

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State....”

- Excerpt from the Sixth Amendment to the United States Constitution

Attorneys, both for the prosecution and the defense, recognize how important the jury selection process is for winning their respective side of a criminal case. They will go through great lengths to select those whom are deemed the most likely to decide in their respective favor: guilty or not guilty. This process, referred to as “voir dire,” can be time consuming; not only for the court, but also for the jury's candidates.

With both sides having an equal say in excusing candidates from being selected as jurors, it is presumed that there would be a more equal balance in those whom eventually end up in the jury, i.e., forming an unbiased jury.

With this in mind, there are a number of firms that specialize in assisting counsel in the jury selection process. In *The People v. O.J. Simpson* case, the prosecution brought in Don Vinson of Vinson & Company, while the defense brought in Jo-Ellan Dimitrius of Dimitrius & Associates. (Linder, n.d.)

Although no one expects potential jurors to be completely ignorant of a high-profile personality's existence, or even that of a well-known conglomerate such as General Electric, unbiased jury members, however, do need to be protected from the details of a case, which may be disseminated by outlets of the media.

A news reporter is not an attorney, and does not have to follow the rules of procedure in shedding light on evidence that may or may not be admissible in a court of law. Therefore, in

addition to no jury member being allowed to discuss—or be exposed to—information regarding the case, outside of the court room, so as to maintain the jury's impartiality, it is also imperative that they not be exposed to information through various sources of media.

It is for this reason why selected jurors and alternates in the O.J. Simpson trial were eventually sequestered and monitored closely to ensure that they were not being exposed to reports and expressed opinions being made through the media. (Hastings, 1995) Ultimately, these jurors were “held captive” for 8 ½ months—half as much time as O.J. Simpson was incarcerated, before and during that trial. (Stockman, 2016)

Another example, in the O.J. Simpson case, of steps that were taken to ensure an impartial jury, is that even before the jury was selected, when the book *Nicole Brown Simpson: The Private Diary of a Life Interrupted*, co-written by Faye Resnick was released, Judge Ito instructed the remaining potential jurors to not go to bookstores, after the judge learned that the book portrayed O.J. Simpson “as stalking his ex-wife and threatening to kill her if she ever slept with another man.” (Press, 1994)

So, what would happen if it were proven that even just one juror was found to have been influenced by outside sources? “Anything that might impede a jury's ability to remain impartial or prevent it from reaching a unanimous decision is grounds for a mistrial.” (Pellettieri, 2004)

And, what happens if there's a mistrial? According to Adam Winkler, a professor of law at the University of California of Los Angeles, “If a mistrial is declared, one of three things typically happens: the prosecutor dismisses the charges, a plea bargain or agreement is made, or another criminal trial is scheduled on the same charges.” (Farber, 2017)

From the prosecution's perspective, it is in the best interests of the people to ensure that they avoid a mistrial from happening. Such was the intent of the prosecutors in the Rodney King

beating case, when those jurors were sequestered under strict U.S. Marshal supervision. A juror in that case, Erik Rasmussen, later purported that jurors “were secretly whisked to the downtown Hilton. They lived in isolation, under armed guard, in a sealed wing on the 10th floor.... [where] they had no telephones, radios or televisions. They were allowed no private conversations or private visits with anyone, especially spouses. 'We were allowed one phone call each night, after dinner,' Rasmussen says. A marshal listened to every word, after advising that the line would be cut if anyone mentioned the trial.” (Hastings, 1995)

Although rare, it does happen that a judge will grant a motion to relocate a case to a different venue, in order to assure the accused of an impartial jury. In the case of Timothy J. McVeigh, whom was convicted of bombing the Alfred P. Murrah Federal Building in Oklahoma City on April 19, 1995, the trial was relocated to Denver, Colorado. The attack killed 168 people and injured more than 600. Although news coverage of the horror was televised around the nation (and even globally), McVeigh's lead lawyer, Stephen Jones, is quoted as saying, “The judge ruled in a published opinion that there had been a complete demonization of Mr. McVeigh by the media that permeated Oklahoma [prior to the jury selection process]. Oklahoma is a small state and people felt personally involved in the attack.” (Muskal, 2015)

Given the pervasive nature of today's social media, tabloids, and legitimate news media outlets, extraordinarily careful consideration is being given in a case that I am associated with, in regard to all witnesses (and members of law enforcement) keeping a tight lid on the details relative to a pending, high-profile criminal matter. Virtually from the start of the investigation, I've been personally involved in frequent conversations, relative to the subject of jury selection and the necessity of keeping the general public ignorant about the accusations that will be made

against the suspects. So, gag orders are another tool that courts make use of, so as to ensure that the accused enjoy(s) an impartial jury.

A gag order is “a judge's order prohibiting the attorneys and the parties to a pending lawsuit or criminal prosecution from talking to the media or the public about the case. The supposed intent is to prevent prejudice due to pre-trial publicity which would influence potential jurors. A gag order has the secondary purpose of preventing the lawyers from trying the case in the press and on television, and thus creating a public mood (which could get ugly) in favor of one party or the other. Based on the 'freedom of the press' provision of the First Amendment, the court cannot constitutionally restrict the media from printing or broadcasting information about the case, so the only way is to put a gag on the participants under the court's control. In Canada, however, the media can be restricted, as in a famous case in which American newspapers were smuggled across the border to report on a particularly lurid sex-murder case in which a second accused person was yet to be tried. A gag order can also be made by an executive agency such as when President George Bush issued a gag order which forbade federally funded health clinics from giving out information about abortions, a gag order which President Bill Clinton rescinded on his first day in office, January 22, 1993.” (Unknown, n.d.)

It all seems like the innocent are punished, being held captive and silent in the name of justice being served, but, hopefully it will be worth it.

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