysis of media coverage. Recommended a change of venue [Denied].

People v. Tree (2014): Conducted preliminary media analysis. Recommended against moving forward with venue study.

People v. Hoyt (2014): Reviewed pretrial publicity, juror questionnaires, and voir dire transcript. Recommended that trial counsel should have pursued change of venue.

People v. Duran (2014). Conducted preliminary media analysis. Recommended against moving forward with venue study.

People v. White (2013): Conducted preliminary media analysis. Recommended against moving forward with venue study.

People v. Vega (2013): Conducted preliminary media analysis. Recommended against moving forward with venue study.

People v. Ayers (2013): Conducted community attitude survey. Recommended against a change of venue.

People v. Lucero (2013): Conducted community attitude survey. Recommended against a change of venue.

People v. Bennett (2013): Conducted media analysis. Recommended against a change of venue.

People v. Deloney (2012): Testified as expert witness regarding literature on the accuracy of eyewitness identification, memory, cognition, and suggestive questioning.

People v. Ortega, et al. (2012): Conducted community attitude survey and content analysis of pretrial publicity. Testified as expert witness about results, the impact of pretrial publicity on attitudes, memory, jury selection, and jury-decision making.

People v. Bey (2011): Conducted community attitude survey and content analysis of pretrial publicity. Testified as expert witness about results, the impact of pretrial publicity on attitudes, memory, jury selection, and jury-decision making.

Johnson, et al. v. BART, et al. (2011). Conducted community attitude survey. Recommended against filing a change of venue motion.

People v. Fowler (2011): Conducted community attitude survey. Recommended certain communities be excluded from the venue [Granted]

People v. Sanchez, et al (2011): Conducted preliminary media analysis. Recommended against moving forward with venue study.

People v. Loughner (2011): Conducted media analysis.

Huang Xiu Mei, New York (2007): Expert witness in political asylum hearing.

Weather Shield v. Bostik (2005): Evaluated plaintiff's change of venue motion.

Olympic Pipeline Company v. Washington (2002). Assisted with content analysis of media coverage.

PUBLICATIONS AND PRESENTATIONS

Edelman, B. (2018). *Preventing Runaway Juries*. Presented at the Michigan Defense Trial Counsel's Annual Meeting, MT Pleasant, MI.

Edelman, B. (2018). *Trial Consulting 101*. Presented at the American Psychological Association, Division 41, Memphis, TN.

Edelman, B. (2018). *Trial Consulting 101*. Presented at American Society of Trial Consultants Conference, Ft Worth, TX.

Bronson, E. Edelman, B., & Philipsborn, J.T. (2017). Change of Venue. In N. Yuenger (Ed.), *California criminal law procedure and practice*. Oakland: Continuing Education of the Bar.

Edelman, B. (2016). *Conducting an Effective Jury Selection*. Presented at Santa Barbara Bar Association Bench and Bar Conference, Santa Barbara, CA.

Bronson, E. Edelman, B., & Philipsborn, J.T. (2015). Change of Venue. In N. Yuenger (Ed.), *California criminal law procedure and practice*. Oakland: Continuing Education of the Bar.

Edelman, B. (2015). *Trial Consulting 101*. Presented at American Society of Trial Consultants Conference, Nashville, TN.

Edelman, B. (2015). *Effective Jury Selection Lunch and Learn*. Sponsored by Thomas Reuters (Oakland).

Edelman, B. (2015). *The Social Psychology of Jurors and Juries*. Presented at Washoe County Alternate Defender, Reno, NV.

Edelman, B. (2013). *The Social Psychology of Jurors and Juries*. Presented at Washoe County Alternate Defender, Reno, NV.

Edelman, B. (2013). *Police Liability*. Presented at the Lorman Education Services Seminar in Santa Rosa.

