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The Times-Picayune coverage of three incidents resulting in capital trials

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THE TIMES-PICAYUNE COVERAGE OF THREE INCIDENTS
RESULTING IN CAPITAL TRIALS

A Thesis

Submitted to the Graduate Faculty of the
Louisiana State University and
Agricultural and Mechanical
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in

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ABSTRACT

Death penalty cases are truly the most unique cases in the criminal justice system. Much research has been done showing that the death qualification process venripersons must undergo results in jurors un-empathetic to the kind of information used to mitigate the death penalty, as well as creating a jury that is more susceptible to pretrial publicity. This study reviews this research and analyzes the content of a New Orleans' newspaper's coverage of three incidents resulting in capital trials. It was found that, similar to a study done in California that was the model for this study's content analysis, the newspaper relied heavily on law enforcement, prosecutors and prosecutorial lay witnesses, and emphasized details used to seek a guilty verdict and to seek the death penalty. Implications of these findings on capital defense teams were discussed.

CHAPTER 1. INTRODUCTION

Oscar Wilde wrote in *The Soul of the Man Under Socialism* of journalism's ability to demoralize the human being. Wilde concluded that society is dominated by journalism (1891).

In a study examining how newspapers report on death penalty cases, Haney and Green (2004) presented research showing that many citizens rely solely on the media for understanding the crime-related events taking place in their communities. Haney and Greene found this reliance so strong that the local news media were often the primary, and sometimes sole, basis for how residents of the communities perceive the cause of crime in their communities (2004).

In an essay on how media influences law, Haney (2002) noted that the media's focus when covering crime was to single out the individual perpetrators, emphasizing the gory details of their alleged acts and to place blame solely on the innate evil of the perpetrators. Such coverage individualized the accused and often left out until trial the true strength of the evidence (Haney & Greene, 2004). Furthermore, information that might have mitigated a harsher sentence of death was left out of the news until coverage of sentencing; if this information was covered at all.

The purpose of this paper is to review the professional literature concerning the role the media plays in death penalty cases and the potential effects the news media has on death-qualified jurors, and to examine the content of a local newspaper's coverage on three incidents resulting in capital crimes.

CHAPTER 2. MEDIA'S INFLUENCE ON DEATH PENALTY TRIALS

The media's tremendous influence on the criminal justice system has an exceptionally profound impact on death penalty cases (Haney and Greene, 2004). This influence comes about due to the process that venripesons (i.e., potential jurors) undergo what is known as "death-qualifying the jury" (Butler & Moran, 2002). Unlike any other criminal case, potential capital trial jurors are called upon to consider how the accused should be punished before ever hearing an argument for why the accused might be innocent. The process includes questioning the prospective jurors on their ability to impose a sentence of death if the accused is found guilty of a first degree crime.

2.1: THE DEATH-QUALIFIED JURY AS THE 'UNEMPATHETIC JURY'

Research shows that besides resulting in juries more susceptible to pretrial publicity (i.e., newspaper coverage) (Butler, 2007), the death-qualifying process also results in jurors, when compared to their non-death-qualified counterparts, who have a higher belief in a just world and the infallibility of the criminal justice system. Death-qualified jurors also tend to believe in an internal locus of control as opposed to accepting that external factors can have a profound impact on the defendants' lives (Butler & Moran, 2007) and are more susceptible to victim impact statements (Butler, 2008). These jurors had more negative attitudes towards women, higher levels of homophobia, modern racism and modern sexism (Butler, 2007a) and were less receptive to mitigating circumstances (factors they must consider when deciding between life and death as a sentence) and more receptive to aggravating circumstances (factors the prosecutor must prove beyond a reasonable doubt in the eyes of the jury for them to return with a death penalty) during sentencing (Butler & Moran, 2002). These circumstances are outlined in greater detail below.

The death-qualified jurors also showed less need for cognition when called on to evaluate expert scientific testimony presented by the prosecution's witnesses (Butler & Moran, 2007) and this decreased need for cognition was a strong predictor of their increased level of support for punitive responses for crime (Sargent, 2009). Death qualified jurors were also less receptive to the insanity defense (Butler & Wasserman, 2006) and were less likely to take into consideration the age of the defendant when handing down a death sentence; even when the defendant was a juvenile (Butler, 2007a).

The summation of this research is that death qualified jurors tend to show very little empathy for defendants charged with capital crimes. This lack of empathy also coincides with less thoughtfulness when considering the defendants' guilt or innocence. The jury's lack of empathy and thoughtfulness also impacts sentencing when the death qualified jury is deciding between life and death. Any bias towards the prosecution and lack of thoroughness when covering capital crimes by the local news media can only exacerbate capital defendants' chances at an outcome in their favor (Butler, 2007). Butler (2007) found that death-qualified jurors were better able than their non-death-qualified counterparts to identify the defendant and recognize factual details of the case based on their exposure to pretrial publicity, to believe that pretrial publicity did little to harm a defendant's right to due process, and to think the defendant was guilty and should be put to death. All of the above findings give support to the common belief among those working on capital defense teams that, in the eyes of the jury, their clients are truly guilty until proven innocent.

As part of their study analyzing 321 newspaper articles covering capital trials and convictions, Haney and Greene (2004) coded for, among other variables, the source attribution for the information contained in the articles, whether or not descriptions of the crime or crime-

related details were included in the articles, whether or not references to the background or social history of the defendants were included in the articles, and if there are any specific mention of aggravating or mitigating circumstances in the articles.

Haney and Greene (2004) found that 72% of the sources cited in the articles were affiliated with the state (police- 36%, prosecutors- 25%, and prosecution lay witnesses- 11%), 22% of sources cited were affiliated with the defense (defense attorneys- 14%, defendants- 5%, and defense lay witnesses- 3%), and the remaining 6% of sources cited were the judges assigned to the case (2004). Of the 5% of sources cited that were defendants, 4% were in the form of confessions or admissions. Overall, the newspaper coverage examined by Haney and Greene cited sources from the state's side versus the defense's side at a ratio of 3-to-1 (2004).

