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The Case of Casey Anthony:

Defending the American Jury System]

On July 5, 2011, after only eleven hours of deliberation and no request to review evidence, a twelve-person jury found twenty-five year old Casey Anthony not guilty of murdering her two year old daughter, Caylee.1 The two-year old had been missing since June of 2008, however, the authorities were not notified until thirty-one days later at which point Casey began to weave a web of lies about her daughter's whereabouts. In December of 2008, Caylee's skeletal remains were found in the woods near her family's home and Casey was indicted for Caylee's murder soon after.2 The story quickly grabbed the media's attention but it was not until the trial that the American people became captivated by the possibility that a young mother like Casey could murder such a beautiful little girl like Caylee.3 Had Casey been convicted, she would have faced the death penalty.4

Many compared the recent Casey Anthony case to that of O.J. Simpson.5 Both cases drew millions of Americans to their televisions to watch the trial and corresponding media coverage and commentary. Both cases depended mainly on circumstantial evidence and both cases ended with an acquittal.6 Furthermore, when the verdicts came down, in both cases, a majority of Americans were not only outraged but devastated and heartbroken.7 How could a jury not convict a woman who failed to notify authorities that her daughter was missing for over one month? How could any parent believe a mother is innocent when she parties while her daughter is missing? Many Americans felt there to be an obvious conclusion to this case. Common sense tells us that a mother who does not report her child missing, parties while her daughter is missing and lies is clearly guilty. The verdict left many questioning how a jury could reach such a seemingly unjust result.

I. The Purpose and Importance of a Jury Trial

In order to answer this question, it is first important to understand the functional purpose of a jury. The Sixth Amendment of the United States Constitution reads in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . ."8 The 'not-guilty' verdict in the Casey Anthony case left many wondering why we even have a jury when they have produced verdicts which fly in the face of the evidence at bar. However, America's founding fathers believed jury trials to be the ultimate safeguard against oppression by the government - which the judicial branch is a part of. Thomas Jefferson "consider[ed] trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution."9 Judges, although a separate branch of government, may align themselves with the prosecution, whether consciously or subconsciously. This might be because many judges are former prosecutors themselves.10 A jury, on the other hand, is less likely to be partial to any branch of government and those who have biases may be weeded out through the voir dire phase of jury selection.11 Therefore, the trial by jury process provides Americans with peace of mind, ensuring that if an individual is ever put on trial, a jury of that individual's peers will be attentive, fair and impartial and acquitting that individual if the prosecution fails to meet its burden. It assures Americans that we are not totally at the whim of our government, and cannot be convicted based on the beliefs of the government alone.

The Founding Fathers required a jury verdict in all criminal trials to protect against government oppression. In continuing this protection, the Fifth Amendment secures due process of the law.12 Encompassed under the Due Process Clause is the high standard of proving the defendant to be guilty beyond a reasonable doubt.13 This standard requires the jury to acquit in all cases if "there is a real possibility that a defendant is not guilty."14 The prosecution in the Casey Anthony case thus had to prove beyond a reasonable doubt that Casey Anthony murdered her daughter, Caylee.

II. Why a Jury Might Not Convict

A. Lack of Direct Evidence - The CSI Effect

By the end of the Casey Anthony trial, many uncertainties remained.15 No "smoking gun" evidence existed - no murder weapon was ever found, no one confessed to the murder, the cause of death was never determined, there was no eyewitness testimony, and no scientifically substantiated physical evidence.16 It is possible that those twelve jurors felt that because this evidence was not presented to them, the defendant was not guilty.17 This is known as the "CSI Effect."

