

The Impact of Jury Instructions on Heat of Passion Manslaughter Determinations

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Version: January 27, 2022

DRAFT

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Abstract

The goal of this study was to determine how individuals comprehend, and subsequently deploy, their understanding of standard jury instructions for murder and manslaughter. To this end, this study addresses three primary research questions: (1) Do potential jurors understand the instructions as provided? (2) If they fail to understand the instructions, what is the nature of their misunderstanding? (3) How does understanding impact the probability of a guilty determination?

The Impact of Jury Instructions on Heat of Passion Manslaughter Determinations

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Bio

Beth Redbird is an Assistant Professor of Sociology at Northwestern University and a Faculty Fellow at the Institute of Policy Research. Her expertise includes the survey methodology, including the use of surveys to measure difficult, stigmatizing, or complex attitudes. Her work has been published in *Nature* and the *American Sociological Review*. Funded by the National Science Foundation, her current work focuses on using surveys to measure trends in political, social, and cultural changes resulting from COVID. Her work has been featured in more than 250 news stories including Bloomberg; CBS News; CNN; CNN Anderson Cooper 360; NBC News; The New York Times; and The Wall Street Journal; Washington Post, among many others. She completed her PhD from Stanford University in 2016.

Study Description

The goal of this study was to determine how individuals comprehend, and subsequently deploy, their understanding of standard jury instructions for murder and manslaughter. To this end, this study addresses three primary research questions: (1) Do potential jurors understand the instructions as provided? (2) If they fail to understand the instructions, what is the nature of their misunderstanding? (3) How does understanding impact the probability of a guilty determination?

Participants were recruited utilizing Amazon's Mechanical Turk service, an online platform where individuals may opt to take surveys for payment. In this instance, the sample was limited to individuals over age 18, currently residing in the United States, and speaking English as their primary language. To determine the impact of instruction on assessment of crime, respondents were first provided a hypothetical description of a crime.

Next, respondents were provided a video featuring a set of jury instructions. These instructions were read out loud in order to mimic the presentation of instructions in a court. Full instructions are included in Appendix B.

After listening to jury instructions, respondents were asked several questions about the nature of the crime. The full questionnaire is included in Appendix A. To prevent order effects, the questions were asked in random order. Questions included several attention checks, to confirm that respondents listened to the instructions and retained the information. Respondents who failed the attention checks were dropped from this analysis.

The final sample includes 897 respondents. The final sample is 66 percent male and 34 percent female, with a median age of 35-44. This distribution is fairly common for internet panel surveys. The sample was weighted to be nationally representative. The sample is more highly educated than expected, with 92 percent having completed some of college and 65 percent holding a 4-year bachelor's degree.

Description of Crime

Paul Smith and John Jones both work at a motorcycle repair shop. Smith is accused of killing Jones by hitting him with a blunt object. Before the death, the two men generally got along while at work.

After killing Jones, Smith used his truck to take the body to a rural area. Smith was later arrested. Co-workers later said that, on the day of the death Smith seemed “off” and was in a bad mood.

In a phone call to his brother, Smith said that, on the day of the killing he had not been sleeping well, and he just snapped when Jones had “said something to the effect of uh...my wife being a whore or whatever.” He added, “Dude died because he caught me on the wrong day.”

Results

Understanding of Instructions

After listening to the jury instructions, respondents were asked six true/false questions about the content of the jury instructions. To prevent ordering effects questions and answer choices were presented in random order.

Questions Checking Comprehension

Are the following true or false?