These findings definitely support Haney and Greene's (2004) assertions that the news media over-relies on law enforcement, prosecutors and witnesses associated with the prosecution as sources for their coverage of incidents resulting in capital indictments.

2.2: SUBSIDIZED NEWS

To describe the phenomenon created by the overreliance of the media on the police, the prosecution and lay witnesses of the prosecution, Haney and Greene (2004) use the term *subsidized news*. Subsidized news is an approach where the reporters covering capital crimes rely heavily on police and other law enforcement agencies for their information. A potential reason for this is that journalists can access adequate information to create a news article from a smaller, more convenient group of sources. Another potential cause is that defendants' lawyers may often be reluctant, or unable, to engage with the media; many times to their own clients' detriment.

Critics of subsidized news believe that this approach increases the potential for biased reporting (Haney & Greene, 2004). Information released by the police is often limited to the

crime itself, the prior criminal history of any suspect they have in custody and information that justifies the arrest. The prosecution will focus only on giving statements as to the strength of their case and present to the media only the facts that support their case. Finally, the prosecution's lay witnesses were chosen by the prosecution solely for their testimony that supports the state's case in both guilt phase and in penalty phase.

Considering the legally mandated process of death qualifying capital juries, the subsidized news approach favored by many reporters quite possibly finishes the job of closing the loop between the state, the media, and the death qualified jury.

CHAPTER 3.
DETAILS USED TO SEEK A GUILTY VERDICT
(DSGVs)

In their 2004 study, Haney and Greene coded for descriptions of the crime, or crime related details, where they included all sentences containing any information about the crime the defendant was charged with. They essentially coded for all the information that would be used by a prosecutor to seek a verdict of guilty.

Going further than details of the crime coded for by Haney and Greene (2004) is the consideration of details that call into question the defendant's innocence; for example, the defendant's prior conviction history. In his study, Blume (2008) discussed the conventional wisdom against innocent defendant's taking the stand and proclaiming their innocence. Blume found that defense attorney's would often dissuade clients with a criminal history from taking the stand due to a perceived lack of credibility.

If the defendant takes the stand, the prosecution is allowed to bring up the defendant's prior convictions, and charges, as a means of attacking the defendant's credibility. It is noteworthy that newspapers often include in their reporting the criminal histories of individuals charged with capital crimes right from the very beginning of their coverage. When it comes to the newspaper's coverage of capital crimes, defendants do not have a choice in having their prior arrest and conviction history disclosed.

CHAPTER 4.
DETAILS USED TO SEEK THE DEATH PENALTY
(DSDPs)

4.1: AGGRAVATING CIRCUMSTANCES

Under Louisiana law, upon finding that the defendant is guilty of first degree murder, the jury must find beyond a reasonable doubt the existence of at least one aggravating circumstance before suggesting death by lethal injection.

Aggravating circumstances include, but are not limited to, if the offender was engaged in the perpetration or attempted perpetration of aggravated/forcible rape, aggravated or second degree kidnapping, aggravated burglary, arson, or escape, etc. (www.legis.state.la.us). See appendix A for an exhaustive list.

4.2: VICTIM IMPACT STATEMENTS

In a 2008 study of the death qualification process and venireperson's susceptibility to victim impact statements, Butler found that the death qualifying process resulted in the removal of potential jurors that were less likely to be swayed by victim impact statements. This resulted, according to Butler's findings, in jurors more susceptible to victim impact statements.

Simply put, victim impact statements are statements made by the surviving victims of the capital crime (family members, friends, loved ones) describing how much they have suffered since the death of the victim. The prosecution is allowed to call on these individuals to present these statements during the penalty phase of the trial (*Louisiana v. Bernard*, 1992).

CHAPTER 5.
DETAILS SUGGESTING LIFE WITHOUT PAROLE
(DSLs)

5.1: MITIGATING CIRCUMSTANCES

Louisiana law states that the jury must consider mitigating circumstances that contraindicate imposing a sentence of death. These circumstances include the defendant's lack of significant prior history of criminal activity, if the offense was committed while the offender was under the influence of extreme mental or emotional disturbance, if the offense was committed while the offender was under the domination of another person, etc. (www.legis.state.la.us). See appendix B for an exhaustive list.

5.2: MENTAL RETARDATION

Louisiana state law defines "mental retardation" as a disability characterized by significant limitations in both (1) intellectual functioning and (2) adaptive behavior as expressed in conceptual, social, and practical adaptive skills that must occur before the individual reaches eighteen years of age. The law also states that no person deemed mentally retarded shall be put to death. Any defendant claiming mental retardation shall prove the allegation by a preponderance of the evidence. Unless the state and the defense agree that the judge shall try the issue, the jury will hear the issue during sentencing (www.legis.state.la.us). See appendix C for the entire code.

5.3: NEGATIVE MITIGATING CIRCUMSTANCES

In their study, Haney and Greene (2004) recognized that certain kinds of mitigating circumstances may be used by the prosecution seeking a death sentence. They referred to these circumstances as *negative* and coded them as both aggravating and mitigating. An example of a negative mitigating circumstance would be "intoxication" at the time of the crime. A death

qualified juror might be unsympathetic to the presentation of the defendant as drunk at the time the killing occurred or that the defendant joined a gang at the age of 11.