American jurists have grown accustomed to shows like NCIS, CSI and Law and Order, which often find a murder weapon with the DNA or fingerprints of the defendant, or they are able to secure a confession after fifteen minutes in the interrogation room. If these shows can come up with this type of evidence in one hour, surely detectives and prosecutors should produce similar results. The "CSI Effect," "refers to inflated jury expectations regarding evidentiary proof and a consequent increase in the prosecution's burden. In the typical CSI episode, each crime is solved with forensic tests, and these tests always discern the identity of the culprit."18 Furthermore, in these primetime dramas, forensic scientists and investigators are definitely positive that a particular fingerprint or DNA sample matches the suspect. However, in reality, forensic scientists cannot make such a definitive claim; instead, they can merely say that the evidence is "associated" with the suspect.19 This creates "unreasonable expectations in the minds of jurors" influencing them to believe that physical evidence, or one-hundred percent certainty, is required to prove guilt in every case in order to convict.20

In the Casey Anthony case, the CSI effect may have very well played a major role in the minds of the jurors. Without seeing clear physical evidence proving guilt, a jury in today's society might be less inclined to convict and as we saw in the Casey Anthony case, acquit. Like many Americans are accustomed to seeing on their favorite primetime drama, no murder weapon was ever found, no one confessed to the murder, the cause of death was never determined, there was no eyewitness testimony, and any physical evidence presented was questionable.21 Instead, both sides attempted to paint a picture of what occurred framed around circumstantial evidence.22 "Circumstantial evidence is evidence from which the fact-finder can infer whether the facts in dispute existed or did not exist."23 The prosecution presented a theory that Casey used chloroform to subdue Caylee, and then used duct tape to cover her mouth and nose to kill her. The defense, on the other hand, claimed at trial that Caylee drowned in the pool and rather than calling the paramedics or police, Casey's father concocted a cover-up plan to make it appear that Caylee was kidnapped and then killed.24

Despite the lack of direct evidence, circumstantial evidence pointing toward Casey's guilt did exist. Duct tape was found near the remains of Caylee, part was stuck to her skull.25 However, the duct tape contained no DNA.26 Although direct evidence showed that Google searches for "chloroform" and "how to make chloroform" were conducted on the Anthony's computer, no direct evidence put Casey at the computer at that time.27 A strand of hair, most likely from Caylee, was also found in the trunk of Casey's car, and evidence suggested that it had come from a decomposing body.28 Witnesses, including Casey's father, also testified that a foul smell believed to be a decomposing body lingered in Casey's car; however, there was no unanimous conclusion among experts that a dead body was actually in the car.29 Furthermore, Casey was caught in many lies, such as lying to friends and family about her daughter's whereabouts, partying while her daughter was missing, and claims of a nanny kidnapping Caylee when it was later determined that no such person existed.30 The prosecution also presented items found with Caylee's remains including a Winnie the Pooh blanket, matching one found at the Anthony's home, and a laundry bag that served as the little girl's coffin came from a matching set - the other was found at the Anthony's home.31

The problem with relying on mostly circumstantial evidence, as was the case in the Casey Anthony trial, is that it can "simultaneously [be] evidence of guilt and innocence."32 Thus, the evidence presented in the Anthony trial, when taking everything into account, did not particularly point in one direction or another. Despite the abundance of evidence presented to the jury by the prosecution, any forensic evidence was questionable and not strong enough to amount to the evidence presented in most primetime dramas. Circumstantial evidence presented did suggest that Casey murdered her child, but is this enough? Many Americans believed that even without an abundance of strong forensic evidence and eyewitnesses, all arrows pointed to Casey as her daughter's murderer. However, because the prosecution did not present physical evidence or "smoking gun" evidence appearing in prime time dramas, this jury might have been inclined to acquit.

B. What's at Stake & The Whole Picture

Jurors, however, are in a starkly different position from the American public, and while it struggles with its outrage in an attempt to understand how twelve of its peers could have acquitted someone who is believed to have murdered her own child, Americans must remember that the jury has more information at its disposal, with a greater understanding of what is at stake and the ability to better interpret the information presented in the courtroom. Jurors in a criminal case are faced with the daunting task of determining whether or not an individual is guilty. The defendant not only has the stigma of becoming a convicted felon, but also his reputation,

