RACE TO JUDGMENT: STEREOTYPING MEDIA AND CRIMINAL DEFENDANTS*

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I
INTRODUCTION

The media's coverage of the Duke lacrosse story generated controversy from the very beginning. Early on, criticism came from those who felt that the media mistreated the accuser; later, critics wondered why coverage failed to direct more attention to the weakness of the prosecution's case. And throughout, critics suggested that the media mistreated the accused, rushing to judge them, abandoning the credo of innocent until proven guilty. What happened to these young men was indubitably a travesty of justice, and there are important lessons to be drawn regarding how standard media routines and practices can undermine the presumption of innocence. However, these lessons do not support critiques that trace media derelictions to "liberal bias" or "political correctness."[1] Nor should coverage as a whole be characterized as consistently slanted against the defendants. Just as it was unfair to jump to the conclusion that the prosecutor's emphatic insistence on the defendants' guilt

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1. For examples of such critiques, see generally NADER BAYDOUN & R. STEPHANIE GOOD, A RUSH TO INJUSTICE: HOW POWER, PREJUDICE, RACISM, AND POLITICAL CORRECTNESS OVERSHADOWED TRUTH AND JUSTICE IN THE DUKE LACROSSE RAPE CASE (2007); STUART TAYLOR, JR. & KC JOHNSON, UNTIL PROVEN INNOCENT: POLITICAL CORRECTNESS AND THE SHAMEFUL INJUSTICES OF THE DUKE LACROSSE RAPE CASE (2007). See also Durham-in-Wonderland, The Times: No Harm, No Foul, http://durhamwonderland.blogspot.com/2007/04/times-no-harm-no-foul.html (Apr. 23, 2007, 00:01 EDT), in which KC Johnson makes the following statement that typifies many critics' analyses: "[T]he *Times*' failure in the lacrosse case . . . was attributable to reporters and editors allowing their worldviews to distort the facts." As far as we can tell there is no published book or article that engages in systematic content analysis of media coverage over the entire period of the case. A number of sources provide qualitative analysis of selected media coverage. *See, e.g.*, TAYLOR & JOHNSON, *supra* (focusing mainly on coverage that suggests a bias against the defendants); David J. Leonard, *Innocent Until Proven Innocent*, 31 J. SPORT & SOC. ISSUES 25 (2007) (reaching a different conclusion by focusing on efforts to exonerate and defend the students).

meant they were guilty, so it is wrong to assess the media by relying on unsystematic impressions and inevitably flawed memories filtered through stereotypes of, and generalized dissatisfaction with, U.S. journalism.

To draw the proper lessons from this incident, its coverage is best examined in the larger context of research on media, race, and crime. Thus, this article begins by reviewing the extensive literature in the subfield, highlighting the ways crime news typically reinforces stereotypes of blacks and other nonwhites, particularly Latinos, and contributes to more-generalized racial antagonism. Understood in this context, news of the Duke lacrosse case diverges markedly from typical crime coverage. This is worth bearing in mind when recalling the amount of attention devoted to the injustices suffered by the Duke students[2] relative to the attention given to potential injustices suffered by more-typical defendants.

This article systematically analyzes coverage of the Duke lacrosse case over the year that it received attention in the news. It distinguishes between news reporting and news commentary and between national and local coverage. In analyzing the reporting, it also distinguishes between two phases. The first phase, between March 14 and April 10, 2006, was before the first exonerating DNA evidence became available. The post-DNA period, from April 10, 2006, through April 11, 2007, the date on which the prosecutor announced that all charges were being dropped, constitutes the second phase. The initial DNA information could have clearly marked the unraveling of the case, serving as a signal to reporters to dig deeper, but the weakness of the prosecutor's case was not fully reflected in much of media treatment until well into the post-DNA phase. That is not the whole story, however. The data reveal a more complicated pattern of news coverage that neither continually violated, nor perfectly conformed to, journalistic ideals. News of this case is explained using theories of news slant that emphasize how the skill and incentives of players in a two-sided framing contest—here, criminal defense versus law-enforcement agencies—interact with the incentives, norms, and limitations of the news media. These theories take the analysis far beyond any simplistic, monocausal explanation of media shortcomings in this single instance and toward an understanding of the more general problems posed by normal media behavior for the impartial administration of justice in the United States.

II

JOURNALISTIC ROUTINES, PRETRIAL PUBLICITY, AND THE DUKE LACROSSE CASE

Many of the traits on exhibit in the Duke lacrosse case characterize not only crime news, but news of the policy process generally. These include

2. *See, e.g.*, BAYDOUN, *supra* note 1; TAYLOR & JOHNSON, *supra* note 1; DON YEAGER & MIKE PRESSLER, IT'S NOT ABOUT THE TRUTH: THE UNTOLD STORY OF THE DUKE LACROSSE CASE AND THE LIVES IT SHATTERED (2007).

overreliance on public officials, overuse of standardized story scripts and familiar stereotypes, and "pack journalism"—the tendency of reporters from nominally competitive news organizations to converge on the same framings. In the case of crime coverage, these media routines can facilitate a pro-prosecution slant that appears across news coverage when law-enforcement officials are eager to promote claims of guilt. Perhaps the most important prerequisite to achieving the journalistic ideal of balance is the requirement of having reliable, legitimate, and credible sources competing to advance alternative narratives. Without such contending elite forces working to impose different frames on the coverage of an issue, media coverage is *usually* one-sided and arguably unfair to at least some participants.[3] News of criminal cases often does not meet the requirement of contending elites working to uphold alternative narratives.[4] Thus, crime news is almost always heavily slanted toward the prosecution for a structural reason: unlike in coverage of policy debates over, say, social security, abortion, or the environment, there is no institutionalized political-party system to provide a more-or-less automatic two-sided debate among credible elites that journalists can reflect in their coverage.

Pretrial journalism, in particular, tends generally to treat the presumption of innocence as a formality, largely limited to using the word *allege*, without actually covering the story in a balanced fashion that makes clear the possibility that district attorneys (D.A.s), police, and judges (and juries) can make mistakes or have bureaucratic, psychological, or political motives.[5]

Although relatively few crimes receive sustained media attention,[6] when they do, coverage is likely to include information that can be considered prejudicial under American Bar Association (ABA) guidelines. In covering crime stories, journalists typically rely on law-enforcement officials' views, downplaying the defense perspective while minimally acknowledging the

3. W. LANCE BENNETT ET AL., WHEN THE PRESS FAILS: POLITICAL POWER AND THE NEWS MEDIA FROM IRAQ TO KATRINA (2007) (examining the implications of news framing on, inter alia, the Abu Ghraib incidents); ROBERT M. ENTMAN, PROJECTIONS OF POWER: FRAMING NEWS, PUBLIC OPINION, AND U.S. FOREIGN POLICY (2004) (examining the implications of news framing on public opinion in media coverage of U.S. foreign policy) [hereinafter PROJECTIONS]; Robert M. Entman, *Framing Bias: Media in the Distribution of Power*, 57 J. COMM. 163, 164–70 (2007) [hereinafter *Framing Bias*] (discussing the way in which framing and biases in media coverage interact in the creation of news slant); Robert M. Entman et al., *Doomed to Repeat: Iraq War News, 2003-2007*, 52 AM. BEHAV. SCIENTIST (Dec. 2008) (suggesting that a key factor facilitating the one-sided framing of U.S. foreign policy is the fact that "*the magnitude and cultural resonance of media attention to negative results of foreign policy tends to go down as they become more commonplace*" (emphasis in original)).

4. *See* PROJECTIONS, *supra* note 3, at 151.

5. This was certainly an issue in the Duke lacrosse case, when the prosecutor's potential ulterior motives were perhaps more obvious than normal. Although journalists paid some attention to the connection between the case and District Attorney Michael Nifong's upcoming election campaign, in hindsight it seems they gave his claims undue deference, perhaps because it seemed literally incredible that a D.A. in the national-media glare would engage in blatant misconduct.

6. Ralph Frasca, *Estimating the Occurrence of Trials Prejudiced by Press Coverage*, 72 JUDICATURE 162, 165 (1988).

innocence presumption.[7] Thus, news of crime generally exhibits a pro-prosecution bias, rooted most importantly in this dependence of reporters on official and, therefore, purportedly credible sources.[8] One study measuring the extent of pretrial publicity on Los Angeles television news found that nineteen percent of the defendants in crime stories were associated with at least one category of potentially prejudicial information as defined by the ABA.[9] Another study found that twenty-seven percent of suspects in crime stories were described using prejudicial information.[10] Most of this information was cited to law-enforcement officers and prosecutors.[11]

The imbalanced perspective in the news, facilitated by overreliance on public officials, is compounded by the inability of criminal-defense teams, even well-funded ones, to counter the public-relations machinery of law-enforcement agencies. The latter's spokespersons enjoy established relationships with local and wire-service reporters, and they serve superiors with strong career incentives to maximize publicity for crime-fighting successes.[12] Beyond this, few reporters—especially those from national news organizations parachuting into a local scene like Durham—have the time to investigate documentary evidence, to interview ordinary citizens, or to otherwise probe alternative sources of information. Defendants face further jeopardy from the very facts that a district attorney has indicted and police officers have arrested them. For most people, these actions connote guilt because they believe (based perhaps in part on television crime shows like *Law and Order* and *CSI*) that officials take these

7. *See* Michael Welch, Melissa Fenwick & Meredith Roberts, *Primary Definitions of Crime and Moral Panic: A Content Analysis of Experts' Quotes in Feature Newspaper Articles on Crime*, 34 J. RES. CRIME & DELINQ. 474, 474, 488 (1997) (demonstrating a general tendency in newspaper crime coverage to rely on law-enforcement officials and to underrepresent the perspectives of defense lawyers).

8. *See id*. The defense attorneys, the contending side, are likely viewed as more biased than prosecutors—their job is to try to get their clients off—and thus their claims are likely to be viewed more skeptically.

9. Travis L. Dixon & Daniel Linz, *Television News, Prejudicial Pretrial Publicity, and the Depiction of Race*, 46 J. BROADCASTING & ELECTRONIC MEDIA 112, 127–29 (2002) (reporting findings based on a sample that yielded two seven-day composite weeks of news programming with 200 programs in all).

10. Dorothy J. Imrich et al., *Measuring the Extent of Prejudicial Pretrial Publicity in Major American Newspapers: A Content Analysis*, 45 J. COMM. 94, 94 (1995).

11. *Id*.; *see also* Celeste Michelle Condit & J. Ann Seltzer, *The Rhetoric of Objectivity in the Newspaper Coverage of a Murder Trial*, 2 CRITICAL STUD. MASS COMM. 197, 197 (1985) (showing subtle pro-prosecution bias in newspaper reporting on a criminal trial); Nancy Mehrkens Steblay et al., *The Effects of Pretrial Publicity on Juror Verdicts: A Meta-Analytic Review*, 23 LAW & HUM. BEHAV. 219, 219 (1999) (suggesting that negative pretrial publicity typically and significantly promotes guilty judgments); Christina A. Studebaker & Steven D. Penrod, *Pretrial Publicity: The Media, the Law, and Common Sense*, 3 PSYCHOL. PUB. POL'Y & L. 428 *passim* (1997) (using the term "pretrial publicity" as synonymous with *prejudicial* pretrial publicity, suggesting that legal scholars and many lawyers *presume as a matter of course* that publicity will negatively slant against defendants).

12. *See* Edward Stringham, *Justice After Nifong*, WASH. TIMES, May 22, 2007, at A15 ("[T]he incentives created by our highly politicized legal system . . . reward[] law enforcement officials for high conviction rates, rather than meting out justice. Indeed, in high-profile cases, law enforcement officials frequently use a conviction to advance their career.").

actions only after amassing strong evidence.[13] Journalists no less than their audiences can fall prey to these not unreasonable assumptions.

III

RESEARCH ON BLACKS, WHITES, CRIME, AND NEWS

This section sets a context for evaluating coverage of the Duke lacrosse case by considering the normal in crime news: a largely unintentional slant that reinforces whites' antagonism, particularly toward black defendants, and more generally equates blacks with crime and danger. As this section shows, virtually all serious academic research reveals a consistent bias against African Americans, both in the coverage of crime and more generally.[14] At the same time, media content—not just news but entertainment and "infotainment"—usually promotes white privilege and the idea that whites occupy the top of a racial hierarchy wherein blacks are largely and naturally relegated to the bottom.[15] Thus the Duke lacrosse case is the exception that proves the rule, an inversion of the normal situation in which black defendants in criminal cases are especially likely to be presumed guilty because they are subject to the stereotypes or heuristics that most whites apply to the category "black person."[16]

A. The Racial Nature of Crime Coverage

Media stereotypes consist of recurring messages that associate persons of color with traits, behaviors, and values generally considered undesirable, inferior, or dangerous. In the context of crime coverage, there is considerable evidence that media portray blacks and Latinos as criminal and violent.[17] These images matter because they are a central component in a circular process by which racial and ethnic misunderstanding and antagonism are reproduced, and

13. *See, e.g.*, RONALD WEITZER & STEVEN A. TUCH, RACE AND POLICING IN AMERICA: CONFLICT AND REFORM 41 (2006) (reporting that 86% of whites, 73% of African Americans, and 80% of Latinos were either "Very" or "Somewhat Satisfied" with the police department in their city and very few were "Very Dissatisfied"); Lawrence D. Bobo & Victor Thompson, *Unfair by Design: The War on Drugs, Race, and the Legitimacy of the Criminal Justice System*, 73 SOC. RES. 445, 454-62 (showing that whites' perceptions of the fairness of the criminal-justice system exceeds blacks' perceptions on multiple measures).

14. On media and race generally, see ROBERT M. ENTMAN & ANDREW ROJECKI, THE BLACK IMAGE IN THE WHITE MIND: MEDIA AND RACE IN AMERICA (2000).

15. *See generally* ROBERT ENTMAN, YOUNG MEN OF COLOR IN THE MEDIA: IMAGES AND IMPACTS, JOINT CENTER FOR POLITICAL AND ECONOMIC STUDIES BACKGROUND PAPER (2006).

16. *See generally* Patricia G. Devine, *Stereotypes and Prejudice: Their Automatic and Controlled Components*, 56 J. PERSONALITY & SOC. PSYCHOL. 5, 5 (1989) (demonstrating that both "high- and low-prejudiced persons are . . . knowledgeable of the cultural stereotype [of blacks]. . . . [This] stereotype is automatically activated . . . [and] low-prejudice responses require controlled inhibition of [this] automatically activated stereotype."). Thus, when individuals are not consciously monitoring their stereotypes, both the prejudiced and the unprejudiced produce stereotype-consistent evaluations. *See id*. Blacks are often stereotyped as lazy and violent, contributing further to presumptions of criminal tendencies. PAUL M. SNIDERMAN & THOMAS PIAZZA, THE SCAR OF RACE 38–46 (1993).