- Edelman, B., & Canon, D. (2012). *The Social Psychology of Jurors and Juries*. Presented at Office of the Public Defender, Albuquerque, NM.
- Edelman, B. (2013). *Police Liability*. Presented at the Lorman Education Services Seminar in Sacramento.
- Edelman, B., & Canon, D. (2012). *The Social Psychology of Jurors and Juries*. Presented at Office of the Public Defender, Albuquerque, NM.
- Edelman, B. (2011). Using online surveys to conduct jury research. *The Jury Expert*, 23(6), 51-54.
- Edelman, B. (2011). Juror race and capital sentencing. *The Jury Expert*, 23(4), 47-49.
- Bronson, E., Dillehay, R., Edelman, B., & Rountree, W. (2011). *Analyzing Pretrial Publicity in the New-Media Universe*. Presented at the American Society of Trial Consultants Conference.
- Edelman, B. (2010). *CLE: Selecting your Jury*. Presented at White and Williams, LLP, Philadelphia, PA.
- Edelman, B. (2010). *Trial Consulting 101*. Presented at the University of Nevada, Reno.
- Edelman, B. (2009). The impact of graphic injury photographs on liability verdicts and non-economic damage awards. *The Jury Expert*, 21(5), 1-4.
- Edelman, B. (2009) *Online Research Tools to Evaluate Cases*. Presented at the Santa Clara County Bar Association.
- Edelman, B. (2009). *Psychology in the Courtroom: Selecting Your Jury*. Presented at the Monterey County Bar Association.
- Edelman, B. (2008). *Striking the Jury*. Visiting lecturer at Stanford Law School.
- Edelman (2008). *Communicating with the Jury*. Presented at the International Symposium on Life Care Planning, Phoenix.
- Edelman (2007). *Race, Empathy, and Capital Punishment*. Visiting lecturer at the University of California, Santa Cruz.
- Edelman, B. *Racial Prejudice, Juror Empathy, and Sentencing in Death Penalty Cases*. (New York: LFB Scholarly Publishing LLC, 2006).
- Edelman, B. & J.T. Richardson, (2005). Imposed limitations on freedom of religion in China and the margin of appreciation doctrine: A legal analysis of the crackdown on the Falun Gong and other "evil cults." *The Journal of Church and State*, 47(2), 243-267.
- Richardson, J.T., & Edelman, B., Cult controversies and legal developments concerning new religions in Japan and China. In D.H. Davis & G. Besier (Eds.), *International Perspectives on Freedom and Equality of Religious Belief*, Waco: (Dawson Institute of Church-State Studies, Baylor University, 2002), reprinted in J.T. Richardson (Ed), *Regulating Religion Case Studies from Around the World*. (United States: Kluwer Academic/Plenum Publishers, 2004), pp. 359-380.
- Edelman, B. & Richardson, J.T. (2003). Falun Gong and the law: Development of legal social control in China. *Nova Religio*, 6(2), pp. 312-331.
- Edelman, B., Dillehay, R.C., Bennett, D., & Hinxman, C. (2002). *The difficulties of collecting data in a local justice system*. Presented at the annual meeting of the Pacific Sociological Association, Vancouver, Canada.

Edelman, B. & Richardson, J.T. (2002). *Falun Gong and the law*. Presented at the annual meeting of the Society for the Study of Religion, Houston, TX.

Edelman, B. & Richardson, J.T. (2002). *The crackdown on the Falun Gong: Western influence and the development of the anti-cult movement in China*. Presented at the Society for the Scientific Study of Religion annual conference, Salt Lake City, Utah.

Richardson, J.T. & Edelman, B. (2001). *Cult controversies and legal developments in Japan and China*. Presented at the annual conference on "New Religions," Heidelberg, Germany.