CHAPTER 6. RESEARCH OBJECTIVES

After analyzing articles representing the coverage done by the Times Picayune of 3 incidents resulting in trials for capital murder it is believed that the following will be found:

1. The newspapers relied heavily on law enforcement, prosecutors and prosecutorial lay witnesses.
2. Statements by law enforcement, prosecutors and prosecutorial witnesses placed more emphasis on reporting details of the crime the defendant was charged with, details questioning the defendant's innocence (DSGVs), and details used by the prosecution to seek the death penalty (DSDPs) than details suggesting the defendant's possible innocence (DSDIs) and details used by the defense to convince the jury life without parole is an adequate sentence (DSLs).
3. Overall, the newspaper placed more emphasis on reporting DSGVs and DSDPs than DSDIs and DSLs.

CHAPTER 7. METHODS

Using Haney and Greene's (2004) content analysis as a blueprint, this researcher was able to design a process that was a better fit to his own qualitative study. Modifications had to be made since Haney and Greene's study began with a list of 726 total defendants either sentenced to death or life without chance of parole, from which they randomly selected 26 individuals on death row and 26 individuals serving life without parole and this researcher was examining just three.

7.1: SAMPLE

Through this researcher's work in the mitigation field (as an assistant to a mitigation expert and as a mitigation investigator), this researcher obtained a great deal of exposure to three particular cases.

These three cases represent three distinct periods of recent New Orleans history. The first case is for an incident that occurred in 2003 (2 years before Hurricane Katrina), the second case is for an incident that occurred in 2006 (less than one year after Hurricane Katrina), and the third case is for an incident that occurred in 2009 (4 years after Hurricane Katrina). It is important to make note here that the researcher examined and discussed only information obtained through the public media outlet. No information obtained as part of his duties on the capital defense teams was disclosed as part of this study.

There are interesting similarities between the three cases. Each of the incidents leading to the capital indictments occurred in Orleans Parish, located in southeast Louisiana. Each case involves an individual whose representation was provided, or is being provided, by the Indigent Defense Board through the Orleans Public Defenders' office. In each case, the defendant was a young African American male. In two of the cases, a suspected accomplice was tried first. In the

other case, there were two mistrials declared before the final trial. This means that essentially each defendant was, or is, facing charges where the facts of the case had already been presented and deliberated in court at least once. As of the writing of this paper, one of the defendants has been found guilty of second degree murder, one of the defendants has agreed to serve ten years for the quadruple homicide he was charged with, and one of the defendants is still awaiting trial.

Given that the three cases took place in Orleans Parish, the articles used for this study all came from the Times-Picayune. The articles were obtained through the use of NewsBank, an online, searchable database that accesses the Times-Picayune's archives.

The Time-Picayune is the predominant newspaper of Orleans Parish. According to information about readership provided by the Times-Picayune, the newspaper is read by 77% of all adults in Orleans Parish 5 weekdays and on Sunday each week. When coupled with Nola.com (the Times-Picayune's media website), 85.8% of all adults in Orleans Parish get their news from the Times-Picayune (www.timespicayune.com/readership.html).

7.2: CONTENT ANALYSIS

Following Haney and Greene's (2004) approach for their study, content categories were developed to identify and code the following aspects of each article in the sample. These categories are as follows:

- (1) **Identification of all statements of fact.** The researcher identified all of the statements of fact in the article. For example:

Police have determined that drugs are not a factor in the kidnappings, Defillo said ("Search continues for couple kidnapped – Victim's car found in Treme; six people taken for questioning", 2009).

Each statement was assigned its own number.

(2) **Determination of each statements source attribution.** The researcher determined whether the source of the fact was a member of law enforcement, the prosecution, the defendant in the case (and whether or not the defendant was admitting a crime), if it was a judge or member of a jury, a witness likely to be used by the prosecution, or a witness likely to be used by the defense. For example:

A link between the kidnapping victims and any of the six adults, beyond the car's presence at the house, was not clear at the time of the house search, Defillo said ("Search continues for couple kidnapped – Victim's car found in Treme; Six people taken for questioning", 2009).

Because Defillo is the Assistant Police Superintendent, the source of this statement is attributed to "law enforcement".

(3) **Determination of ROJS or ROJNS.** For each of the statements, the researcher determined whether the reporter made their observation while a capital jury was sequestered (ROJS) or whether the observation was made while a capital jury was not sequestered (ROJNS). Given that for two of the cases in the sample an alleged accomplice was tried first, the determination of ROJS or ROJNS was made based on either the defendant with the capital charge. For example:

"Barnes is a man to fear," Malveau argued. "When he says jump, you say, 'How high?'" ("N.O. man guilty in two murders – Victims Kidnapped, held for ransom", 2010)

While there was a jury sequestered when this statement was reported by the Times-Picayune, the jury was not a capital jury. The defense attorney quoted in this statement is an attorney for alleged accomplice of another man charged with first degree murder and still awaiting trial. This man's jury has yet to be selected and is potentially being exposed to this statement. Because of this, this sentence is coded as ROJNS.

(4) **Determination of DSGV or DSDI.** For each of the statements, the researcher determined if the statement contained details used by the prosecution to seek a guilty verdict (DSGV) or if the statement contained details suggesting the defendant's innocence (DSDI). For example:

They were abducted early Sunday after two men entered Perkin's Algiers area apartment, NOPD spokesman Janssen Valencia said. ("Slain couple found in abandoned house – Student, literacy tutor had been shot to death", 2009)

This statement contains details of the crime the defendant was charged with and was coded as a DSGV. It is also important to note here that many statements coded as DSGV would also be coded as DSDP (see below). The reason for this is that the very details of the incidents that allowed them to be the basis of capital charges (belief they occurred during the commission of a crime, they occurred as a way of covering up a crime, etc.) are the very details that allowed the prosecution to seek the death penalty. Furthermore, the details questioning the defendant's innocence, such as previous criminal history, not only detrimentally affect the defendant during guilt phase, but during penalty phase as well. This is due to the fact that they may be brought up by the prosecution to show the "character" of the defendant in their attempts of seeking death (*Louisiana v. Jackson*).

