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**“Dramatic Moments in the Pursuit of Justice”  
Founder's Day Lecture  
by Ronald L. Carlson**

**The University of Georgia Chapel  
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Thanks to President Adams for providing the welcome today, to Alumni Office Executive Director Deborah Dietzler for her appreciated introduction of this program, to Larry Dendy for the fine preview article which he published Monday about this program in Columns, and to the audience for being with us.

**Introduction**

The tradition of the University has always been to train its students to be leaders of business, science and government, informed voters, and responsible jurors dedicated to finding the truth in the important business of dispensing justice. In connection with these goals, let us collectively look at some of the dynamics operating today in the place to which Americans increasingly turn for resolution of society's difficulties, the American courtroom.

In most prominent trials, there are critical junctures which determine the outcome. Sometimes a case turns completely around because of a significant witness or a startling piece of evidence. These are the watershed points, where the flow of the case formerly going one direction shifts 180 degrees in the opposite direction. The shift can be gradual, or very sudden and unexpected like an earthquake or a tsunami. Wherever it starts, that turning point supplies a dramatic moment in the pursuit of justice.

**Scott Peterson**

For the jury foreperson in the Scott Peterson case, that dramatic moment came in the tapes you are about to hear us illustrate. Some will remember that for the first month or so of that trial, many of the pundits and commentators saw the defense winning. The State is no match for Mark Geragos, several of the experts said. And then the Amber Frey tapes were played. For the foreperson of the jury, what he heard in them was dramatic. This powerful evidence had a persuasive effect on this important juror, and as he heard more of the tapes he began thinking in the direction of the conviction. To this man, it was unbelievable that Scott Peterson would make at least one of these telephone calls while he was involved in a candlelight vigil for Laci, just a relatively few days after she went missing.

In our mind's eye, let's take ourselves back to the early morning hours of January 1, 2003. In Modesto, California, Scott Peterson makes a telephone call to a woman who is about 100 miles away. He pretends he is overseas. Let's review a few excerpts from those conversations.

**January 1, 2003**

**Frey:** Do you even know when you're coming back?

**Peterson:** Well, I'm trying to schedule for [Jan.] 25th.

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**Peterson:** What do you have on? (She explains that she asked so many questions because she hasn't seen him for a while and has been drinking.)

**Frey:** Um ... what I'm wearing, I'll go to that. I'm wearing black pants which kind of have a texture ... well, they're kind of shiny and they have a leopard print but it's on black.

**Peterson:** Oooh!

**Peterson:** I mean I'm in [Brussels] so it's much cleaner obviously than most cities than your American cities.

**Frey:** Uh-hum.

**Peterson:** At least Brussels is. Paris is pretty clean. Yeah, there won't be anyone out I'm sure. People get up you know, like 9:00 and 10:00.

**Frey:** So how it is they have such a luxury to sleep in?

**Peterson:** Well, just because they work until 8:00 or 9:00 in the evening.

In this, as in so many of the early recorded conversations between these two people, Scott's small talk reveals a less than serious mood. He seems casual, and any tension or tightness which one might expect to see from a man who is searching for his wife appears to be missing. These factors militated against him in the minds of the trial jury.

### Michael Jackson

We next look at another high profile case. In this one there is plenty of tension. This is the Michael Jackson case.

At one of his court appearances, fans from around the world were outside the courthouse to demonstrate on his behalf. Michael jumped atop his SUV on the way out of the court proceeding and danced. There was a party afterward for everybody at Neverland. Meanwhile, his inner circle continued to meet on a regular basis to map strategy for his trial.

It is too bad they did not advise and counsel him to avoid the mistakes in his conduct which may have contributed to his current predicament. By questionable conduct I am not referring to his associations with young men and boys. No, I am referring to his conduct in another regard. By recording a song that, in part, seemed to criticize the prosecutor in the area where he lives in California, and then continuing to reside in the county where also lived the prosecutor whom Michael had chastised.

