

Casey anthony trial and removing juror bias



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Introduction

On October 14, 2008, Casey Anthony was indicted on charges of first-degree murder in the death of her three-year old daughter Caylee. Opening statements in the trial did not take place until May 24, 2011. Between those two dates, television stations and reporters flocked to Orlando, Florida, providing the entire nation a blow-by-blow account of the events leading up to the trial. Television cameras were allowed into the courtroom, and a non-stop live feed of the trial was broadcast continuously for the entirety of the six-week trial. In a USA Today/Gallup Poll, nearly two out of every three Americans believed Casey Anthony was guilty of murder (Bello, 2011). On July 5, 2011, Casey Anthony was found not guilty of murder, aggravated child abuse, and aggravated manslaughter of child- the three most serious charges against her.

There were essentially two juries in this case: one in the courtroom and one in almost every home in America. How is it, then, that both juries came to two drastically different verdicts? Since the jury in the case was sequestered for the entirety of the trial in a hotel with limited television and Internet access, the one element that makes a difference between the Orlando jury and the American jury is media access and constant coverage of the trial. That being said, how was it that 12 jurors and five alternates had never heard of the trial in the two years *prior* to being selected as jurors? And if they had, how did they set aside their biases and come to a unanimous decision that would set the media into a tailspin?

Throughout history, judges have tried mightily to confine trials to the four walls of the courtroom, only to see them spill out onto the streets, pop-up on the evening news, and land in the daily newspaper (Sellers, 2008). This paper will look at the argument of constitutionality- whether or not media coverage and televising trials impedes on any amendments or rights provided by the constitution of the United States, specifically the First and Sixth Amendments. I will also look at ways the court combats juror bias, in order to ensure a defendant's right to a fair trial. Using the Casey Anthony trial as an example, I will show how the courts implement these strategies in the face of a high profile case in which all of America is watching and judging.

Literature Review

Are televising trials a constitutional right?

There is a large debate as to whether or not cameras should be allowed into courtrooms in order to broadcast to the public the proceedings of a criminal trial. Many news outlets feel it is their constitutional right to televise high profile trials. The Supreme Court of the United States has addressed this issue several times, and many social scientists have studied the effect of publicity on potential jurors (Pritchard, 1986). A Supreme Court decision in *Richmond Newspapers Inc . v . Virginia* found that the media does have a First Amendment right to attend trials as the public's surrogate inside the courtroom (Arenella, 1997). Not only does this apply to television media, but also print and electronic media as well. Many average Americans will not closely follow a trial proceeding in its entirety from start to finish; therefore

they rely on these media outlets to provide them with a summary or sound-bite of the day's proceedings in court. Several Supreme Court justices had this thought in mind when ruling on the case stating, " There may be occasions when not every person who wished to attend can be accommodated. In such situations, reasonable restrictions on general access are traditionally imposed, including preferential seating for media representatives" (Arenella, 1997). However, the author makes a valid point that watching a trial on television isn't the same as actually physically " attending" the trial.

While the First Amendment protects the media's right to free press, a second question must also be raised: does televising a criminal trial impede on the defendants Sixth Amendment right to a fair trial? The Six Amendment guarantees a defendant a trial by an unbiased jury of his peers. Because of high profile cases receiving large amounts of pre-trial publicity, it can be very difficult to find jurors who are impartial enough not to decide a case based on information obtained outside the courtroom. The quest for an " impartial" jury is made all the more difficult in trials involving issues, events or people of public interest (Cate & Minow, 1991). Chief Justice Marshall explained, " Such a person (a juror possessing a fixed opinion about the guilt of the accused) may believe that he will be regulated by the testimony, but the law suspects him, and certainly not without reason. He will listen with more favor to that testimony which confirms, than to that which will change his opinion; it is not to be expected that he will weigh evidence or argument as fairly as a man whose judgment is not made up in the case" (Morris, 2003). Judges in high profile trials must then walk a fine line in protecting

the Sixth Amendment; not only does this call for a trial by an impartial jury, it also calls for a right to a public trial.

Ways to prevent jury bias

The courts recognize the challenge of high profile trials. The potential for extensive media coverage of a criminal case to bias prospective jurors has been the subject of numerous studies (Brown, Duane, & Fraser, 1997). With pretrial publicity and constant coverage of courtroom proceedings broadcast on television, it is the court's responsibility to protect the defendant's Sixth Amendment rights. There are several ways the courts do this: (a.) gag orders, (b.) voir dire, (c.) jury instructions, (d.) jury sequestration, (e.) postponement, and (g.) change of venue.