EDUCATION

LL.M. , International Law, with Distinction, University of Kent, Canterbury, United Kingdom	2004
Ph.D. , Interdisciplinary Social Psychology, University of Nevada, Reno, Nevada	2003
B.S. , Magna Cum Laude, Psychology, Florida State University, Tallahassee, Florida	1997

APPENDIX B: SURVEY INSTRUMENT

SCREENING FORM (LANDLINE)

Intro1. Hello. My name is (your name) calling from the (Survey Company Name). We are not selling anything and this is not a political poll. We're doing a public opinion survey among residents of Cook County to obtain opinions about the justice system and a specific criminal case in your area. Your cooperation is very important because your household was selected at random by computer as being representative of Cook County. Again, we are not selling anything and this is not a political poll.

*[IF RESPONDENT HESITATES TO COOPERATE, SAY: **If you like, you can verify the authenticity of the survey by calling NAME at SURVEY COMPANY during regular office hours; call collect PHONE NUMBER***

*[IF RESPONDENT INDICATES GREAT DIFFICULTY WITH ENGLISH, SAY: **Hola. Mi nombre es _____ llamo del centro de ciencias sociales. Se encuentra alguna persona que hable inglés? ¿Hay alguien allí quién habla inglés? Deseo hablar con alguien que habla inglés, por favor.***

S0. *[Do Not Read]* Does the respondent have a reasonable working knowledge of English?
1.....Yes
2.....No → → → → *Discontinue Survey*

S1. First, is your household in Cook County?
1.....Yes
2.....No → → → → *Discontinue Survey "Thank you very much but this survey is only in Cook County."*

S2. Have I reached you on your cell phone or landline?
1.....Landline
2.....Cell phone → → → → *Discontinue survey*

S3. Is there a U.S. citizen in this household 18 or older who is registered to vote in Cook County?
1.....Yes
2.....No → → → → *Discontinue Survey*
9.....Refused → → *Discontinue Survey*

S4. So that our final sample has the appropriate number of men and women for this survey, my instruction is to first ask to speak with a male. May I speak with the youngest male 18 or older who is a U.S. citizen and is registered to vote in Cook County?

SKIP to Intro2 ← ← 1.....Yes
2.....No, not available → → → → *SKIP to S6*
9.....Refused → → → → *Discontinue Survey*

S6. May I speak with any other male in your household 18 years or older who is a U.S. citizen and who is registered to vote in Cook County?

SKIP to Intro2 ← ← 1.....Yes

2.....No, not available → → → → *SKIP to S7*
9.....Refused → → → → *Discontinue Survey*

S7. May I speak to the oldest female 18 or older who is a U.S citizen and registered to vote in Cook County?

SKIP to Intro2 ← ← 1Yes
2.....No, not available → → → → *SKIP to S8*
9.....Refused → → → → *Discontinue Survey*

S8. May I speak with any other female in the household 18 years or older who is a U.S. citizen and registered to vote in Cook County?

SKIP to Intro2 ← ← 1Yes
2.....No, not available → → → → *SKIP to S9*
9.....Refused → → → → *Discontinue Survey*

S9 When could I call back to find a person 18 or older who is a U.S. citizen and who is registered to vote in Cook County?

Timed Callback 1 → → → → [*Callback date/time: _____*]
Refused..... 9 → → → → *Discontinue Survey*

Intro2. Hello, my name is [NAME]. We're conducting a brief study on the justice system and a specific criminal case in Cook County. Your cooperation is very important because your household was randomly selected as being representative of Cook County.

[IF RESPONDENT HESITATES TO COOPERATE, SAY: If you like, you can verify the authenticity of the survey by calling NAME at SURVEY CENTER'S NAME during regular office hours; call collect at PHONE NUMBER

S0. [*Do Not Read*] Does the respondent have a reasonable working knowledge of English?

1.....Yes
2.....No → → → → *Discontinue Survey*

S10. Do you live in Cook County?

1.....Yes
2.....No → → → → *Discontinue Survey* "**Thank you very much but this survey is only in Cook County.**"

S11. Do you have a working cell phone?

