

# Determining Jury Impartiality in the Malice Green Murder Cases

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## **Abstract**

Detroit Police Department officers Walter Budzyn and Larry Nevers beat Black resident Malice Green to death in November 1992 and were convicted of second-degree murder, however, their convictions were overturned by appellate courts on the basis that the jury was influenced by outside sources. Race played a critical factor in the trials and public opinion as both officers were White and the judge, juries, and prosecutors were Black. While the evidence of the case suggests a wrongful death, public opinion in Detroit and exposure to media compromised the juries' impartiality.

For six days and six nights in April-May 1992, the city of Los Angeles was engulfed in flames. It had been announced that all four officers involved in the beating of Rodney King were acquitted of assault and three were acquitted of excessive force. Uprisings soon began and ended in the death of 63 people, 2,383 injured, 3,600 fires, and 1,100 buildings destroyed (Gerdes 18). Six months later when the nation was still reckoning with the aftermath and the continued legacy of police brutality, Detroit Police Department officers Walter Budzyn and Larry Nevers, who were White, maliciously beat and murdered Black Detroit resident Malice Green on November 5<sup>th</sup>, 1992. The blood literally stained the corner of W. Warren Avenue and 23<sup>rd</sup> Street. “They beat him down like a dog,” one anonymous witness said. Another witness recounted, “He just wiped the blood off the flashlight and put it back where he had it.” Witnesses remained anonymous in fear of retaliation. The officers, nicknamed “Starsky & Hutch,” had

reputations in the neighborhood for their rough treatment of residents, but until that day residents had not witnessed the brutality (7 Action News).

These incidents dramatically changed the way Americans viewed the police and their relationship to the communities they served. In Metro Detroit, Black residents were more likely to view the incident within the context of historical racial discrimination by law enforcement whereas White residents, who had different experiences of policing, were more likely to view the incident as tragic yet isolated (Siegelman, et al. 784). Evidence during the subsequent trials of the officers were generally geared towards two possible scenarios: that Malice Green died from being beaten to death or that Green died from a cocaine overdose and a heart attack (Wilson 5). The judge, George Crockett III, the prosecutor, Kym Worthy, and both juries were entirely Black, befitting elections, jury selection, and the demographics of the city at the time. In August 1993, Budzyn and Nevers were convicted of second-degree murder (Terry 10). However, these convictions were overturned by appellate courts in the following years. The appellate court judges were majority white, reflecting the demographics of the state and circuit court (Coleman). While the evidence and facts of the case suggests a wrongful death by the officers, confirmation bias in the opinions of the juries and appellate courts likely influenced their decisions. Public opinion in Detroit was geared towards the officers' guilt because of personal encounters with law enforcement, consumption of media biased against the officers, and the statements of popular politicians like Mayor Coleman Young and Congressman John Conyers condemning the incident. Additionally, an impartial jury was not granted to the officers because of outside influences on the jury such as the showing of the film *Malcolm X*. The juries were likely not swayed by the defense's argument because they often made contradictory statements and offensive justifications of the incident. The majority White appellate court was more likely to listen to evidence that suggested alternatives to his death

because of the general public opinion outside of Detroit among White communities and the impression of a biased jury.

Historians such as Lasley (“The Impact of the Rodney King Incident on Citizen Attitudes toward Police”), Howell (“Black Cities/White Cities: Evaluating the Police”), and Seigelman (“Police Brutality and Public Perceptions of Racial Discrimination: A Tale of Two Beatings”) have discovered that how individuals react to police brutality depends on demographics and residence. Other historians like Heather Ann Thompson (“Unmaking the Motor City in the Age of Mass Incarceration”) have documented the long history of police brutality and discrimination in the justice system. Psychologists like Martin F. Kaplan (“Reducing the effects of Juror Bias”) have studied how a jury can be influenced.

I examined a variety of sources such as newspapers, letters, official documents, court transcripts, and interviews. The *Detroit Free Press* reporting was substantial in understanding the specifics of the trial. For key testimonies I read the official transcripts to ensure bias by the authors was not an issue. In understanding public opinion from Metro Detroit residents, I analyzed surveys conducted before and after the killing of Green and read letters from the Coleman Young collection at the Reuther Library written to Coleman Young and Stanley Knox expressing opinions on the incident. I argue the evidence of the case without a doubt shows Walter Budzyn and Larry Nevers murdered Malice Green, but the consumption of media that compromised the juries’ impartiality and the general attitudes of Detroit residents on the incident likely influenced their verdict of guilty. Because of this Budzyn and Nevers were able to overturn their convictions.

