

Change of Venue In the Sean Bell Case

by {ga=kramseur}

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The aftermath of the fatal police shooting of Sean Bell in November both mirrors and contrasts with the case of Amadou Diallo, an unarmed African immigrant killed in the Bronx in 1999.

New York City was quickly gripped by the Diallo case, in which police officers shot at an unarmed man 41 times. A racially charged atmosphere led to protests that resulted in over 1,000 arrests, including those of several high-profile politicians. Lawyers for the police officers asked a state appeals court to move the trial to Albany. The court agreed. There, a jury in which eight of the twelve members were white acquitted the four white police officers of wrongdoing.

[Bell's case is similar](#) : 50 shots were fired at Bell and two friends, all unarmed. Protesters have raised questions of racial profiling and police brutality. And talk has turned to whether there will be a change of venue. Defense lawyers have not yet asked for a change of venue in this case, although they may still do so. They owe their clients the best defense possible, and if a change of venue would help the defense, they should make a case for it.

But many, [including Mayor Michael Bloomberg](#) , say that this trial should be held in New York City. I agree that moving the trial was a bad decision in the Diallo case, and it would be a bad decision in this case. Instead, there are obvious steps that can be taken to ensure a fair trial in Queens.

Changes of venue are rare. A lawyer who makes the application has to submit compelling reasons for it. Among the factors are convenience for witnesses or overheated publicity or religious or racial prejudice in an area that would convince a judge that a fair trial could not happen in the county where the crime has occurred.

Sometimes this is appropriate. Let's say you have a large rural county with a population of 10,000, and a case came up involving the local high school principal who had been there 40 years. Everybody might know that person, or even have a relationship with him or her. In that situation, a change of venue may be appropriate.

In most cases, though, the American justice system is based on the idea that if a crime occurs in a certain jurisdiction, the jury should come from the same area. A jury trial is supposed to be

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a trial by one's peers, such as their neighbors. Local juries are also preferable because, in theory, people in the same physical area form a community, and they have a particular interest in making sure that justice is served.

In New York, changing venue becomes an issue not because everyone personally knows the people involved, but because everyone knows about the case. Media attention does not preclude the possibility for a fair trial, however. New York City has always had high profile cases, from the 1930s when Tom Dewey was prosecuting [Lucky Luciano](#) to the big drug cases, to the organized crime in federal court, to the trial of the police in the [Abner Louima case](#)

. All of those cases were tried in New York City without difficulty.

In the Diallo case, defense lawyers were of the opinion that given the publicity, circumstances, and emotions in the Bronx, their clients could not get a fair trial. Based on a poll of prospective jurors, the Supreme Court Appellate Division in New York agreed. The court never even made an attempt to seat an acceptable jury, even though they would have had to find only 12 jurors and six alternates out of the 1.3 million people living in the Bronx.

In addition to being unnecessary, the change of venue probably raised racial tensions even higher. The overwhelming majority of the judges who made the decision to move the trial were white, in an area where the majority of the population is black and Latino. As a result, a lot of minorities felt that the decision stunk to high heaven.

The Bell case raises many of the same issues.

One argument that has been made is that the jury pool was poisoned by Mayor Michael Bloomberg's early statement that the shooting seemed unacceptable. Public officials should give such opinions; that is just good leadership. To suggest that a jury will not be able to make up their own minds because of that is insulting to the intelligence of New Yorkers.

The other argument is that the general publicity and the politics around the case have made it too heated. But consider the alternatives. In Queens, you have a population of 2.2 million people from which to choose a jury. Yes, many people have been exposed to media coverage of the Bell case. But given the far reach of the news media, who hasn't heard of it? If the trial

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were moved out of Queens, it would likely take place in a jurisdiction where the jurors knew just as much about the case, and where there is smaller jury pool than Queens.

Short of changing the venue, there are things that can be done to safeguard a high-profile trial. State courts have sequestered juries during deliberations or throughout trials in the past, although for budgetary reasons that is rarely done today. The court could also bring in more potential jurors, and spend more time in jury selection.

In short, there is no reason that a fair and impartial jury cannot be selected in Queens. It might take a bit longer. But to administer justice, you take the time.

Kenneth Ramseur is an attorney in New York City who often works on police cases. He represented the family of [Timothy Stansbury](#), who was killed by a police officer in 2004.Â