1.....Yes
2.....No → → → → *Skip to Main Survey*
8.....Don't know → → → → [*Don't read this response option*]

9.....Refused

S12. Of all the telephone calls that you receive, are...

- 1.....All calls received on a cell phone
- 2.....Almost all calls received on a cell phone
- 3.....Some calls received on a cell phone and some on a regular phone
- 4.....Almost all calls received on a regular phone
- 5.....All calls received on a regular phone
- 8.....Don't know → → → → *[Don't read this response option]*
- 9.....Refused

SCREENING FORM - COOK COUNTY

Cell Phone

Intro1. Hello. My name is (your name) calling from the (Survey Company Name). We are not selling anything and this is not a political poll. We're doing a public opinion survey among residents of Cook County to obtain opinions about the justice system and a specific criminal case in your area. Your cooperation is very important because your household was selected at random by computer as being representative of Cook County. Again, we are not selling anything and this is not a political poll.

[IF RESPONDENT HESITATES TO COOPERATE, SAY: If you like, you can verify the authenticity of the survey by calling NAME at SURVEY COMPANY during regular office hours; call collect PHONE NUMBER

[IF RESPONDENT INDICATES GREAT DIFFICULTY WITH ENGLISH, SAY: Hola. Mi nombre es ____ llamo del centro de ciencias sociales. Se encuentra alguna persona que hable ingles? ¿Hay alguien allí quién habla inglés? Deseo hablar con alguien que habla inglés, por favor.]

S0. *[Do Not Read]* Does the respondent have a reasonable working knowledge of English?

- 1.....Yes
- 2.....No → → → → *Discontinue Survey*

S1. First, is your household in Cook County?

- 1.....Yes
- 2.....No → → → → *Discontinue Survey "Thank you very much but this survey is only in Cook County.*

S2. Have I reached you on your cell phone or landline?

- 1.....Cell phone
- 2.....Landline → → → → *Discontinue survey*

S3. Are you a U.S. citizen who is 18 or older and registered to vote in Cook County?

- 1.....Yes
- 2.....No → → → → *Discontinue Survey*
- 9.....Refused → → *Discontinue Survey*

S4. Are you in a place where you can safely talk on the phone and answer my questions?

- 1.....Yes → → → *SKIP to S5*
- 2.....No → → → →

S4a When is a safe time for me to call you back?

- Timed Callback 1 → → → → [*Callback date/time: _____*]
- Refused 9 → → → → *Discontinue Survey*

S5. Of all the telephone calls that you receive, are...

- 1.....All calls received on a cell phone
- 2.....Almost all calls received on a cell phone
- 3.....Some calls received on a cell phone and some on a regular phone
- 4.....Almost all calls received on a regular phone
- 5.....All calls received on a regular phone
- 8.....Don't know → → → → [*Don't read this response option*]
- 9.....Refused

MAIN QUESTIONNAIRE

Before I begin asking you questions, I'd like you to know that there are no right or wrong answers and that you are free to respond with a "don't know" or "no opinion" answer to any question. All of your answers will remain confidential!

Q1. Now I'd like to read you some statements about local law enforcement. For each statement I read, please tell me whether you strongly agree; somewhat agree; somewhat disagree; or strongly disagree. Here's the first one:

Q1a. Police in my community make me feel safe.

- Strongly agree..... 1
- Somewhat agree..... 2
- Somewhat disagree..... 3
- Strongly disagree..... 4
- No opinion..... 5
- Don't know..... 8
- Refused/NA..... 9

RECORD ANY SPONTANOUS COMMENTS ABOUT THE CASE OR THE DEFENDANT (E.G., THEY DISCRIMATE.)

Q1b. The Chicago Police Department has not done enough to hold its officers accountable for the use of excessive force.

- Strongly agree..... 1
- Somewhat agree..... 2
- Somewhat disagree..... 3
- Strongly disagree..... 4
- No opinion..... 5
- Don't know.....8
- Refused/NA..... 9

RECORD ANY SPONTANOUS COMMENTS ABOUT THE CASE OR THE DEFENDANT (E.G., THEY DISCRIMATE.)

