

TRIAL TALK

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All Eyes on You

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What can we learn from the Casey Anthony trial? There is probably a lot to learn in terms of trial themes and stories, mass hysteria and the difficulties of trying a case in front of the world.

You may think that the media frenzy surrounding the trial makes the strategy different from your own cases – and for some issues, this is true - but remember that for your jurors, your case is very important. They have to stand by their verdict. They tell friends and family members about it, which for many is enough motivation to do a good job and pay attention – very close attention.

During the Casey Anthony trial, you could not spend more than fifteen minutes on CNN or HLN without a commentator pointing out Casey's demeanor – when she cries, how she cries, which eyebrow rises when it is a real cry. And it is not just Casey they analyzed. Viewers watched her parents in elevators and in the audience. Her brother ate alone at a sandwich shop during a lunch break and people wondered if it meant he was estranged from the family.

In your cases, you may not have as many eyes on you, your client and your client's family, but be assured that the eyes of your jurors are just as intently watching every move in and out of the courtroom. It is for this reason that it is important to prep your client and his or her family before trial. Warn them that they need to act as they would in the courtroom whenever they are outside of the confines of their house for the duration of the trial. Someone will be analyzing their actions and words in the hallways of the courthouse, in the bathrooms, during lunch at the local sandwich shop and even out in the parking lot and sometimes at their homes.

Although judges instruct jurors not to do any research on the case outside of the courtroom, do not for one second let that fool you into thinking that jurors abide by these rules. Jurors might drive to the scene of the accident and even to the plaintiff's house to find out how nice the house is or how expensive the plaintiff's car is. Keep in mind that regardless of the extent of the injuries, many jurors think

that wealthier plaintiffs need (and therefore deserve) less money for their injuries.

There is also a bias against poor clients, although it is less conscious. If your client comes into court looking unkempt, jurors may form opinions about your client's character that are harmful to your case. If your client's appearance causes jurors to view your client as being lazy and unproductive, jurors will be less apt to provide money to make the client's situation better.

There is obviously no way to prevent jurors from judging your client based on appearance or by doing their own investigations into your client's wealth, but you can minimize the chances of any such problems by making sure your clients arrive looking nice but not overly done up. Make sure they look presentable. If they are struggling with money, consider buying them a couple of decent outfits - not nice new business suits, but business casual wear that makes them look conventional. Wealthier clients should not show up with expensive watches and jewelry. Ask them to leave their luxury cars at home, if they can, or if necessary, pick them up in your car (assuming your car is not flashy).

How your clients treat people and act in court will speak volumes to jurors. Do not assume that the only evidence jurors evaluate is what you present while court is in session. Explain to your clients that they need to be polite to waiters, to court clerks and to strangers they pass in the halls. Jurors will notice and watch these interactions. No one wants to help someone who seems angry, self-centered or disrespectful. If your client naturally comes off in a conceited or disrespectful manner, you may want to consider hiring someone to help with witness preparation. Sometimes simply videotaping your client and replaying the tape for them can help them to see themselves in a different light.

Be aware of the injuries your client claims and how those injuries will appear to the jury. For example, if your client is claiming back injuries, realize that jurors will watch how they sit in court all day – do they shift around or do they seem uncomfortable? If this is going to be an issue, consider not

having your client in court often. You can explain to the jurors that your client's doctors have said that it would not be good mentally for your client to hear people talk about his or her limitations. Ask jurors in voir dire if what problems they would have with your client not being in court the entire time.

The same principles apply to you as well. Jurors in today's tort reform era are skeptical of attorneys, particularly plaintiff's attorneys. Many of them believe you are living a rich life off the pains of the injured (whom they think

are not actually injured). Do not show up in an expensive suit with expensive jewelry or watches. Be yourself, whether that means wearing bold colors or dressing more casually. Jurors are aware of body language and if you are not comfortable in your own skin, they will feel disconnected and immediately be suspicious. It is better to come to court in non-traditional attire than to give off a false image. Be polite to court staff as well as your opponents and their witnesses. Remember, all eyes are on you – and your client.▲▲▲

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statement and through witnesses and exhibits throughout the trial. The misuse of focus groups can often lead to damaging consequences. The proper use of focus groups can be very rewarding.▲▲▲

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Endnotes

¹ In ruling on post-trial motions, the trial court felt the verdict was excessive and granted a new trial on the issue of damages only. In another case before this same judge in 1981, a jury rendered a verdict against Texaco for unlawful interference with the business of a small distributor of Texaco products. The court set aside the verdict for the plaintiff

and granted a JNOV. The case, *B&D v. Texaco*, settled on appeal. However, these cases demonstrate that an additional person, the trial judge, can determine the outcome regardless of the analysis by focus groups and subsequent unanimous jury verdicts.

² Dr. Singer has a Ph.D. in applied research psychology and helped pioneer the field of trial consulting in the 1980s. She is the author of numerous published articles and books on subjects related to trial consultation. She is the founder, CEO, and President of Trial Consultants, Inc. located in Ft. Lauderdale, FL.

³ However, a combination of re-enactments and focus groups are being used to "discover the story." Conard Metcalf explains that he also wants to know where the juror's minds are going the minute they start hearing information. "So I try to give very small snippets of information (to the focus group) and then follow up with questions like: "If this is the opening scene of a movie, what is the name of the movie? What do you imagine the next scene of the movie will be? Just hearing the little bit you've heard, do you have a sense about who is

the good guy? Who is the bad guy? Then I can start to get an idea about where the jurors' (or focus group members) own stories are taking them as soon as they start getting information about the case. Then, if I need to, I can start to tweak the way I present my trial story."

⁴ See, *Torrey v. The Coleman Company*, 1:07-cv-00528-RPM, (D. Colo. 2009). Verdicts totaling \$2,021,000.00 were reduced by decedents' comparative negligence.

⁵ There is a wealth of information available on the internet on the use of Shadow Juries, but most of it is promotional material authored by trial consultants. For a good article describing the pitfalls and problems in using shadow juries see Alan J. Belsky, 7/20/10 *Shadow Juries – An Interesting Concept but Rarely Used*, (July 20, 2010, 8:40 a.m.), www.marylandmalpracticelawyers.com/2010/07/shadow-juries-an-interesting-concept-but-rarely-used.html.