17. *See infra* notes 18–39 and accompanying text.

thus become predictable influences in the criminal-justice process. Such coverage may reinforce biases against black and Latino defendants even in the absence of specific pretrial publicity about a given defendant's case. Here are some examples from the extensive research literature detailing the varied and subtle ways in which television and print news stereotype blacks and Latinos in crime coverage:

1. Blacks and Latinos are more likely than whites to appear as lawbreakers in news—particularly when the news is focusing on violent crime.[18] Blacks and Latinos are more likely to appear as perpetrators than victims.[19] Blacks are overrepresented as perpetrators of violent crime when news coverage is compared with arrest rates.[20] Work that engages in "inter-reality" comparisons suggests the media portrayal is somewhat less distorted than the comparison of the number of black, white, and

18. For examples of studies reaching this conclusion through "intergroup comparisons" (that is, comparing the extent to which members of different racial groups are portrayed as perpetrators) based on evidence from systematic content analyses, see Travis L. Dixon & Daniel Linz, *Overrepresentation and Underrepresentation of African Americans and Latinos as Lawbreakers on Television News*, 50 J. COMM., Spring 2000 at 131, 149 (local television news programming in Los Angeles and Orange counties, Cal.); ENTMAN & ROJECKI, *supra* note 14 (multiple media formats and locations); Daniel Romer et al., *The Treatment of Persons of Color in Local Television News: Ethnic Blame Discourse or Realistic Group Conflict?*, 25 COMM. RES. 286, 294–98 (1998) (local television news programming in Phila., Pa.). *See also* Travis L. Dixon & Cristina L. Azocar, *The Representation of Juvenile Offenders by Race on Los Angeles Area Television News*, 17 HOW. J. COMM. 143, 143, 151 (2006) (portrayal of juvenile lawbreakers in local television news programming in L.A., Cal.).

19. For examples of studies employing "inter-role comparisons" (that is, comparing the extent to which members of a specific racial or ethnic group are portrayed in more- and less-sympathetic roles) to find that people of color are more likely to be portrayed as criminals than as victims, see Travis L. Dixon & Daniel Linz, *Race and the Misrepresentation of Victimization on Local Television News*, 27 COMM. RES. 547, at 559–560 (2000); Romer et al., *supra* note 18, at 294–98, (finding also that blacks are more likely to be portrayed as perpetrators than as bystanders, experts, or other nonperpetrators).

20. For examples of studies reaching this conclusion through "inter-reality comparisons" (that is, comparing media portrayals with "reality" by comparing content analyses to arrest statistics), see Dixon & Linz, *supra* note 18, at 131 (finding blacks, though not Latinos, overrepresented as lawbreakers); Franklin D. Gilliam, Jr. et al., *Crime in Black and White: The Violent, Scary World of Local News*, 1 HARV. INT'L. J. PRESS/POL., June 1, 1996, at 6, 10–12 (finding blacks, though not Latinos, overrepresented as lawbreakers in coverage of violent and nonviolent crimes). *See also* Dixon & Azocar, *supra* note 18, at 143, 152–53 (portraying juvenile lawbreakers). *But see* Franklin D. Gilliam, Jr. & Shanto Iyengar, *Prime Suspects: The Influence of Local Television News on the Viewing Public*, 44 AM J. POL. SCI. 560, 562 (2000) (finding that blacks appear in crime coverage at rates not much different than the actual black arrest rate for Los Angeles County, Cal.); Ted Chiricos & Sarah Eschholz, *The Racial and Ethnic Typification of Crime and the Criminal Typification of Race and Ethnicity in Local Television News*, 39 J. RES. CRIME & DELINQ. 400, 400 (2002) (finding blacks underrepresented when comparing the racial composition of television news suspects on Orlando, Fla. TV news with the percentages of arrests involving blacks and whites). Of course, in this context, the heavy emphasis on violent crime in television news coverage becomes especially troubling. *See generally* LORI DORFMAN & VINCENT SCHIRALDI, OFF BALANCE: YOUTH, RACE, AND CRIME IN THE NEWS (2001) (surveying the representation of crime in the news media in connection with youth and race). There is no natural law that makes street crime and violence automatically more newsworthy than city-budget debates, or education, mass transit, and other policy discussions to which local TV news typically pays comparatively little attention. Summarizing the results of these content analyses is somewhat complicated by different standards of comparison (for example, comparing the extent to which members of different racial groups are portrayed as perpetrators versus comparing the media portrayal with "reality" through the use of measures such as arrest statistics). *See, e.g.*, Dixon & Linz, *supra* note 18, at 131 (employing intergroup and inter-reality comparisons).

Latino perpetrators might imply.[21] Nonetheless, the picture is troubling, suggesting that news cultivates the perception of blacks and Latinos as lawbreakers.

2. In contrast, whites are overrepresented as victims of violence and as law-enforcers, while blacks are underrepresented in these sympathetic roles.[22]
3. These patterns are more disturbing when one considers that blacks and Latinos may not appear as frequently as whites outside the crime-news context. Because of the values that define the newsworthy, blacks in criminal roles tend to outnumber blacks in socially positive roles in newscasts and daily newspapers.[23] In some areas, at least, Latinos may receive even worse treatment than blacks. Chiricos and Eschholz examined three weeks of local-news programming in Orlando and found that one in twenty whites appearing on the local television news was a criminal suspect compared with one in eight blacks and one in four Latinos.[24]
4. Studies of local news in Chicago and elsewhere suggest that depictions of black suspects (mostly young men) tend to be more symbolically

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21. Measures of reality to which representations are compared are deeply problematic. Assume blacks and Latinos are represented in proportion to their actual crime rates according to some relatively simple measures (for example, blacks commit 25% of crimes in a metropolitan area and constitute 25% of accused criminals in local news reports). This leaves aside many ambiguities in the guidelines offered by proportionality as a standard: for example, does accuracy demand that today's coverage offer racial proportionality in terms of last week's racial crime rate, or this year's, or last year's, or should it reflect rate of change in relative racial crime rates? If blacks committed 35% of armed robberies last month, what happens if they commit 12% this month, which one finds out only when the statistics are compiled at some later date? Should one underreport the following month's black-committed armed robberies to make up for the previous month's overrepresentation? Exactly *how* should coverage be calibrated to severity of crime committed by members of racial groups—by devoting more time, more-vivid language, more details on the victims? And how does one measure "severity" anyway? For further discussion, see ENTMAN & ROJECKI, *supra* note 18 at 213–15. The list could go on. More importantly, even if blacks and Latinos are somehow represented in "proper" proportion, a lack of contextual reporting reinforces whites' ignorance and tendencies to stereotype. As an example of needed context, black crime rates among young adult males are no different from white rates when controlling for employment status. In other words, unemployment is a primary cause of black crime, unemployment rooted in discrimination, poor education systems, and other structural causes. *See* WILLIAM JULIUS WILSON, WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR 22 (1996).

22. Travis L. Dixon et al., *The Portrayal of Race and Crime on Television Network News*, 47 J. BROADCASTING & ELECTRONIC MEDIA 498, 498 (2003); *see also* Chiricos & Eschholz, *supra* note 20, at 20 (finding "[b]lacks . . . more likely to appear as criminal suspects than as victims or positive role models"); Dixon & Linz, *supra* note 18, at 131 (finding whites overrepresented as law defenders on local news programming in L.A., Cal., though blacks are neither over- nor underrepresented compared to county employment rates); Dixon & Linz, *supra* note 19, at 564 (finding, via intergroup comparisons, whites more likely than blacks or Latinos to be portrayed as victims of crime, and whites overrepresented as homicide victims on local television news); Romer et al., *supra* note 18, at 286 (finding "Whites overrepresented as victims of violence compared to their roles as perpetrators, and persons of color . . . overrepresented as perpetrators of violence against White[s]").

23. *See* ENTMAN & ROJECKI, *supra* note 18, at 86.

24. Chiricos & Eschholz, *supra* note 20, at 407, 416. Though this same study did not find that blacks were overrepresented when looking only among TV-news suspects, *id*. at 410, this lack of other positive-role portrayals for blacks reinforces the link between blacks and crime.

threatening than those of whites accused of similar crimes.[25] Black defendants in one study were more likely to be shown in mug shots.[26] In the ubiquitous "perp walks," blacks were twice as likely as whites to be shown under some form of physical restraint by police—although all were accused of scary and generally violent crimes.[27] In some notorious, highly publicized crimes—such as the 1989 alleged rape of a wealthy, young white woman in Central Park by a "gang" of Latino and black young men—young men of color appear particularly susceptible to portrayals that associate them with extreme threat and less-than-human traits. Narratives routinely used such words as "savage" and "wild."[28]

5. Violence and youth, especially male youth, are closely linked: most stories that feature young people on local news depict violence they commit or suffer, and in those stories, older white men are the dominant speakers.[29] Local news does not often portray young persons as positively contributing to society.[30]
6. People of color are more likely to be subjected to negative pretrial publicity. One study found that black and Latino defendants are twice as likely as white defendants to be subjected to negative pretrial publicity and that defendants who victimized whites were more likely to have prejudicial information broadcast about them than defendants who victimized nonwhites.[31]

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25. *See, e.g.*, ENTMAN & ROJECKI, *supra* note 18, at 78–93 (reporting and discussing the results of a study on the use of racial stereotypes in local-crime news coverage in Chicago, Ill.); Chiricos & Eschholz, *supra* note 20, at 20 (finding that blacks, and especially Latinos, who appeared as suspects in Orlando, Fla., local-crime news coverage appeared in more threatening contexts than whites).

26. ENTMAN & ROJECKI, *supra* note 18, at 82.

27. *Id*. at 83–84. One complexity to note is that it may well be true that police officers physically restrain more black defendants than they restrain white defendants because of the officers' own racial fears. News reports that may cultivate negative stereotyping and fear of young men of color may also accurately convey aspects of the "real world." This consideration indicates that solving the problem may require more than simply urging journalists to report on discrete events or specific facts more accurately.

28. *See generally* Michael Welch et al., *Moral Panic Over Youth Violence: Wilding and the Manufacture of Menace in the Media*, 34 YOUTH & SOC'Y 3 (2002) (discussing use of the term "wilding" and synonyms for "wild" in media coverage following this incident). Later evidence showed that the idea of a gang of nonwhites repeatedly assaulting the woman was exaggerated and most of the accused were exonerated. *See* Jim Dwyer, *New Slant on Jogger Case Lacks Official Certainty*, N.Y. TIMES, Jan. 28, 2003, at B7; Susan Saulny, *Convictions and Charges Voided In '89 Central Park Jogger Attack*, N.Y. TIMES, Dec. 20, 2002, at A1.

29. Lori Dorfman & Katie Woodruff, *The Roles of Speakers in Local Television News Stories on Youth and Violence*, 26 J. POPULAR FILM & TELEVISION 80, 81, 83 (1998).

30. *See id*.; DORFMAN & SCHIRALDI, *supra* note 20. This coverage leads to specific perceptions of juvenile offenders. *See* Robert K. Goidel et al., *The Impact of Television Viewing on Perceptions of Juvenile Crime*, 50 J. BROADCASTING & ELECTRONIC MEDIA 119, 134 (2006) (reporting the results of a survey of Louisiana residents that found viewers of television news were more likely to believe juvenile crime was increasing, more likely to overestimate the percentage of juvenile offenders imprisoned for violent crimes, and more likely to believe rehabilitation in prison was more effective than community-based rehabilitation programs).

31. Dixon & Linz, *supra* note 9, at 128–29 (finding also that, accounting for the race of the victim, being black with a white victim more than doubles the odds of prejudicial pretrial information

7. Several studies show that black victims are less likely to be covered than white victims in newspaper coverage of crime.[32] But unlike studies focused on local television, studies of newspapers do not indicate that minorities are overrepresented as perpetrators.[33] Newspaper coverage is somewhat better than local television news on some dimensions, if only because it does not follow the "if it bleeds it leads" norm and devotes much less of its news space to crime.[34] Stories themselves are often longer and, on average, perhaps more likely to contain more context than TV. On the other hand, the additional words devoted to crime by newspapers might yield a greater net volume of negative pretrial information.[35]
8. Aside from crime, perhaps the most frequent and disproportionate association made with persons of color in the news media is poverty. In stories featuring poverty as a topic, newsmagazines like *Time* and *Newsweek* overrepresent blacks, while underrepresenting whites, Latinos, and Asians.[36] At the same time, the magazines overrepresent

appearing; a Latino with a white victim more than triples the odds that prejudicial information will be aired when compared with a white defendant and white victim).

32. *See, e.g.*, John W.C. Johnstone et al., *Homicide Reporting in Chicago Dailies*, 71 JOURNALISM Q. 860, 860 (1994) (homicide coverage in Chicago, Ill., newspapers); David Pritchard & Karen D. Hughes, *Patterns of Deviance in Crime News*, 47 J. COMM., Summer 1997, at 49, 49 (homicide coverage in Milwaukee, Wis., newspapers); Susan B. Sorenson et al., *News Media Coverage and the Epidemiology of Homicide*, 88 AM. J. PUB. HEALTH 1510, 1510 (1998) (comparing a special, seven-part series on homicide in the *Los Angeles Times* to the homicides that occurred during the period featured in the report and finding that homicides of blacks and Latinos were substantially underreported); Alexander Weiss & Steven Chermak, *The News Value of African-American Victims: An Examination of the Media's Presentation of Homicide*, 21 J. CRIME & JUST. 71, 71 (1998) (homicide coverage in Indianapolis, Ind., newspapers).

33. *See, e.g.*, David Pritchard, *Race, Homicide, and Newspapers*, 62 JOURNALISM Q. 500, 500 (1985) (finding homicides with minority suspects get *less* coverage in Milwaukee newspapers); Shelly Rogers et al., '*Reality' in the St. Louis* Post-Dispatch, 21 NEWSPAPER RES. J., Summer 2000, at 51, 63 ("African Americans did not dominate the stereotyped role[] of perpetrator" in St. Louis, Mo., newspaper coverage.); Susan Sorenson et al., *supra* note 32, at 1511 (finding suspect characteristics like race unrelated to coverage in the *Los Angeles Times* with one exception of interest here: "Latino suspects were less likely than others to receive coverage . . . ."). *But see* Weiss & Chermak, *supra* note 32, at 78 (finding that, although the number of articles in coverage of murder in Indianapolis newspapers was similar whether the suspect was black or white, the average length of the article was longer if the suspect was black); Tara-Nicholle Beasley Delouth & Cindy J.P. Woods, *Biases Against Minorities in Newspaper Reports of Crime*, 79 PSYCHOL. REP. 545 (1996) (finding some evidence, with admittedly small numbers necessitating caution about the conclusions, that disclosure of the victims' identity was more common when the suspect was an ethnic minority).

34. Newspapers emphasize violence less in their news than television. *See* ENTMAN & ROJECKI, *supra* note 18, at 88–90 (comparing newspaper and local television-news coverage); Joseph F. Sheley & Cindy D. Ashkins, *Crime, Crime News, and Crime Views*, 45 PUB. OPINION Q. 492, 492 (1981) (comparing newspaper and television-news coverage with police figures). Crime is the dominant topic on local television news and an important topic in metropolitan daily papers. *See* RICK EDMONDS & THE PROJECT FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA 2006, http://www.stateofthenewsmedia.com/2006/narrative_newspapers_contentanalysis.asp?cat=2&media=3 (reporting results of a content analysis of news coverage by local and national television news and newspapers on May 11–12, 2006).