The name of Michael's prosecutor is a district attorney named Tom Sneddon. Some in the Michael Jackson camp deny that Sneddon is targeted in the song, but one respectable publication interpreted the concluding words of one verse as follows:

Tom Sneddon is a cold man  
Tom Sneddon is a cold man

In the end, Michael Jackson's case, like a couple of famous cases we have in the pipeline here in Georgia, turns on the application of something called the pattern or similar crimes law. If the defendant did something in his past which is uniquely like something he is charged with now, the older thing can be brought up at his current trial. In Michael Jackson's trial, that means disclosure of some of the damaging facts of an early 1990s case which Michael apparently settled for somewhere in the neighborhood of 15 to 20 million dollars.

Some states limit this "pattern crimes" law to misconduct occurring before the time of the charged offense, but not after. In these states, prior pattern misconduct means exactly this: in order to be used against a defendant, he must have been a bad person and engaged in the bad conduct prior to the crime he is currently charged with; what he did after the charged crime does not count, and cannot be used.

### **Dr. Barton Corbin**

This point of law is crucial in one of the most famous cases to ever hit the courts in Georgia, Dr. Barton Corbin's alleged killing of Dolly Hearn. Who was Dolly Hearn? At the time her life was cut short she was about to become a dentist at the Medical College of Georgia in Augusta, the city where she was tragically killed. In 1990 Dolly was 27 years old and at the threshold of her professional life. She was set to graduate and become a practicing dentist, but in the last couple of months before graduation she began having a host of mysterious troubles. She told authorities that someone had let the air out of her car tires; had broken into her apartment; while the person was in there, the individual put hair spray in her contact lens solution; someone had taken her mail; poured paint into her car's gas tank; took her cat several miles away and let it go; destroyed some of her patient charts; and finally, stole the set of teeth Dolly had been making and needed for her graduation requirements. In some, if not several of these events, Dolly apparently suspected her former boyfriend, Barton Corbin.

On the fatal day for Dolly, she was cooking dinner. At some point during that activity she apparently sat down on the couch. She then received a pistol shot in the head, and died. When the police arrived the gun was next to her hand on the couch. But curiously, there was no gunshot residue, or GSR on her hands.

Dolly's death remained a mystery for 14 years. And then, just as suddenly and dramatically as Dolly had died, a young wife was killed in Gwinnett County with a bullet hole in her head and a handgun by her side. Dr. Barton Corbin was indicted for murder in Augusta, and separately in Gwinnett. In these double crime situations, the norm is for the respective district attorneys to decide which jurisdiction tries the accused first. When the Augusta case reaches the trial stage, a significant legal question is raised. Can the facts of Jennifer Corbin's death be brought up in the Dolly Hearn trial? Remember, when I talked about Michael Jackson a few minutes ago, I said that former or prior misconduct was admissible -- but Jennifer Corbin's death came after the Dolly Hearn fatality. Does this rule present a dilemma for the authorities in Augusta?

Fortunately for them, Georgia law has addressed this issue. Under Georgia's liberal pattern crime laws, prosecutors are permitted to offer not only a defendant's misconduct before the 1990 murder, but also after.

Ultimate issues of admissibility of evidence are always resolved by a Superior Court judge in the place of trial. That is the way it is in the Corbin case. Further, I emphasize that Dr. Corbin is at this point presumed innocent, and legal judgments about his guilt of either or both of these deaths is properly left to the courts.

### **Old Cases**

In any Augusta trial of Dr. Corbin, one might wonder about the efficacy of trying a case which is 15 years old. However, please remember that a Perry, Georgia jury in 2004 had little trouble convicting Lynn Turner for the antifreeze poisoning of her husband almost 10 years earlier. That is partly the result of the way modern popular culture drives jury attitudes. The public is very willing today to look at old cases because of television shows like:

- 1) Cold Case --- CBS
- 2) Cold Case Files --- A&E, as well as
- 3) CSI

This thrust on the part of networks inures to the benefit of prosecutors who bring up old cases; think about what is happening in Mississippi, where a Klansman called "The Preacher" is accused in the brutal 1964

killings of 3 civil rights workers, Chaney, Goodman and Schwerner, and is on the brink of trial. The case is over 40 years old.