Detroit has a long and well documented history of police discrimination and abuse (“Unmaking the Motor City in the Age of Mass Incarceration” 42). Following the Great Migration from 1910–1970, in which millions of African Americans from the South migrated to the industrial North in search of opportunity, the demographics of Detroit

dramatically changed. The large influx of residents led to housing shortages and Black Detroiters were confined to the overcrowded neighborhoods of Black Bottom and Paradise Valley because of housing segregation and redlining (Lassiter). During this time the Detroit Police Department was an openly racist and almost all-White institution. The DPD overtly repressed civil rights organizations, implemented policies that profile Black residents such as the 1968 “stop and frisk” law, and in an effort to protect White property values, used violence and excessive force to contain them to Black neighborhoods (Lassiter). Both liberal and conservative city governments were complicit and implemented these discriminatory policies such as the “get tough” policies under the Jerome Cavanaugh administration that militarized the police and gave them authority to arrest people under any pretext. The undercover STRESS, an acronym for Stop the Robberies and Enjoy Safe Streets, patrolled Black neighborhoods to instill fear and killed 22 residents in only three years. During the late 1960s and early 1970s, the DPD was the nation's deadliest police force per capita (Lassiter).

Civil rights organizations and Black radical groups protested this brutality and were ruthlessly cracked down by the DPD. Resentment and a failure to address these grievances led to clashes between Black Detroiters and police. In 1966, four men were arrested for loitering outside the Afro-American Youth Movement (AAYM) headquarters and sparked four days of conflict between neighborhood residents and police in the east side neighborhood of Kercheval and McClellan. This “mini-riot” was successfully quelled and revealed deep divisions about policing within Detroit (Lassiter). These divisions came to a boiling point in July 1967 when communities rebelled against this oppression after the mass arrest of 85 African Americans. For seven days the city was burned and looted. This massive civil unrest led to a military occupation by the U.S. Army and Michigan National Guard. By the time order was restored 47 people had been killed, a majority by law enforcement (Lassiter). This uprising

hastened the already existing trend of deindustrialization and White flight in the city and escalated police violence against Black residents (Boyle 121).

After the failure of the underfunded Johnson administration's "War on Poverty" and the turbulent decade of the 1960s, a wave of conservatism overtook the nation for the following decades. This was true for most of the nation except for urban cities where changing demographics led to the political ascension of African Americans that held onto liberal values ("Rethinking the Collapse of Postwar Liberalism" 223). This was especially true for Detroit when Coleman Young was elected mayor in 1973 with a coalition of Black and White voters. The primary issue Young ran on was the creation of a "people's police department" and desegregation within the DPD. Young achieved this by dismantling STRESS and by appointing African Americans and women to leadership positions. By 1987, 20% of the department were women and by 1992 half were Black ("Rethinking the Collapse of Postwar Liberalism" 239). Despite desegregation and a liberal city government, the DPD held onto its conservative culture as the devastating effects of War on Drugs ravaged the city.

This became evident on the evening of November 5, 1992, when the former steelworker Malice Green was murdered by police of the 3<sup>rd</sup> Precinct (Watson 1). According to the *Detroit Free Press*, using witness accounts and police reports, Green dropped off a friend at his home on W Warren and 23<sup>rd</sup> and was approached by two white plainclothes officers, Larry Nevers and Walter Budzyn, in an unmarked car at 10pm. The officers asked for his license and Green reached into the glove box and clutched an unknown object in his hand. They asked him what's in his hand and to let go. Green refused. The nearby witnesses observed Nevers jumping into the car and beating Green's hands with a flashlight as Budzyn started beating him from the other side of the car. After being struck in the chest Green seemed dazed. Bystanders called for EMS while Nevers called for backup. Two EMS units and police in marked cars arrived, and the arriving police joined the beating. Officer Robert Lessnau pulled

Green from the car and beat him in the face with a fist. Another stood on the injured man's neck as they put handcuffs on him. According to his testimony, EMS technician Lee Hardy messaged his supervisor asking, "What should I do if I witness police brutality ... murder?" Green went into a seizure and was taken to Detroit Receiving Hospital where he was pronounced dead on arrival at 11:06pm (Watson 1). The beating lasted for 44 minutes. An autopsy conducted by the Wayne County Morgue determined Green had used cocaine hours before, but this may not have been a factor in his death (Chesley 4).