35. Dixon & Linz, *supra* note 9, at 130–31.

36. *See* Rosalee Clawson & Rakuya Trice, *Poverty as We Know It: Media Portrayals of the Poor*, 64 PUB. OPINION Q. 53, 56–57 (2000) (analyzing media depictions of poverty demographics).

> the nonworking poor and the urban poor in their illustrations of poverty.[37] In this way, not only do media encode poverty as an especially black trait, but they undermine potential sympathy, especially among the white majority, for antipoverty programs.[38] Poverty can be portrayed as a condition that merits sympathy, but it more often appears associated with threats in the form of crime, violence, drugs, gangs, and aimless activity.[39]

Such messages not only stereotype the blacks and Latinos who are featured in them, but also contribute to a stereotypical association between blacks, criminality, and guilt that can influence evaluations and behavior. These messages also reinforce negative emotions and a sense of social distance that may promote a belief in inherent group conflict between blacks or Latinos and whites. Moreover, these stereotypes arise not merely from the news, but from TV and film entertainment, advertising, and sports programming as well.[40]

The implications of this research for public attitudes are troubling. Messages continually associating people of color, especially blacks, with poverty and crime reinforce the updated form of racial prejudice known as symbolic racism, racial resentment, or racial animosity.[41] In the absence of contextual information about discrimination and other forces that produce the poverty, racialized images of poverty reinforce the stereotype that blacks are lazy and therefore deserve their impecuniousness. Racialized crime coverage reinforces the

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37. *See id*. at 60.

38. *See generally* ENTMAN & ROJECKI, *supra* note 18, at 103–06 (discussing the implications of news-media portrayals of race and poverty on, inter alia, racial animosity); MARTIN GILENS, WHY AMERICANS HATE WELFARE: RACE, MEDIA, AND THE POLITICS OF ANTIPOVERTY POLICY, (1999) (examining media portrayals of and attitudes toward race, poverty, and welfare); Robert M. Entman, *Television, Democratic Theory, and the Visual Construction of Poverty*, *in* 7 RESEARCH IN POLITICAL SOCIOLOGY 139 (Philo C. Washburn ed., 1995) (discussing the effects of race and poverty in news media on the nonpoor's support for antipoverty policy); Martin Gilens, *"Race Coding" and White Opposition to Welfare*, 90 AM. POL. SCI. REV. 593 (1996) ("[R]acial attitudes are the single most important influence on whites' welfare views.").

39. *See* ENTMAN & ROJECKI, *supra* note 18, at 96–100 (reporting results of a study of the depiction of poverty in local newspapers and local and national television news).

40. *See* ROBERT M. ENTMAN, YOUNG MEN OF COLOR IN THE MEDIA: IMAGES AND IMPACTS, 15–17 (2006) (discussing the prevalence and implications of racial stereotyping in these contexts). Such media routines are central to a self-perpetuating cycle that reproduces white racial antagonism directed at persons of color. The cultural reproduction of racial antagonism among whites as a result of media coverage reinforces discrimination, which promotes joblessness and hopelessness among African Americans, and that in turn encourages criminal behavior. This cycle yields continuing crime news that reinforces the stereotypes and the automatic and unconscious anxieties and associations of blacks with danger and lawlessness. Figure 1 in Entman offers a graphic representation of this circular process, which in admittedly oversimplified and abstract form depicts the complex interrelationships among white elites and the institutions that they dominate; ordinary white citizens' sentiments, decisions, and behaviors; and the lives and life chances of persons of color. *Id*. at 9. *See generally* ENTMAN & ROJECKI, *supra* note 18.

41. *See generally* ENTMAN & ROJECKI, *supra* note 18 (discussing the interactions of portrayals of race in media, racial animosity, and symbolic racism); DONALD R. KINDER & LYNN M. SANDERS, DIVIDED BY COLOR: RACIAL POLITICS AND DEMOCRATIC IDEALS (1996) (discussing racial resentment in the context of U.S. politics); Christopher Tarman & David O. Sears, *The Conceptualization and Measurement of Symbolic Racism*, 67 J. POL. 731 (2005) (studying and discussing the effects of symbolic racism on racial policy preferences).

stereotype that blacks are not just lazy, but violent.[42] Both of these stereotypes are important components of this new form of racial prejudice. Moreover, empirical evidence demonstrates associations between racial resentment and whites' support of punitive crime policies[43] and opposition to preventative policies.[44]

B. Effects on White Attitudes

The effects on whites of this heavy representation of blacks and Latinos in crime news have been documented through empirical studies. As Gilliam and Iyengar argue, coverage of this nature creates a "crime script" in which crime is violent and perpetrators are black. Repeated exposure to this script promotes and reinforces negative racial stereotypes.[45] Kang uses the metaphor of the "Trojan Horse Virus" to describe how local television news of this nature can, without viewers' awareness and without intent on the part of news producers, create and reinforce associations between blacks and violence in the minds of citizens.[46] These stereotype-based cognitive and emotional responses are often automatically, quickly, and unconsciously triggered, and go on to affect a wide range of sentiments.[47] For example, one researcher found that an act (an ambiguous shove) was interpreted as more violent when performed by a black than when performed by a white,[48] consistent with the notion that "black" and "violent" have become linked in the minds of many individuals. Other work illustrates that when presented with an ambiguous suspect, individuals are more likely to assume the suspect is black.[49] Further evidence comes from studies

42. *See* the 2000 General Social Survey. Individuals were asked to rate blacks, Asians, Latinos, and whites as a group on two traits of relevance here: on a seven-point scale from lazy to hardworking and on a seven-point scale from violence-prone to not-violence-prone. Thirty-five percent of respondents rated blacks as lazy (that is, they gave blacks a rating corresponding to the three numbers at the negative end of the scale for lazy), 21% rated Latinos as lazy, and only 11% rated whites or Asians as lazy. The stereotypes are more extreme in the case of violence: 48% rated blacks as prone to violence (that is, they gave blacks a rating that corresponded to the three numbers at the negative end of the seven-point scale), 38% rated Latinos as prone to violence, 21% rated whites as prone to violence, and 17% rated Asians as prone to violence.

43. *See* Gilliam & Iyengar, *supra* note 20, at 560, 571 ("[E]xposure to the racial element of the [experiment's] crime script increases [whites'] support for punitive approaches to crime . . . .").

44. Eva G.T. Green et al., *Symbolic Racism and Whites' Attitudes Towards Punitive and Preventative Crime Policies*, 30 LAW & HUM. BEHAV. 435, 435 (2006).

45. *See* Gilliam & Iyengar, *supra* note 20, at 560–61.

46. *See* Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489, 1553–54, 1562–63 (2005). Kang draws on psychological work on implicit attitudes, *id*. at 1506–14 (citing, for example, Brian A. Nosek, Mahzarin Banaji & Anthony G. Greenwald, *Harvesting Implicit Group Attitudes and Beliefs from a Demonstration Web Site*, 6 GROUP DYNAMICS 101, 105 (2002)), in describing how coverage may be detrimental. Implicit-attitudes research shows that whites express some explicit preference for their own group but much greater levels of implicit preference. *Id*. at 1513. Even individuals who honestly self-report positive attitudes toward individuals in other racial categories may hold implicit negative attitudes toward that group. *Id*.

47. *Id*. at 1515–48.

48. B.L. Duncan, *Differential Social Perception and Attribution of Intergroup Violence: Testing the Lower Limits of Stereotyping of Blacks*, 34 J. PERSONALITY & SOC. PSYCHOL. 590, 590 (1976).

49. *See* Gilliam & Iyengar, *supra* note 20, at 564 (finding that subjects who viewed a crime story with no mug shot were much more likely to misremember seeing a black perpetrator, consistent with

using a computerized experiment in which participants were instructed to shoot an armed target but not an unarmed target.[50] The target individual was either black or white, was holding either a gun or another object, and was presented in a realistic background.[51] Under time pressure, participants were more likely to mistakenly shoot an unarmed black target than an unarmed white target and were more likely to mistakenly fail to shoot an armed white target than an armed black target.[52] In other words, participants in the study were more likely to assume wrongly that a black individual was armed and assume wrongly that a white individual was not.[53] Other research reveals the interaction between these experimental results and media images.[54] This work suggests that the shooting bias results from the mental linkage of black males to guns—a connection cemented by vivid media images—rather than from generalized racial prejudice against blacks.[55] With this crime–guns–blacks schema so prevalent, it is not

the claim that crime news reinforces a script in which crime is violent and perpetrators are black); *see also* Mary Beth Oliver, *Caucasian Viewers' Memory of Black and White Criminal Suspects in the News*, 49 J. COMM., Summer 1999, at 46, 46 (finding that white viewers presented with a newscast featuring a white murder suspect were increasingly likely over time to misidentify the suspect as black); Mary Beth Oliver & Dana Fonash, *Race and Crime in the News: Whites' Identification and Misidentification of Violent and Nonviolent Criminal Suspects*, 4 MEDIA PSYCHOL. 137, 137 (2002) (finding that white viewers presented with a newspaper crime brief featuring violent- and nonviolent-crime stories and photographs of white and black criminal suspects had an increased likelihood later to misidentify the black criminal suspects in the violent-crime stories); Travis L. Dixon, *Black Criminals and White Officers: The Effects of Racially Misrepresenting Law Breakers and Law Defenders on Television News*, 10 MEDIA PSYCHOL. 270, 270 (2007) (finding that test subjects were highly likely to assume that unidentified perpetrators were black no matter what their prior level of news viewing and that heavy viewers of news were more likely to say an unidentified police officer was white). Dixon's finding that unidentified police officers were more likely to be identified as white is consistent with the notion that television viewing creates specific crime scripts. *See id*. Interestingly, Dixon's finding that news viewing did not moderate the likelihood of rating the unidentified suspect as black suggests that this link has been made for all viewers and is chronically accessible. *See id*. at 281.

50. Joshua Correll et al., *The Police Officer's Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals*, 83 J. PERSONALITY & SOCIAL PSYCHOL. 1314, 1314 (2002) [hereinafter Correll et al., *Police Officer's Dilemma*]; *see also* Joshua Correll et al., *The Influence of Stereotypes on Decisions to Shoot*, 37 EUR. J. SOC. PSYCHOL. 1102, 1102, 1105 (2007) [hereinafter Correll et al., *Decisions to Shoot*] (replicating this study and adding a preliminary task in which subjects were asked to read news stories about black or white criminals).

51. Correll et al., *Police Officer's Dilemma*, *supra* note 50, at 1315–17.

52. *Id.* at 1319.

53. *See id.*; Correll et al., *Decisions to Shoot*, *supra* note 50, at 1102 (finding exposure to news stories featuring black criminals increased shooting bias); *see also* Kang, *supra* note 46, at 1562–63 (describing how local television news can create associations between racial categories and violent crime).

54. *See* B. Keith Payne, *Prejudice and Perception: The Role of Automatic and Controlled Process in Misperceiving a Weapon*, 81 J. PERSONALITY & SOCIAL PSYCHOL. 181, 181 (2001) (finding participants identified guns faster and misidentified tools as guns more often when first presented with photographs of black faces than when first presented with photographs of white faces).

55. *See id*. It is worth noting that the shooting experiments show that black subjects, not just whites, respond prejudicially—suggesting the depth to which this particular cultural equation penetrates. *See* Correll et al., *Police Officer's Dilemma*, *supra* note 50, at 1325; Correll et al., *Decisions to Shoot*, *supra* note 50, at 1108–11. *But see* Kristin A. Lane et al., *Implicit Social Cognition and Law*, 3 ANN. REV. L. & SOC. SCI. 427, 435 (2007) (reporting that the same is *not* true of the Implicit-Attitude Test experiments, in which blacks respond quite differently from whites to subtle racial cues).

surprising that there are consequences for how people think about politics and public policy.

Researchers have probed the effects of media representations of race and crime on whites' fearfulness of crime and whites' tendencies to support punitive public policies, such as capital punishment and mandatory long sentences. Empirical studies have explored the effects of overrepresentation of black lawbreakers. Using both experimental and survey studies, researchers have shown that exposure to images of black, male, criminal defendants increased whites' punitive attitudes toward crime, as well as their tendencies to endorse dispositional explanations for criminal behavior and racist beliefs.[56] Dixon and Azocar draw similar conclusions, finding that news coverage interacts with "news use" (the amount of news-watching engaged in by TV viewers) to influence judgments of the structural limitations that blacks face in the United States, attitudes toward the death penalty, and views on culpability.[57] Other work reveals conditional effects of exposure to racialized crime depending on the racial mix of the neighborhoods in which individuals lived. Whites who lived in homogeneously white neighborhoods endorsed punitive crime policy and expressed more-negative stereotypes of blacks when exposed to a black suspect in a violent crime story, whereas whites living in heterogeneous neighborhoods were unaffected or were moved in the opposite direction.[58]

Other studies show an interaction between media exposure and the ethnic composition of a community in influencing fear of crime. In areas where whites

56. *See* Gilliam & Iyengar, *supra* note 20, at 560. In this study, people were exposed to a no-crime story, a murder story with no information identifying the race of the perpetrator, a murder story with a mug shot of a black perpetrator, or a murder story with a mug shot of a white perpetrator. *Id*. at 563. The murder story was identical across conditions with the exception of the mug shot. *Id*. Whites exposed to the black perpetrator showed significantly greater support for punitive remedies for crime than those who did not view a crime story. *Id*. at 567–68. Exposure to the black-perpetrator and the no-perpetrator conditions also increased dispositional attributions among whites. *Id*. There was no similar effect among those who were exposed to the white perpetrator. *Id*. Gilliam and Iyengar also found that all crime stories influence racial attitudes (including the white-mug-shot condition), though the effects are greatest in the no-perpetrator condition, then the black-perpetrator condition, and then the white-perpetrator condition. *Id*. at 567–68. Using data from the Los Angeles County Social Survey, the researchers demonstrate that frequent viewers of television news (who presumably get this specific script) are more punitive. *Id.* at 570–71. The survey results lend external validity to the experimental results.

57. Travis L. Dixon & Cristina L. Azocar, *Priming Crime and Activating Blackness: Understanding the Psychological Impact of the Overrepresentation of Blacks as Lawbreakers on Television News*, 57 J. COMM. 229, 229 (2007) (finding that heavy viewers of television news who are faced with unidentified (that is, no race given) suspects are less likely to say blacks face structural limits to success and more likely to support the death penalty than heavy viewers who are exposed to noncrime stories; and that exposure to crime news with a majority of black suspects leads people to evaluate a race-unidentified suspect as more culpable, an effect that is enhanced among heavy news viewers); *see also* Travis L. Dixon, *Psychological Reactions to Crime News Portrayals of Black Criminals: Understanding the Moderating Roles of Prior News Viewing and Stereotype Endorsement*, 73 COMM. MONOGRAPHS 162, 162 (2006) (finding that, after exposure to a newscast featuring either a majority of black or unidentified-race suspects, viewers who endorsed stereotypes of blacks were more likely to support the death penalty than viewers who rejected stereotypes of blacks).