Q1c. A code of silence exists in the Chicago Police Department where officers lie or cover-up abuses to protect each other.

- Strongly agree..... 1
- Somewhat agree..... 2
- Somewhat disagree..... 3
- Strongly disagree..... 4
- No opinion..... 5
- Don't know.....8
- Refused/NA..... 9

RECORD ANY SPONTANOUS COMMENTS ABOUT THE CASE OR THE DEFENDANT (E.G., THEY COVER-UP WRONGDOING.)

Q1d. Chicago police officers are more likely to respond with force when confronting black suspects than when dealing with white suspects.

- Strongly agree..... 1
- Somewhat agree..... 2
- Somewhat disagree..... 3
- Strongly disagree..... 4
- No opinion..... 5
- Don't know..... 8
- Refused/NA..... 9

RECORD ANY SPONTANOUS COMMENTS ABOUT THE CASE OR THE DEFENDANT (E.G., THEY RACIALLY PROFILE.)

Q2a. Now I'd like to ask you about a specific upcoming case in Cook County. Back in 2014, Chicago Police Officer Jason Van Dyke shot a black teenager 16 times shortly after exiting his patrol vehicle. Laquan McDonald was walking down the street in Chicago with a small knife in his hand when he was shot. Van Dyke was later charged with murder. Have you read, seen, or heard anything about this case?

- Yes..... 1 GO TO Q3a
- No..... 2 GO TO Q2b
- Don't know..... 8 GO TO Q2b
- Refused/NA..... 9 GO TO Q2b

RECORD ANY SPONTANEOUS COMMENTS ABOUT THE CASE OR THE DEFENDANT (E.G., HE SHOULD BE EXECUTED.)

Q3a. Based on what you have read, seen, or heard, do you believe that Jason Van Dyke is definitely guilty; probably guilty; probably not guilty; or definitely not guilty of murder?

- Definitely guilty..... 1
- Probably guilty..... 2
- Probably not guilty..... 3
- Definitely not guilty..... 4
- No opinion..... 5
- *Other..... 7
- Don't know..... 8
- Refused/NA..... 9

THE RESPONSE OPTIONS SHOULD BE ROTATED FOR HALF THE SAMPLE

*Record responses

Q3b. Given what you already know about these events, would Jason Van Dyke have a difficult time convincing you that he **is not—repeat is not—** guilty of murder?

- Yes..... 1
- No..... 2
- No opinion..... 5
- Don't know..... 8
- Refused/NA..... 9

GO TO 4A

Q2b. Van Dyke was charged with murder after a police dashboard camera video of the shooting was released to the public. Have you read, seen, or heard anything about this case?

- Yes..... 1 GO TO Q3c
- No..... 2 GO TO Q9
- Don't know..... 8 GO TO Q9
- Refused/NA..... 9 GO TO Q9

RECORD ANY SPONTANEOUS COMMENTS ABOUT THE CASE OR THE DEFENDANT (E.G., HE SHOULD BE EXECUTED.)

Q3c. Based on what you have read, seen, or heard, do you believe that Jason Van Dyke is definitely guilty; probably guilty; probably not guilty; or definitely not guilty of murder?

- Definitely guilty..... 1
- Probably guilty..... 2
- Probably not guilty..... 3
- Definitely not guilty..... 4
- No opinion..... 5
- *Other..... 7
- Don't know..... 8
- Refused/NA..... 9

THE RESPONSE OPTIONS SHOULD BE ROTATED FOR HALF THE SAMPLE

*Record responses

Q3d. Given what you already know about these events, would Jason Van Dyke have a difficult time convincing you that he **is not—repeat is not—** guilty of murder?