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liberty and possibly even life are at stake.33 "Accordingly, a society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt."34 This might make a juror more inclined to favor acquittal when no direct evidence is presented to them. Furthermore, unlike the jurors, most Americans did not watch every minute of the thirty-three day trial. We did not all listen closely to what each witness said nor were we in the privileged position of being able to interpret the body language and expressions of each witness.35 Instead, we rely on the media for our information. Americans cannot trust that the media presented all the relevant information properly or objectively.36 The media portrays a person and case in a light that attracts viewers and attention; it does not necessarily reflect the truth.37 Therefore, a juror may be more inclined to find a defendant not guilty when the evidence is not strong because of the high stakes or the jurors might have observed something in the courtroom that the American people were unable to pick up on due to the lack of media attention.38 This phenomena may well have occurred in the Casey Anthony trial.

III. Conclusion

So in the instant case, was the evidence enough to find Casey Anthony guilty beyond a reasonable doubt? This question can only be answered by the twelve people on that jury. Although some jurors have come out and spoken to the media about its verdict, we do not know the exact thoughts of all twelve jurors during their deliberations, nor do we know how their subconscious may have influenced the final verdict. Perhaps they found evidence pointing to her innocence to be more credible than the prosecution's evidence. Or perhaps they found that all the evidence was circumstantial and that because there was no "smoking gun" evidence the prosecution did not meet its burden. Regardless, what the jury verdict did prove is that despite the government prosecuting a person and despite a media mob attacking the character of the defendant, an individual can still count on a jury of his peers to listen to the facts and hold the government to the standard required under our laws, even if that decision is unpopular. While the verdict in the Casey Anthony case offends many Americans who believe the evidence is clear, it underscores the importance of our justice system, and shows us that through the trial by jury process, our system avoids the hallmark of totalitarian regime: the imposition of draconian punishment based on conclusory beliefs absent clear and convincing evidence.

1 Lizette Alvarez, Casey Anthony Not Guilty in Slaying Daughter, N.Y. Times, July 5, 2011, A1, available at http://www.nytimes.com/2011/07/06/us/06casey.html. Casey Anthony was also found not guilty of aggravated manslaughter of a child and aggravated child abuse. However, she was convicted for misleading law enforcement. Id.
2 Id.
3 See id.
4 Id.
5 Rennie Dyball, Casey Anthony v. O.J. Simpson: Which Not Guilty Verdict Was More Shocking, People, July 5, 2011, http://www.people.com/people/article/0,,20507867,00.html.
6 Dennis Romero, Casey Anthony: Echoes of O.J. Simpson For Veteran Trial Watchers, L.A. Weekly, July 5, 2011, http://blogs.laweekly.com/informer/2011/07/casey_anthony_oj_simpson.php.
7 Id.
8 U.S. Const. amend. VI.
9 Letter from Thomas Jefferson to Thomas Paine (July 11, 1789), in 3 The Writings of Thomas Jefferson 69, 71 (Henry A. Washington ed., 1853).
10 Norman Lefstein, The Best Defense, By Alan M. Dershowitz, 56 Temp. L.Q. 1101, 1111 (1983) (reviewing Alan M. Dershowitz, The Best Defense (1982)).
11 Henry F. Fradella & Lauren Fradella, 42 No. 3 Crim. Law Bulletin ART 6 (The main purpose of voir dire is to weed out those members of the venire who would not be fair and impartial jurors.); see Dale Larson, A Fair and Implicitly Impartial Jury: An Argument for Administering the Implicit Association Test During VoirDire, 3 DePaul J. for Soc. Just. 139, 152 (2010).
12 U.S. Const. amend. V.
13 Sullivan v. Louisiana, 508 U.S. 275, 278 (1993); Leland v. Oregon, 343 U.S. 790, 802-803 (1952) (Frankfurter, J. dissenting)(Justice Frankfurter stated that "[i]t is the duty of the Government to establish . . . guilt beyond a reasonable doubt. This

