

## Celebrity Trial Juries Pose Selection Problem

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Given the unceasing media coverage of the O.J. Simpson case and the attendant possibility of a contaminated jury pool, many people question whether a fair trial is possible. I believe it is. Jurors normally take their responsibilities seriously. In high-profile cases, with the entire nation watching, they tend to be extremely conscientious. To make sure a fair and impartial jury is seated, however, the court would be well-advised to authorize the use of pretrial juror questionnaires and individual, attorney-conducted voir dire. This would allow both sides to explore fully the impact publicity has had on prospective jurors.

Celebrity trials are very different from routine criminal trials. The most earnest juror cannot help being affected by previous media exposure to the person on trial. Consequently, how jurors treat a celebrity defendant corresponds in large measure to the public image he or she projects. Jurors bend over backwards to be fair to celebrities they like, but they convict people such as Mike Tyson, a tough kid who parlayed his aggressiveness into a world heavyweight boxing title. Despite his fame, Mr. Tyson was viewed widely as a thug. It was not hard for jurors to see him as someone who could commit rape. And, not surprisingly, a jury convicted Leona Helmsley, widely known as the Queen of Mean.

The outpouring of sympathy for O.J. Simpson, portrayed as a fallen American hero, reflects his popularity thus far. When, in memory, has the public expressed such compassion for someone charged with double homicide?

Jury selection poses special problems in high-profile cases. For example, when being examined for a routine trial, most prospective jurors try to be as honest as possible. Faced with the prospect of laying a role in a celebrity case, some people are so eager to become jurors that they play with the truth to strengthen their chances of being selected.

In celebrity trials, there is also an increased risk that jury deliberations will be disclosed publicly, and that fear of that disclosure could inhibit those deliberations. For this reason, voir dire questions must be designed to identify these would-be authors. Jurors in the Pennzoil and Bernhard Goetz cases who subsequently published books and articles about their jury experiences violated the sanctity of the jury room.

### Identifying Sympathies

Both the prosecution and defense must seek to disclose personality quirks and areas of interest in prospective jurors that could make them undesirable choices. The prosecution should identify and challenge those who appear sympathetic to Mr. Simpson as a person, those who believe he wouldn't have been charged so quickly had he been white, and those who distrust the police and legal system. Questions designed to extract this information should be included in the pretrial examination questionnaire.

Jurors also should be asked about the amount of time they spend watching TV, types of programs watched, magazines subscribed to (e.g., *People*, *Star*) and the newspaper sections they regularly read. While my educated guess is that sports fans are too diverse a group to be automatically sympathetic to Mr. Simpson, this issue should be researched carefully.

Similarly, the defense should aim to eliminate people with personal histories as victims or witnesses of family violence or abuse; and to throw out knee-jerk feminists, those who betray racial prejudice and those whose sympathy for the victims appears to be overwhelming.

In the most recent assisted-suicide trial of Dr. Jack Kevorkian, a questionnaire was designed for the defense team for the purpose of identifying prospective jurors who were strongly biased against the doctor. In a criminal trial, the defendant never has enough peremptory challenges, so it is imperative to challenge for cause as many unfavorable jurors as possible. In the Kevorkian case, 75 percent of the jurors who were rated as hostile to the defense were challenged successfully for cause.

In most celebrity cases, both the prosecution and defense are trying their case actively in the media, aware that eventual jurors are watching and listening. For the Simpson trial, each side should conduct at least one community attitude survey on the impact of media coverage and commentary, on case issues and on feelings about O.J.'s innocence or guilt. In other cases, such surveys have proven invaluable. Before the Kevorkian trial, survey results accurately pinpointed those most prejudiced against the defense.

#### Using Focus Groups

Focus groups are extremely effective in helping lawyers shape cases before trial. In the Simpson case, a focus group for the defense should show how to capitalize on the defendant's popularity, and to persuade jurors to vote for a lesser crime than capital murder. The prosecution, on the other hand, needs to learn how to persuade jurors to overcome any lingering positive feelings toward the defendant in arriving at a verdict.

Pretrial research and preparation of this sort has contributed significantly to high-profile defense successes in recent years, including the trials of Mr. Goetz, former Arizona Gov. Evan Mecham, William Kennedy Smith and the Menezes brothers.

Prosecutors, however, rarely employ trial consultants. Their attitude is that since they usually prevail, they do not need this type of assistance or that, in the rare cases when they concede that they do, they cannot afford it. Many still wrongly believe that jury consultants are used only to read "body language" during voir dire.

This resistance is misguided. In the William Kennedy Smith trial, for instance, the prosecutor, without benefit of a trial consultant, believed a prototypical prosecution jury (i.e., conservative, older) would vote to convict. Meanwhile, informed by pretrial research, the defense discovered that older conservatives were biased against the alleged victim's "loose" morals. Eventually, the prosecution challenged the same type of people as the defense, effectively giving the latter twice the usual challenges before the evidence was even presented, and thus an enormous advantage.

The Los Angeles police department and district attorney's office, embarrassed far too often in recent years, face some of the country's highest-priced legal talent in the upcoming O.J. Simpson case. The defense team will use the most sophisticated methodology available to learn how to obtain the best jury possible and to present their most persuasive case. If the prosecution does not level the playing field, it may well find itself embarrassed again.