- Yes..... 1
- No..... 2
- No opinion..... 5
- Don't know..... 8
- Refused/NA..... 9

Q4a. What are your thoughts and feelings about Officer Van Dyke, the victim, or the shooting?

PROBE AT LEAST ONCE: Do you have any other feelings about Officer Van Dyke?

Q4b. What are your thoughts and feelings about the response to the shooting by the Chicago Police Department and Mayor Rahm Emanuel?

Q5a. Every criminal defendant is entitled to a trial by a fair and impartial jury. Based on what you know about this case and the community's response to these events, do you believe Jason Van Dyke would have a better chance receiving a fair trial in Cook County, or in another county in Illinois?

- Cook County..... 1
- Another county..... 2
- No opinion..... 5
- *Other..... 7
- Don't know..... 8
- Refused/NA..... 9

*Record responses

RECORD ANY SPONTANEOUS COMMENTS ABOUT THE CASE OR THE DEFENDANT (E.G., HE CAN'T GET A FAIR TRIAL.)

Q6. As you may know, the media have reported a number of things about this case. Some people may remember some things, while others may remember other things. We're interested in what you may remember, even if you already told me in one of the previous questions.

[ONLY ASK THOSE WHO RECOGNIZED THE CASE ON Q2a QUESTION Q6a]

Q6a. Have you read, seen, or heard if Officer Van Dyke was charged with murder after a police dashboard camera video of the shooting was released to the public?

- Yes..... 1
- No..... 2
- Don't know..... 8
- Refused/NA..... 9

RECORD ANY SPONTANEOUS COMMENTS ABOUT THE CASE OR THE DEFENDANT (E.G., HE SHOULD BE EXECUTED.)

Q6b. Have you read, seen, or heard if several officers who were at the scene allegedly lied about the shooting to protect Van Dyke?

- Yes..... 1
- No..... 2
- Don't know..... 8
- Refused/NA..... 9

RECORD ANY SPONTANEOUS COMMENTS ABOUT THE CASE OR THE DEFENDANT (E.G., HE SHOULD BE EXECUTED.)

Q6c. Have you read, seen, or heard if there were weeks of protests in Chicago after the video of the shooting was released to the public?

Yes..... 1
No..... 2
Don't know..... 8
Refused/NA..... 9

RECORD ANY SPONTANOUS COMMENTS ABOUT THE CASE OR THE DEFENDANT
(E.G., HE SHOULD BE EXECUTED.)

Q6d. Have you read, seen, or heard if an autopsy showed that Laquan McDonald had PCP in his system at the time of the shooting?

Yes..... 1
No..... 2
Don't know..... 8
Refused/NA..... 9

RECORD ANY SPONTANOUS COMMENTS ABOUT THE CASE OR THE DEFENDANT
(E.G., HE SHOULD BE EXECUTED.)

Q6e. Have you read, seen, or heard if Mayor Rahm Emanuel tried to prevent the video of the shooting from being released to the public?

Yes..... 1
No..... 2
Don't know..... 8
Refused/NA..... 9

RECORD ANY SPONTANOUS COMMENTS ABOUT THE CASE OR THE DEFENDANT
(E.G., HE SHOULD BE EXECUTED.)

Q6f. Have you read, seen, or heard if the shooting led to an investigation by the Department of Justice into civil rights violations and abuses within the Chicago Police Department?

Yes..... 1
No..... 2
Don't know..... 8
Refused/NA..... 9

RECORD ANY SPONTANOUS COMMENTS ABOUT THE CASE OR THE DEFENDANT
(E.G., HE SHOULD BE EXECUTED.)

Q7. Have you ever watched the video recording of the shooting?

Yes..... 1

No..... 2 [GO TO Q9]
Don't know..... 8 [GO TO Q9]
Refused/NA..... 9 [GO TO Q9]

RECORD ANY SPONTANOUS COMMENTS ABOUT THE CASE OR THE DEFENDANT
(E.G., HE SHOULD BE EXECUTED.)