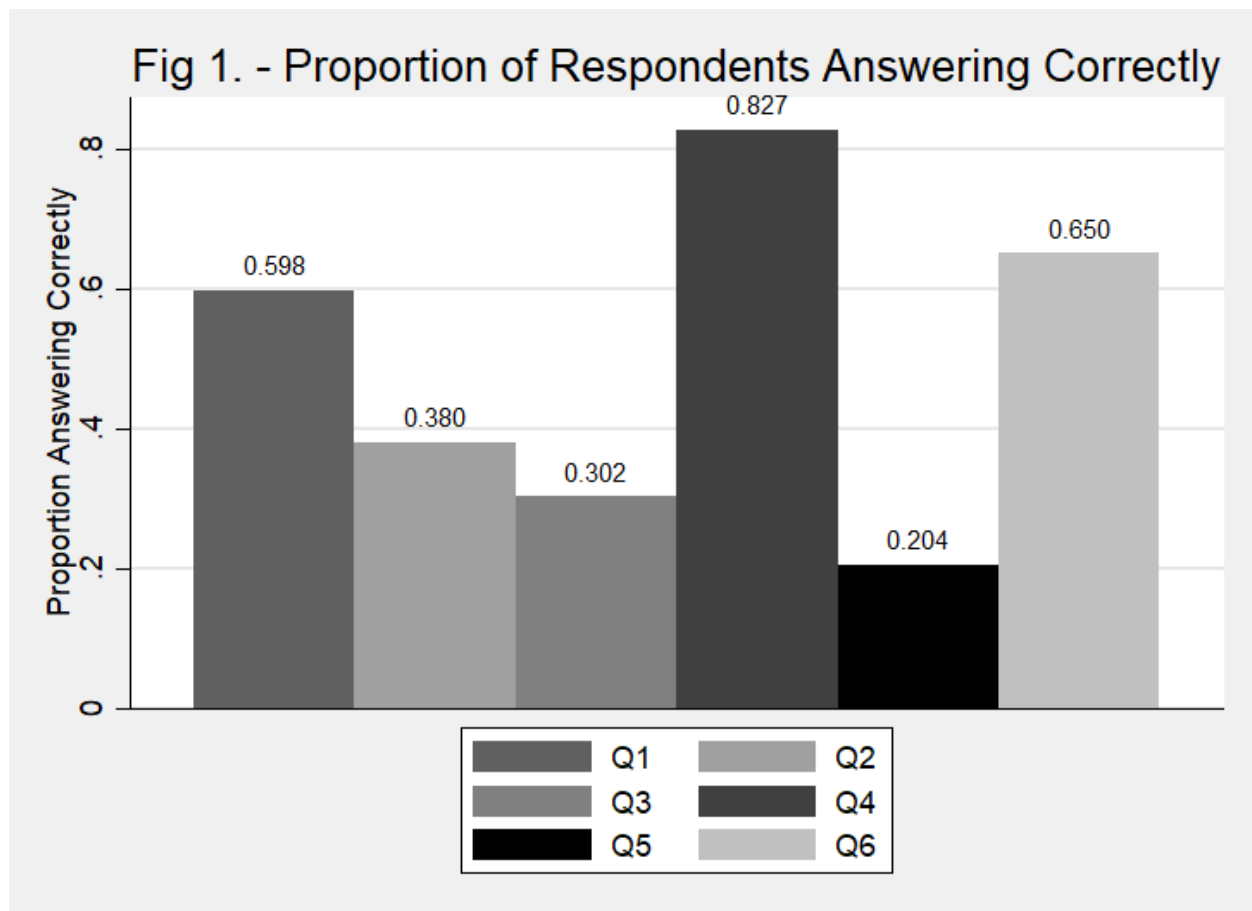
- [1] The prosecution can prove murder, rather than manslaughter, by proving Jones did not call Smith's wife a whore [correct answer = true]
- [2] To reduce murder to manslaughter, the defense must prove that Smith was acting emotionally or rashly [correct answer = false]
- [3] To reduce murder to manslaughter, the defense must prove an average person would have killed if in the same situation [correct answer = false]
- [4] The prosecution can prove murder, rather than manslaughter, by proving that an average person would not have felt provoked by Jones's insults [correct answer = true]
- [5] The prosecution can prove murder, rather than manslaughter, by proving an average person would not kill if in the same situation [correct answer = false]
- [6] The prosecution can prove murder, rather than manslaughter, by proving that an average person would not have acted rashly in Smith's shoes [correct answer = true]

How confident are you about your answers?

- [1 – Not at all confident
- 2 – Somewhat confident
- 3 – Pretty confident
- 4 – Very confident]

Overall, only 5.2 percent of respondents were able to answer all six questions correctly. If all respondents guessed correct answers at random, the expected correct rate would be 1.56 percent. While this rate is higher than would be produced through guessing at random, it is still strikingly low. The

pattern of correctness indicates greater levels of understanding on some questions (see figure 1 for correct rate for all questions).



Responses to the confidence question indicate that survey respondents were unable to accurately identify their own lack of knowledge. The average rate of correct answer does not differ substantially by confidence in answers. Respondents who indicated they were very or pretty confident answered an average of 3.4 questions correctly. Respondents who indicated they were not at all confident or somewhat confident answered an average of 2.3 questions correctly. While the difference is statistically significant ($t = -13.9513$, $p = 0.000$, one-tailed), it is a surprisingly small difference. This is consistent with past research suggesting that people who perform poorly at complex tasks tend to overestimate their performance (e.g. see McKenna and Myers 1997; Sundström 2008). In the context of a courtroom jury, this suggests that asking jurors whether they comprehended provided instructions is not a reliable means of gauging actual levels of understanding.