58. Franklin D. Gilliam, Jr. et al., *Where You Live and What You Watch: The Impact of Racial Proximity and Local Television News on Attitudes About Race and Crime*, 55 POL. RES. Q. 755, 755, 760, 770. (2002).

perceive that significant proportions of their neighbors are black or Latino, heavy viewers of news, of "reality" crime shows, and of fictional crime shows are all markedly more fearful of crime.[59]

The media images—and other political and cultural forces—that cultivate racialized fear and animosity influence public policies through these effects on prejudice. Soss and his colleagues show that whites' racial sentiments are strongly related to their level of support for the death penalty.[60] Furthermore, residential proximity heightens this effect. In the presence of large populations of African Americans, whites' racial antagonism is particularly associated with high support of the death penalty.[61] If such a strong yet simple equation between violent crime and blacks were not made in the media and in U.S. culture, such a relationship would not emerge. After all, murder is murder, and capital punishment does not inherently implicate race. Nonetheless, historical study reveals clear relationships among support of capital punishment, racial attitudes, and the racial composition of different states.[62] On the other side of the ledger, Weitzer and Tuch show that blacks and Latinos are more likely than whites to support police-reform policies, in part because of their greater attention to media reports of police misconduct and the greater extent of their direct experience with it.[63]

Media coverage of crime primes racial sentiments, influencing evaluations of both candidates and policies. For example, Valentino found that subjects responded to TV news stories that included brief shots of black, Latino, or Asian criminal suspects by lowering their ratings of President Clinton—*even*

59. *See* Sarah Eschholz, Ted Chirico & Marc Gertz, *Television and Fear of Crime: Program Types, Audience Traits, and the Mediating Effect of Perceived Neighborhood Racial Composition*, 50 SOC. PROBS. 395, 395, (2003) (finding that viewers of local news, "reality," or fictional crime shows who perceive that they live in a neighborhood with a high percentage of blacks have an increased fear of crime); *see also* Ted Chiricos et al., *Perceived Racial and Ethnic Composition of Neighborhood and Perceived Risk of Crime*, 48 SOC. PROBS. 322, 322 (2001) (finding that the perception that blacks or Latinos live nearby influences the perceived risk of criminal victimization); Ted Chiricos et al., *Fear, TV News, and the Reality of Crime*, 38 CRIMINOLOGY 755, 755 (2000) (showing that local news is related to fear of crime independent of measures of "reality"); Sorin Matei et al., *Fear and Misperception of Los Angeles Urban Space: A Spatial-Statistical Study of Communication-Shaped Mental Maps*, 28 COMM. RES. 429, 429 (2001) (finding that people in Los Angeles with heavy television-viewing habits have increased fear of nonwhite and non-Asian populations). *But see* Kimberly Gross & Sean Aday, *The Scary World in Your Living Room and Neighborhood: Using Local Broadcast News, Neighborhood Crime Rates, and Personal Experience to Test Agenda Setting and Cultivation*, 53 J. COMM. 411, 419–21 (2003) (finding that viewing local television news does not cultivate fear of crime once neighborhood crime rates and personal experience are taken into account).

60. Joe Soss et al., *Why Do White Americans Support the Death Penalty?* 65 J. POL. 397, 397 (2003).

61. *Id*. at 409.

62. *See* Eric P. Baumer et al., *Explaining Spatial Variation in Support for Capital Punishment: A Multilevel Analysis*, 108 AM. J. SOC. 844, 844 (2003) ("[R]esidents of areas with higher homicide rates, a larger proportion of blacks, and a more conservative political climate are significantly more likely to support the death penalty."). *See generally* David Niven, *Bolstering an Illusory Majority: The Effects of the Media's Portrayal of Death Penalty Support*, 83 SOC. SCI. Q. 671 (2002) (discussing the complexities of public sentiments toward the death penalty).

63. Ronald Weitzer & Steven A. Tuch, *Reforming the Police: Racial Differences in Public Support for Change*, 42 CRIMINOLOGY 391, 409–12 (2004).

though the stories did not mention Clinton or his policies.[64] Presumably, the widespread publicity about Clinton's sympathies for persons of color made white subjects think of him when they perceived crime committed by young men of color. The 1988 Bush presidential campaign took advantage of whites' tendencies to automatically associate black young men and Latino young men with crime and fear in its infamous "Willie Horton" and "Revolving Door" political advertisements.[65] A related study showed that by merely inserting the words "inner city" in a survey question about spending money on prisons as opposed to antipoverty programs, whites' racial thinking was stimulated to the point that "racial conservatives" became more punitive, favoring prisons over antipoverty programs.[66] The mental association between the term "inner city" and threatening persons of color is apparently so strong that visual images (such as those in George H.W. Bush's 1988 campaign advertisements) or explicit racial labels are not even needed to generate an effect on whites.[67] Physiological evidence, moreover, also supports the notion that negative associations with black persons, repeated vividly across the mass media, resonate quite deeply in whites' neural networks.[68]

C. Race and Crime Representations

The research outlined in this subsection suggests that it would be entirely inappropriate to generalize from the Duke lacrosse case about the media's normal depictions of race and crime. Systematic content analyses of media depictions of crime and race suggest that the Duke lacrosse case—featuring white, relatively privileged defendants—does not follow the typical pattern. The evidence on race and crime news is quite strong, about as strong as any social-science evidence in the field of communication and public opinion. We know of no credible research suggesting that wealthy white defendants are systematically subjected to more unfair coverage or pretrial publicity compared with black defendants. Moreover, the evidence illustrating the effects of such coverage suggests that patterns in the media place black defendants at a

64. Nicholas A. Valentino, *Crime News and the Priming of Racial Attitudes During Evaluations of the President*, 63 PUB. OPINION Q. 293, 293 (1999); *see also* Mark Peffley et al., *Racial Stereotypes and Whites' Political Views of Blacks in the Context of Welfare and Crime*, 41 AM. J. POL. SCI. 30, 30 (1997) ("Whites holding negative stereotypes are substantially more likely to judge blacks more harshly than similarly described whites in the areas of welfare and crime policy.").

65. *See generally*, KATHLEEN HALL JAMIESON, DIRTY POLITICS: DECEPTION, DISTRACTION, AND DEMOCRACY 15–42 (1992) (describing advertisements in the context of negative political campaigning); TALI MENDELBERG, THE RACE CARD 134–68 (2001) (discussing the advertisements in the context of racial stereotypes in political campaigns).

66. John Hurwitz & Mark Peffley, *Playing the Race Card in the Post-Willie Horton Era: The Impact of Racialized Code Words on Support for Punitive Crime Policy*, 69 PUB. OPINION Q. 99, 99, 108 (2005).

67. *See id*. at 109.

68. *See* William A. Cunningham et al., *Separable Neural Components in the Processing of Black and White Faces*, 15 PSYCHOL. SCI. 806, 806 (2004) (using brain-imaging technology to reveal that a subliminal, black stimulus "lights up" the amygdala, the portion of the brain that is particularly sensitive to fear).

disadvantage because of the association built between blacks, crime, and guilt. Preexisting racial schemas, therefore, worsen the general problem of prejudicial pretrial publicity for blacks (and perhaps Latinos). Even in the absence of specific prejudicial publicity about a given defendant's case, the general nature of crime news may prejudice potential jurors against minority defendants. By contrast, white defendants relative to black defendants may benefit from a greater (though not necessarily high) presumption of possible innocence.[69]

IV

ANALYSIS OF COVERAGE OF THE DUKE LACROSSE CASE

Just how did the media cover this case? Did the media depict the incident as a metaphor for larger issues of race and class? Did coverage undermine the presumption of innocence or appear to slant in favor of one side? To what extent did the various parties receive positive or negative coverage? Was this an example of egregious "liberal bias" or "political correctness" run amok in media coverage, as some have suggested? In order to begin to answer these questions, we conducted a systematic content analysis, in addition to a more qualitative assessment of coverage. Media coverage is characterized according to how the media dealt with the case over the full period that it received attention in the news; distinctions are also made among time periods (early coverage compared with coverage after the DNA results were released), among different media outlets (comparing newspapers with television), and among different sections of newspapers (distinguishing news from editorials and commentary).

Before turning to the analysis, however, it is helpful to explore why this case received more attention than an accusation of rape against three college students might be expected to generate. A kind of "perfect storm" of events reinforced the attractions of this case for national, not just local, media. What contributed to this "storm"? District Attorney Michael Nifong publicly condemned the students and provided a narrative that was irresistible for the media. The racial element was an important component of the frame the District Attorney developed, perhaps intentionally, since he was running for election and needed to maximize his support within Durham's large black electorate.

69. It is also true that because police officers, district attorneys, and the citizen pool that supplies juries are often dominated by whites, blacks may be more likely to be arrested, treated more rigorously by the criminal-justice system, and convicted. Moreover, given their lower socioeconomic status, they are likely to have less-sophisticated and less-able legal representation, and less-refined public-relations strategies designed to soften up potential jury pools and put political pressure on district attorneys, police, and judges to treat the defendants fairly. *See, e.g.*, Donna Coker, *Foreword: Addressing the Real World of Racial Injustice in the Criminal Justice System*, 93 J. CRIM. L. & CRIMINOLOGY 827 (2003) (comparing the empirical evidence of criminal-law enforcement to assumptions underlying Fourth Amendment and Equal Protection clause jurisprudence); *see also* Jeffrey T. Ulmer et al., *Prosecutorial Discretion and the Imposition of Mandatory Minimum Sentences*, 44 J. RES. CRIME & DELINQ. 427, 427 (2007) ("find[ing] that Hispanic males are more likely to receive mandatory minimum[] [sentences] and that Black–White differences in mandatory application increase with county percentage Black").

Moreover, the case had elements that played into stereotypes and standard scripts about race and class—dynamics that were reinforced by Duke's mostly affluent, mostly white student body and faculty located in Durham, a small city (population approximately 190,000) with a predominantly working-class and poor population, forty-four percent of which is African American. Some black leaders and citizens took up and pushed the case in light of its perceived racial dynamics and town–gown tensions. Faculty and outside groups who saw this alleged crime as symbolic of real race, class, and gender injustices—which turned out not to be represented by this particular case—helped propel it further. In addition, the story played into another cultural schema, one about elite college sports, athletes behaving badly, and universities doing little to stop it. Furthermore, Duke is a kind of "celebrity" university, one of a handful that combines prestige for its academics (ranking eighth in the 2008 U.S. News and World Report rankings)[70] with highly publicized, championship sports teams—as personified by "Coach K," the men's basketball coach, who does commercials for American Express and General Motors, among others. In this sense, the lacrosse saga possessed an allure roughly analogous to that of the O.J. Simpson murder or the Michael Vick dog-abuse cases. All this may help to explain why the case obtained so much publicity and also some of the specific themes that emerged in coverage.[71]

A. Sample and Coding for Systematic Quantitative Analysis

Our analysis focuses on stories substantively dealing with this case in *The New York Times*, *USA Today*, the Raleigh *News & Observer*, and *NBC Nightly News*. This focus allows comparison of national newspaper outlets (*The New York Times* and *USA Today*) with a local newspaper (the Raleigh *News & Observer*) and comparison of newspaper coverage with network news.[72] We examined news coverage from March 14, 2006, through April 15, 2007. This period encompasses the initial accusation and runs until four days after all the charges were dismissed—through the Sunday following the dismissal of charges, so as to include the Sunday papers.[73] The sample of substantive coverage dealing

70. U.S. NEWS & WORLD REPORT, AMERICA'S BEST COLLEGES 2008, *available at* http://colleges.usnews.rankingsandreviews.com/usnews/edu/college/rankings/brief/t1natudoc_brief.php.

71. Between the time of the event in March and the end of May 2006, *CBS Evening News* spent 30 minutes on the story, *ABC World News* 27½ minutes, and *NBC Nightly News* 21½ minutes. Few if any events in Durham's history (aside from Duke basketball) have received as much concentrated, national-media attention. Yet it is important not to overstate the case. In May 2006, only 16% of the public said they were following this story very closely, compared with 42% who said they were following news about the situation in Iraq very closely, 69% who said they were following high gasoline prices very closely, and 44% who said they were following immigration very closely. PEW RESEARCH CENTER FOR THE PEOPLE AND THE PRESS, PUBLIC ATTENTIVENESS TO NEWS STORIES: 1986–2006, http://people-press.org/nii/bydate.php.

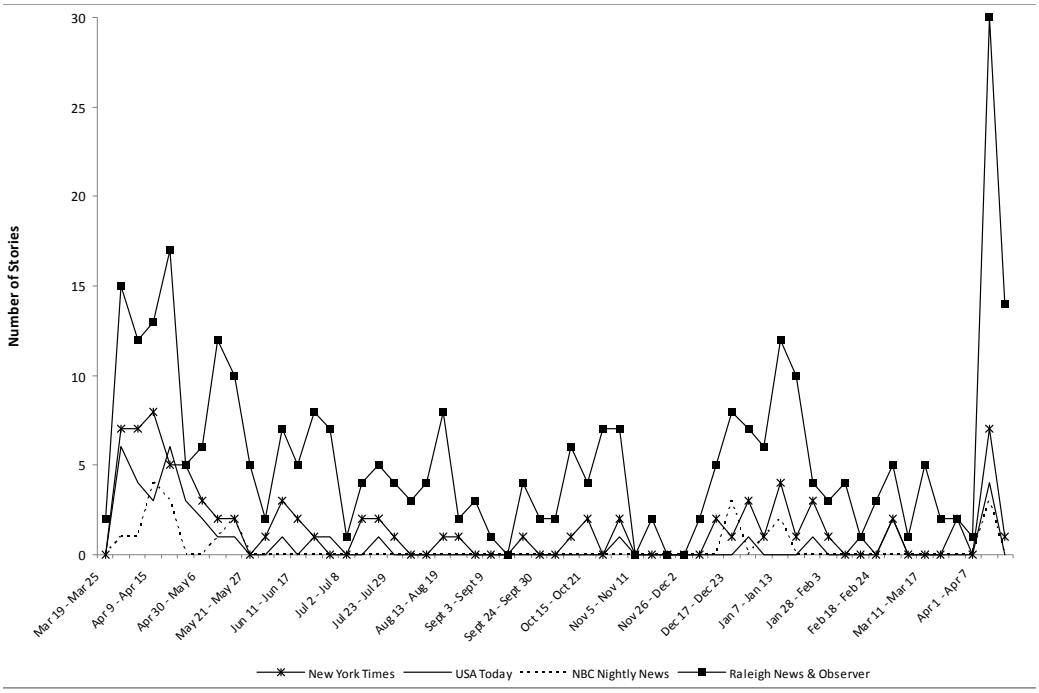
72. Neither cable news nor talk shows were included in the systematic content analysis, though they will be discussed briefly below. Nor was the local Durham paper included, a paper that has come under criticism for its coverage. *See* TAYLOR & JOHNSON, *supra* note 1, at 65.

73. This sample was based on a LexisNexis search for all articles that included "Duke" within the same paragraph as "lacrosse" during this time period. This initial search generated several stories that

with the case includes 86 articles from *The New York Times*, 40 from *USA Today*, 321 from the *News & Observer*, and 21 stories on *NBC Nightly News*.[74]

Figure 1 shows the amount of substantive coverage over time for this period for each of these sources. Coverage waxes and wanes with events in the case; it is always higher in the local paper, as one would expect. The national news paid considerable attention in the very early period as the case initially unfolded and indictments were issued (March 2006 through May 2006), returned to the case when the rape charge was dropped and Nifong recused himself (December 2006 and January 2007), and gave considerable attention when the students were cleared of all charges (April 2007).

