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**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH**

STATE OF IDAHO

Plaintiff,

V.

BRYAN C. KOHBERGER,

Defendant.

CASE NUMBER CR29-22-2805

**MEMORANDUM IN SUPPORT OF
OBJECTION TO THE STATE'S
MOTION FOR ORDER PROHIBITING
CONTACT WITH PROSPECTIVE
JURORS ABSENT LEAVE OF COURT**

COMES NOW, Bryan C. Kohberger, by and through his attorney of record, Anne C. Taylor, Public Defender, and hereby submits this Memorandum in Support of Objection to the State's Motion for Order Prohibiting Contact with Prospective Jurors Absent Leave of the Court.

Telephonic surveys to explore the media stories the juror population has been exposed to is not a violation of this Court's Revised Order issued June 23, 2023.

The State has alleged that the Defense has violated this Court's Revised Order. Specifically, the State alleges the Defense has violated the prohibition on discussing:

[t]he identity or nature of evidence expected to be presented at trial or any sentencing phase of the proceedings." Order, pp.1-2. The Order also prohibits the disclosure of "[a]ny information a lawyer knows or reasonably should know is likely to be inadmissible evidence in trial, and that would, if disclosed, create a substantial risk of prejudicing an impartial trial." Order, p.2.

The Defense is aware of these prohibitions, after all, the Defense wrote the original order upon which it is based. The State, however, misunderstands the prohibition in this respect. The Defense is not "disclosing" information. The Defense is asking prospective jurors in the county of Latah as to what information they are aware of that was previously "disclosed" vis-à-vis the press. Further, the Revised Order for Non-Dissemination allows for Counsel to ask questions of the public to do its work. That is exactly what happened.

Mr. Kohberger in his preparation for his Change of Venue hearing is mindful of what the Court must consider and the available means to obtain information for his evidentiary hearing. Idaho Criminal Rule 21 (ICR 21) and relevant case law guide the factors a court must consider in a motion to change venue. The State's motion and the Court's order intrudes on one of the ways the Defense will seek to establish prejudice pursuant to ICR 21(a). *State v. Hadden*, 152 Idaho 371, Ct. of Appeals (2012) outlines relevant factors a court must consider when taking up a change of venue motion prior to attempting to seat a jury: extensive publicity, accuracy of publicity, and the size of the community from which a jury would be drawn. The *Hadden* court, in referencing the size of the county as being small said, "[h]owever, this fact alone does not require the presumption of prejudice, nor would such a rule be practicable given the relatively rural nature of many of Idaho's counties." *Id.* at 386. The *Hadden* court also said a party challenging venue must bring "more" than the size of the community. Certainly pervasive media coverage, that continues to this day, is a factor and will be discussed in a later filing; the focus here is on critical survey work obtaining information to support the change of venue motion by establishing the "more" in addition to size of community; this important work will establish the reasonable probability of prejudice.

To provide that “**more**”, the defense hired Dr. Bryan Edelman, owner of Trial Innovations. Dr. Edelman is an experienced doctor of social psychology with additional educational achievement and experience in statistical surveys. It likely will help to understand how surveys are done in cases such as this. The survey, to be valid, must be done by a random selection of contacts. The number of surveys are small but enough to see trends that are attributed to a larger population. *See* Declaration of Dr. Edelman attached as Exhibit A. The questions in the survey seek limited but important information. To qualify the surveyor first asks if the person reached is an adult Latah County resident; then the survey continues with opinion, exposure and connection to the case questions. Dr. Edelman, after extensive research of the media coverage in this case and with approval of Counsel, designed the media influence questions around statements that have been in the media.

As counsel for the State wrote in their motion, many of the media influence questions are NOT factually correct. That is exactly the point. That is what the *Hadden* Court said in relation to extensive media coverage; non-factual media dissemination is more harmful. It would be of little use to this Court to know that there was a deluge of unobjectionable media coverage. The only way for this Court to have a way of understanding what the parties would face with a juror from Latah County is to know what they are being exposed to. As Dr. Edelman can testify, that is the sort of work parties do in these cases. It may be new to some in Latah County, but it is still the industry standard, professional, and ethical way to do this work.

There is no realistic possibility that this will affect the jury selection in Latah County. The problems with this county are not of the Defense’s making. They are what the Defense wishes to expose for this Court.