(5) **Determination of DSDP or DSL.** All of the articles covered events leading to the indictment of a defendant for capital murder. This means that if the defendant were to be found guilty of the crime, he would face a penalty phase where the jury would decide between the death penalty and life without possibility of parole. Therefore, it was necessary to code for details often used by prosecutors in seeking the death penalty (DSDP) and to code for details often used by defense seeking a sentence of life without parole after their clients have been found guilty (DSL).

Coded as DSDP were the aggravating circumstances found in appendix A, victim impact statements, and DSGV the researcher believed would be used by the prosecution to seek the death penalty. For example:

When the ransom was not delivered, the couple were driven across the river to an abandoned house at Fig Street and Broadway in Gert Town. (“Three men indicted in double killing – Teen’s bodies dumped in N.O. kidnap case”, 2009)

Section 905.4 of the Louisiana Code of Criminal Procedure, which covers aggravating circumstances, includes the following:

The offender was engaged in the perpetration or attempted perpetration of aggravated rape, forcible rape, aggravated kidnapping, second degree kidnapping, aggravated burglary, aggravated arson, aggravated escape, assault by drive-by shooting, armed robbery, first degree robbery, second degree robbery, simple robbery, cruelty to juveniles, second degree cruelty to juveniles, or terrorism. (www.legis.state.la.us)

Details given in the statement above inform that there was a ransom involved with the crime. This makes it an aggravating kidnapping and allows the prosecutor to seek the death penalty.

An example of a victim impact statement coded as a DSDP would be,

At one point during the graphic description of how his daughter lost her life, Perkin’s father bowed his head into a small towel (N.O. man guilty in two murders – Victims kidnapped, held for ransom”, 2010)

7.3: INTER-CODER RELIABILITY

After all coding was complete, the services of an anthropology student with experience coding and qualitative research were enlisted for the purposes of doing an inter-coder reliability test. Since each statement was assigned its own number the anthropology student was able to use

Random.org to randomly select 10% of the articles. The student then performed the same content analysis for source, DSGVO, DSDP, DSDI and DSL on that 10%.

Comparing our individual findings on those statements, we coded the same for source at a rate of 70.3%, for DSGVO we coded the same at a rate of 79.0%, for DSDP we coded the same at a rate of 73.2%, for DSDI we coded the same at a rate of 86.2% and for DSL we coded the same at a rate of 89.9%. It is important to consider the subjective nature the variables we coded for and that this researcher had a far greater familiarity than the other coder.

CHAPTER 8. RESULTS

The researcher coded a total of 1,356 statements comprising 62 articles. Case 1 was by far the largest, with 44 articles containing 982 coded statements. There were 10 articles written about case 2, with 180 statements, and 8 articles written about case 3 containing 194 statements that were coded.

Table 1: Number of articles and statements in each article

	Case 1	Case 2	Case 3	Total
Article	44	10	8	62
Statement	982	180	194	1356

8.1: RESEARCH OBJECTIVE 1

Similar to Haney and Greene’s study (2004), law enforcement, prosecution and prosecutorial witnesses were more often sourced for the articles content (research objective 1).

Table 2: The frequency (and percentage) of statements that were attributed to a source for all three cases.

Source	All 3 Cases
Total Statements	837
Law Enforcement	205 (24.5%)
Prosecution	127 (15.2%)
Prosecution Witnesses	218 (26.0%)
Total LE, P, PW	550 (65.7%)
Defendant	82 (9.9%)
Defense Attorney	98 (11.7%)
Defense Witness	20 (2.4%)
Total D, DA, DW	200 (23.9%)
Judge	85 (10.1%)

Overall, the researcher was able to attribute 837 statements to a source. Of the statements attributed to a source, law enforcement was cited 205 times (24.5%), prosecution was cited 127 times (15.2%), and prosecutorial witnesses were cited 218 times (27.4%). Sources that essentially comprise the state’s case were cited a total of 550 times, representing 65.7% of all sources cited.

The remaining sources comprise what essentially makes up the defense’s case. Of the 837 statements coded, 82 statements (9.9%) were attributed to the defendant, 98 statements (11.7%) were attributed to the defense attorneys, and 20 statements (2.4%) were attributed to the defense witnesses. While 65.7 % of the statements that could be attributed to a source were associated with the state, only 23.9% of the statements that could be attributed to a source were associated with the defense. (See appendix D for a table of source attributions by case.)

8.2 RESEARCH OBJECTIVE 2

As discussed above, statements coded as DSGV (details used to seek a guilt verdict) included any statements that contained details of the crime the defendant was charged with and any statement that included details that are used by the prosecution to call into question the innocence of the defendant. An example of a detail calling into question the innocence of a defendant would be the prosecution bringing up prior arrests and convictions with the purpose of attacking the credibility of the defendant.

Below is a table of the frequencies of details used by the prosecution seeking a guilty verdict (DSGV) and details used by the prosecution to seek the death penalty (DSDP) by source citation for all three cases.

Table 3: The frequency of DSGV and DSDP by source (and overall percentage of that source’s statements) for all three cases.

Source	Total	
	DSGV	DSDP
Law Enf.	169 (82.4%)	151 (73.7%)
Prosecution	91 (71.7%)	102 (80.3%)
Pros. Wit.	135 (61.9%)	186 (85.3%)
Ttl LE, P, PW	395 (71.8%)	439 (79.8%)
Defendant	8 (9.8%)	19 (23.2%)
Def. Atty.	2 (2.0%)	3 (3.1%)
Def. Wit.	2 (10%)	4 (20%)
Ttl D, DA, DW	12 (6%)	26 (13%)
Judge	8 (9.4%)	13

As shown by table 3, 169 (82.4%) of the 205 statements attributed to law enforcement contained DSGVs. 91 (71.7%) of the 127 statements attributed to prosecutors contained DSGVs. Of the 218 statements attributed to prosecutorial witnesses, 135 (61.9%) contained DSGVs. Of all the statements made by these three sources, 71.9% contained details used by the prosecution to seek a guilty verdict.