Gag Orders

Gag orders may be implemented for several reasons during a trial. A judge may place a gag order on a defendant who is being unruly or disruptive during court proceedings. The name "gag order" comes from the practice of literally covering the defendant's mouth with a gag in order to prevent him from speaking out. Secondly, a judge may impose a gag order on all participants of the trial that prohibits them from talking with the media or the public about the case (Legal Dictionary, 2012). This gives the courts an opportunity to skirt around the First Amendment by restricting the participants under the court's control, not the media.

The issue of a gag order has been seen recently in the high profile case of George Zimmerman. Citing self-defense, Zimmerman killed teenager

Trayvon Martin on February 26, 2012. Martin was on his way back from a convenience store when he encountered Zimmerman, a neighborhood watch volunteer who found the teen's behavior suspicious. After a scuffle and struggle, Zimmerman claims he was forced to shoot Martin in order to save his own life. Zimmerman's defense team has consistently used social media and a strong public relations strategy. Prosecutors in the case have requested a gag order several times because they strongly believe the tactics used by the defense are a campaign to taint a jury. The judge in the case, Seminole County Circuit Judge Debra Nelson, ruled against issuing the gag order saying, "there was no evidence of an overriding pattern of prejudicial commentary that will overcome reasonable efforts to select a fair and impartial jury" (Robles, 2012).

Voir Dire

Voir dire is a procedure that involves the routine questioning of potential jurors in order to gauge their competence and potential bias. The questioning usually includes inquires about a potential juror's occupation, family, education, prior convictions, and knowledge of a trial (Morris, 2003). Constitutionally, a juror cannot be disqualified from sitting on a case even if he has some "preconceived notion as to the guilt or innocence of the accused," as long as the court is satisfied that he "can lay aside his impression or opinion and render a verdict based on the evidence presented in court" (Brown, Duane, & Fraser, 1997).

While the goals of voir dire are virtuous, it is nearly impossible to find a someone with absolutely zero knowledge about a high profile case

considering the amount of pretrial publicity the cases usually garner. Also, it is entirely possible that a juror may lie about their prejudices during voir dire, rendering this process completely useless.

Jury Instructions

It is crucial for judges to emphasize to the jurors their duty to remain impartial, not only before the trial, but also as the trial proceeds and facts are presented. Jury instructions can correct for prejudicial information potential jurors receive prior to deliberation (Morris, 2003). Jury instructions are also seen throughout trials when either the defense or prosecution objects to a statement and the judge sustains that objection. The judge may strike the particular line of questioning from the record, but he must also instruct the jury to disregard those statements as well. Instructions to the jury may also be ineffective at decreasing prejudices in the same way as voir dire. It's hard to believe that a juror will disregard information that may be deeply imbedded in their minds.

Sequestration

Jury sequestration refers to the physical isolation of the jury from the rest of society. This can take place at two points in the judicial process: during the trial itself or during deliberations. The primary purpose is to shield jurors from biased outside information and influences (Levine, 1996).

Sequestration, despite its benefits, has significant failures as well. It can be extremely expensive and also places a significant burden on jurors. It is also thought that sequestration is useless because it comes too late in the judicial process- after a jury has been selected. Therefore, a jury may be

sequestered, but they may already have preconceived notions and biases due to pretrial publicity prior to their sequestration.

Postponement

A postponement is an action a judge can take to guarantee an impartial jury because it delays the trial until pretrial publicity abates or dies out (Morris, 2003). It is thought that postponing a trial will make the media lose interest in the trial and therefore will also diminish potential jurors' ability to remember details and information they may have heard about the case through the media. However, there is no guarantee that media coverage of a case will fizzle out over time. Also, media coverage may also pick back up once the postponement is over. A postponement may also impede on the defendant's Sixth Amendment right to a speedy trial; however, because the purpose of postponement is usually for the benefit of the defense, there are usually few objections.

Change of Venue

A change of venue is when a court moves proceedings to another location where media attention surrounding the case is not as widespread. This, in turn, means that potential jurors are less likely to have been influenced by media coverage. Another change of venue is to bring in jurors from an outside area into the location of the trial.

This option has diminished in recent times due to technological advances. The media is now able to reach a much wider array of people than in the past due to social media, 24-hour news channels, and the Internet, making it

extremely hard to find an impartial juror that has not seen coverage at some point.