Q7a. Based on what you saw, how would you describe what the video of the shooting shows?

PROBE: Based on what you saw, how would you describe the shooting to a friend or family member?

Q7b. Based on what you saw in the video, do you believe Officer Van Dyke was in danger of losing his life or suffering a serious injury when he shot Laquan McDonald?

Yes..... 1
No.....2
No opinion..... 5
*Other..... 7
Don't know..... 8
Refused/NA..... 9

*Record responses

RECORD ANY SPONTANOUS COMMENTS ABOUT THE CASE OR THE DEFENDANT
(E.G., HE SHOULD BE EXECUTED.)

Q7c. Based on what you saw in the video, do you believe Laquan McDonald was walking toward Officer Van Dyke or away from him when he was shot?

Toward Officer Van Dyke..... 1
Away from him..... 2
No opinion..... 5
*Other..... 7
Don't know..... 8
Refused/NA..... 9

*Record responses

RECORD ANY SPONTANOUS COMMENTS ABOUT THE CASE OR THE DEFENDANT
(E.G., HE SHOULD BE EXECUTED.)

Q8. Have you ever talked about this shooting with your family, friends, or co-workers, or discussed it online, for example, on social media?

Yes..... 1
No..... 2
Don't know..... 8

Refused/NA..... 9

RECORD ANY SPONTANOUS COMMENTS ABOUT THE CASE OR THE DEFENDANT (E.G., EVERYONE IS TALKING ABOUT IT.)

Q8a. Have you ever heard others talking about the shooting in person or online?

Yes..... 1
No..... 2
Don't know..... 8
Refused/NA..... 9

RECORD ANY SPONTANOUS COMMENTS ABOUT THE CASE OR THE DEFENDANT (E.G., EVERYONE IS TALKING ABOUT IT.)

Q9. Have you ever talked about police brutality or discrimination in Chicago with your family, friends, or co-workers, or discussed it online, for example, on social media?

Yes..... 1
No..... 2
Don't know..... 8
Refused/NA..... 9

RECORD ANY SPONTANOUS COMMENTS ABOUT THE CASE OR THE DEFENDANT (E.G., EVERYONE IS TALKING ABOUT IT.)

Q10. Finally, I have a couple of more questions to be sure we have included all groups in this survey. All of your answers will remain confidential.

[ASK EVERYONE]

Q10a. First, how often do you read a hard copy or online version of a newspaper? Would you say you read it every day, several times a week, once or twice a week, less often than once a week, or never?

Every day.....1 (GO TO Q10b)
Several times a week..... 2 (GO TO Q10b)
Once or twice a week..... 3 (GO TO Q10b)
Less often than once a week..... 4 (GO TO Q10b)
Never..... 5 (GO TO Q12)
Don't know..... 8 (GO TO Q10b)
Refused/NA..... 9 (GO TO Q10b)

Q10b. What newspapers do you read? I am interested in both local and out-of-town papers.

(PROBE) Do you read any other papers?

[RECORD UP TO 4 NEWSPAPERS]

INSTRUCTION: DO NOT READ THE LIST OF NEWSPAPERS TO RESPONDENTS.

Local Publications	
22nd Century Media	1
Austin Weekly News	2
Berwyn Suburban Life	3
Bridgeport News	4
Chicago Defender	5
Chicago Journal	6
Chicago Reader	7
Chicago Sun-Times	8
Chicago Tribune	9
Daily Herald	10
Desplaines Valley News	11
Evanston Roundtable	12
Evanston Sentinel	13
Forest Park Review	14
Hoy	15
Hyde Park Herald	16
La Grange Suburban Life	17
Lemont Suburban Life	18
Naperville Sun	19
Newcity	20
News Sun	21
Niles Bugle	22
Northwest Herald	23
Oak Park Journal	24
Pioneer Press	25
Post-Tribune	26
Riverside & Brookfield Suburban Life field	27
Riverside-Brookfield Landmark	28
Saint Charles Republican	29
Sanghamam	30
Skokie Review	31
SouthtownStar	32
The Beacon-News	33
The Chicago Crusader	34
The Chicago Shimpo	35
The Courier-News	36
The Herald-News	37