Structure of Misunderstanding

Results suggest a broad, but not random, misunderstanding of the provided jury instructions.

Comprehension was lowest in questions:

- Q2: To reduce murder to manslaughter, the defense must prove that Smith was acting emotionally or rashly (38% correct).
- Q3: To reduce murder to manslaughter, the defense must prove an average person would have killed if in the same situation (30% correct).
- Q5: The prosecution can prove murder, rather than manslaughter, by proving an average person would not kill if in the same situation (20% correct).

Only 17.73 percent of respondents answered questions 2 and 3 correctly. This is particularly problematic because the remaining 82.27 percent of responses indicate that potential jurors believed a criminal defendant must prove that he was either acting emotionally or that an average person would have killed in a similar situation. Moreover, a striking 49.5 percent answered both questions incorrectly, indicating that half of respondents believed the defense must prove *both* to reduce a charge from murder to manslaughter.

The impact of these misunderstandings can be seen in respondent's views of the burden of proof. Respondents were separately asked, "Whose job is it to prove or disprove that Smith acted in the heat of passion?". Overall, 56.4 percent of respondents indicated that the defense had some or all of the burden of proof. This rate was significantly higher among respondents who answered questions 2 or 3 incorrectly (68% compared to 54%).

The low correct rate of question 5 is also problematic, because it indicates a misunderstanding of the types of factual evidence the prosecution can use to prove murder. Overall, nearly 80 percent of respondents believe prosecutorial evidence that an 'average person' would not have *killed* in these circumstances is sufficient to support a charge of murder.

Determination of Guilt

At the end of the survey, respondents were asked to indicate which crime the defendant was guilty of: manslaughter, murder, or no crime. Again, answer choices were presented in random order to prevent order effects. Overall, 53 percent of respondents indicated a verdict for murder, 44 percent for manslaughter, and 3 percent for no crime.

Misunderstanding had a significant effect on guilt determination. A substantial 70 percent of respondents who misunderstood the burden of proof (answered questions 2 or 3 incorrectly) indicated a guilty verdict; this was significantly smaller (49.7 percent) for those who answered the question correctly ($t = 4.8042$, $p = 0.000$, one-tailed). Logit regression indicates the increased likelihood of a guilty determination remains for the misunderstanding group, even after controlling for demographics, whether the respondent thought the defendant was lying, and whether they believed an average person would be angered by the insult (coef. = 1.160981, S.E. = 0.58656, $p = 0.048$). This suggests that misunderstanding of the burden increases the probability of a guilty verdict, even when potential jurors believe the defendant and find his anger to be reasonable.

In contrast, incorrectly answering question 5, indicating misunderstanding of what might be offered as factual proof, did not increase the likelihood of a guilty verdict.

Discussion

The purpose of jury instructions is to present a layperson with a set of important and nuanced legal principles that they must apply to a set of facts to obtain a verdict. Substantial research in the 1980s and 1990s suggested that this task is often done imperfectly. This is unsurprising, as it is a complex task. It relies on several cognitive structures including perception, memory, retention, encoding, and mapping. While our understanding of the science of learning and comprehension has progressed significantly in the last 40 years, little work has been done to utilize this work to improve the application of jury instructions (for some of the more recent discussions see Lieberman and Sales 2000; Marder 2005).

The questions presented here were narrow, intended to test the direct effect of a specific set of jury instructions on juror comprehension and guilt determination. Yet, even within that narrow framework, results suggest broader implications. Rates of understanding were strikingly low. This is particularly noteworthy, as the sample was more highly educated than the adult American population, and thus likely represents an overestimation of understanding.

Within those misunderstandings, a subset was particularly concerning. Four out of five potential jurors misunderstood the burden of proof necessary to raise a charge from manslaughter to murder. This misunderstanding was pervasive, increasing the likelihood that those jurors believed the defense had a proof burden, and significantly increasing the likelihood of conviction. Moreover, these misunderstandings are difficult to identify. Simply asking jurors whether they understand does not provide an accurate determination of actual understanding.

