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Dramatic Moments in the Pursuit of Justice

by Ronald L. Carlson, Callaway Chair of Law Emeritus

This is an edited version of Carlson's UGA Founders' Day Lecture presented on Jan. 27, 2005.

The tradition of the university has always been to train its students to be leaders of business and government, informed voters and responsible jurors dedicated to finding the truth in the important business of dispensing justice. In connection with these goals, let us collectively look at some of the dynamics operating today in the place which Americans increasingly look to for the resolution of society's difficulties, the American courtroom.

In many cases, there are watershed points, where the flow of the case formerly going one direction suddenly turns and begins to go 180 degrees in the opposite direction. The shift can be gradual or very sudden and unexpected like an earthquake or a tsunami. Wherever it starts, that turning point supplies a dramatic moment in the pursuit of justice.





Jan. 1, 2003

Frey: Do you even know when you're coming back?

Peterson: Well, I'm trying to schedule for [Jan.] 25th.

...

Peterson: What do you have on?

[She explains that she asked so many questions because she hasn't seen him for a while and has been drinking.]

Frey: Um ... what I'm wearing, I'll go to that. I'm wearing black pants which kind of have a texture ... well, they're kind of shiny and they have a leopard print but it's on black.

Peterson: Oooh!

...

Peterson: I mean I'm in [Brussels] so it's much cleaner obviously than most of your American cities.

Frey: Uh-hum.

Peterson: At least Brussels is. Paris is pretty clean. Yeah, there won't be anyone out I'm sure. People get up you know, like 9:00 and 10:00.

Frey: So how is it they have such a luxury to sleep in?

Peterson: Well, just because they work until 8:00 or 9:00 in the evening.

Scott Peterson Case

For the jury foreperson in the Scott Peterson case, that dramatic moment came in the tapes I am about to review. Some will remember that for the first month or so of that trial, most of the pundits and commentators had the defense winning, hands down. The state is no match for Mark Geragos, many of the legal experts said. Then, the Amber Frey tapes were played.

For the foreperson of the jury, what he heard in them was dramatic and powerful. It turned this important juror around, and from that moment on, he began thinking "conviction." To this man, it was unbelievable that Scott Peterson would make at least one of these telephone calls while he was involved in a candlelight vigil for Laci, just five days or so after she went missing.

In our mind's eye, let's take ourselves back to the early morning hours of Jan. 1, 2003. In Modesto, Calif., Scott Peterson is making a telephone call to a woman about 100 miles away. He pretends he is overseas. Here are a few excerpts from this conversation and another one made a couple of days later.

Jan. 4, 2003

[Peterson asks what kind of movies Amber likes.]

Peterson: Different genres of movies.

Frey: Different like joggers?

Peterson: Genres. Different types. Love story, a comedy, horror.

Frey: Oh!

[He says his favorite movie is "The Shining."]

Peterson: I've asked you the best movie ever made in your opinion.

Frey: European ... or, in my opinion?

Peterson: Your opinion, yes.

Frey: My opinion? Oh, you know, I don't know how to answer that honestly.

Peterson: Okay, how about if I give you a genre?

Frey: What? What are you saying gen ... I still don't know what you're saying?

Peterson: Genre? G-e-n-r-e?

Frey: Gen ...

Peterson: It's a type of movie. Genre.

Frey: Okay, I've never heard that before.

Peterson: Okay, it just means like different types.

Frey: Okay.

Peterson: So if I gave you a romantic comedy, what would be the best or what would be your favorite in that genre?

Frey: Romantic comedy? I don't know. I'd have to hear some examples 'cause I don't know what ... I don't know. "Pretty Woman," is that romantic comedy?

In this, as in so many of the early-recorded conversations between these two people, Scott's small talk reveals a less than serious mood. He seems casual and any tension or tightness, which one might expect to see from a man who is searching for his wife, who appears to be missing. These factors militated against him in the minds of the trial jury.

Third-year law students Eric Johnson (above left) and Amanda Bates (below) portray Scott Peterson and Amber Frey during Carlson's Founders' Day Lecture.



Photographs by Paul Efland.

Michael Jackson Case

We next take a look at another high profile case. In this one, there is plenty of tension.

After one of his court appearances, hundreds of fans from around the world were outside the courthouse to demonstrate on his behalf. Michael jumped atop his SUV when he got to it and danced. There was a party afterward for everybody at Neverland.

Meanwhile, his inner circle continued to meet with Michael on a regular basis to map strategy. It is too bad they did not advise and counsel him to avoid the mistakes in his conduct that led to his current predicament.

In the end, Michael Jackson's case, like a couple of famous cases we have in the pipeline here in Georgia, turns on the application of something called the pattern or similar crimes law.