The Patch	38
The Reporter	39
The SouthtownStar	40
Tri-City Journal	41
Wednesday Journal	42
Windy City Times	43
Other: Specify _____	97
Don't know	98
Refused/NA	99

Q11. How often do you listen to local news on the radio or on television? Do you listen to local news: every day, several times a week, once or twice a week, less often than once a week, or never?

Every day.....	1
Several times a week.....	2
Once or twice a week.....	3
Less often than once a week.....	4
Never.....	5
Don't know.....	8
Refused/NA.....	9

Q12. Do you use the internet to get any of your news?

Yes.....	1
No.....	2
Don't know	8
Refused/NA.....	9

Q13. How often do you get your news, or news related updates from social media sites such as Facebook or Twitter? Do you get your news or news related updates from social media sites every day, several times a week, once or twice a week, less often than once a week, or never?

Every day.....	1
Several times a week.....	2
Once or twice a week.....	3
Less often than once a week.....	4
Never.....	5
Don't know.....	8
Refused/NA.....	9

Q14. What town or city do you live in or nearest? (DO NOT READ RESPONSES)

Arlington Heights	1
Barrington	2
Bartlett	3
Berwyn	4
Blue Island	5

Brookfield	6
Buffalo Grove	7
Calumet City	8
Chicago	9
Chicago Heights	10
Cicero	11
Des Plaines	12
Dolton	13
Elgin	14
Elk Grove Village	15
Evanston	16
Evergreen Park	17
Glencoe	18
Glenview	19
Hoffman Estates	20
Lemont	21
Lincolnwood	22
Lyons	23
Mount Prospect	24
Niles	25
Northbrook	26
Oak Forest	27
Oak Lawn	28
Oak Park	29
Orland Park	30
Palatine	31
Park Ridge	32
Riverdale	33
Rolling Meadows	34
Schaumburg	35
Skokie	36
Streamwood	37
Tinley Park	38
Westchester	39
Western Springs	40
Wheeling	41
Wilmette	42
Winnetka	43
Woodridge	44
Other	97
Don't know; not sure; can't say	98
Refused/NA	99

Q15. Could you please tell us how old you are?

(DO NOT READ RESPONSES. IF RESPONDENT ANSWERS, E.G., "OVER 30," PROBE)

18-24.....	1
25-34.....	2
35-44.....	3
45-54.....	4
55-64.....	5
65 or over	6
Refused/NA	9

Q16. Regardless of race, are you of Hispanic, Latino, or Spanish origin?

Yes	1
No	2
Don't know	8
Refused/NA	9

Q17. Regardless of your ethnicity, what is your race? Are you white, African American, Asian, Pacific Islander, American Indian, a member of some other race, or of mixed race?

White.....	1
African American	2
Asian.....	3
Pacific Islander.....	4
American Indian	5
Mixed.....	6
Other: Specify	97
Don't know.....	98
Refused/NA.....	99

Q18. Finally, for statistical purposes only, we need to know if you have ever been convicted of a felony.

Yes	1
No	2
Don't know	8
Refused/NA	9

Q19. (NOTE GENDER OF RESPONDENT)

Female	1
Male	2

Well, those are all the questions that I have. Lastly, let me verify that I dialed ____-_____. Again, my name is (*Your First Name*), and on occasion a small percentage of people like you are called back just to verify that this interview actually took place. May I please have your first name, and first name only, so my supervisor will know whom to ask for in case this interview is verified? Thank you for your time and have a good (evening/day)!

Respondent Name: _____ Phone () _____ - _____
Interview Date: _____ End Time: _____