Figure 1: Media Coverage of the Duke Lacrosse Case By Outlet: March 14, 2006, through April 15, 2007



did not substantively deal with the Duke lacrosse case; those with fewer than three paragraphs about the incident were eliminated. Dropping these search results eliminated stories only peripherally dealing with the case—such as those about the lacrosse team's new fall season, their new coach, and the women's lacrosse team—while also removing one-sentence news summaries or other articles making only a passing reference to the case. All letters to the editor and summaries describing an article inside the paper were also removed from the sample. If an article ran less than three paragraphs, it was included if the entire article dealt with the lacrosse case.

74. In all, NBC devoted thirty-four minutes of coverage to the case. Its depictions tended to track major developments—there is no coverage between the indictment of the third defendant in May 2006 and the news that the rape charges had been dropped on December 23, 2006. This is somewhat less time than the other two mainstream networks devoted to the story: ABC allocated just over forty-one minutes to coverage of this case over this entire period, and CBS devoted nearly one hour to the case, including an unusually lengthy ten-minute story on April 11, 2007.

In characterizing the nature of coverage, the coding strategy was two-fold. First, it included examining the total number of substantive articles invoking specific terms that might contribute to favorable or unfavorable evaluations of the accuser and the accused, in addition to examining how often articles put the coverage into a racial or class context to understand the larger frames used in making sense of this event.

Second, the coding strategy included analyzing the degree to which news stories provided information that would promote favorable or unfavorable judgments of those associated with the prosecution and those associated with the defense—that is, the degree to which the information would promote, in a neutral audience member, a belief either in the defendants' guilt or in their innocence. Specifically, each paragraph was coded for the presence or absence of information that might move a neutral reader toward the belief that the players were guilty or toward the belief that they were innocent. Every paragraph was thus coded as containing (1) only information that contributed to the belief the players were guilty, (2) only information that contributed to the belief the players were not guilty, (3) information that promoted both guilty and nonguilty views, or (4) no information that might move a neutral reader in one direction or the other.[75] This analysis provides a systematic basis for inferences about whether, when, or where the coverage did tilt heavily against the presumption of innocence.

B. Results

1. Racial and Class Context

Usual media behavior would lead one to expect simplifying and sensationalizing—the media rely heavily on stereotypes in constructing their narratives and journalists themselves filter information through their own stereotypes. In the Duke lacrosse case, there was evidence that many in the media used a standard story script that viewed this event as a metaphor for larger cultural divisions—white over black, the privileged over the working class.[76] We searched for the terms "race," "racial," "racism," "racist," "black," "white," and "African American" in our samples of substantive articles, assuming these words signal that the story implicates race. Table 1 reveals that a majority of the national news coverage included one or more of these terms—57% of *The New York Times* articles, 80% of *USA Today* articles, and 48% of

75. For purposes of this analysis, a random sample of one-half *The New York Times* substantive articles (n=44) and a random sample of one-fifth of the *News & Observer* substantive articles (n=69) were coded. Because there was less coverage, every *USA Today* substantive article and every *NBC Nightly News* story was coded. See Appendix for further details on the coding.

76. The setting—prestigious university with a white-majority student body in a town where the majority of the residents are black or working class—may have contributed to this metaphor even while the media overstated the case. As community, faculty, and outside groups took up the case, they often did so from perspectives that advanced this narrative.

NBC Nightly News stories. The *News & Observer* used racial frames somewhat less: 43%.

This analysis suggests that media coverage did place the case in a racial context, particularly among national news organizations unfamiliar with the local context. Framing the case through a racial lens—a choice not somehow compelled by the laws of nature, but rather by the normal practices of professional journalism—might yield both benefits and harms. On the one hand, by racializing the story, journalists convey the role that racial difference continues to play in the United States. To some degree, that reactions emerged as they did suggests race was indeed an important force shaping belief and behavior in the case. On the other hand, this narrative, like many others, places race in a context where racial hostility and competition are highlighted and perhaps exaggerated. Such information is likely to undermine racial comity.[77] National news outlets emphasized the race angle more than the Raleigh paper. Perhaps more-detailed knowledge of the local community enables local journalists to grasp how racialized stereotypes and simplifications can possess elements of truth while also misleading readers. Additionally, it was the racial element that helped motivate national-media and audience attention to this local criminal case in the first place.

77. *See generally* ENTMAN & ROJECKI, *supra* note 18, at 11–12 ("[R]acial comity means something more than mere tolerance . . . [:] [it] require[s] that members . . . act kindly and empathetically enough to see beyond skin color to their own shared interests in a more effective and harmonious society.").

Table 1: Articles with Racial and Class References[78]

	The New York Times	***USA Today***	***NBC Nightly News***	**Raleigh *News & Observer***
Articles and stories in which any of the terms "race," "racial," "racist," "racism," "black," "white," or "African American" appear	57% (n=49)	80% (n=32)	48% (n=10)	43% (n=138)
Articles and stories in which only the terms "racism," "racist," or "racial hatred" appear	14% (n=12)	13% (n=5)	10% (n=2)	10% (n=32)
Articles and stories with references to "racial epithets," "insults," "slurs," or "racial taunts" by the lacrosse players	21% (n=18)	18% (n=7)	5% (n=1)	14% (n=44)
Articles and stories with references in which the terms "class," "privilege," "well-off," "well-to-do," "affluent," "suburban," "poor," "working class," or "poverty" appear	35% (n=30)	40% (n=16)	29% (n=6)	18% (n=58)
Total stories	N=86	N=40	N=21	N=321

There is less evidence that national news media *explicitly* portrayed the players as "racist," though there was certainly attention, particularly early on, to the claim that the players at the party used racial slurs. Evidence on this point can be found in the second and third row of Table 1. The terms "racism," "racist," or "racial hatred" appear in relatively few articles (this group is a subset of the group reflected in the second row). In the context in which they appear, the terms were very rarely used to explicitly label the players as racist.[79]

78. Sources: *The New York Times*, *USA Today*, the Raleigh *News & Observer*, and *NBC Nightly News*, from March 14, 2006, through April 15, 2007, based on LexisNexis search with terms "Duke" and "lacrosse" in the same paragraph, discarding articles that are not substantively about the case. Table entries report the proportion of all substantive stories that invoke at least one of the terms in the story.

79. These terms were used relatively infrequently in referring to the students themselves. Take for example the five *USA Today* articles that invoked these terms. One referenced "racist jocks," citing Tom Wolfe's novel *I am Charlotte Simmons*. Sal Ruibal, *Assault Scandal Highlights Divide for Durham, Duke*, USA TODAY, Mar. 13, 2006, at 9C. Another, appearing after the first indictments, did reinforce the claim that racism was a consideration in the event. It reported that students at North Carolina Central University (NCCU) had "racist graffiti spray-painted on doors and . . . had racist comments shouted at them by people in passing cars." Dick Patrick, *N.C. Central Applauds Action; Students Hope Justice Served*, USA TODAY, Apr. 19, 2006, at 10C. It quoted an NCCU professor who was monitoring the case for the state chapter of the NAACP, and it went on to quote a student who said people need to understand and discuss these issues of "racism, sexism, [and] power." *Id.* A third story offered two alternative historical references for the event: Tawana Brawley, who made up a story that she was raped by "white racists," and the case of the St. John's lacrosse players, in which an allegation of sexual abuse turned out to be true, though the defendants were acquitted of criminal charges. DeWayne

Rather, this claim was made more implicitly through reference to the use of racial epithets by the players at the party. Eighteen *New York Times* articles included the terms "racial epithet," "insult," "slur," or "taunt"; seven *USA Today* articles, forty-four *News & Observer* articles, and two *NBC Nightly News* stories invoked these terms.[80]

The bottom row of Table 1 provides evidence on the extent to which the case was placed into a class frame. Here the search comprised terms that might signal class as a frame of reference: "class," "privilege," "well-off," "well-to-do," "affluent," "suburban," "poor," "working class," and "poverty." Although not as prominent as a racial frame, a significant portion of substantive coverage included at least one of these class terms: 35% of articles in *The New York Times*, 40% in *USA Today*, 18% in the *News & Observer*, and 29% on *NBC Nightly News*.

Whereas the race and class storyline was prominent, very few stories placed the incident in a gendered context. Only eight *Times* stories invoked gender, six in *USA Today*, seventeen in the *News & Observer*, and two on *Nightly News*.[81]

Wickham, *Race and Sex Cast Long Shadow Over Duke*, USA TODAY, Apr. 18, 2006, at 13A. In the spring of 2007 these terms appeared in two more articles. A sports column suggested that the three defendants were "part of a group that included vile, racist teammates," Jon Saraceno, *Duke Lacrosse Case Has No Winners*, USA TODAY, Feb. 26, 2007, at 5C, and an article quoting editorials and columns from across the nation criticized the faculty for supporting the branding of the athletes as "racist," *A Rush to Judgment on Duke Lacrosse Men*, USA TODAY, Apr. 13, 2007, at 11A. On *NBC Nightly News*, the first story on the topic opened with, "And on the campus of one of the nation's top universities, Duke, accusations of racial hatred and a terrible crime . . . ." *NBC Nightly News* (NBC television broadcast Mar. 29, 2006). The second occurred in a story noting that "[b]ecause the accuser [was] African-American, the issue of racism inflamed the case and heightened tensions . . . ." *NBC Nightly News* (NBC television broadcast Apr. 10, 2006). *The New York Times* used these terms in twelve articles. In six, the terms were used in ways that undercut the claim of racism. An article from April 12, 2007, that began by reporting that the three students had been declared innocent of all charges also noted "the accuser's vivid account of racism and misogynistic taunts." Duff Wilson & David Barstow, *Duke Prosecutor Throws Out Case Against Players*, N.Y. TIMES, Apr. 12, 2007, at A1. This story also offered a quote from a student suggesting it was unfair to pigeonhole all students as racist. *Id.* One column about Reade Seligmann, one of the accused students, includes a quote from the only black member of the women's lacrosse team who, in response to the question whether he ever gave indicators of being racist said, "Oh my god, absolutely no, a resounding no. The idea is just laughable." Peter Applebome, *As Duke Accusation Festers, Disbelief Grows*, N.Y. TIMES, July 16, 2006, § 1, at 23. An article and a column cite the faculty report that notes no evidence that the lacrosse players were racist. David Brooks, *The Duke Witch Hunt*, N.Y. TIMES, May 28, 2006, § 4, at 11; William Yardley, *Review by Duke Faculty Sees Both Bad and Good in Lacrosse Team*, N.Y. TIMES, May 2, 2006, at A22. In an early article, a lawyer for the players said that they had been branded racist (the implicit message being that they were not). Joe Drape, *Lawyers for Lacrosse Players Dispute Accusations*, N.Y. TIMES, Mar. 31, 2006, at D5. And finally, a column by Nicholas Kristof argued that racism runs through history but that this should prompt deep reflection not just on racism but on prejudice of any kind, including prejudice against athletes. Nicholas Kristof, Op-Ed, *Jocks and Prejudice*, N.Y. TIMES, June 11, 2006, § 4 at 13. Note, however, that athletes (particularly white ones) have never been subjected to systematic (or centuries-long, government-sanctioned) discrimination or violence rooted in a negatively stereotyping ideology.

80. Included in this are a few references to the allegation that Finnerty used a slur in an assault on a man in Washington, D.C. Over half of all references to the use of racial insults occurred in March and April of 2006.

81. Here, the search terms were "sexist," "sexism," "sex," or "misogynist." All stories that were essentially referring to the allegations of sexual assault were dropped. In the *Times*, when a gendered context was invoked it was often alongside a racial context—for example, "another painful chapter in

Presumably, media motivated by "liberal bias" or desire to promote a "politically correct" agenda would have made more of the patriarchal ritual embodied in the hiring of a stripper by young men, irrespective of rape charges.

2. Terms Used in Describing the Accuser and the Accused

How the press characterized the accuser was also explored[82]—specifically, how often she was described as a mother and how often she was described as a student (assuming these labels facilitate more-sympathetic impressions). The words "mother," "student," "single mother," or "North Carolina Central" were searched for; references not associated with the accuser were dropped. "Stripper," "exotic dancer," and "dancer" were also searched for; references not linked to the accuser were likewise dropped.

The results can be found in Table 2. A small but significant number of articles did describe the accuser as a mother (or single mother) and student. This positive depiction is likely offset by the fact that she was much more likely to have been described, given the facts of the case, as a stripper or dancer. Here, television news proves to be an exception—almost as likely to have described her as a student as to have described her as a stripper. Perhaps the difference arose because network television news paid little attention to the case between the initial phase (when "student" was more common) and the end (when "stripper" dominated).

References to the accuser as a mother and student are indeed concentrated in early coverage, which tended to treat her more sympathetically. In fact, the number of references that described her as a student is similar to the number of references that noted she was a stripper, up to the point at which the initial DNA evidence was released. Subsequently, descriptions of her as a student dropped off more rapidly than descriptions of her as a stripper. Over time, as evidence mounted suggesting the players were innocent, she was described mainly as a stripper.

This analysis of how she was described or identified does not suggest she was treated especially gently by the media. Of course, it is difficult to know how audiences interpreted these references to her occupation. These labels have the

the tangled American opera of race, sex, and privilege"; "the case has touched historically tender nerves of race, sex, and class"; and "pointing to underlying issues of race, class, sex, and privilege."

82. The news sources analyzed here were not more likely to call her a victim than to call her the accuser. To the degree that use of the term victim implies that something did happen, potentially undermining the presumption of innocence, the news did not reinforce this perception by using victim more than accuser. A simple word search for "accuser," "victim," and "alleged victim" shows the papers significantly more likely to describe her as the accuser. However, when she was referenced as a victim, it was not as an alleged victim. *The New York Times* used the term "accuser" 151 times compared with 38 times for "victim" (only once was the term "alleged victim" used). In the *News & Observer* the term "accuser" appeared 627 times in coverage, "victim" 150 times, and "alleged victim" 24 times. *USA Today* and *NBC Nightly News* were relatively more likely to use "victim." In *USA Today*, "accuser" appeared 49 times, "victim" 18 times, and "alleged victim" 3 times; on *NBC Nightly News* these figures were 17 times, 9 times, and 6 times respectively.

potential to undermine audience sympathy,[83] particularly in light of the consistent references to her having been heavily intoxicated on that night. On the other hand, such labels also reinforce the negative image of the students by reminding audiences that they hired strippers for an underage drinking party.