Only 8 times, 9.8% of the 82 statements attributed to a defendant, was a statement coded as containing DSGV. Only 2 (2%) times was a statement made by a defense attorney coded as a DSGV and only 2 (10%) times was a statement made by a defense witness coded as a DSGV. Of all the statements attributed to these three sources, only 12% were coded as having a DSGV.

As discussed above, DSDPs include aggravating circumstances, victim impact statements and; essentially all the details that would be used by the prosecution to convince the jury the death penalty is the appropriate sentence for the crime the defendant allegedly committed.

As shown by Table 4, 151 of the 205 times (73.7%) a law enforcement officer was cited as a source, the statement contained a DSDP. 102 of the 127 times (80.3%) a prosecutor was cited as a source, the statement contained a DSDP. 186 of the 218 times (85.3%) a prosecutorial witness was cited as a source, the statement contained a DSDP. Of all the statements attributed to these three sources, 79.8% contained a detail used by prosecution to seek a death penalty.

Of the 82 statements made by a defendant, 19 (23.2%) contained DSDPs. Of the 98 statements made by defense attorneys, 3 (3.1%) contained DSDPs. Of the 20 statements attributed to defense witnesses, 4 (20%). Combining these three sources resulted in 26 statements that contained DSDPs for a total of 13% of all statements made by defendants, defense attorneys and defense witnesses. (See appendix E for a table of DSGV and DSDP by source for each individual case.)

Below is a table of the frequencies of details suggesting the defendant is innocent (DSDI) and details used by the defense arguing that life without chance of parole is adequate for the defendant's crime if he is found guilty of first degree murder (DSL).

Table 4: The frequency of DSDI and DSLWOP by source (and overall percentage of that source's statements) by case.

Source	Total	
	DSDI	DSL
Law Enf.	1 (0.4%)	2 (0.9%)
Prosecution	1 (0.7%)	2 (1.6%)
Pros. Wit.	7 (3.2%)	1 (0.5%)
Ttl LE, P, PW	9 (1.6%)	4 (0.7%)
Defendant	58 (70.7%)	17 (20.7%)
Def. Atty.	69 (70.4%)	5 (5.1%)
Def. Wit.	14 (70.0%)	0 (0%)
Ttl D, DA, DW	141 (70.5%)	22 (11%)
Judge	1 (1.2%)	1 (1.2%)

As shown by Table 4, only once did a member of law enforcement make a statement that contained a detail suggesting that the defendant might be innocent of these crimes; less than one percent of the statements made by law enforcement. Likewise, only once did a prosecutor make a statement that contained a detail suggesting the defendant might be innocent of the crime (DSDI); also less than one percent of total statements by the prosecution. Only slightly more at 7 times, did a prosecutorial witness make a statement that could be considered to contain a DSDI; still only 3.2% of prosecutorial witnesses' total statements. Totaling these three cases together revealed that only 1.6% of all statements made by law enforcement, prosecutors and prosecutorial witnesses contained details that suggested the defendant might be innocent.

Of the 78 statements made by the defendant, 58 (70.7%) contained DSDIs. Of the 98 statements made by defense attorneys, 69 (70.4%) contained DSDIs. Of the 20 statements made by defense witnesses, 14 contained DSDIs. The total for this group is 141 statements containing DSDIs; 70.5% of all statements made by defendants, defense attorneys and defense witnesses.

As discussed above, DSL contains all mitigating circumstances (including mental retardation) outlined by the Louisiana code of Criminal Procedure. Mitigating circumstances comprise details that essentially make up the defendant’s psychosocial history and include challenges in access to education, mental health disorders, struggles with drug addictions, environmental stressors, lack of primary supports, etc. (ABA Guidelines).

As shown by Table 4, of the 205 times law enforcement was cited, only twice (0.9%) did a statement contain a DSL. Of the 127 times a prosecutor was cited, only twice (1.6%) did a statement contain a DSL. Of the 218 times a prosecutorial witness was cited, only once (0.5%) was did a statement contain a DSL.

Defendants made just 17 statements that contained DSLs; 20.7% of their total statements. Of the 98 statements attributed to defense attorneys, only 5 (5.1%) contained DSLs. Of the 20 statements attributed to defense witnesses, none contained a DSL. The total percentage of statements for these three sources that contained a DSL was 11%.

8.3: RESEARCH OBJECTIVE 3

Below is a table of the frequencies of DSGV, DSDP, DSDI and DSL for all statements examined; regardless of whether or not the researcher was able to attribute a source.

Table5: Frequencies (and percentages) of Details Suggesting Death Penalty, Details Suggesting Defendant’s Innocence and Details Suggesting Life Without Parole for all three cases

	Total
Total Statements	1356
DSDG	532 (39.2%)
DSDP	588 (43.4%)
DSDI	189 (13.9%)
DSL	63 (4.6%)

As shown by table 5, of the 1356 statements examined by the researcher, 532 (39.2%) contained details used by the prosecution to seek a guilty verdict and 588 (43.4%) contained details used by the prosecution to seek the death penalty.

Only 189 of the 1356 statements (13.9%) contained details suggesting the defendant might be innocent and only 63 (4.6%) of the statements contained details that are used by defense attorneys in convincing juries that life in prison without parole is an adequate penalty for the defendant's crime.

Overall, the newspapers reported DSGVs to DSDIs at a ratio of almost 3 to 1. Overall, the newspapers reported DSDPs to DSLs at a ratio of over 9 to 1.