The vital importance of due process and fair trial in U.S. jurisprudence demand a more extensive social science interrogation on the matter and use of instructions. Without this, we are left with little understanding of the ways in which jurors comprehend and utilize such instructions. The work presented here is only one small piece of evidence that the use of jury instructions has not improved in the forty years since researchers first identified the problem.

References

Lieberman, Joel D., and Bruce D. Sales. "Jury instructions: Past, present, and future." *Psychology, Public Policy, and Law* 6.3 (2000): 587.

Marder, Nancy S. "Bringing jury instructions into the twenty-first century." *Notre Dame L. Rev.* 81 (2005): 449.

McKenna, Frank P., and Lynn B. Myers. "Illusory self-assessments—Can they be reduced?." *British Journal of Psychology* 88.1 (1997): 39-51.

Sundström, Anna. "Self-assessment of driving skill—A review from a measurement perspective." *Transportation Research Part F: Traffic Psychology and Behaviour* 11.1 (2008): 1-9.

Appendix A

In this survey, we are asking you to pretend you are sitting on a jury. You will read about some fictional events about a death that occurred at a motorcycle repair shop, the events described are slightly graphic and include terminology that some might find offensive. Please do not continue if such descriptions are disturbing or upsetting to you.

After the description, we will next ask you to watch a video that instructs you how to determine if a crime was committed. Please watch the full video and read carefully.

Consent to Participate in Research

Title of Research Study: The use of jury instructions in murder determination.

Key Information about this research study:

The following is a short summary of this study to help you decide whether to be a part of this study. Information that is more detailed is explained later on in this form.

- The purpose of this study is to understand how jurors use jury instructions when making decisions about murder cases
- You will be asked to take a brief survey that is expected to take about 5 minutes, and to watch a video presented by a judge, explaining what the law of murder is. You will then be asked to place yourself in the position of a juror and make a decision about the case.
- There are no known risks to participating in this study. You will not be asked any questions that may personally identify you, and none of your information will be released to the public at any time.
- The study contains a description of a murder that is somewhat graphic. It describes the manner of death. It also contains adult language. If this content upsets you, please feel free to not take the survey. You may withdraw from the survey at any time.
- We do not expect there to be any benefits to you from participation in this study. However, your participation will help researchers understand the ways in which jurors use the instructions judges give them.
- We expect about 500 people will be in this research study.

What happens if I do not want to be in this research, or I change my mind later?

- Whether or not you take part is up to you.
- You can choose not to take part.
- You can agree to take part and later change your mind.
- Your decision will not be held against you.
- You do not have to answer any question you do not want to answer.

Participation in research is voluntary. You can decide to participate or not to participate. If you do not want to be in this study or withdraw from the study at any point, your decision will not affect your relationship with Northwestern University. You can leave the research at any time and it will not be held against you.

How will the researchers protect my information?

No information that can identify you will be collected. In addition, the information will be housed on a secure computer and encrypted.

Who will have access to the information collected during this research study?

We will keep the information we collect about you during this research study for study recordkeeping and for potential use in future research projects. De-identified data from this study may be shared with the research community, with journals in which study results are published, and with databases and data repositories used for research. We will remove or code any personal information that could directly identify you before the study data are shared. Despite these measures, we cannot guarantee anonymity of your personal data.

You may print a copy of this consent form to keep.

Consent

Do you agree to participate?

- ☐ Yes
- ☐ No

crime

Paul Smith and John Williams both work at a motorcycle repair shop. Paul Smith is accused of killing John Williams by hitting him with a blunt object.

Before the death, the two men generally got along while at work. After killing Williams, Smith used his truck to take the body to a rural area. Smith was later arrested.

Co-workers later said that, on the day of the death Smith seemed “off” and was in a bad mood. In a phone call to his brother, Smith said that, on the day of the killing he had not been sleeping well, and he just snapped when Williams had “said something to the effect of uh...my wife being a whore or whatever.” He added, “Dude died because he caught me on the wrong day.”

First, we’d like to ask you some questions about this event.

Do you believe Smith, when he told his brother that Williams insulted his wife?

- ☐ I think Smith is definitely lying.
- ☐ I think Smith is probably lying.
- ☐ I think Smith is probably telling the truth.
- ☐ I think Smith is definitely telling the truth.

Would a regular person be angry if their co-worker called their wife a “whore”? A whore is an insult used to refer to a woman as a slut or a prostitute.