Casey Anthony Trial

Background of the Case

Caylee Anthony, Casey's three-year-old daughter, was last seen alive on June 16, 2008, leaving from her grandparents' house where she lived with her mother. Thirty-one days later, Cindy Anthony, Caylee's grandmother, called police to report her granddaughter has been missing. In her 911 call, she also claims that the car Casey had been driving " smells like there's been a dead body in it" (Timeline in the Casey Anthony Case, 2011). Casey then sends the Orlando authorities on a wild goose chase, claiming that her nanny " Zanny" took her daughter, among other lies she now admits to telling. Within those thirty-one days that Caylee was not reported missing, her mother was seen out dancing and drinking in bars, partaking in contests, and getting tattoos.

Casey was arrested on July 16, 2008, on charges of child neglect, obstructing a criminal investigation, and filing false statements. She was released on bail; however, she was re-arrested on August 29, 2008 on charges of check fraud and theft, unrelated to the disappearance of Caylee. After again being released on bail and re-arrested on similar charges unrelated to Caylee, she was not granted bail. It was on October 14, 2008 that Casey was finally indicted on charges of first-degree murder, aggravated manslaughter, aggravated child abuse, and four counts of lying to the police (2011). She was charged even without the body of Caylee; her remains were discovered

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on December 11, 2008 in a swampy area near her home. Casey Anthony was acquitted of all felonies on July 5, 2011, but found guilty of the four minor misdemeanors of providing false information to a police officer. She was released from jail on July 17, 2011.

Media Coverage of the Trial

The media covered this event from the very outset, beginning with candlelight vigils and mass searches for Caylee. As the investigation into the disappearance and eventual murder got underway, the public was given a front row seat to each discovery under Florida's "Sunshine Law"; this statute made all evidence exchanged between the prosecution and the defense a public document, accessible for anyone to read and download (Gabriel, 2011).

HLN, a sister network of TruTV which broadcasts trials from all over America, was a beacon for the pretrial publicity of this case. The executive vice-president of the network, Scott Safon, discussed just how important the Casey Anthony trial was to his network (Boedeker, 2011). Nancy Grace, who dedicated hundreds of shows to the case, averaged 1.5 million viewers a night (Hibbard, 2011). The trial of Casey Anthony fit right in with Nancy Grace's message of victim justice "signaling to the audience that there is a perceived imbalance in the moral order that demands both legal and populist redress to return to a state of justice" (Monahan & Maratea, 2013).

Nancy Grace made it very clear from the beginning that she felt Casey Anthony was guilty. The defense team saw her television show as a "character assassination" on Casey, and even stated that she had "convicted
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Casey Anthony long before trial” (Battaglia, 2012). When the “not guilty” verdict was read, Grace infamously remarked, “somewhere out there tonight, the devil is dancing” and the case was “a bad verdict by some kooky jury” (Hudson, 2011).

Discussion

Preventing Juror Bias in the Casey Anthony Trial

This trial was dubbed the “social media trial of the century” by all major news and media outlets. So how did the judge in this case, Judge Belvin Perry, combat the media coverage and pretrial publicity in order to find an impartial and unbiased jury? He used several of the tools that were outlined previously, including change of venue and sequestration.

Change of Venue and Sequestration

Because of the overwhelming media coverage surrounding the trial in Orlando, the defense team submitted a motion for a change of venue outside of the county. This was asked for because of a focus group conducted by the defense in Orlando that unequivocally stated that they felt Casey was guilty (Gabriel, 2011). Judge Perry agreed to move the case; however, instead of physically moving the location of the trial, he decided to “import” a jury to Orlando. This move also required the jury to be sequestered in a hotel for the entirety of the six-week trial.

Voir Dire

Judge Perry ruled that the questioning of potential jurors to be broadcast as part of the trial. The jurors were not shown on camera, however, and were assigned and identified only by numbers. Jury selection was difficult for defense and the prosecution; throughout the voir dire process, attorneys from both sides had to find jurors who would be willing and able to leave their family and jobs for at least six weeks, jurors who had not already made up their mind about the case, and jurors who would not automatically vote for or against the death penalty without the additional evidence in the penalty phase of the trial (Cowen, 1984). Voir dire also consisted of more regular examination including the common expectation of jurors that the defendant should have to prove their own innocence and testify on their own behalf, which Casey Anthony did not do (Gabriel, 2011). In the end, it took two weeks to seat twelve jurors and five alternates.