Table 2: Articles that Include Specific Terms in Referencing the Accuser[84]

	The New York Times	***USA Today***	***NBC Nightly News***	**Raleigh *News & Observer***
"Mother"	15% (n=13)	10% (n=4)	10% (n=2)	3% (n=10)
"Single Mother"	9% (n=8)	5% (n=2)	—	3% (n=9)
"Student"	41% (n=35)	40% (n=16)	23% (n=5)	11% (n=36)
"Stripper" or "Dancer"	56% (n=48)	85% (n=34)	29% (n=6)	55% (n=176)
Total stories	N=86	N=40	N=21	N=321

The analysis also focused on how often "hooligan," a term Nifong applied to the players, appeared in the coverage, finding that it was presented mostly in a critical context. Five of nine articles that used this term in *The New York Times* made clear the label was unjustified, or criticized Nifong for having used it. Similarly, five of six references in *USA Today* and two on NBC criticized Nifong's terminology. In the *News & Observer*, nineteen of twenty-five stories containing "hooligan" undermined its applicability. So, in thirty-one of forty-two articles (seventy-four percent), the coverage told audiences that the players were not hooligans or, what amounts to the same thing, that Nifong should not have used the word.

The damaging nature of certain keywords such as "single mother" and "stripper" must also be considered in any calculation of the balance between coverage of the defendants and coverage of the accuser. And this is a good example of the complexity of trying to decipher the polysemic nature of the coverage and its effects. It is unclear, for example, whether denunciations of the lacrosse players as hooligans caused any more damage to their reputations—no matter how subjectively painful these characterizations may have been to the

83. She was a black, *single mother* working as a stripper while raising young children (a portrait consistent with negative stereotypes about black women). And to the extent that some of the articles detail her work as a stripper, they tend to paint an unflattering portrait.

84. Sources: *The New York Times*, *USA Today*, *NBC Nightly News*, and the Raleigh *News & Observer*, from March 14, 2006, through April 15, 2007. This table presents the percentage of stories in which the accuser was described in each of these ways. Coding for "single mother" is done separately from coding for "mother."

players and their families—than being labeled as an unmarried mother and stripper damaged the reputation and credibility of the accuser.

Although the "hooligan" label was largely dismissed, there is some support for the claim that early coverage contained information that reinforced impressions of Duke lacrosse players as spoiled, privileged, and loutish. There are references to prior misdemeanor charges, quotes from neighbors and professors, and discussions of the team's collective reputation that can be characterized as undermining the individual defendants' reputations. For example, *The New York Times* noted how fifteen members of the team had committed previous minor infractions, like public intoxication, in a story headlined, "A Team's Troubles Shock Few at Duke."[85] Although our analysis does not comprehensively evaluate this dimension of the coverage, some suggestive evidence comes from a search for the terms "record," "criminal," "violat[-e, -ing, -ion, -or, -ed]," or "assault." This search sought any mention of a criminal record or of violating university codes for either the accuser or the accused, dropping any irrelevant references. In *The New York Times*, two articles mentioned the accuser's record and ten mentioned the defendants' records. In *USA Today*, these figures were one and six; in the *News & Observer*, twenty-three stories referred to the defendants' records and five to the accuser's prior record. *NBC Nightly News* stories contained only a single reference to a prior charge against one of the defendants.[86] Viewing this particular dimension as a frame contest, the score would be eight to forty against the defendants. On the other side, however, the news also offered many positive character witnesses testifying to the decency of these young men and relatively few testimonials to the character of the accuser.

3. The Use of DNA Evidence

Because DNA evidence played such a prominent role in the case—not least because Nifong originally asserted that it was crucial and then backtracked when tests failed to implicate members of the team—we examine how the national media outlets presented this evidence, as detailed in Table 3. Here, we searched for all articles that included "DNA" and then analyzed whether the references were exculpatory or incriminating. In *The New York Times*, eighty-three references to exculpatory DNA evidence appear in forty-three stories, and seven references to incriminating DNA evidence appear in six stories. The latter were mainly references to a second test on the accuser's fingernails that had a match with the third player indicted. *USA Today* mentioned exculpatory DNA evidence twenty-seven times in eighteen articles and *NBC Nightly News*, eleven times in seven stories. Totaling the numbers reveals 121 mentions of

85. Warren St. John & Joe Drape, *A Team's Troubles Shock Few at Duke*, N.Y. TIMES, Apr. 1, 2006, at D1.

86. Articles describing past violations of the defendants tended to mention Finnerty's assault charge in Washington, D.C., that Evans went to court for a noise violation, and a general record of misconduct on campus among lacrosse players.

exculpatory DNA versus eleven mentions of incriminating DNA, a strong imbalance—reflecting the facts—favoring the defendants.[87] Looking only within articles that mentioned the term "DNA" further reveals thirty-three mentions of Nifong's continued belief in guilt or of the medical exam having been consistent with rape, which might offset claims that the DNA evidence exonerates the defendants. By these measures, attention to the DNA tests' exculpatory results thoroughly prevails (by 121 to 44) over attention to indications of guilt.

87. Looking at when these references appear reveals—as would be expected—that most mentions came after the initial DNA results were released on April 10, 2006. More interestingly, mentions of exculpatory DNA evidence are fairly evenly divided between coverage in the spring and summer and coverage in the fall and winter, once it was revealed that Nifong withheld information about additional exculpatory DNA evidence (presence of other DNA not associated with any lacrosse players).

Table 3: References to DNA Evidence in National News Outlets[88]

	DNA Exculpatory	**DNA Incriminating**	**DNA Inconclusive**	**Assertion that Medical Exam is Consistent with Claims of Accuser or Assertion Offsetting Claim from Nifong, or both, in an Article Mentioning DNA Evidence**
The New York Times				
Total Mentions	83	7	2	25
Articles with at least one reference	43	6	2	15
USA Today				
Total Mentions	27	—	2	5
Articles with at least one reference	18	—	1	4
NBC Nightly News				
Total Mentions	11	4	2	3
Articles with at least one reference	7	2	1	2

4. Messages Reinforcing Innocence and Guilt

In this analysis, the most direct test of the extent to which media coverage favored one side or the other came from a systematic examination of assertions facilitating claims of guilt or innocence. The results of this analysis are presented in Table 4. The table reports the proportion of all paragraphs in a given outlet that can be characterized as leading a neutral reader toward believing the accused were guilty or innocent. The first row under each source reports the results for coverage over the full period examined (March 14, 2006, through April 15, 2007). In each case, when one accounts for all coverage,

88. Sources: *The New York Times*, *USA Today*, and *NBC Nightly News* March 14, 2006, through April 15, 2007, based on a LexisNexis search for stories with "Duke w/p lacrosse" and "DNA." The first row reports total mentions, the second row reports articles with at least one mention, and the final column reports when information that might offset the exculpatory DNA evidence appears in stories that mention DNA evidence.

paragraphs that reinforced the claims of innocence outnumber those that reinforced guilt. All the outlets provided substantially more paragraphs purely promoting conclusions of innocence than encouraging either guilt conclusions or continued uncertainty (by including both guilt and nonguilt information). In *The New York Times*, 21% of all paragraphs coded included only information or claims that would lead a neutral reader to view the defendants as innocent, 11% promoted guilt, and 4%, uncertainty. In *USA Today*, the equivalent figures were 16%, 10%, and 5%, and on *NBC Nightly News*, 18%, 9%, and 11%. The *News & Observer* offered a lower proportion of direct innocence or guilt assertions, with 12% of all coded paragraphs including only information suggesting innocence, 8% guilt, and 2% uncertainty.[89]

Interestingly, *The New York Times*, which received substantial criticism for its purportedly pro-Nifong and anti-accused coverage, actually more disproportionately favored "not guilty" inferences than the other sources, considering the coverage in its entirety. And averaging across the four media outlets, 17% of paragraphs were purely pro-innocence and 9.5% purely favored guilt, nearly a two-to-one ratio favoring the defendants. Certainly these figures do not portray a media homogeneously attacking the lacrosse players.

Because much criticism focused on early coverage, the analysis is divided into two periods: on or before April 10, 2006—the day that initial results showing no DNA match to the defendants were released—and after that day.[90] When the results from the earlier phase are compared to the results from the later phase, the importance of this distinction emerges.[91] In the initial phase, the proportion of paragraphs containing information that would be read by a neutral reader as reinforcing claims of guilt substantially outnumbered those that reinforced claims of innocence in each outlet. Coverage of this nature would have the potential to undermine the presumption of innocence, consistent with the claims of critics. Even in this early phase, however, some paragraphs supported innocence.[92]

89. Front page stories are also no more likely to emphasize guilt. The three newspapers were combined to compare front page stories (B section page 1 stories from the *News & Observer* were included here since it was a local story) with inside stories. Among front page stories, 8% of paragraphs contained information that only reinforced guilt, 16% of paragraphs contained information that only reinforced innocence, and 3% contained both. For stories that did not originate on the front page, the proportions were 10%, 15%, and 3%, respectively. Thus, in the most prominent stories, innocence was the dominant theme—another finding incompatible with a hypothesis of liberal bias driving the coverage.

90. In the case of television, the results are presented in the April 10th broadcast, so we place April 10th in the second phase of coverage.

91. See Table 4, Rows 2, 3, 7, 8, 12, 13, 17 & 18 for results divided by time period.

92. *See*, *e. g.*, Joe Drape, *Lawyers for Lacrosse Players Dispute Accusations*, N.Y. TIMES, Mar. 31, 2006, at D5.

Table 4: Media Coverage Reinforcing Guilt or Innocence, By News Outlet[93]

	Guilty Only	**Not Guilty Only**	**Both Guilty and Not Guilty**	**Total Paragraphs**
USA Today (n=40 articles)				
Total Coverage	10%	16%	5%	634
On or Before April 10, 2006	11%	4%	2%	151
After April 10, 2006	10%	19%	6%	483
News Coverage	10%	14%	4%	512
Editorials, Columns, and Commentary	11%	21%	7%	122
The New York Times (n=44 articles)				
Total Coverage	11%	21%	4%	936
On or Before April 10, 2006	9%	2%	1%	269
After April 10, 2006	13%	29%	5%	667
News Coverage	13%	23%	4%	815
Editorials, Columns, and Commentary	3%	6%	—	121
Raleigh *News & Observer* (n=69 articles)				
Total Coverage	8%	12%	2%	1388
On or Before April 10, 2006	15%	5%	1%	127
After April 10, 2006	7%	13%	2%	1261
News Coverage	9%	11%	2%	1193
Editorials, Columns, and Commentary	2%	16%	2%	195
NBC Nightly News (n=21 stories)				
Total Coverage	9%	18%	11%	198
Before April 10, 2006	18%	3%	—	34
On or After April 10, 2006	7%	22%	13%	164

93. Sources: *The New York Times*, *USA Today*, *NBC Nightly News*, and the Raleigh *News & Observer*, March 14, 2006, through April 15, 2007. In the case of *The New York Times* and the *News & Observer*, the analysis is based on a subsample (randomly selected) of all substantive coverage. Table entries show the proportion of all paragraphs devoted to the Duke lacrosse case that fall into a specific category. Paragraphs were coded based on whether they included information, evidence, or claims that reinforced guilt only, reinforced innocence only, reinforced both, or had no information that could move a neutral participant toward one side or the other.

Given how the proportion of paragraphs reinforcing guilt or innocence changed over time, it is apparent that the weakness of the prosecution's case was not fully realized until well into this second phase. What accounts for this continuing attention to information that suggests guilt after the initial DNA evidence came back—evidence that Nifong said would be crucial and that defense lawyers said would prove their clients' innocence? Recall that Nifong indicted the players *after* April 10th, so the indictments themselves seem to be evidence reinforcing guilt early in the second phase. Because this DNA evidence did not mark an unraveling of the case *for the prosecutor*, journalistic routines and norms ensured that it did not mark an immediate unraveling of the case *for journalists*. Rather, reporters and editors apparently assumed that Nifong had other good evidence for proceeding with the indictments, and this colored their reporting.[94] Here one sees how dependence on elite sources helped maintain attention to information suggesting guilt, even after evidence severely undermining the prosecutor's case became public.

As suggested earlier, pretrial publicity is likely to be at least somewhat slanted in favor of the prosecution, and the early coverage in this case was no exception. To the extent that criminal defendants ever enjoy a chance to have their sides presented in equal measure to the prosecution's, the Duke lacrosse players occupied a more promising position than most because of their class status and the presence of some compelling evidence for innocence (and one sees this realized in the second phase). Early on, however, this advantage was undermined by Nifong's vivid assertions of guilt, by claims suggesting the team was not cooperating, and by news of many team members' previous uncouth, though not seriously illegal behavior (much of it well-documented), which seemed to confirm suspicions and stereotypes. Revelations that one member of the team had an assault charge in Washington, D.C., and that another member's e-mail, sent right after the party in question, said that he wanted to brutalize and kill strippers, only added to the negative image. First impressions establish stereotypes that are difficult to dislodge. The early events helped establish these unfavorable perceptions among audiences as well as journalists, perceptions that may have stuck even after the initial DNA evidence became available.[95]

Eventually, coverage did change from its pro-prosecution slant. Overall, the second phase is marked by greater attention to the claims of innocence.[96] This is

94. *See* Rachel Smolkin, *Justice Delayed*, 29 AM. JOURNALISM REV., Aug.–Sept. 2007, at 18, 25–27.

95. On the cognitive psychology demonstrating the stickiness of stereotypes, and in particular the tendency of people to disregard later, stereotype-disconfirming information while selectively noticing any new, stereotype-confirming data, see Myron Rothbart & Oliver Johnn, *Intergroup Relations and Stereotype Change*, *in* PREJUDICE, POLITICS, AND THE AMERICAN DILEMMA (Paul M. Sniderman et al. eds., 1993).

96. In some instances, the nature of the coding scheme used herein probably led to extra tallies on one side. This occurred toward the end of the sample period, when stories recounted the entire case. In these instances, reiterations of the accuser's claims are counted as information reinforcing guilt if the coded paragraph (or the paragraph immediately preceding it) did not refute the rape charge. Thus, the paragraphs coded as invoking guilt in the spring 2007 coverage often appeared in the context of stories

particularly extreme in the period from December 22, 2006, when the rape charges were dropped, through April 11, 2007, when all charges were dropped (encompassing the period when Nifong asked to be removed from the case and the North Carolina Attorney General took over). As Figure 1 makes clear, there was considerable media attention during this time. In this period, the results are as follows: in the *News & Observer*, 19% of paragraphs emphasized only innocence and 5% emphasized only guilt; in *The New York Times*, the figures are 52% innocence and 6% guilt; in *USA Today*, 40% innocence and 6% guilt; and on *NBC Nightly News*, 38% innocence and 3% guilt.[97]

5. Editorials Versus News

Observations of media coverage of the Duke lacrosse case suggest that far and away the worst offenders in framing from a one-sided prosecution perspective were certain opinion columnists and cable television personalities. These people are not reporters bound (at least nominally) by the strictures of "objectivity" or balance; nor do they necessarily even face the requirement of confirming facts or of doing any reporting of their own. One example is a "Sports of the Times" column by Selena Roberts in which she wrote about a "night that threatens to belie [the team members'] social standing as human beings" and in which she clearly implied the students' guilt.[98] Another example would be a Sunday op-ed piece, *Blue Devils Made Them Do It*, which presented a highly unfavorable portrait of the Duke lacrosse team and again did little to apply the innocent-until-proven-guilty standard.[99]

Here, analysis of the proportion of paragraphs that reinforced guilt or innocence suggests that editorials were much more likely to be one-sided—that is, to include only paragraphs reinforcing guilt or only paragraphs supporting innocence, with no paragraphs at all representing both sides. All editorials and columns in *The New York Times* were one-sided in this way, purely supporting guilt or innocence, as were seven of eleven editorials and columns in the *News & Observer*. This said, however, editorials are designed to assert opinion.