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notion - basic in our law and rightly one of the boasts of a free society - is a requirement and a safeguard of due process of law in the historic, procedural content of 'due process.'"); see also Paul Marcus & Vicki Waye, Australia and the United States: Two Common Criminal Justice Systems Uncommonly at Odds, 12 Tul. J. Int'l & Comp. L. 27, 34 (2004).
14 Black's Law Dictionary 1293 (8th ed. 2004).
15 Emanuella Grinberg, Flawed Forensic Evidence Explains Casey Anthony Acquittal, Experts Say, CNN, July 18, 2011, http://www.cnn.com/2011/CRIME/07/15/casey.anthony.forensic.evidence/index.html.
16 Debbie Hines, Casey Anthony - Did She or Didn't She Do It?, Legal Speaks, May 25, 2011, http://www.legalspeaks.com/2011/05/casey-anthony-did-she-or-didnt-she-do-it.
17 Russell Huekler, an alternate juror in the Casey Anthony trial, "said the lack of physical evidence that Caylee was murdered overwhelmed the circumstantial evidence of Casey Anthony's many lies and her hard partying in the 31 days when she knew her daughter was dead but didn't tell authorities." Mary Kate Burke, et. al., Casey Anthony Juror: 'Sick to Our Stomachs' Over Not Guilty Verdict, ABC News, July 6, 2011, http://abcnews.go.com/US/casey_anthony_trial/casey-anthony-juror-jury-sick-stomach-guilty-verdict/story?id=14005609.
18 Dr. Kimberlianne Podlas, "The CSI Effect": Exposing the Media Myth, 16 Fordham Intell. Prop. Media & Ent. L.J. 429, 433 (2006).
19 Id.
20 Id.
21 See Alvarez, supra note 1; Nate Rawlings, Casey Anthony CSI: A Triumph of High-Tech Forensics?, Time, June 16, 2011, http://www.time.com/time/nation/article/0,8599,2077937-1,00.html.
22 Grinberg, supra note 15.
23 Barbara E. Bergman & Nancy Hollander, Wharton's Criminal Evidence § 1:8 (1997); Direct evidence is evidence that "proves a fact without an inference or presumption and which in itself, if true, establishes that fact." Id.
24 Alvarez, supra note 1.
25 Rawlings, supra note 21.
26 Id.
27 Id.; Casey's mother testified at trial that she had conducted these searches; however, it was later determined that Casey's mother was at work during this time and thus could not have conducted the search.
28 Id.
29 Camille Mann, Casey Anthony's Father Says at Trial that Car Smelled Like Corpse, CBSNews, May 27, 2011, http://www.cbsnews.com/8301-504083_162-20066895-504083.html ("The smell was so intense, he could not drive the car without rolling down the windows, he said."); Rawlings, supra note 21.
30 Alvarez, supra note 1.
31 Ashley Hayes, Casey Anthony Not Guilty of Murder, Other Charges in Daughter's Death, CNN, July 5, 2011, http://articles.cnn.com/2011-07-05/justice/florida.casey.anthony.trial_1_george-and-cindy-anthony-caylee-marie-anthony-defense-team.
32 Kevin Jon Heller, The Cognitive Psychology of Circumstantial Evidence, 105 Mich. L. Rev. 241, 292 (2006).
33 In Re Winship, 397 U.S. 358, 368 (1970); Eric Deggans, Casey Anthony Juror on Nightline: "How Can You Punish Someone, if you Don't Know What They Did?", Tampabay.com, July 7, 2011, http://www.tampabay.com/blogs/media/content/casey-anthony-juror-nightline-how-can-you-punish-someone-if-you-dont-know-what-they-did ("[T]he prospect of a death penalty left the jury hungry for a definitive account of the crime, which prosecutors could not provide.").
34 In Re Winship, 397 U.S. at 368.
35 For example, Jennifer Ford, a juror on the Casey Anthony trial, told Frontline that "Casey Anthony's father George didn't help the state's case by looking evasive on the stand and seeming to switch allegiances between the prosecution and defense." Deggans, supra note 32.
36 Byrne, Media as the 13th Juror, The University Times, Aug. 5, 2011, http://www.universitytimes.ie/?p=3448.
37 Id.
38 See quote accompanying note 32.