If the defendant did something in his past, which is uniquely like something he is charged with now, the older thing can be brought up at his current trial. In Michael Jackson's trial, that means disclosure of some of the damaging facts of an early 1990s case which Michael apparently settled for somewhere in the neighborhood of \$15-20 million.

In the days since the Founders' Day Lecture, Judge Melville allowed five alleged incidents of Jackson's prior conduct into evidence, including the 1993 allegations mentioned in this speech. While these incidents could be referenced during the trial, the judge ruled any dollar amounts paid in settlement to be "off limits."

Some states limit the introduction of pattern crimes to misconduct occurring before the time of the charged offense. In these states, prior pattern misconduct - in order to be used against a defendant - means he must have been a bad person *before* the crime he is currently charged with. What he did after the charged crime does not count, and cannot be used.

Dr. Barton Corbin Case

This point of law is crucial in one of the most famous cases to ever hit the courts in Georgia, Dr. Barton Corbin's alleged killing of Dolly Hearn. Who was Dolly Hearn? At the time her life was cut short at the age of 27, she was soon to become a dentist at the Medical College of Georgia located in Augusta, the city where she was tragically killed.

In 1990, during the last couple of months before her summer break, she began having a

host of mysterious troubles. She told authorities she suspected someone had let the air out of her car tires; broken into her apartment and taken her mail; while in there, put hair spray in her contact lens solution; poured paint into her car's gas tank; took her cat several miles away and let it go; destroyed some of her patient charts at school; and finally, stole the set of teeth Dolly had been making and needed for her graduation requirements. In some, if not several of these events, Dolly suspected Barton Corbin.

On the fatal day for Dolly, she was about to cook some food. In the middle of things, she apparently sat down on the couch. She was then shot in the right temple and died. When the police arrived, the gun was next to her hand on the couch. But, curiously, there was no gunshot residue or GSR on her hands.

Dolly's death remained a mystery for 14 years. And then, just as suddenly and dramatically as Dolly had died, a young wife was killed in Gwinnett County with a bullet hole in her head and a handgun by her side. Dr. Barton Corbin was indicted for murder in Augusta, and separately in Gwinnett.

There is some precedent in Georgia, where two separate homicides are charged against the same person, for trying the earlier case in time first. Whether or not that timetable is followed in the Corbin cases, key legal questions will mark both the Gwinnett and Augusta trials.

Can the Hearn homicide be shown in evidence in the Gwinnett trial? On the other hand, can the Jennifer Corbin death be demonstrated to the jury in the Augusta case? In Augusta, prosecutors will confront an interesting timing issue. Remember, when I talked about Michael Jackson, I said former or prior misconduct was admissible - but Jennifer Corbin's death came *after* the Dolly Hearn fatality. Does this approach present a dilemma for the authorities in Augusta?

Fortunately for them, Georgia law has addressed this issue. Under Georgia's liberal pattern crime laws, prosecutors are permitted to use not only a defendant's misconduct before the 1990 murder, but also after.

These issues of admissibility will eventually be resolved by a Superior Court judge. Meanwhile, I emphasize that Dr. Corbin is at this point presumed innocent, and legal judgments about his guilt of either or both of these deaths are still to be decided by the courts.

Old Cases

What about trying a case that is 15 years old? Can the Augusta authorities effectively bring charges drawn from a 1990 episode? While that may be a challenge, it is well to remember that a Perry, Ga., jury in 2004 convicted Lynn Turner for the antifreeze poisoning of her husband, an event that occurred almost 10 years earlier. Results in "old" cases are sometimes driven these days by popular culture. Culture helps to shape jury attitudes. Modernly, the public is very willing to look favorably upon old cases because of television shows like "Cold Case," "Cold Case Files" and "CSI."

This thrust on the part of networks inures to the benefit of prosecutors who bring up old cases. Think about what is happening in Mississippi, where a Klansman called "The Preacher" in the brutal 1964 killings of three civil rights workers - Chaney, Goodman and Schwerner - is on the brink of trial. The case emanates from homicides that are 40 years old.

Pretrial Publicity

Publicity surrounding big cases drives public opinion about those cases. In a recent program at the Georgia Education History Museum in Roswell, Ga., we took an unscientific but very revealing survey before the program began. The survey reflected on the guilt or innocence of Michael Jackson, Kobe Bryant and Saddam Hussein. High school honor students from Fulton County provided the audience, and each one handed in a ballot. In the final tally, they voted: Michael Jackson - Guilty 112, Not Guilty 15 and Kobe Bryant - Guilty 20, Not Guilty 130.

Kobe Bryant Case

In the Kobe Bryant litigation, the alleged victim caused the dropping of the criminal case against Kobe, but she later sued him for money damages. That civil case has now been settled.

A notable aspect of the Kobe Bryant criminal case strikes me as remarkable. Few other cases in recent history have involved so much pretrial exposure of the identity of the accuser in a rape case. Media policy is to shield or protect the name and face of the victim in a sexual assault case. But in this litigation, the public pressure was so compelling the tabloid press brought out the name and eventually the picture of the woman.