CHAPTER 9. DISCUSSION

As stated before, this researcher became acquainted with these three cases by filling different roles on the defendants' capital defense teams. For one of the cases, the researcher observed the case in court for nearly the entirety of two trials; one mistrial and one trial ending in a verdict of second degree murder. Throughout the trial, the researcher would closely follow the Times-Picayune's coverage of the proceedings.

Often times, the researcher felt that articles in the Times-Picayune seemed to favor the prosecution's case; leaving out large portions of the defense's case. Not knowing if this was due to the researcher's role on the defense team making him especially sensitive to the defense's case, or if there was actually a disparity between the court proceedings and what was being reported in the newspaper each day, the researcher decided to review the literature to see if others had the same observations.

Research completed by Butler (2007, 2007a, 2007b, & 2008), Butler and Moran (2002, 2006, 2007, & 2007a), Butler and Wasserman (2006), and Sargent (2004), highlighted to this researcher the possibility of the profound impact such suspected unbalanced coverage might have on trial.

Finding Haney and Greene's (2004) study on this very subject allowed the researcher to conduct his own study into the local newspaper coverage of these three capital indictments. While modifications to Haney and Greene's (2004) study had to be made, this researcher still discovered many similarities.

As was found by Haney and Greene (2004), the newspaper articles examined by this study placed more emphasis on reporting information attributed to law enforcement, prosecutors and prosecutorial law witnesses. It was also found that these individuals placed more emphasis

on making statements about why the defendant is guilty of the crime and why the defendant should be put to death for the crime. This researcher also found that, as a whole, the newspaper's coverage of these three cases place more emphasis on reporting details suggesting the defendant was guilty and should be put to death than details suggesting the defendant might be innocent or that life without parole is an adequate sentence for his alleged crime.

Similar to Haney and Green (2004) this researcher couldn't help but notice that early on in the cases, when the incidents occurred, statements attributed to law enforcement were presented as undisputed facts. This carried over into how statements by the prosecution and prosecutorial witness were also treated. Not until the presentation of the defense's case were any of the details called into question. For most of the articles, law enforcement carried a great deal of credibility and aside from one of the accused saying "I didn't do it", there were almost no statements reported that conflicted law enforcement's or the prosecutor's claims that the defendants committed the crimes.

9.1: THE "GAG ORDER"

While Haney and Greene's design (2004) coded for stage of trial, this researcher only made the determination of whether or not there was a jury sequestered when the statement was reported. The purpose of this was to help the researcher better organize his data for coding. However, while determining whether or not a jury was sequestered, this researcher discovered something very noteworthy.

For one of the cases, the judge felt that it was necessary to issue what the press referred to as a "gag order". This order forbade all parties, from attorneys to witnesses, from speaking with the press. The judge issued this order out of concern that the jury pool was possibly being tainted

by all of the press and the risk this caused to the defendant's right to a fair trial. This judge had previously suspended jury selection due to the same fear.

This researcher realized, however, that there was a possibility that the judge's efforts may have been misguided. Issuing an order that both sides refrain from talking to the press effectively silenced the defense's ability to engage with the press and inform them of the strengths of their client's case. Also, it is important to consider that the story already out there, the story that begun the night of the incident, already emphasized the prosecution case in a way that made it appear very strong. It was as if, that without new information on the case, the newspaper kept running the same information over and over; information that was collected primarily from law enforcement, prosecutors and prosecutorial law witnesses.

CHAPTER 10. CONCLUSION

The results of this study highlight the need for further investigation into how newspapers report on crimes that result in charges of capital murder; particularly in one-newspaper-dominated cities like New Orleans.

New Orleans, still dealing with the aftermath of Hurricane Katrina, faces many challenges. Much of the city's residents live below the poverty line and struggle accessing education, social support and opportunities. Like the rest of the country, New Orleans, dependent on tourism, was greatly impacted by the economic downturn. Always struggling with violent crime and drug activity, the city is on track to have one of its most violent years on record (as of the writing of this paper in March of 2011, the murder rate was already near 50 deaths).

In attempting to make sense of all the crime in their city, residents often turn to the local news media for answers. However, what they are reading about the most violent of the city's crimes emphasize only *how* the crimes were committed and never *why* the crime were committed. Like the prosecution, the news media emphasizes the individualism of the crime. (i.e., that the defendant, on his own, committed the act). Escaping examinations, and culpability, are all of the institutions that failed the defendant on his way to becoming charged with a capital crime.

Once charged, the newspaper gives the defendant the same treatment that the prosecution gives him during trial. The defendant alone faces the trial and, if found guilty of the charge, faces the death penalty.

It is the job then of the defense attorneys to convince the jury that the defendant, if he is found guilty, did not stand alone in committing the crime. In fact, the attorney must argue, there

are many factors such as poverty, mental health disorders, drug addictions, and lack of education that played important roles in the defendant being charged with a capital crime.

In his article examining the bifurcation of the capital trial process, Cheng (2010) describes a concept that he calls *frontloading* mitigation. Cheng said that the goal of the team's mitigation specialists and investigators is to gather mitigating evidence, or biopsychosocial historical information on the defendant, to present to the attorneys so they can "frontload" it into the first phase of trial.

Cheng recognized that the prosecution, from the very start of trial, began a process of dehumanizing the defendant; introducing the criminal history of the client, emphasizing the heinousness of the crime, etc. Cheng said that because of this it is necessary for defense teams to begin the process of humanizing their client from the very start of the trial.

After reading Haney and Greene's study (2004) and conducting his own examination of how the local news media covers capital crimes, this researcher believes that it is necessary to begin the re-humanizing process as soon after the defendants arrest as possible. This is because, as shown by Haney and Greene's (2004) findings and the findings above, the local news media begins to dehumanize the defendant from the very first article they print on the story.