CONCLUSION

The State’s Motion is filed against the backdrop of Mr. Kohberger preparing for his Motion to Change Venue. The State objected to the Court scheduling a change of venue hearing

and now, through this motion, is thwarting the Defense preparation for the motion. The State knows Counsel for Mr. Koberger did not violate the Revised Non-Dissemination Order; the State and Counsel met the day before the State filed its motion and discussed the content of the survey and received the curriculum vitae for the expert hired by the defense. The State was informed that these types of surveys are not an anomaly. However, the State filed its motion anyway. The State's motion should be denied, and the order prohibiting future contact with prospective jurors should be withdrawn.

DATED this 26 day of March, 2024.

ANNE C. TAYLOR, PUBLIC DEFENDER
KOOTENAI COUNTY PUBLIC DEFENDER



BY: _____

ANNE TAYLOR
PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the 26 day of March, 2024 addressed to:

Latah County Prosecuting Attorney –via Email: paservice@latahcountyid.gov

Elisa Massoth – via Email: legalassistant@kmrs.net



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 20 years and have conducted pretrial and post-trial research on both criminal and civil cases across the country. I have been retained as an expert in over 70 high profile cases to assess the impact of pretrial publicity on the fairness of the trial proceedings including the *State of Idaho v. Jonathan Renfro*, *State of Idaho v. Gilberto Rodriguez*, *State of Colorado v. James Holmes*, *United States v. Robert Bowers*, *State of Florida v. Nikolas Cruz*, and *United States v. David DePape*.

Counsel for the defendant in *State of Idaho v. Brian Kohberger* retained me to research and evaluate: (1) whether there was extensive and prejudicial pretrial publicity surrounding the killing of four students attending the University of Idaho in Moscow, the community panic that ensued, and the search for a suspect which ended with Brian Kohberger’s arrest; (2) determine if the media coverage has impacted the defendant’s ability to obtain a fair and impartial jury in Latah County; (3) whether community residents in alternate venues exhibited similar bias; and (4) based on the findings, recommend appropriate remedial measures—for example, a change of venue—to protect Mr. Kohberger’s ability to be tried by a fair and impartial jury. As part of my analysis, I evaluated relevant newsprint, television, and social media coverage surrounding these events and conducted a community attitude survey of 400 residents in Latah County. Comparison surveys in alternative venues have yet to be completed. These surveys were designed to assess case recognition, familiarity with prejudicial media content, and bias.

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 other 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 co-founded 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, Saint Mary's College, 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, Florida, Massachusetts, Nevada, Pennsylvania, Tennessee, West Virginia, and Washington in state and federal court. 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 documenting the impact of attitudes on information processing. Attitudes have been shown to have an impact on selective attention, the evaluation of new information, memory recall, and behavior. This research provides insight into how media coverage may lead to juror bias.

Pretrial publicity can have a prejudicial effect on jurors through its impact on the formation of attitudes and beliefs that they bring into the courtroom. Attitudes are not isolated entities but are often linked to other memories, experiences, attitudes, and beliefs. These links can create large networks of attitudes, which are resistant to change. The links between attitudes strengthen with repeated activation. As these links strengthen, the probability increases that the attitudes and underlying beliefs will be consistent with one another and brought to awareness simultaneously.

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.

Attitudes that are strongly linked to one another are more easily accessible in memory and more likely to be automatically activated with exposure to the attitude object. Attitudes can be activated automatically without any conscious, intentional processing. This is more likely to occur when an attitude has been repeatedly activated in the past.³

When media coverage surrounding a case is broad, extensive, and redundant, strong links between relevant attitudes and beliefs begin to form. If the pretrial publicity creates links between case details, attitudes, and beliefs over the course of a trial, these attitudes are likely to be automatically activated at a subconscious level. As described below, 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 and strengthens, specific attitudes become resistant to change because change requires revisions to other attitudes and beliefs within the network. 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 those attitudes over arguments that may disprove them. The acceptance of a counterargument can create 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 preexisting attitudes and suppress those that run counter to such attitudes.

In sum, when a venue is exposed to prejudicial media coverage surrounding a crime, there is a risk that potential jurors will develop a large network of linked attitudes and beliefs relating to the victim, the defendant, and the crime. These linked attitudes include opinions about the guilt of

³ Eagley, A.H., & Chaiken, S. (1993). *The psychology of attitudes*. Florida: Harcourt Brace College Publishers.

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.

the defendant, appropriate sentence and evaluations of the evidence presented through the media. When the links between attitudes are strong, they can be activated at a subconscious level and have an impact on jurors' evaluation of the evidence and arguments presented at trial.

Attitudinally supporting arguments will be more 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. When a venue has been saturated with pretrial publicity, these psychological processes can put the defendant at a significant disadvantage, 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, because the rules of evidence that are strictly enforced at trial do not apply. As such, the persuasive impact of information presented through the news media becomes more significant and engrained in the juror's mind than the evidence presented at trial.

