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## The Casey Anthony verdict: Important lessons for civil attorneys

Bruce G. Fagel is a physician and medical malpractice attorney.



In the days since the Casey Anthony verdict, most of the public press, pundits and public opinion polls clearly shows great dissatisfaction with the verdict. Whether or not Anthony got away with murder, as most people believe, the greater concern is the perception that the jury got it wrong. Even many pundits who say that they support the jury

system have said, at the same time, that the jury got it wrong. To paraphrase Martin Luther King Jr.'s famous statement that "injustice anywhere is injustice everywhere," an attack on a jury verdict anywhere is an attack on the jury system itself.

While attorneys can do little to improve the public perception of the jury system, there is much that attorneys can do to improve the integrity of the jury system in individual cases. There are important lessons from the Anthony case for all trial attorneys, both civil and criminal.

First and foremost is the concept of credibility. While judges are tasked with understanding and applying the law to the case (usually through rulings on the admissibility of evidence) finding the facts based on the credibility of the witnesses is the exclusive role of the jury. Most business cases, which occupy much of our civil courts, usually involve contract issues where judges make the decisions without a jury. But in most civil personal injury or other tort claims, and almost all criminal cases, a jury must decide the case. In such cases, the judge will often form an opinion about the guilt or liability of the defendant (as was readily apparent in the Anthony case) but his or her opinion is superseded by the jury verdict. The jury in this instance simply did not believe the case presented by the prosecutor.

The most objective analysis of the Anthony case is that the prosecutor over-charged the case by attempting to prove first-degree murder without sufficient evidence. While the jury could have found guilt on a lesser charge of criminally negligent child endangerment, the prosecutor's case and argument was directed towards first-degree murder. When the jury concluded that they did not believe the prosecutor on the first-degree murder charge, they had no direction on what evidence would allow a guilty verdict on a lesser charge. The prosecutor or plaintiff's attorney, in either a criminal or civil case, must show the jury how the evidence leads to a single conclusion.

When a jury is presented with multiple options, they will often find "none of the above." The prosecutor in the Anthony case essentially lost the case when he charged Anthony with first-degree murder, in a situation where all he had was a dead body with very suspicious circumstances. It is important to note that in both the Anthony and the first O.J. Simpson case, the defendant did not testify. To the contrary, in the recent re-trial of Rod Blagojevich, that defendant testified and was found guilty.

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The O.J. Simpson trial was lost when the Los Angeles County District Attorney transferred the case from Santa Monica to downtown Los Angeles, so that he could have more direct control. This in turn, allowed racial issues to overtake the case. Fortunately for the prosecution in criminal cases, most are not highly publicized and televised events, but it is unfortunate that in those few such cases, a prosecutor will often gamble on a high stakes conviction. But in the end, like in the Anthony case, they only succeed in hurting the jury system.

For civil attorneys, the challenges are even greater since the object of a jury verdict is obtaining monetary damages. A plaintiff who brings an action for civil monetary damages is very much in the same position as a criminal prosecutor who decides on the charge to indict a defendant. While the burden of proof may be less in civil cases, most jurors still require a high level of proof to find liability and award any significant monetary damages. Therefore, the theories of civil liability and the amount of damages requested, especially non-economic damages, must be clearly laid out from the evidence and must be more than sufficient to sustain a verdict. Any attorney who asks a jury to award damages to their client must accept that the jury system only works when a jury is given a clear and unambiguous analysis of the facts, within the confines of the law and the supporting evidence.

It is unfortunate that both of the highly publicized and televised trials - Casey Anthony and O.J. Simpson, resulted in defense verdicts against the great weight of public opinion. However, in contrast to the O.J. Simpson case, where there was more than sufficient evidence to convict, the jury in the Anthony case was not provided with direct evidence of a murder. Duct tape over a decomposed skull is not the same as two bodies with multiple stab wounds and blood everywhere. Anthony's failure to report the disappearance of her child for over 30 days is far more consistent with a mother whose child died somehow, and who then tried to cover it up by essentially ignoring that the child was dead. Under Florida law, however, Anthony's lies to the police about her child and other issues were only punishable by a year in jail for each of four counts. As a result, Florida and many other states have efforts underway to enact a "Caylee's law," which will make a failure to report the disappearance of a child a felony offense.

In civil cases with a contingency fee, the attorney has the same responsibility to see justice done as does a criminal prosecutor. Therefore, any civil attorney needs to understand what the jury system can and cannot do, and if a jury is given a case that is too complicated, or with multiple theories of liability, we should not be surprised if the jury does not reach the "right" verdict. A civil attorney must be able to simplify the facts and show the jury how to reach the desired conclusion. Every time a jury reaches a defense verdict in a civil case, there is a potential for that jury to believe that the case should not have been brought in the first place, and that conclusion is harmful to the system. The jury system works so well because it is, in fact, not perfect, and occasionally a jury will reach an unjust verdict, both in civil and criminal cases.

In criminal cases, the jury has the final verdict, and a judge does not have the right to overturn the verdict and find the defendant guilty. But in civil cases, the judge can, and sometimes does, overturn a jury verdict either on liability or damages. This is unfortunate since it shows the same disrespect for the jury system that the public complains about after a highly publicized verdict that goes against the public mind.

But with all of the flaws and foibles of the jury system, it works so well because we trust it, and attorneys who bring civil tort cases into court before a jury should acknowledge the special responsibility they have to defend and maintain this system. Everyone who thinks that the Casey Anthony jury got it wrong should recognize that from the perspective of the jury system, they got it perfectly right.

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