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APPENDIX A
ART. 905.4 OF THE LOUISIANA CODE OF CRIMINAL PROCEDURE:
AGGRAVATING CIRCUMSTANCES

A. The following shall be considered aggravating circumstances:

- (1) The offender was engaged in the perpetration or attempted perpetration of aggravated rape, forcible rape, aggravated kidnapping, second degree kidnapping, aggravated burglary, aggravated arson, aggravated escape, assault by drive-by shooting, armed robbery, first degree robbery, second degree robbery, simple robbery, cruelty to juveniles, second degree cruelty to juveniles, or terrorism.
- (2) The victim was a fireman or peace officer engaged in his lawful duties.
- (3) The offender has been previously convicted of an unrelated murder, aggravated rape, aggravated burglary, aggravated arson, aggravated escape, armed robbery, or aggravated kidnapping.
- (4) The offender knowingly created a risk of death or great bodily harm to more than one person.
- (5) The offender offered or has been offered or has given or received anything of value for the commission of the offense.
- (6) The offender at the time of the commission of the offense was imprisoned after sentence for the commission of an unrelated forcible felony.
- (7) The offense was committed in an especially heinous, atrocious or cruel manner.
- (8) The victim was a witness in a prosecution against the defendant, gave material assistance to the state in any investigation or prosecution of the defendant, or was an eye witness to a crime alleged to have been committed by the defendant or possessed other material evidence against the defendant.
- (9) The victim was a correctional officer or any employee of the Department of Public Safety and Corrections who, in the normal course of his employment was required to come in close contact with persons incarcerated in a state prison facility, and the victim was engaged in his lawful duties at the time of the offense.
- (10) The victim was under the age of twelve years or sixty-five years of age or older.
- (11) The offender was engaged in the distribution, exchange, sale, or purchase, or any attempt thereof, of a controlled dangerous substance listed in Schedule I, II, III, IV, or V of the Uniform Controlled Dangerous Substances Law.
- (12) The offender was engaged in the activities prohibited by R.S. 14:107.1(C) (1).

(R.S. 14:107.1 C. (1) No person shall commit ritualistic mutilation, dismemberment, or torture of a human as part of a ceremony, rite, initiation, observance, performance, or practice.)
- (13) The offender has knowingly killed two or more persons in a series of separate incidents.

B. For the purposes of Paragraph A(2) herein, the term "peace officer" is defined to include any

constable, marshal, deputy marshal, sheriff, deputy sheriff, local or state policeman, commissioned wildlife enforcement agent, federal law enforcement officer, jail or prison guard, parole officer, probation officer, judge, attorney general, assistant attorney general, attorney general's investigator, district attorney, assistant district attorney, or district attorney's investigator.

APPENDIX B
ART. 905.5 OF THE LOUISIANA CODE OF CRIMINAL PROCEDURE:
MITIGATING CIRCUMSTANCES

The following shall be considered mitigating circumstances:

- (a) The offender has no significant prior history of criminal activity;
- (b) The offense was committed while the offender was under the influence of extreme mental or emotional disturbance;
- (c) The offense was committed while the offender was under the influence or under the domination of another person;
- (d) The offense was committed under circumstances which the offender reasonably believed to provide a moral justification or extenuation for his conduct;
- (e) At the time of the offense the capacity of the offender to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication;
- (f) The youth of the offender at the time of the offense;
- (g) The offender was a principal whose participation was relatively minor;
- (h) Any other relevant mitigating circumstance.

APPENDIX C
ART. 905.5.1 OF THE CODE OF CRIMINAL PROCEDURE:
MENTAL RETARDATION

- A. Notwithstanding any other provisions of law to the contrary, no person who is mentally retarded shall be subjected to a sentence of death.
- B. Any capital defendant who claims to be mentally retarded shall file written notice thereof within the time period for filing of pretrial motions as provided by Code of Criminal Procedure Article 521.
- C. (1) Any defendant in a capital case making a claim of mental retardation shall prove the allegation by a preponderance of the evidence. The jury shall try the issue of mental retardation of a capital defendant during the capital sentencing hearing unless the state and the defendant agree that the issue is to be tried by the judge. If the state and the defendant agree, the issue of mental retardation of a capital defendant may be tried prior to trial by the judge alone.
- (2) Any pretrial determination by the judge that a defendant is not mentally retarded shall not preclude the defendant from raising the issue at the penalty phase, nor shall it preclude any instruction to the jury pursuant to this Section.
- D. Once the issue of mental retardation is raised by the defendant, and upon written motion of the district attorney, the defendant shall provide the state, within time limits set by the court, any and all medical, correctional, educational, and military records, raw data, tests, test scores, notes, behavioral observations, reports, evaluations, and any other information of any kind reviewed by any defense expert in forming the basis of his opinion that the defendant is mentally retarded.
- E. By filing a notice relative to a claim of mental retardation under this Article, the defendant waives all claims of confidentiality and privilege to, and is deemed to have consented to the release of, any and all medical, correctional, educational, and military records, raw data, tests, test scores, notes, behavioral observations, reports, evaluations, expert opinions, and any other such information of any kind or other records relevant or necessary to an examination or determination under this Article.
- F. When a defendant makes a claim of mental retardation under this Article, the state shall have the right to an independent psychological and psychiatric examination of the defendant. A psychologist or medical psychologist conducting such examination must be licensed by the Louisiana State Board of Examiners of Psychologists or the Louisiana State Board of Medical Examiners, whichever is applicable. If the state exercises this right, and upon written motion of the defendant, the state shall provide the defendant, within time limits set by the court, any and all medical, correctional, educational, and military records, and all raw data, tests, test scores, notes, behavioral observations, reports, evaluations, and any other information of any kind reviewed by any state expert in forming the basis of his opinion that the defendant is not mentally retarded. If the state fails to comply with any such order, the court may impose sanctions as provided by Article 729.5.
- G. If the defendant making a claim of mental retardation fails to comply with any order issued pursuant to Paragraph D of this Article, or refuses to submit to or fully cooperate in any examination by experts for the state pursuant to either Paragraph D or F of this Article, upon motion by the district attorney, the court shall neither conduct a pretrial hearing concerning the issue of mental retardation nor instruct the jury of the prohibition of executing mentally retarded defendants.
- H.(1) "Mental retardation" means a disability characterized by significant limitations in both intellectual functioning and adaptive behavior as expressed in conceptual, social, and practical adaptive skills. The onset must occur before the age of eighteen years.