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 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. ^L_{SEP}

Steblay, 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

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

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.

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.

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.

IV. TELEPHONE SURVEY

A telephone survey of 400 residents was conducted in Latah County. The sample size of 400 was calculated via a power analysis to reach an industry-standard 95% confidence interval of + or – 5% using the most conservative response distribution (50%). Comparison surveys were planned in two alternative counties to assess if any potential bias found in Latah County carried over to the rest of the State.

The survey instrument used in this case adheres to industry standards established by the American Association of Public Opinion Research (AAPOR) and the change of venue survey professional code established by the American Society of Trial Consultants (ASTC).¹⁵ The survey instrument, topics of focus, and questions were constructed after reading more than 269 articles that reference the murders in the *Moscow-Pullman Daily News*, *The Idaho Argonaut*, and the *Spokesman-Review*. Steps were taken regarding the structure and flow of the instrument and design of the questions to mitigate potential threats to internal validity including response bias and order effects.

All of the questions in the survey instrument—including the media recognition items¹⁶ criticized by the government—were carefully selected based on how pervasive each item was in the coverage. None of the media recognition items included any information that was not widely reported and available in the public domain. The rest of the survey instrument focused on

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.

¹⁵ASTC Professional Code, available at:

<https://www.astcweb.org/resources/Documents/ASTC%20Professional%20Code%20Updated%202021.pdf>.

¹⁶ For example, have you read, seen, or heard if Brian Kohberger was arrested at his parent’s home in Pennsylvania?

respondent's opinions of the defendant, prejudgment, and experiences during the search for a suspect. The survey measured resident's exposure to media coverage, the extent of their case knowledge, and their opinions regarding the case.

The survey was conducted by Research Strategies, Inc., a consumer, public opinion, and business-to-business market research firm for thirty-six (36) years. Their data has been used in 49 Districts, Federal District Courts, and the U.S. Department of Justice. They programmed the screener and the survey into Research Strategies, Inc.'s proprietary computer program "Research Express." Patricia Rhinehart, Vice President, led, trained, and instructed for this telephone polling project. Research Strategies, Inc.'s Research Express program was thoroughly tested prior to the implementation of the survey. Research Strategies' Inc.'s in-house Telephone Operations Center is manned with, experienced, professionally trained researchers familiar with conducting change of venue studies. These researchers are specifically selected for their demeanor and speaking ability and have a combined average of 9.6 years with Research Strategies, Inc. With a mean age of 52.5 years, Research Strategies, Inc. restricts the minimum age for these researchers to 25 years of age.

Respondents who refused to participate in the survey were not called again. Research Strategies, Inc.'s protocol is continuous on-site monitoring of each telephone researcher that validates a minimum of 5% of each researcher's calls. They follow standard procedures developed by the Marketing Research Association as well as Data Collection guidelines for the Council of American Survey.

To successfully win a change of venue motion, the defendant needs to demonstrate that the media coverage has generated bias in the community that undermines his or her constitutional right to a fair and impartial trial. The standard method for measuring prejudgment and fixed opinions within a venue is a community attitude survey. There is no other accepted scientific method for doing so. By preventing the defendant from completing this survey, the government is impeding his ability to collect the data required to meet his burden. Will the government then criticize the change of venue motion for failing to demonstrate widespread bias and fixed opinions in Latah County?

The survey design methodology I used in this case comports with surveys I have presented in numerous other cases, which other courts have found to be valid and objective when considering the need to change venue. For example, in *California v. Quentin Ray Bealer*, the court granted a change of venue largely based on findings from my telephone survey, which were cited throughout

the decision, stating that: “Dr. Edelman appeared to **use a measured, objective analysis** of the basis for a change of venue.”¹⁷ The *Bealer* court also found me to be “an experienced expert in the area of change of venue.”¹⁸ In *United States v. Sablan*, the court concluded that “the potential for influence creating bias is apparent as reflected in Dr. Edelman’s survey.... Indeed, Dr. Edelman’s survey shows actual bias in more than half the potential jury pool.”¹⁹

The notion that polling 400 community residents (1% of the Latah County population 18 and over) is the cause of potential bias in a county that has been saturated with hundreds of highly prejudicial newspaper articles, television news stories, and social media posts is not credible. Unlike the media, individual residents do not serve as a communication channel for disseminating information across the county. There is no evidence that conducting the survey has had any impact on the master list of prospective jurors or potential venire in this case.