Perhaps most egregiously imbalanced were the cable talk shows, such as *The Nancy Grace Show* on the CNN Headline News network.[100] Many cable shows

that began with the fact that the defendants had been cleared. The coding protocol does not fully capture how that initial background might influence interpretation of all subsequent paragraphs; in other words, the data somewhat overstate the degree to which the defendants' guilt continued to be asserted during the second phase.

97. The heavy emphasis on innocence near the very end of coverage in the second phase does not fully account for the finding of more attention to innocence in the second phase. For example, in *The New York Times* during the period from April 10, 2006, through December 22, 2006 (before the indictments were dropped), 15% of paragraphs emphasized only guilt and 22% emphasized only innocence.

98. *See* Selena Roberts, *When Peer Pressure, Not a Conscience, is Your Guide*, N.Y. TIMES, Mar. 31, 2006, at D1.

99. *See* Allan Gurgangus, Op-Ed, *Blue Devils Made Them Do It*, N.Y. TIMES, Apr. 9, 2006, § 4, at 13.

100. *See* Smolkin, *supra* note 94, at 21, 25; YAEGER & PRESSLER, *supra* note 2, at 149–54; TAYLOR & JOHNSON, *supra* note 1, at 118–28. It should be noted that Grace does not generally take overtly

seek out guests who will take extreme positions and offer controversial claims because that is part of the "entertainment" of the show. This coverage becomes problematic if citizens see it as news, or as some form of journalism. As KC Johnson notes, "They shouldn't be considered journalism in any respect at all, but it's alarming because most of the public probably does consider it journalism, or journalism in some way."[101]

Of course, to the degree that commentary and editorials influence the construction of news narratives, they may be consequential. This may be a dynamic at play in early coverage. Editorials and columns appearing before the release of the initial DNA evidence, like the two examples given above, tended to support a pro-prosecution framing of the event, although editorials supporting the claims of innocence also appeared. Analyzing the proportion of paragraphs that reinforced guilt or innocence separately for news versus columns or editorials reveals that over the entire period editorials were more likely to contain paragraphs emphasizing only innocence than they were to contain paragraphs emphasizing only guilt (Table 4). Overall, editorial pages averaged 5.3% of paragraphs arguing for guilt only and 14.3% supporting innocence only, a nearly three-to-one ratio favoring the defendants. In other words, once strong (DNA) evidence of innocence was available, the newspapers in the sample gave far more editorial attention to innocence than they *ever* gave to guilt. This finding offers another indicator that neither a "politically correct" nor a liberal editorial agenda was driving the coverage.

V
DISCUSSION

This analysis of the Duke lacrosse case coverage in three national news outlets and one local newspaper reveals evidence consistent with some of the major concerns raised in critiques of the media's treatment of the case. The results provide some evidence that journalists relied on stereotypes and scripts that may have oversimplified and misrepresented what the case was about and caricatured and misrepresented the individuals involved. Coverage in the early phase was also less balanced and exhibited a slant toward the prosecution. And yet, the analysis here does not provide support for those who would characterize coverage as "politically correct sensationalism,"[102] or as failing to include claims of and evidence for innocence. Coverage was not completely one-sided and unfavorable to the students. This examination suggests that the

liberal positions on her show, so the slanted coverage should not be interpreted as an indicator of liberal bias. Instead, as noted by Dowler, "*The Nancy Grace Show* selectively targets specific kidnappings, sex crimes, or murders, with a particular focus on retribution and punishment." Dowler et al., *Constructing Crime: Media, Crime, and Popular Culture*, 48 CAN. J. CRIMINOLOGY & CRIM. JUST. 837, 838 (2006).

101. Smolkin, *supra* note 94, at 25. *See generally* Robert Entman, *The Nature and Sources of News*, *in* THE INSTITUTIONS OF DEMOCRACY: THE PRESS (Kathleen Hall Jamieson & Geneva Overholser eds., 2005).

102. TAYLOR & JOHNSON, *supra* note 1, at 118, use this as the title of a chapter on the press.

coverage, taken as a whole, does not demonstrate particularly clear-cut favoritism toward either side. Plenty of unfavorable information was conveyed about the accuser and the accused.[103] Ironically, just as the earliest coverage may have biased some people's perceptions of the case toward guilt, so too the news and commentary during the first phase may have distorted perceptions of the media's behavior. Any conclusions about the journalism here must avoid stereotypes that oversimplify the media's constructions of the Duke lacrosse case.

One of the most important lessons to be drawn is the way normal news routines—including overreliance on public officials (specifically the prosecution and police), overuse of familiar stereotypes and standard scripts, and pack journalism—can combine with a determined government official to facilitate pro-prosecution slant in news of alleged crimes. The Duke lacrosse case provides a particularly vivid and compelling example of a more general dilemma for the administration of justice. Research suggests that pretrial publicity may have important effects on juries and thus on the ability of defendants to get a fair trial.[104] The findings are particularly troubling when one considers that the Duke lacrosse players do not typify crime-news defendants. Poorer racial minorities—and whites—can rarely afford the sort of legal representation that helped the Duke students generally obtain more-positive

103. *See* Susan Hanley Kosse, *Race, Riches & Reporters—Do Race and Class Impact Media Rape Narratives? An Analysis of the Duke Lacrosse Case*, 31 S. ILL. U. L.J. 243, 261, 267 (2007) (concluding, on the basis of a content analysis of fourteen magazine articles, that the media painted an unflattering picture of both the accuser and the accused).

104. Much research suggests that pretrial publicity has the potential to produce an antidefendant bias. *See, e.g.*, John W. Wright II & Susan Dente Ross, *Trial by Media?: Media Reliance, Knowledge of Crime and Perception of Criminal Defendants*, 2 COMM. L. & POL'Y. 397 (1997) (finding that exposure to crime coverage is associated with perceptions of a guilty defendant); Gary Moran & Brian L. Cutler, *The Prejudicial Impact of Pretrial Publicity*, 21 J. APPLIED SOC. PSYCHOL. 345, 345 (1991) (finding that exposure to pretrial publicity is associated with perceived culpability but not with willingness to admit one might be biased by the publicity); Stanley Sue et al., *Biasing Effects of Pretrial Publicity on Judicial Decisions*, 2 J. CRIM. JUST. 163 (1974) (claiming that pretrial publicity results in antidefendant bias by affecting the evaluation of evidence presented at trial); Amy L. Otto et al., *The Biasing Impact of Pretrial Publicity on Juror Judgments*, 18 LAW & HUM. BEHAV. 453 (1994) (suggesting that pretrial publicity influences initial judgments about guilt); *see also* sources cited *supra* note 11. Christine Ruva et al. suggest a cognitive mechanism by which this might work, arguing that jurors selectively attend to trial information that is consistent with their preconceived notions based on the pretrial publicity. Christine Ruva et al., *Effects of Pre-Trial Publicity and Jury Deliberation on Juror Bias and Source Memory Errors*, 21 APPLIED COGNITIVE PSYCHOL. 45, 61 (2007); *see also* Lorraine Hope et al., *Understanding Pretrial Publicity: Predecisional Distortion of Evidence by Mock Jurors*, 10 J. EXPERIMENTAL PSYCHOL.: APPLIED 111 (2004) ("The effect of prejudicial [pretrial publicity] on verdict outcomes was mediated by predecisional distortion [juror bias] in the evaluation of testimony."); Margaret Bull Kovera, *The Effects of General Pretrial Publicity on Juror Decisions: An Examination of Moderators and Mediating Mechanisms*, 26 LAW & HUM. BEHAV. 43 (2002) (finding that media slant affected participant standards for determining guilt). Some work suggests that voir dire and jury instructions do not necessarily overcome these effects. *See, e.g.*, Hedy Red Dexter et al., *A Test of Voir Dire as a Remedy for the Prejudicial Effects of Pretrial Publicity*, 22 J. APPLIED SOC. PSYCHOL. 819 (1992). *See generally* Solomon M. Fulero, *Afterword: The Past, Present and Future of Applied Pretrial Publicity Research*, 26 LAW & HUM. BEHAV. 127 (2002) (summarizing the prejudicial pretrial-publicity literature); JON BRUSCHKE & WILLIAM E. LOGES, FREE PRESS VS. FAIR TRIALS: EXAMINING PUBLICITY'S ROLE IN TRIAL OUTCOMES (2004) (reviewing prejudicial pretrial-publicity literature, including many studies finding no effects).

coverage after the initial phase. Indeed, for most poorer defendants, there may be no second phase to balance initial stories almost always slanted against them. When the defendants are blacks or Latinos, they further suffer from the effects of pre-existing schemas that arise from prior, racialized coverage of news as described above.

In these senses, most pretrial publicity is predictably prejudicial, and media behavior in the Duke lacrosse case was not unusual but typical. Here, the absence of a second side consisting of legitimate sources promoting an alternative narrative was compounded by the early public stance of the team, an almost classic example of poor public relations. Lesson number one for organizations facing a crisis of confidence (for example, Johnson & Johnson's poisoned Tylenol scare[105]) is to create an appearance of openness to criticism and honest desire to let the truth prevail.[106] Although criminal defendants obviously differ from corporations or government agencies charged with malfeasance or error, defense lawyers in recent years have widely recognized that in high-profile cases they might need to compete in the media to counter the prosecution bias.[107] To yield balanced coverage, media framing contests require that both sides have approximately equal skill and resources. The Duke lacrosse case featured a publicity-hungry D.A. (not exactly unusual) who was also flagrantly violating legal standards for prosecutors (less typical). On the other side, it featured a defense-communication strategy initially constrained by the potential future trial and the involvement of several different potential defendants and their lawyers. For a few perhaps crucial days, the prosecution and police dominated media coverage.[108]

Furthermore, some journalists suggest that the early silence of team members, who on advice of counsel refused to speak publicly, inhibited their

105. *See generally* Jerry Knight, *Tylenol's Maker Shows How to Respond to Crisis*, WASH. POST, Oct. 11, 1982, at Wash. Bus. 1 (discussing Johnson & Johnson's response); Richard S. Levick, *Brand Protection: Defining Priorities During Crisis and Litigation*, http://www.bernsteincrisismanagement.com/nl/crisismgr040215.html (last visited Feb. 27, 2008) (discussing Johnson & Johnson's response as "the ultimate brand preservation").

106. *See*, *e.g.*, ROBIN COHN, THE PR CRISIS BIBLE: HOW TO TAKE CHARGE OF THE MEDIA WHEN ALL HELL BREAKS LOOSE 182 (2000) ("When a company doesn't talk to the press, it is giving up control of the story."); *see also* LYNN BREWER ET AL., MANAGING RISKS FOR CORPORATE INTEGRITY: HOW TO SURVIVE AN ETHICAL MISCONDUCT DISASTER 149–86 (2006) (discussing crisis-communication best practices).

107. It would depend on the details of the case whether the defense in high-profile cases would want to compete in the public arena. *See generally* John Watson, *Litigation Public Relations: The Lawyers' Duty to Balance News Coverage of their Clients*, 7 COMM. L. & POL'Y. 77 (2002) (discussing the effect of duties owed to clients in litigation public-relations strategies); Robert Shapiro, *Secrets of a Celebrity Lawyer: How O.J.'s Chief Strategist Works the Press*, 33 COLUM. JOURNALISM REV., Sept.–Oct. 1994, at 25 (discussing litigation public-relations strategies); Jonathan M. Moses, *Legal Spin Control: Ethics and Advocacy in the Court of Public Opinion*, 95 COLUM. L. REV. 1811 (1995) (discussing the ethical implications of litigation public relations).

108. The first statements by the Durham police came on March 24, 2006, asserting strong physical evidence of rape, TAYLOR & JOHNSON, *supra* note 1, at 63, and Nifong began making public statements on March 27, 2006, *id.* at 85. The first public denial of the rape charge by individuals associated with the team was a statement released by Duke on March 28, 2006. *Id.* at 93.

coverage.[109] To the extent the defense could have contested the early framing, they undermined their credibility by depriving journalists of the simple raw material (for example, quotes and interview photos) necessary to balanced depictions.[110] Early on, Nifong claimed that the players were not cooperating, and this theme was picked up by reporters and columnists. This, along with visual images of the team and the paucity of public statements, helped to feed the impression that "they have something to hide" and "they think they are above the law." The team's so-called "wall of silence,"[111] along with widely reproduced visual images of team members dressed similarly and appearing grim faced, potentially left damaging impressions among journalists, and among audience members predisposed to be sympathetic toward the accuser.[112]

Although the team captains initially cooperated by giving statements to the authorities and volunteering to take polygraph tests, these facts did not fit conveniently into the initial frame and therefore did not receive narrative prominence. On the other hand, media research offers little reason to expect news reports in most arenas to calibrate the magnitude and resonance of attention given to aspects of the story according to a self-conscious assessment of those aspects' substantive or logical importance.[113] In this instance, given journalistic values, it is not surprising that a symbolic "wall of silence" trumped the detail that some team members were cooperating with the prosecutor's requests.

In some cases, the absence of a second side to the story, due to the lack of a second set of credible sources promoting a competing frame, arises because such an argument would be culturally unthinkable or illegitimate. Thus, the Michael Vick dog-fighting case produced overwhelmingly one-sided coverage because no credible sources were systematically promoting the arguments that torturing and killing dogs is an acceptable hobby. Unfortunately, some of the

109. *See* Smolkin, *supra* note 94, at 21.

110. *See* Entman, *Framing Bias*, *supra* note 3 (showing through a news-slant index formula the necessity of two sides competing equally skillfully to yield balanced news).

111. This term was often invoked by editorial writers and columnists. As an indicator of the extent to which this term entered the lexicon of the case, a simple search of the LexisNexis database for March 14, 2006, through July 31, 2007, finds thirty-three uses of "wall of silence" in U.S. newspapers and nineteen on ABC, CBS, CNN, or FOX News programs. Many of these, however, came in contexts denying such a wall existed.

112. On the importance of visual displays of such nonverbal communication behaviors as body language and facial expressions, see generally Eric P. Bucy & Maria Grabe, *Image Bite News: An Underappreciated Source of Political Information* (Aug. 30–Sept. 3, 2006) (paper presented at the 2006 Annual Meeting of the American Political Science Association, Political Communication Division, on file with *Law and Contemporary Problems*).