Many living outside Detroit or those that were disconnected from the experiences of everyday residents were shocked at Green's death. Mayor Coleman Young was especially surprised, believing his reforms would've prevented such an incident (Watson 1). "I didn't think, frankly, that something like this could happen in Detroit, I thought we were past that," Young said (Watson 1). He was quick to condemn the incident and Police Chief Stanley Knox suspended all seven officers involved. In a collection of 54 letters from the *Coleman Young Papers* archive of the Walter P. Reuther Library at Wayne State University written to Mayor Young expressing opinions on the incident, the vast majority condemned it and wanted life imprisonment for the officers, although it depended on an individual's ideology, identity, and residence. All spectrums of thought were present in the letters; a more extreme example includes one former Detroit resident saying,

All 7 must be fired and put into Solitary Confinement for the rest of their lives – No Perks – No Appeals – No Parole – Limited Food – Limited Health Care. Since they have so little regard for human life, they must Never, Ever have contact with another Human Being again. Putting them to Death would be the easy way out. (*Coleman Young Papers*)

One letter writer purporting to be a Black Detroit police officer wrote, “You are the biggest racist and instigator. I’m a Black police officer and we police officers regardless of color can’t depend on you for support. You convict us before we go to court. You should work on the streets for a while and get a taste of it” (*Coleman Young Papers*). One resident of Waterford, a majority White suburb of Detroit, took a very moderate stance, writing, “First of all this incident is inexcusable, as are all acts of violence, and it is unfortunate that the 2 officers have to learn such a hard lesson .... It is obvious the officers went a bit [too] far, but what is the humane thing to do that would benefit these officers most?” (*Coleman Young Papers*).

Studies have shown that how an individual reacts to incidents of police brutality generally depends on their identity and how the community they live in is policed. According to surveys conducted in Metro Detroit before and after Green’s murder, people’s perception on police brutality and race relations in general changed drastically. For White people these incidents provided an occasion to rethink previously held opinions, whereas in Black people it reinforced previously held opinions. According to their findings, White people and Black people similarly viewed the incidents as negative, however, White people were more likely to view them as isolated incidents by treating them outside the historical context of discrimination and violent policing, whereas Black people were likely to view them as reinforcements of past discrimination (Siegelman, et al. 780). This is evident in the letters as residents of more affluent, majority White suburban communities were more sympathetic to the police due to their experience of police protection instead of harassment. Residents of Detroit, who were far more likely to have experienced police discrimination or known someone who had, were likely to be sympathetic to Green and the condemnation of the officers.

A 1992 Wayne State Center for Urban Studies survey (Siegelman, et al.) showed that the Green killing caused a significant amount of change in

opinions in White metro Detroit residents and only a slight change in Black residents' opinions. While for most questions White Metro Detroit residents acknowledged the existence of discrimination against African Americans to a greater extent after the killing, a wide gap still existed for White and Black residents and even declined for some questions. In a question asking, "Do you think a Rodney King-like incident could happen here?" 68% of Black respondents said yes before the Green murder and 98% said yes after. 28% of White residents said yes before and only 61% said yes after a similar incident occurred. A potential issue with this question arises as it's meant to apply to the community the survey taker resides in. It's likely at least a portion of those surveyed believed this could happen in Detroit or another community outside of their own. In another question asking, "Does police unfairness against [Black residents] exist?" 90% of Black residents before the killing said yes and 91% said yes after. For White residents, 64% said yes before and 59% said yes after, showing that generally White residents did not believe Green was murdered because of his race (Siegelman, et al. 783).

Understanding public opinion on the event is important because it can demonstrate biases the jury may have had. Nevers' attorney, John Goldpaugh, had requested the trial take place outside of Detroit due to the officers already being condemned in the press and by their superiors, such as the *Detroit Free Press* headline "City leaders outraged at beating," but was denied by Judge George Crockett III to ensure a speedy trial and that the jury was representational of the community ("Two days produce no jurors" 7). The jury selection process took several weeks because many potential jurors had already formed opinions on the event due to the widespread TV and print media coverage. For hours and hours, they were grilled by Goldpaugh, Judge Crockett, and prosecutors Douglas Baker and Kym Worthy on everything about their lives, from their opinion on the police to their marital status and health, until they were satisfied and comfortable they had an unbiased jury ("Jurors represent Detroit at its best" 6).