- ☐ A regular person would definitely be angry at the insult.
- ☐ A regular person would probably be angry at the insult.
- ☐ A regular person would probably not be angry at the insult.
- ☐ A regular person would definitely not be angry at the insult.

video1

Next, we would like you to watch a video in which a person pretending to be a judge will give you, the jury, instructions on how to determine if a crime was committed.

https://youtu.be/_k2tbO5N8RI

Please watch the video before you continue with this survey.

video2

Next, we would like you to watch a video in which a person pretending to be a judge will give you, the jury, instructions on how to determine if a crime was committed.

<https://youtu.be/qs7CxDd3rSE>

Please watch the video before you continue with this survey.

jury

Now we would like to ask you some questions about the video. Pretend you are a juror, as you think about what crime Smith might have committed.

First, the text background changed color from white to another color part way through the video. What color did the background change to?

- ☐ Orange
- ☐ Green
- ☐ Blue
- ☐ White

The instructions mention that a killing is manslaughter, not murder, if the defendant was provoked or acted in the heat of passion.

Whose job is it to prove or disprove that Smith acted in the heat of passion?

- ☐ The People (prosecuting attorney)
- ☐ The defense attorney
- ☐ Either
- ☐ Neither

Are the following true or false:

	True	False	Don't Know
To reduce murder to manslaughter, the defense must prove an average person would have killed if in the same situation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The prosecution can prove murder, rather than manslaughter, by proving Williams did not call Smith's wife a whore	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	True	False	Don't Know
The prosecution can prove murder, rather than manslaughter, by proving that an average person would not have acted rashly in Smith's shoes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The prosecution can prove murder, rather than manslaughter, by proving an average person would not kill if in the same situation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The prosecution can prove murder, rather than manslaughter, by proving that an average person would not have felt provoked by Williams's insults	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To reduce murder to manslaughter, the defense must prove that Smith was acting emotionally or rashly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

How confident are you about your answers?

- ☐ Not at all confident
- ☐ Somewhat confident
- ☐ Pretty confident
- ☐ Very confident

You just sat through a trial. During the trial the defense did not present any evidence that Smith was emotional or acting from heat of passion. The prosecution also did not present any evidence that he was not emotional.

As a juror, what crime would you find Smith guilty of?

- ☐ Manslaughter
- ☐ No Crime
- ☐ Murder

demos

What is your race?

- ☐ White / Caucasian
- ☐ Black / African American
- ☐ American Indian / Alaska Native
- ☐ Latino / Hispanic
- ☐ Asian / Pacific Islander
- ☐ Multi-Racial / Other

If you had to pick one, what best describes your gender?

- ☐ Male
- ☐ Female
- ☐ Non-binary / third gender

What is your age?

- ☐ Under 18
- ☐ 18 - 24
- ☐ 25 - 34
- ☐ 35 - 44
- ☐ 45 - 54
- ☐ 55 - 64
- ☐ 65 - 74
- ☐ 75 - 84
- ☐ 85 or older

What is the highest level of education you have completed?

- ☐ Less than High School
- ☐ High school graduate
- ☐ Some college or a 2 year degree
- ☐ 4 year degree
- ☐ Professional degree

Have you attended law school?

- ☐ No
- ☐ Yes, attended at least some law school

MTurk

For payment purposes, what is your MTurk ID?

Thank you for your participation in our study!

Please complete the following instructions to receive full payment for your participation.

- 1. Copy this completion code: eCS2-00**
- 2. Paste the code into the HIT's completion code box**
- 3. Submit the HIT**

Appendix B

500. HOMICIDE: GENERAL PRINCIPLES

Homicide is the killing of one human being by another. Murder and Manslaughter are types of homicide. The defendant is charged with murder. Manslaughter is a lesser offense to murder.

A homicide can be lawful or unlawful. If a person kills with a legally valid excuse or justification, the killing is lawful and he or she has not committed a crime. If there is no legally valid excuse or justification, the killing is unlawful and, depending on the circumstances, the person is guilty of either murder or manslaughter.

You must decide whether the killing in this case was unlawful and, if so, what specific crime was committed. I will now instruct you in more detail on what is a legally permissible excuse or justification for homicide. I will also instruct you on the different types of murder and manslaughter.

**520. FIRST OR SECOND DEGREE MURDER
WITH MALICE AFORETHOUGHT
(Pen. Code, § 187)]**

The defendant is charged in COUNT ONE with murder in violation of Penal Code section 187. To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant committed an act that caused the death of another person;

2. When the defendant acted, he had a state of mind called malice aforethought.

There are two kinds of malice aforethought, express malice and implied malice. Proof of either is sufficient to establish the state of mind required for murder.