113. *See, e.g.*, BENNETT, NEWS: THE POLITICS OF ILLUSION (2007) (showing the vulnerability of journalists to manipulation by "spin doctors," who have no interest in logic or substance, but seek rather to promote news serving their political goals); Robert M. Entman, *Mass Media and Policy Innovation: Opportunities and Constraints for Public Management*, *in* INNOVATION IN AMERICAN GOVERNMENT: CHALLENGES, OPPORTUNITIES, AND DILEMMAS 202 (1997) (showing news-production values and routines usually trump any interest in calibrating the amount and focus of coverage to the substantive importance of policy problems and solutions); Entman, *Framing Bias*, *supra* note 3 (showing that facts and journalists' assessments of them are less important to the slant of news than contending parties trying to spin the story).

same dynamics can be seen in coverage of military interventions in which fear of seeming unpatriotic or "soft on defense" discourages credible opponents from organizing together to promote an alternative narrative suggesting diplomacy as a more efficient solution to the conflict.[114] In one sense, the defendants here suffered from a similar cultural disadvantage in that the facts of the case, as promoted vigorously by the prosecution, seemed indeed culturally indefensible. However, as eventually became clear, there was another culturally acceptable perspective—one emphasizing prosecutorial misconduct.

The media might have been more sympathetic to the defense's questioning of Nifong's credibility, had that been more of a focus of the defense's initial media strategy; but the defense did not skillfully promote it during the crucial, early days when the "sticky," initial, event-specific schema for the incident was forming.[115] Instead, the defense appears to have spent more time attacking the *accuser's* story and credibility. One reason this tack might have been less effective is that, had the story turned out to be true, journalists would have found themselves on the side of attacking a rape victim.[116]

The apparent story of privileged whites victimizing a black woman fit larger cultural narratives, making it almost inevitable that third parties would insert themselves into the struggle over media framing.[117] The use of this high-visibility case as a platform for advancing more-general political agendas is also nothing unusual and, leaving aside the particulars of the case, is not even undesirable. After all, we are constantly being told that the United States enjoys a vigorous marketplace of ideas,[118] so there is nothing wrong with spokespersons for various ideological points of view seizing on big news stories to promote their political interpretations and preferences. What was obviously problematic in this case was that these spokespersons tended to treat the defendants as guilty and used that conclusion as a basis for their larger political arguments about white racism and privilege. The weak factual basis of this particular case does not in itself logically preclude the possibility that their arguments to the more

114. *See* BENNETT ET AL., *supra* note 3, at 31–33 (discussing the failure of the Democratic party to successfully promote a competing frame in the aftermath of 9/11); Entman et al., *supra* note 3, at 13–15.

115. On the stickiness of initial event schemas, see Robert Entman, *Framing U.S. Coverage of International News: Contrasts in Narratives of the KAL and Iran Air Incidents*, 41 J. COMM., Autumn 1991, at 6.

116. Furthermore, several stories reinforcing Nifong's credibility would seem to undermine attempts to promote this frame. Early stories describe Nifong as an able prosecutor, and describe his local reputation as good. Ironically, an April 12, 2006, *New York Times* story dealing with the case and the election features defense lawyers essentially agreeing with that characterization, perhaps bolstering Nifong's credibility. *See* Juliet Macur & Duff Wilson, *Duke Inquiry to Continue, and So Will a Campaign*, N.Y. TIMES, Apr. 12, 2006, at A14.

117. In this case, those third parties included black citizens in Durham and other groups that put political pressure on the authorities, as well as the Duke faculty, who were concerned about the university's heavy-drinking culture and widespread flouting of alcohol laws, its emphasis on big-time athletics, and the possible dilution of academic standards.

118. For research contesting this claim, see C. EDWIN BAKER, MEDIA CONCENTRATION AND DEMOCRACY: WHY OWNERSHIP MATTERS (2007); BENNETT ET AL., *supra* note 3; Gadi Wolfsfeld & Tamir Sheafer, *Competing Actors and the Construction of Political News: The Contest over Waves in Israel*, 23 POL. COMM. 333 (2006).

general points were valid. A large body of evidence supports the view that white privilege and white racism do continue to oppress African Americans, particularly poorer African Americans.[119] And there is a sound basis in this particular instance for suggesting that Duke University is a relative bastion of white privilege in a city where many working-class whites, blacks, and Latinos struggle to make ends meet and to receive adequate educations, job opportunities, health care, and other privileges that most Duke students (and professors) take for granted. In the context of increasing income- and wealth inequality nationally, and of continued black–white disparities across an array of indicators,[120] the Duke lacrosse story, as it first seemed to be, was a reasonably compelling symbol.

The very ability of a conference held at a prestigious law school to command attention—and attendance—from important elites testifies to the accuracy, at least in part, of the stereotype of Duke University and its students as unusually privileged.[121] When Richard Jewell was hounded for his alleged, and ultimately disproved, responsibility for the Atlanta Olympic bombing, no serious books were written, the media paid minimal attention to the injustices, and no major law school devoted a conference and law-review issue to the lessons from that case. Richard Jewell was a working-class white man, a point that suggests part of the Duke lacrosse case narrative does indeed properly concern class privilege.[122]

In many ways the Duke lacrosse story—with its simplifications, mistakes, distortions, and initial pro-prosecution slant—was typical. Yet the case was also quite unusual for crime coverage. Most crime news depicts poor, young whites and nonwhites unaffiliated with prestigious institutions, and much of it reinforces antiblack stereotypes.[123] This unusual case of white students at an elite university subjected to the same kind of treatment customarily bestowed on poor and working-class whites and minorities could yield social benefits. It could raise awareness among journalists and law-enforcement officials of the

119. *See, e.g.*, MICHAEL K. BROWN, ET AL., WHITEWASHING RACE: THE MYTH OF A COLOR BLIND SOCIETY (2003).

120. *See generally* NATIONAL URBAN LEAGUE, ANNUAL REPORT ON SOCIO-ECONOMIC CONDITIONS IN BLACK AMERICA, http://www.nul.org/thestateofblackamerica.html (discussing multiple markers of black socioeconomics); DAVID CAY JOHNSTON, FREE LUNCH: HOW THE WEALTHIEST AMERICANS ENRICH THEMSELVES AT GOVERNMENT EXPENSE (AND STICK YOU WITH THE BILL) (2007) (discussing growing income inequality).

121. Disclosure: Entman and his wife are Duke alumni, and their son is a member of the class of 2008.

122. Jewell died just before this law-school conference. Not only was he innocent, he was actually the man whose discovery of the bomb helped minimize casualties from it. *See* Kevin Sack, *Richard Jewell, 44, Hero of Atlanta Attack, Dies*, N.Y. TIMES, Aug. 30, 2007, at C14. *See generally* Kevin Sack, *He Felt Much 'Like a Hunted Animal,'* N.Y. TIMES, Oct. 29, 1996, at A12. Only two law-review articles (written by the same authors) were located that centrally concern Jewell. *See* Clay Calvert & Robert D. Richards, *A Pyrrhic Press Victory: Why Holding Richard Jewell is a Public Figure is Wrong and Harms Journalism*, 22 LOY. L.A. ENT. L. REV. 293 (2002); Clay Calvert & Robert D. Richards, *Journalism, Libel Law and a Reputation Tarnished: A Dialogue with Richard Jewell and His Attorney, L. Lin Wood*, 35 MCGEORGE L. REV. 1 (2004).

123. *See* discussion *supra* III.

damage inflicted by the media's standard operating procedures on the humans subjected to a media circus and on the presumption of innocence that undergirds the criminal justice system. Comparing this atypical instance to normal crime news should also illuminate the ways racial minorities are subjected to a kind of double jeopardy: they face the institutionalized, pro-prosecution news bias likely applied in their specific case, *and* the antiminority (especially antiblack) schemas perpetuated by so many other media productions.[124]

To whatever extent the Duke lacrosse case interfered with that presumption and imposed psychological, financial, social, and other costs on the team members and others, it is a travesty of justice. Yet it does *not* embody a general tendency of media to slant news of white defendants more unfavorably than that of black (or Latino) defendants. Nor does research support the generalization that media treat black victims of alleged crimes more sympathetically than white alleged victims; on the contrary.[125] Yet the Duke lacrosse case presented a moment when attention was focused on the potential problems that can arise in the administration of justice. One of the media's failings in this case was in not using this opportunity to further a more thorough and ongoing discussion of prosecutorial misconduct or of normal journalistic practice in covering crime.

Based on these findings and the prior research, we tentatively suggest some remedies for suboptimal crime-news coverage, in full recognition that their practical implementation and acceptance are problematic. First, with respect to juries, judges could routinely include explicit warnings based on social-science research that jurors, particularly white jurors considering African Americans and other nonwhites, bring to their roles unconscious mental associations that may prejudice deliberations. A judge's directives could also make clear that this is not a matter of accusing whites of being racist, and similar instructions should apply to African American, Latino, and Asian jurors so they can be more-or-less race neutral. The point is that everyone thinks through cultural schemas that encourage unconscious mental associations. Most whites, for example, are not outright racists; few think of themselves as racist and most seek rather to prove to themselves that they are not. Research has shown the best way to combat this is by explicitly telling people what might be happening in their minds subconsciously.[126] Research suggests that awareness of this context can moderate the effects of the unconscious, negative associations in decisionmaking.[127]

124. *See* ENTMAN & ROJECKI, *supra* note 14.

125. *See, e.g.*, ENTMAN & ROJECKI, *supra* note 18, at 81.

126. MENDELBERG, *supra* note 65.

127. *See* MENDELBERG, *supra* note 65, at 209–36 (discussing "psychological mechanisms that [can] hinder or facilitate the impact of implicit and explicit racial appeals"); Devine, *supra* note 16, at 15 (discussing results showing that automatic prejudice activation occurs for both high- and low-prejudiced subjects, but that controlled processing inhibits this for individuals who seek to maintain their unprejudiced self identity); Kang, *supra* note 46, at 1528–35 (discussing arguments for and against the

Another remedy would be training district attorneys, their staffs, police departments, and others involved in the criminal-justice process to understand the social science on unconscious racial stereotyping and decisionmaking. Furthermore, training these personnel to recognize that their interactions with the press may undermine the presumption of innocence could help mitigate deleterious impacts on defendants' rights. However, police officials, individual officers, and certainly district attorneys have many political incentives to promote one-sided publicity with the precise intention of prejudicing the jury pool and improving the chances of conviction. The publicity also promotes an image of competence and achievement that is simply good public relations for police and prosecutors.

As illustrated in the *Gentile* case,[128] which dealt with the ability of the defense to speak to the media, one of the problems for defense attorneys appears to arise from American Bar Association standards discouraging both sides from speaking to the press. Prosecutors' and police officials' incentives and inclinations to violate the ABA's rules appear strong. Defense attorneys on the other hand seem more obedient, we speculate, perhaps because judges can sanction them more readily than they can prosecutors. In addition, awareness of a structural pro-prosecution bias rooted in the superior media resources of the prosecution (which makes the playing field of frame contests uneven) could discourage defense lawyers from even trying to contest the media frame. In a media-saturated culture that includes 24/7 access to breaking news and to unrestrained speculation on the Internet, it might make sense to revisit the ABA guidelines.

These forces put more of an onus on journalists to alter their behavior. That is, they should recognize the self-interested nature of public officials' pronouncements and claims in criminal cases just as they appreciate—and often report—the self-serving motives of public officials in other policy realms.[129] Journalists should also take into account the structural absence of a legitimate, competing opposition of the sort that helps to promote (though certainly not guarantee) more-balanced presentations of controversies in other policy areas.[130] As suggested by Smolkin, however, the forces that promoted the journalistic shortcomings on exhibit in the Duke lacrosse case are not easily countered.[131] This leads to a reasonable prediction that prejudicial pretrial publicity and troubling coverage associating minorities with crime and violence will continue

ability of context to overcome implicit racial attitudes); Lane et al., *supra* note 55, at 438–39 (discussing research finding that exposure to counterstereotypical cues can reduce implicit racial bias).

128. Gentile v. State Bar of Nevada, 501 U.S. 1030 (1991). For a review and discussion of the ABA guidelines with respect to trial publicity, see, for example, Ryan Brett Bell & Paula Odysseos, *Sex, Drugs and Court TV? How America's Increasing Interest in Trial Publicity Impacts Our Lawyers and the Legal System*, 15 GEO. J. LEGAL ETHICS 653 (2001).

129. *See* THOMAS E. PATTERSON, OUT OF ORDER (1994).

130. *See* BENNETT, *supra* note 113.

131. *See* Smolkin, *supra* note 94, at 20 (discussing the media's inability to resist the "sensational, simplistic storyline" in the Duke lacrosse case).

to be the norm rather than the exception, ultimately causing more harm for nonwhite than white defendants.

APPENDIX: CODING INFORMATION

For our analysis of the terms used in coverage, a research assistant searched for the specific terms noted in the text. A research assistant would then determine if the term was used in reference to what we were interested in, as described in the text. Except where indicated, we accounted for the presence or absence of terms at the level of the article as a whole and did not account for the frequency with which terms were used within articles.

For the analysis of information that might promote in a neutral audience member either a belief in the defendants' guilt or in their innocence, a research assistant coded each paragraph for the following:

1. The presence or absence of information that would tend to move a neutral reader to be more likely to think that the events at the house happened and that the players were guilty. Any information, assertions, or statements that would tend to contribute to the belief that the event happened and that the players were guilty was coded here as "guilty" (including assertions or statements that the alleged acts happened or may have happened, evidence or characterizations of evidence consistent with the accuser's claim, and claims that boosted the credibility of the charges).
2. The presence or absence of information that would tend to move a neutral reader to be more likely to think that events did not occur as the accuser described or to be more likely to think that the players were innocent. Any information, assertions, or statements that would tend to contribute to the belief that this did not happen and that the players were innocent was coded as "not guilty." This included assertions that the players were innocent and that the alleged acts did not happen; evidence or characterizations of evidence consistent with claims that they were not guilty, including inconsistency in the evidence; challenges to the credibility of the accuser and challenges to the credibility of Nifong; and mentions of Nifong's errors, including critiques of his behavior by the defense.

Every assertion about what happened, did not happen, or might have happened was coded even when the assertion itself did not provide supporting evidence for the claim. Thus, the statements of the woman who accused the players of sexual assault were coded as supporting the claim of guilt, whereas statements by the players or their lawyers that the defendants were innocent were coded as "not guilty." Assertions that contained conditional statements, however, were not coded. In coding early stories (before specific individuals were charged), any references to any lacrosse player that might move a neutral reader toward a belief in guilt or innocence were coded. Character references were coded only when they were used in the same paragraph as a reason for

believing in guilt or innocence, or when the character reference was immediately preceded or followed by a paragraph making a link between the character trait and likely guilt or innocence. Statements denying the accusations that restate the accusations as a part of the sentence were not coded as assertions of the truth of the accusations.

To ensure intercoder reliability, we adopted a strict coding standard in which coders used only the information within the paragraph and the *immediately preceding* paragraph in making their coding determination. This can result in a conservative coding of the coverage. Information in the Duke lacrosse case is certainly read in the context of an entire article or in the context of what is known about the case at a given point; however, a strict coding scheme facilitates reliability in systematic content analysis.

A second coder coded twenty percent of the total articles coded for the analysis by paragraph in order to assess intercoder reliability. Intercoder reliability was .87 using Scott's Pi, a chance-corrected measure of reliability. This provides a conservative measurement of intercoder reliability because every instance in which one coder gauged the paragraph as both guilty and not guilty and a second coder gauged it as only guilty was treated as an error (even though in such a case the coders did agree on the notion that the paragraph reinforced guilt, but disagreed on the notion that the paragraph also reinforced innocence).