However, it was later revealed a young political appointee of Coleman Young had maneuvered their way onto the jury and was instrumental in the showing of the Spike Lee film *Malcolm X* during the trial. To prevent discussions of the case while the jury was made to wait outside, movies were provided (Coleman). The movie *Malcolm X* contains imagery of police brutality, something Malcolm X personally experienced and fought against, including the beating of Rodney King and claims White police officers are derivative of the Ku Klux Klan. Judge Dalton Robertson, the chief judge of the Recorder's Court, said on the matter, "We don't see it as a problem at all, I would surmise of the 30 or so jurors, most of them had seen the film anyway. Black folks went to see that movie. I don't think seeing it again could have any effect on them" (Green 1). He did acknowledge the issue of the film's showing could come up in appeal.

While the evidence of the case suggests a wrongful death at the hands of Budzyn and Nevers, confirmation bias likely influenced the decision of the jury. Evidence during the trials was generally geared towards two scenarios: that Malice Green died from being beaten to death or that Green died from a cocaine overdose and a heart attack (Wilson, "Juries to Start" 1). The prosecution's argument that Green had been beaten to death relied on the officers' long history of brutality, witness testimony, and autopsy reports. Nevers was a former member of the DPD's STRESS unit that was known for their fatal brutality. In 1972, Nevers shot and critically wounded a 15-year-old boy for allegedly breaking into a gas station, and in 1976 Nevers killed a 26-year-old woman (Chelsey, et. al 12). He and another officer were sued for beating a man in a restaurant parking lot in 1986, and Budzyn was also sued in an assault case in 1988 (Chelsey, et. al 12). Just a year earlier in 1991, Nevers and Budzyn were sued for beating a man waiting in his car (Chelsey et. al 12). Witnesses brought by the prosecution ranged from bystanders to EMS personnel and other officers. All paint a clear picture: the amount of force used against Green was excessive and unnecessary. According to court documents, EMS technician Lee Hardy

testified they never told Green he was under arrest and that even after Green had stopped moving, they continued beating him. The prosecution also relied on the official autopsy by the Wayne County Medical Examiner's Office that attributed Green's death to blunt force trauma. The prosecution had printed out full-color morgue photos of Green after his death and given it to each member of the jury. Janet Wilson of the *Detroit Free Press* writes of the images, "Inside are shocking, ugly photos of Green's mutilated scalp – cuts streaked over his eye, thick red welts lacing his shaved head, all graphic evidence of a sustained beating, according to prosecution" (Wilson, "Juries to Start").

The jury was likely not swayed by the defense due to inconsistencies and the offensive justification of the beating. They attempted to cast doubt on the witnesses' testimonies and on the official autopsy. The defense attempted to prove the use of force was justified by painting Green as a violent crack addict who resisted arrest and attempted to reach for a weapon (Wilson, "Juries to Start"). On cross examination for each witness, the defense questioned their credibility by pointing out minor inconsistencies in their story (Wilson, "Juries to Start"). They also questioned the official autopsy by bringing in other medical examiners to testify. Dr. Lucy Balian Rorke told the jury, "Malice Green would have died whether he was beaten or not" (*State of Michigan v. Nevers*). She observed swelling in the brain which she attributed to cocaine use and that "Green died accidentally because his body and brain were already weakened by cocaine when he was hit" (*State of Michigan v. Nevers*). Other medical examiners, like the Oakland County and Philadelphia Chief Medical Examiner, testified he died from a combination of cocaine use, heart attack and the beating (Wilson, "Juries to Start"). The defense's attack on Green's character was but only one of the offensive arguments made. Defense attorney John Goldpaugh made the argument that officers can kill in crimes such as felony narcotics possession. He read a section of the department manual that read, "Only that force which is necessary to effect

the arrest may be used. That may be . . . extreme force. Deadly force is NOT to be used in misdemeanor cases. It may be used in felony cases where absolutely necessary” (*State of Michigan v. Nevers*). Nevers testified it was absolutely necessary because Green was clutching cocaine in his hand and reached for a weapon. Budzyn’s testimony contradicted what was said by the 33 other witnesses and his own defense by saying he never beat Green and misremembered many details (*State of Michigan v. Nevers*).