Before the criminal case was over, she got death threats. Ultimately, this woman



WSB-AM's News Director Chris Camp (l.) and Morning Show Host Scott Slade (r.) pose with one of their favorite legal news commentators, Ron Carlson. Photo courtesy of Professor Robert Brussack (J.D.'76).

declined to continue further in the criminal case and the rape charge was dismissed.

Gag Orders

What is the impact of broad and unrestricted gag orders on modern trials in high profile cases? When not tailored to the needs of the particular case, their impact is unfavorable. First Amendment rights are unduly restricted. What heavy-handed gag orders result in in these big cases is stopping the flow of reliable official information and replacing it with rumors, speculation and selective leaks.

We need to go no further than the Kobe Bryant case to illustrate. After the official information about what Kobe allegedly did was shut off through a gag order, the public was exposed to a drumbeat of unofficial information to the effect that accuser was mentally unstable or worse.

Attacks on her reputation in the tabloid press, fueled by innuendo and rumor, became intense. Authorities could not counter with reliable information.

The object lesson seems clear. Gag orders should be strictly limited to the needs of the case and periodically reviewed to see if they must be continuously enforced or, on the other hand, might be cut back to allow the public some needed information.

Investigative Secrecy

While the press is often critical of overly broad gag orders, critics of secrecy say gag orders are topped by an overkill of police secrecy in many of their most important investigations. In the Jon Benet Ramsey case, for a very long time, authorities seemed to focus their efforts on the uncharged accusa-

tion against Jon Benet's parents.

Meanwhile, official information about the case was closed down. Recently the CBS program "48 Hours" revealed information about a potential intruder possibly attacking Jon Benet, including the fact that, at the time of her death, a number of registered sex offenders lived within a two mile radius of the Ramsey's Boulder home.

Perhaps the strongest factor that will help to solve the mystery of Jon Benet's death is the DNA found on Jon Benet's underwear. The "48 Hours" broadcast suggested the DNA was from a male and from a person who was not a member of the Ramsey family.

Along with a robust look at the criminal population in Boulder, prospects for solution of the crime might be aided by the police considering the press to be an ally in the search for the killer. This is often a good move. Consistent publicity sometimes aids the solution of an unsolved crime.

During the second O.J. Simpson trial, a significant item of evidence was produced that had not surfaced earlier. It seems to have appeared because of the publicity surrounding the second case. During the original criminal trial, an expert testified that the killer of Nicole Simpson and Ron Goldman tracked through blood at the crime scene in a pair of Bruno Magli shoes. O.J. denied ever owning such footwear. It took until the civil damages trial for a sports photographer to recall that he took a picture of O.J. in such shoes. The introduction of the picture provided a dramatic moment in the second trial of O.J. Simpson.

As a result, the point was amply illustrated that publicity can help to solve an otherwise

intractable case. I hope Jon Benet's case will be solved and her murderer punished. I also hope the cases of a couple of young women killed in Athens will be solved someday. I speak of Jennifer Stone, killed in 1992, and Tara Baker, murdered in 2001.

Martha Stewart Case

One defendant about whom there is very little secrecy is Martha Stewart. She adjusted relatively well to prison life, and her enterprises now seem to have new energy. Martha Stewart is famous, and Americans respect fame and notoriety. In another context, one media mogul, perhaps interested mainly in the cash side of the TV business, remarked: "Notoriety sells. It's too bad Lizzie Borden isn't around today."

Martha Stewart has completed her five-month sentence at a federal women's prison. Meanwhile, she continues the appeal of her conviction, a case that has new life because of the Supreme Court decision announcing new sentencing guideline rules. Team Stewart hopes this development might invalidate her sentence.

At this writing, Martha Stewart is completing the home confinement portion of her federal sentence.

Saddam Hussein

As I look over my notes, I see there is one final defendant about whom we need to report. When I had the high school honor students vote on Michael Jackson and Kobe Bryant as I noted earlier, I also had them vote on the guilt or innocence of another personality - Saddam Hussein. How did that one come out? It turns out the high schoolers were harder on Saddam than they were the other defendants we sampled. The vote? Saddam - Guilty 138, Not Guilty 2.

As we can see, this is one defendant who does not have to worry about prejudicial pre-trial publicity or his place in history. Those aspects of his career seem to be well beyond repair. But even though most people know his name and record, that does not mean the court where he will be scheduled for trial will be immune from a change-of-venue motion. I expect one.

Once Saddam gets fully lawyered up and the Iraqi Special Tribunal gets constituted, look for Saddam to try to change the case to the International Criminal Court in The Hague. The reason? There is no death penalty in the international court. However, prospects for the success of any such motion are thin. ■