The defendant acted with *express malice* if he unlawfully intended to kill.

The defendant acted with *implied malice* if:

1. He intentionally committed an act;
2. The natural and probable consequences of the act were dangerous to human life;
3. At the time he acted, he knew his act was dangerous to human life;

AND

4. He deliberately acted with conscious disregard for human life.

Malice aforethought does not require hatred or ill will toward the victim. It is a mental state that must be formed before the act that causes death is committed. It does not require deliberation or the passage of any particular period of time.

An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.

If you decide that the defendant committed murder, it is murder of the second degree, unless the People have proved beyond a reasonable doubt that it is murder of the first degree as defined in CALCRIM No. 521.

521. FIRST DEGREE MURDER (PEN. CODE, § 189)]*

The defendant is guilty of first degree murder if the People have proved that he acted willfully, deliberately, and with premeditation. The defendant acted *willfully* if he intended to kill.

The defendant acted *deliberately* if he carefully weighed the considerations for and against his choice and, knowing the consequences, decided to kill.

The defendant acted with *premeditation* if he decided to kill before completing the acts that caused death.

The length of time the person spends considering whether to kill does not alone determine whether the killing is deliberate and premeditated. The amount of time required for deliberation and premeditation may vary from person to person and according to the circumstances.

A decision to kill made rashly, impulsively, or without careful consideration is not deliberate and premeditated. On the other hand, a cold, calculated decision to kill can be reached quickly. The test is the extent of the reflection, not the length of time.

The requirements for second degree murder based on express or implied malice are explained in CALCRIM No. 520, *First or Second Degree Murder with Malice Aforethought*.

The People have the burden of proving beyond a reasonable doubt that the killing was first degree murder rather than a lesser crime. If the People have not met this burden, you must find the defendant not guilty of first degree murder and the murder is second degree murder.

522. PROVOCATION: EFFECT ON MURDER

Provocation may reduce a murder from first degree to second degree and may reduce a murder to manslaughter. The weight and significance of the provocation, if any, are for you to decide.

If you conclude that the defendant committed murder but was provoked, consider the provocation in deciding whether the crime was first or second degree murder. Also, consider the provocation in deciding whether the defendant committed murder or manslaughter.

**- 570. VOLUNTARY MANSLAUGHTER: HEAT OF
- PASSION-LESSER INCLUDED OFFENSE
- Pen. Code, § 192(a)**

- Manslaughter is the unlawful killing of a human being without malice.
- A killing that would otherwise be murder is reduced to voluntary manslaughter if the defendant killed someone because of a sudden quarrel or in the heat of passion.
- The defendant killed someone because of a sudden quarrel or in the heat of passion if:
 - 1. The defendant was provoked;
 - 2. As a result of the provocation, the defendant acted rashly and under the influence of intense emotion that obscured his reasoning or judgment;
 - AND
 - 3. The provocation would have caused a person of average disposition to act rashly and without due deliberation, that is, from passion rather than from judgment.
- Heat of passion does not require anger, rage, or any specific emotion. It can be any violent or intense emotion that causes a person to act without due deliberation and reflection.
- In order for heat of passion to reduce a murder to voluntary manslaughter, the defendant must have acted under the direct and immediate influence of provocation as I have defined it. While no specific type of provocation is required, slight or remote provocation is not sufficient. Sufficient provocation may occur over a short or long period of time.
- It is not enough that the defendant simply was provoked. The defendant is not allowed to set up [his/her] own standard of conduct. You must decide whether the defendant was provoked and whether the provocation was sufficient. In

deciding whether the provocation was sufficient, consider whether a person of average disposition, in the same situation and knowing the same facts, would have reacted from passion rather than from judgment.

- If enough time passed between the provocation and the killing for a person of average disposition to "cool off" and regain his or her clear reasoning and judgment, then the killing is not reduced to voluntary manslaughter on this basis.
- The People have the burden of proving beyond a reasonable doubt that the defendant did not kill as the result of a sudden quarrel or in the heat of passion. If the People have not met this burden, you must find the defendant not guilty of murder.

FOCUS IS ON VICTIM'S PROVOCATION

The provocation that causes a person of average disposition to act rashly and without due deliberation, that is, from passion rather than from judgment must be caused by the victim. The provocation would have caused a person of average disposition, in the same situation and knowing the same facts, to act rashly and without due deliberation, that is, from passion rather than from judgment. The focus is on the victim's conduct and what the victim did to provoke the defendant.