In Kym Worthy’s closing argument against, she stated, “We know that crack cocaine is not what cracked Malice Green’s head . . . . What cracked Malice Green’s head was the Kel-Lites of Walter Budzyn and Larry Nevers” (*State of Michigan v. Nevers*). On August 23, 1993, Budzyn and Nevers were convicted of second-degree murder. Later in October, Nevers was sentenced to 12 to 25 years, while Budzyn was sentenced to 8 to 18 years. When the verdict was announced, Budzyn clenched his chest and was overwhelmed physically and emotionally. On W. Warren and 23<sup>rd</sup> Street, listeners on radios began cheering and celebrating. The city of Detroit, to avoid a lawsuit, gave Green’s family a settlement of \$5.25 million (McGraw).

However, on July 31, 1997, Budzyn’s conviction was overturned by the Michigan Supreme Court on the basis he did not receive a fair trial. Justice Dorothy Riley gave the opinion that the showing of *Malcolm X* and exposure to news media that expressed the possibility of civil unrest based on the verdict compromised the jury’s impartiality (*State of Michigan v. Budzyn*). The Court was likely correct in assessing that the movie may have produced an emotional response that influenced their decision. One juror stated in an affidavit, “I specifically recall that segment of the movie in which Malcolm X compares police officers to the Ku Klux Klan. I also specifically recall that there was a verbal reaction by at least one juror when that speech was made” (*State of Michigan v. Budzyn*). However, the court’s own bias is revealed in the view that Green’s death was an isolated incident. Justice Riley writes in the opinion, “In focusing the jurors’ attention in a

very emotional way on the racial element of the crime, the images from the film invited the juries to view the instant crime as a part of a pattern of police brutality, effectively asking them to redress this injustice” (*State of Michigan v. Budzyn*). The court also made the argument that jurors had read news reports that the city of Detroit was bracing for civil unrest in the event of an acquittal. This was discussed by the jury during deliberations, according to the affidavit and may have affected their decision. The majority opinion also discredits many of the witnesses, stating they may have been engaging in criminal activities or under the influence of cocaine. The only African American Justice on the Michigan Supreme Court, Conrad Mallett Jr., offered his dissent. He argued the evidence against Budzyn is overwhelming and the jury determined his guilt independently of being shown the film. He stated,

The presence of racism in any community can, and sometimes does, cause American citizens to react emotionally and render less than clear judgment. But there is no reasonable probability that the Rodney King footage affected the jurors in this case. Racism has not and will not quell the desire of African-Americans to fully exercise all the rights and responsibilities associated with democracy. If this were not true, then the four-hundred-year-old struggle for freedom and economic opportunity would have been abandoned long ago. The defendants have not established that the picture of one Black man being beaten by police officers could reasonably have prevented the jurors from rendering a fair verdict (*State of Michigan v. Budzyn*).

Budzyn was released and granted a retrial and in April 1998 was convicted of involuntary manslaughter. Nevers’ appeal failed in the Michigan Supreme Court but was successful in a federal court that overturned his

conviction on December 30, 1997. Judge Lawrence P. Zatkoff also cited *Malcolm X* as having influenced the jury and granted him a writ of habeas corpus. The United States Court of Appeals for the Sixth Circuit agreed with Zatkoff's decision. Nevers was also convicted of involuntary manslaughter in 2000. This was reversed by the Michigan Court of Appeals but upheld by the Michigan Supreme Court in 2003 (Burns).

While the evidence of the case suggests excessive force by Budzyn and Nevers, the jury and appellate courts were likely influenced by the general public opinion surrounding the case and the influence of outside sources. African American Metro Detroit residents were more likely to view Green's death within the context of past police discrimination whereas White residents were likely to view it as an unfortunate yet isolated incident. The entirely Black jury were thus more likely to listen to the prosecution's evidence that suggested a wrongful death and were possibly influenced by the showing of *Malcolm X*. The subsequent majority White appellate courts were more likely to listen to opposing evidence because of their notion that the officers were not given a fair trial and of the public opinion of people in their communities. By acknowledging how opinions in one's community can affect the way one views important matters such as this case, one is able to step back and consider other perspectives in their world view. If an individual fails to do this, they can be caught in an echo chamber that just reiterates and reinforces what they already believe and who their perceived enemies are. By critically thinking and acknowledging other perspectives, one is able to more objectively view a matter and better understand and form opinions.

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