(2) A diagnosis of one or more of the following conditions does not necessarily constitute mental retardation:

- (a) Autism.
- (b) Behavioral disorders.
- (c) Cerebral palsy and other motor deficits.
- (d) Difficulty in adjusting to school.
- (e) Emotional disturbance.
- (f) Emotional stress in home or school.
- (g) Environmental, cultural, or economic disadvantage.
- (h) Epilepsy and other seizure disorders.
- (i) Lack of educational opportunities.
- (j) Learning disabilities.
- (k) Mental illness.
- (l) Neurological disorders.
- (m) Organic brain damage occurring after age eighteen.
- (n) Other handicapping conditions.
- (o) Personality disorders.
- (p) Sensory impairments.
- (q) Speech and language disorders.
- (r) A temporary crisis situation.
- (s) Traumatic brain damage occurring after age eighteen.

APPENDIX D
TABLE 6:
FREQUENCY (AND PERCENTAGE) OF STATEMENTS
THAT WERE ATTRIBUTED TO A SOURCE BY CASE

Source	Case 1	Case 2	Case 3
Total Statements	562	114	161
Law Enforcement	64 (11.4%)	47 (41.2%)	94 (58.4%)
Prosecution	85 (15.1%)	8 (6.9%)	34 (21.1%)
Prosecution Witnesses	154 (27.4%)	36 (31.0%)	28 (17.4%)
Total LE, P, PW	303 (53.9%)	91 (78.4%)	156 (96.9%)
Defendant	78 (13.9%)	4 (3.4%)	0 (0%)
Defense Attorney	98 (17.4%)	0 (0%)	0 (0%)
Defense Witness	16 (2.8%)	4 (3.4%)	0 (0%)
Total D, DA, DW	192 (34.1%)	8 (6.9%)	0 (0%)
Judge	65 (11.6%)	15 (12.9%)	5 (3.1%)

APPENDIX E
TABLE 7:
THE FREQUENCY OF DSGVs AND DSDPs BY SOURCE
(AND OVERALL PERCENTAGE OF THE SOPURCE'S STATEMENTS)
BY CASE

Source	Case 1		Case 2		Case 3	
	DSGV	DSDP	DSGV	DSDP	DSGV	DSDP
Law Enf.	58 (90.6%)	52 (81.3%)	42 (89.3)	41 (87.2%)	69 (73.4%)	58 (61.7%)
Prosecution	53 (62.4%)	67 (78.8%)	6 (75%)	5 (62.5%)	32 (94.1%)	30 (88.2%)
Pros. Wit.	101 (65.6%)	130 (84.4%)	29 (80.6%)	29 (80.6%)	5 (17.9%)	27 (96.4%)
Ttl LE, P, PW	212 (70%)	249 (82.2%)	77 (84.6%)	75 (82.4%)	106 (67.9%)	115 (73.7%)
Defendant	7 (9%)	19 (24.4%)	1 (25%)	0 (0%)	0 (0%)	0 (0%)
Def. Atty.	2 (2.0%)	3 (3.1%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Def. Wit.	2 (12.5%)	2 (12.5%)	0 (0%)	2 (50%)	0 (0%)	0 (0%)
Ttl D, DA, DW	11 (5.7)	24 (12.5%)	1 (12.5%)	2 (25%)	0 (0%)	0 (0%)
Judge	1 (1.5%)	2	4 (26.7%)	3	3 (60%)	3

APPENDIX F
TABLE 8:
THE FREQUENCY OF DSDIs AND DSLs BY SOURCE
(AND OVERALL PERCENTAGE OF THAT SOURCE'S STATEMENTS)
BY CASE

Source	Case 1		Case 2		Case 3	
	DSDI	DSL	DSDI	DSL	DSDI	DSL
Law Enf.	0 (0%)	1 (1.6%)	1 (2.1%)	1 (2.1%)	0 (0%)	0 (0%)
Prosecution	1 (1.2%)	2 (2.4%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Pros. Wit.	1 (0.6%)	1 (0.6%)	6 (.75%)	0 (0%)	0 (0%)	0 (0%)
Ttl LE, P, PW	2 (0.6%)	4 (1.3%)	7 (7.7%)	1 (1.1%)	0 (0%)	0 (0%)
Defendant	55 (70.5%)	17 (21.8%)	3 (75%)	0 (0%)	0 (0%)	0 (0%)
Def. Atty.	69 (70.4%)	5 (5.1%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Def. Wit.	11 (68.75%)	0 (0%)	3 (75%)	0 (0%)	0 (0%)	0 (0%)
Ttl D, DA, DW	135 (70.3%)	22 (11.5%)	6 (75%)	0 (0%)	0 (0%)	0 (0%)
Judge	1 (12.5%)	0 (0%)	0 (0%)	1 (0%)	0 (0%)	0 (0%)

VITA

Sean Muggivan, a lifelong resident of the Greater New Orleans area, graduated from the University of New Orleans with a Bachelor of Arts in English. As of the writing of this manuscript, Sean Muggivan has worked on three capital defense teams; once as an assistant to the team's mitigation specialist and twice as the team's mitigation investigator.

Upon graduating from Louisiana State University with a Masters in social work, Sean Muggivan plans to continue working on capital defense teams and conduct further studies emphasizing the importance of conducting thorough bio-psychosocial histories and proper presentation of the case to a jury with unique attributes.