

1-1-2005

Juror Bias is a Special Problem in High-Profile Trials

Valerie P. Hans

Cornell Law School, valerie.hans@cornell.edu

Follow this and additional works at: <http://scholarship.law.cornell.edu/facpub>

 Part of the [Courts Commons](#), [Criminal Procedure Commons](#), and the [Evidence Commons](#)

Recommended Citation

Hans, Valerie P., "Juror Bias is a Special Problem in High-Profile Trials" (2005). *Cornell Law Faculty Publications*. Paper 306.
<http://scholarship.law.cornell.edu/facpub/306>

This Article is brought to you for free and open access by the Faculty Scholarship at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Cornell Law Faculty Publications by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.

C T I V E S

Juror Bias is a Special Problem in High-Profile Trials

by Valerie P. Hans



On Christmas Eve, 2003, 27-year-old Laci Peterson, eight months pregnant with her first child, disappeared from her home in Modesto,

California. After returning from a solitary fishing trip to find her gone, her husband Scott Peterson called the police and reported her missing. Thus began one of the most widely reported and discussed trials in contemporary times. Initially, media coverage focused on the fruitless search for the missing woman. But soon, public attention turned to the suspicious behavior of her husband. A media frenzy erupted when information was revealed about a relationship he had recently begun with another woman. The torso of an adult woman and the body of a baby boy washed ashore close to where Scott Peterson had claimed to be fishing. The bodies were identified as the missing Laci Peterson and her baby. Scott Peterson was arrested and charged with capital murder. But, after hearing a steady diet of police reports identifying Scott Peterson as a suspect, widely televised rumors about his life and affairs, and nonstop coverage of his arrest and the evidence

against him, what citizen could possibly be an impartial juror in his case?

Research studies testing the impact of pretrial publicity confirm that it can bias jurors. These studies show that those who read or watch a lot of pretrial publicity about a case tend to prejudge the defendant's guilt, compared to those who have not heard or read such media stories. Once in the courtroom, people who've been exposed to negative pretrial publicity are more likely to see the evidence against the defendant as stronger, are more apt to make negative character judgments about the defendant, and are more persuaded by antidefendant arguments during the jury deliberation.

None of the available methods are perfect remedies for the problems of jury bias. In high-profile trials, judges increasingly use *gag rules* to prohibit the trial participants from discussing the case until the trial finishes. But damage from pretrial publicity has often already been done, and the First Amendment protects the media's right to publish information about the ongoing trial. *Changing the trial's location* is rarely employed, but it is sometimes necessary when many members of the local community have prejudged the case or know the parties. Today's broad national media coverage of crime and the courts means that pretrial publicity is not as localized, so a venue change may make little difference. *Questioning prospective jurors*

during jury selection is an important technique for identifying bias, but to be effective, it must be thorough. Many judges are reluctant to employ questionnaires, to allow attorneys to ask questions directly, to pose extensive questions about prospective jurors' views and attitudes, and to let jurors answer open-ended questions in their own words. Yet all of these approaches tend to improve the ability of the judges and attorneys to identify juror bias. *Sequestering the jury* during the entire trial has fallen out of favor because it causes extraordinary disruption and stress, according to reports from sequestered jurors. It also dramatically reduces the representativeness of the jury, since most people have family and work obligations that don't permit them to be isolated for any length of time. Finally, the judge can *instruct the jury* to avoid media coverage of the trial, to disregard anything they've heard outside the courtroom, and to decide the case solely on the evidence presented during the trial. Psychologists point out that jurors may be unaware of their biases or unable to disentangle media sources and trial evidence.

To his credit, the judge in the Scott Peterson trial used virtually all of these methods in a vigorous effort to select an impartial jury and to encourage unbiased decision making. The trial was moved

continued on page 18

single judge deciding a case. That judge is human and, of course, has biases. A judge acting alone, however, will often be unaware of his or her biases and have little chance, therefore, of overcoming them. A jury verdict will often transcend biases much better than a decision from a judge. Indeed, the strength of a jury comes precisely because it is a group of diverse people with different perspectives. This not only helps in overcoming prejudices but also helps assure that the evidence is fully evaluated, since different people may draw different inferences from the evidence, explaining these possibilities to the other jurors, and thereby producing a full evaluation of the evidence by all. Once again, a judge acting alone is less likely to see all the implications of the evidence.

In fact, juries are quite good at overcoming bias. Studies of jurors consistently show that the personal characteristics of the jurors—their race, age, education, socioeconomic characteristics, attitudes, etc.—have only a minor effect on verdicts. Instead, studies uniformly show that the prime determinant of jury decisions is the information that is presented during the trial. Just as it should be in a good legal system, the evidence and the law overwhelmingly produce trial outcomes. Evidence, not bias, determines verdicts.

A more serious problem for the jury system than biased outcomes is that many people incorrectly believe that verdicts usually result from bias instead of the evidence. For example, many believe that civil jurors are prejudiced against corporations, doctors, and oth-

ers with “deep pockets.” In fact, verdicts in civil cases are evenly split between plaintiffs and defendants. Corporations win half the time, and doctors win more malpractice suits than they lose. What seems to be the case is that the less an observer knows about the evidence presented at trial, the more he will ascribe the verdict to extraneous factors. It is a lot easier to believe an easily accessible explanation, such as bias, than to master the evidence that was presented. But it is that evidence, not bias, which is the most important factor in a trial’s verdict.

Randolph N. Jonakait (rjonakait@nyls.edu) is Professor of Law at the New York Law School. The author of The American Jury System (Yale University Press, 2003), he previously served as a public defender in New York City.

Perspectives—High-Profile Trials *continued from page 15*

from Modesto to another city. Prospective jurors completed questionnaires and answered extensive questions during jury selection. The parties were under a gag rule early on. After a dismissed juror caused a media sensation by revealing his views of the evidence, the remaining jurors who were dismissed were put under a gag rule for the duration of the trial as well. Although the jury was sequestered only during its deliberations, the judge continually reminded jurors to avoid media coverage and to focus only on the trial evidence.

Scott Peterson’s jury convicted him and sentenced him to death. Whether

he had a fair jury is a question that the appellate courts will confront as they review Peterson’s appeal of his conviction and sentence. Would the jury have reached the same decisions if the case had not been so extensively covered in the media? Or was Scott Peterson condemned by media publicity? Whatever your verdict, the Peterson trial provides yet another example of the hurdles to fair trials in high-profile cases.

Valerie P. Hans (vhans@udel.edu) is professor in the Department of Sociology and Criminal Justice, University of Delaware. The author of two books and many articles about the jury system, she conducts research on jury decision making, teaches a course on jury trials, and lectures to judges and attorneys about how to improve the jury system.

Jury Consultants

Jury consultants are social science and legal experts who advise attorneys in the selection of jurors. They may research the community from which the jury is drawn, develop written questionnaires for potential jurors, draft questions to ask during voir dire, and recommend when to use peremptory challenges. Jury consultants have been used at least as far back as the 1960s, notably in famous trials of Vietnam-era antiwar protesters. They continue to be used today in high-profile cases or where a defendant has substantial resources. Increasingly, jury experts provide advice to attorneys on other trial elements such as case strategy, witness preparation, and mock trials. For more information, go to: www.chsnews.com/stories/2004/06/02/48hours/main620794.shtml.