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Plax's 'Hail Mary'

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As a special to *The Vault Law Blog*, further analysis of the *Plaxico Burress case* from criminal defense attorney *Jeremy Saland* (see below for full bio):

Police officers, court officers and, often, prosecutors refer to defendants, especially those who are in custody, as "bodies." For example, when the court is waiting for incarcerated defendants to arrive, one might say, "have the bodies been produced?" Unfortunately for the "bodies," they are nameless and faceless individuals. One of the main reasons why Plaxico Burress testified yesterday was to make sure that the Grand Jury (as well as the public) did not see him as a nameless, faceless "body."

Although it is hard to believe that anyone in New York would find Mr. Burress nameless or faceless, testifying before the Grand Jury was his opportunity to "humanize" the man behind the alleged criminal conduct, while also setting forth a possible defense or mitigating factors. Despite the fact that he is a millionaire athlete, Mr. Burress wanted to portray himself as a good and honest man who made a terrible mistake. Although he possessed the loaded firearm, he attempted to mitigate his conduct by likely informing the Grand Jury that he previously had a permit in another jurisdiction, purchased the gun legally and only injured himself. Were his actions foolish? Yes, but he only hurt himself.

Generally, as I explained yesterday, defendants don't testify before the Grand Jury. That being said, Mr. Burress' "Hail Mary" permits the Grand Jurors to see who he truly is (or how he presents himself). Moreover, Mr. Burress made sure that the Grand Jury heard his "defense" and mitigating factors. If luck is on his side and the Grand Jury sees beyond the prosecutors' presentation, Mr. Burress could be the happy recipient of "jury nullification." A crime may have been committed, but due to all the circumstances – the prior permit, the fact that no one else was hurt, the devastating impact on his career, and his remorsefulness – Mr. Burress hopes he convinced the Grand Jury he is more than a mere "body."

Jeremy Saland is criminal defense attorney and a founding partner in the Manhattan law firm of [Crotty Saland, LLP](#). Mr. Saland has successfully represented clients accused of multi-million dollar tax fraud schemes to violent street level offenses. Mr. Saland's analysis and commentary on legal issues has been sought out by a wide range of media outlets including the Associated Press, Sports Illustrated Online and the AM New York. Presently the treasurer of the Small Law Firm Committee of the New York City Bar Association, Mr. Saland served as an Assistant District Attorney under Robert Morgenthau in Manhattan for seven years. As a prosecutor, Mr. Saland worked in both the Trial Division and was one of the first assistant district attorneys assigned to the Identity Theft Unit upon that unit's creation. As a prosecutor, Mr. Saland had many notable prosecutions including a multi-million dollar extortion of an NBA All Star, a fraudulent international professional graduate school test-taking ring, a million dollar online "pump and dump" scheme, and even a case of a man who kept a tiger in his Harlem apartment.

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