The survey in Latah County has already been completed. It is my opinion—unless the government is willing to concede the point and waive the issue—that it is necessary to complete comparison surveys in alternate venues. This is the only method for demonstrating that there are counties in Idaho that are significantly less biased against the defendant than Latah County.

¹⁷ *State of California v. Quentin Ray Bealer* (2014), NCR86297, Ruling on Defendant’s Motion for Change of Venue, at * 21 (attached as Exhibit A).

¹⁸ *Id.*

¹⁹ *United States v. Joseph Cabrera Sablan* (2014), CR-00259-PMP, Order re Defendant Sablan’s Motion to Transfer Venue, at *3 (attached as Exhibit B).

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 March 25, 2024



Bryan Edelman

APPENDIX A: CURRICULUM VITA

BRYAN EDELMAN, Ph.D.

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, and 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, 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 ombudsman 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 EXPERIENCE²⁰

United States v. Marilyn Mosby (2023). Conducted community attitude survey and content analysis of media coverage. Testified at change of venue hearing. Recommended change of venue.

State of California v. Joseph Maloney (2023). Conducted community attitude survey and content analysis of media coverage. Testified at change of venue hearing. Recommended change of venue.

State of Ohio v. Bennie Adams (2023). Conducted content analysis of media coverage and reviewed jury selection transcripts. Testified at post-conviction hearing.

State of California v. David DePape (2032). Conducted community attitude survey. Recommended change of venue. Testified via declaration.

State of Tennessee v. Lemaricus Davidson (2023). Conducted content analysis of media coverage and reviewed jury selection transcripts. Testified via declaration.

United States v. Aaron Zahn (2022). Conducted community attitude survey. Recommended change of venue.

State of California v. Robert Somerville (2022). Conducted preliminary media analysis. Recommended against moving forward with venue study.

State of California v. Joshua Rodriguez (2022). Conducted preliminary media analysis. Recommended against moving forward with venue study.

State of Tennessee v. Michael Gray (2022). Conducted community attitude survey. Recommended change of venue.

State of West Virginia v. Joshua Phillips (2022). Conducted community attitude survey and testified in change of venue hearing. Recommended change of venue.

²⁰ This is not an exhaustive list and does not include some current cases which are still pending.

State of Colorado v. Barry Morpew (2022). Conducted community attitude survey. Recommended change of venue.

United States v. Robert Bowers (2022). Conducted community attitude survey. Recommended change of venue.

State of Washington v. David Nickels (2021). Conducted community attitude survey. Recommended change of venue.

United States v. James Cloud (2021). Conducted community attitude survey. Recommended change of venue.

State of Florida v. Nikolas Cruz (2021). Analysis of media coverage and testified in closure hearing.

State of Nevada v. James Biela (2021). Conducted post-conviction analysis (media coverage, defense motions, and reviewed jury selection transcripts).

State of Minnesota v. Alex Kueng (2021). Conducted community attitude survey. Pending.

United States v. Robert Bowers (2021). Conducted community attitude survey. Pending.

People v. Nikolas Cruz (2021). Conducted community attitude survey. Testified in closure hearing.

Timaero Ireland Limited v. The Boeing Company (2020). Conducted community attitude survey. Pending.

State of Tennessee v. Andrew Delke (2019). Conducted community attitude survey and content analysis of media coverage. Testified at change of venue hearing. Recommended change of venue.

People v. Diane Anderson (2019). Conducted community attitude survey and content analysis of media coverage. Testified at change of venue hearing. Recommended change of venue.

State of Tennessee v. Nikolaus Johnson (2019). Conducted content analysis of media coverage and reviewed jury selection transcripts. Testified at post-conviction hearing.

People v. Jason Van Dyke (2018). Conducted community attitude survey and content analysis of media coverage. Testified at change of venue hearing. Recommended change of venue.

People v. Brian Cooks (2017). Conducted community attitude survey and content analysis of media coverage. Testified at change of venue hearing. Recommended remedial measures during jury selection [Case settled].

People v. Johnathan Feit (2017). Conducted community attitude survey. Conducted community attitude survey. Conducted community attitude survey and content analysis of media coverage. Testified at change of venue hearing. 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.

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 story 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

Bronson, E. Edelman, B., & Philipsborn, J.T. (2022). Change of Venue. In N. Yuenger (Ed.), *California criminal law procedure and practice*. Oakland: Continuing Education of the Bar.

Gordan, N. & Edelman, B. (2020). Self-Assessments About Fairness in the Robert Durst Case. Presented at the American Psychology Law Society Annual Conference, New Orleans, LA.

Edelman, B. (2018). *Psychology of the Jury*. Presented at the American Board of Trial Advocates MIT Program, Sacramento, CA.

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