Gag Order

The prosecution initially filed a motion for a gag order in the very beginning of the trial, while Judge Stan Strickland was still the presiding judge (he later removed himself from the case, therefore allowing Judge Perry to preside). Prosecutors wanted the defense team to stop talking to the media and reporters, saying their statements could influence prospective jurors in the case (Couwels, 2008). Judge Strickland denied the request for a gag order on November 26, 2008, stating, " While this argument has some appeal, it does not rise to the level of being a serious and imminent threat to the administration of justice. Further, this court is confident that even with a ' gag order' the publicity and media attention would continue unabated" (2008).

Jury Instructions

On July 4, 2011, Judge Perry gave the jury final instructions prior to deliberations. The instructions included a detailed description of each of the charges facing Casey Anthony. Also included in the final instructions was information on reasonable doubt, burden of proof, how to weigh the evidence, expert witnesses, and rules for deliberation. In the final section, *Submitting the Case To Jury*, Judge Perry reminds jurors “ your verdict finding the defendant either guilty or not guilty must be unanimous. The verdict must be the verdict of each juror, as well as of the jury as a whole” (Perry, 2011).

Backlash Towards the Jurors

The public felt this was an open and shut case. They had seen hundreds of hours of coverage, both leading up to the trial and during the trial itself. America was ready to convict Casey Anthony, they just needed the jurors to validate what they already felt was the truth- that Casey had murdered her daughter. Even the Florida State Attorney General, Pam Bondi, publically stated before the trial that the “ evidence was overwhelming” of Casey’s guilt (Sutow, Leach, & Zimmerman, 2011). Once the verdict was read, nearly 500 people outside the courtroom erupted in outrage; the fire quickly spread through social media outlets and across the country (Battaglia, 2012). In the eyes of many, Casey Anthony was wrongfully exonerated: she was acquitted of the allegations brought against her by the criminal justice system at the disagreement of the public at large whom believe she was

guilty (2012). The jurors had failed, according to the public, and it was towards them that they released their anger.

Threats were directed at jurors; they were so intense, Judge Belvin Perry ordered the names of the jurors to be withheld for three months as a cooling period. Jurors went into hiding, quit their jobs, and even stated they would “rather go to jail than sit on a jury like this ever again” (Sanders, 2011).

Another juror stated his “life has been a nightmare. I live in fear that someone will find me. I Google my name everyday to see if anyone has figured out who I am. The few people that do know haven’t said anything, but one of my friends told me that his wife forbid him to talk to me. My own sister cussed me out. It has ruined my life.” (Helling, 2011).

Conclusion

Once a criminal case has garnered so much attention from the media, it is difficult for the court system to keep news and media outlets in check in order to prevent a high-profile circus in their courtrooms. As stated earlier, the courts must walk a fine line in order to protect both the media’s First Amendment rights while also ensuring the defendant’s rights under the Sixth Amendment. The system of checks and balances set up by the courts help ensure a fair trial will take place. Gag orders, voir dire, change of venue, and sequestration are all tools used to safeguard these constitutional rights. As seen in the Casey Anthony trial, when the whole country was convinced of guilt and dripping with bias, the court was able to guarantee an impartial judgment by finding twelve jurors who were not influenced by the media coverage, simply by exercising the tools in place for such circumstances.

Did the jury get it right? That depends on who's answering the question. Aside from the presumption of guilt by the media and the public at large, the jury did no wrong by fulfilling their civic duty in this case. The sequestration for six weeks was not a vacation by any means. The jury was faced with gruesome evidence and pictures, heart wrenching testimony, and drawn out expert opinions. Even with all of these things, the prosecution did not clearly overcome the burden of proof that was their obligation. The circumstantial evidence presented was not enough for these twelve jurors to convict a woman and possibly sentence her to death.

High-profile trials will always be a part of the legal system, and the media will always be a part of the mix as well, with their insatiable appetite for the next big headline. As mentioned earlier, the Florida v. Zimmerman trial already has garnered media and public attention across the country, and the trial is not yet set to start for several more months. Many in America already feel George Zimmerman is guilty, without having heard one piece of testimony nor seen one piece of evidence in a courtroom, simply because the media is telling them that he is guilty. This trial, with constant media coverage and high tensions with those involved, I feel will become much like that of the Casey Anthony trial- a trial by the media with America as the thirteenth juror.

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