### **Pretrial Publicity**

Publicity surrounds big cases and drives public opinion about those cases. In a recent program at the Georgia Education History Museum in Roswell, we took an unscientific but very revealing survey before the program began. The survey reflected on the guilt or innocence of Michael Jackson, Kobe Bryant, and Saddam Hussein. Honor high school students from Fulton County provided the audience, and each one handed in a ballot. In the final tally, they voted:

- Michael Jackson: Guilty 112 Not Guilty 15
- Kobe Bryant: Guilty 20 Not Guilty 103

### **Kobe Bryant**

In the last case which the high schoolers voted on, the alleged victim caused the dropping of the criminal case against Kobe, but she is presently suing him for money damages. A notable aspect of the Kobe criminal case strikes me as remarkable. No other case in recent history has involved as much pretrial exposure of the identity of the accuser in a rape case. Media policy is to generally shield or protect the name and face of the victim in a sexual assault case, at least until the time that a verdict is delivered. But in this case the public pressure was so compelling that some in the tabloid press brought out the name and eventually the picture of the woman. Ultimately, this woman declined to continue further in the criminal case and the rape charge was dismissed.

### **Gag Orders**

What is the impact of broad and unrestricted gag orders on modern trials in high profile cases? On balance, their effect is often unfavorable. What heavy handed gag orders result in these big cases is stopping the flow of reliable official information and replacing it with rumors, speculation and selective leaks. We need look no further than Kobe Bryant case to illustrate. After the official information about what Kobe allegedly did was shut off by a gag order, the public was exposed to a relentless drumbeat of unofficial information to the effect that Kobe's accuser was mentally unstable, or worse. Attacked in some of the tabloids in a vigorous and enthusiastic manner, pressure built on the alleged victim. She received death threats.

These unfortunate developments suggest that when a gag order is imposed, it needs to be periodically reviewed by the judge who imposed it. If one side is being annihilated in the public forum by speculation, it may be appropriate for that party to respond with a measured amount of official, reliable information. The improper speculation may run against a prosecution witness, as explained, or against a defendant, as Michael Jackson has complained. Gag orders should be strictly limited to the needs of the case and periodically reviewed.

### **Investigative Secrecy**

While gag orders sometimes close out too much information, critics say they are topped by an overkill of investigative secrecy in some police investigations. In the Jon Benet Ramsey case, for a very long time authorities seemed to focus their efforts on the uncharged accusation against Jon Benet's parents. Meanwhile, official information about the case was closed down. Recently the CBS program "48 Hours" revealed information about a potential intruder possibly attacking Jon Benet, including the fact that at the time of her death, a number of registered sex offenders lived with a 2 mile radius of the Ramsey's Boulder home.

Perhaps the strongest factor which will help to solve the mystery of Jon Benet's death is DNA found on Jon Benet's underwear. The "48 Hours" broadcast suggested that the DNA was from a male, and from a person who was not a member of the Ramsey family.

Along with a robust look at the criminal population in Boulder, prospects for solution of the crime might be aided by the police considering the press to be an ally in the search for the killer. This is often a good move. Consistent publicity sometimes aids solution of an unsolved crime.

During the second O.J. Simpson trial, a significant item of evidence was produced which had not surfaced earlier. It seems to have appeared because of the publicity attending the second case. During the original criminal trial, an expert testified that the killer of Nicole Simpson and Ron Goldman tracked through blood at the crime scene in a pair of Bruno Magli shoes. O.J. denied ever owning such footwear. It took until the second, civil damages trial for a sports photographer to recall that he took a picture of O.J. in such shoes. The introduction of the picture provided a dramatic moment in the second trial of O.J. Simpson.

As a result, the point was amply illustrated that publicity can help to solve an otherwise intractable case. I hope Jon Benet's case will be solved and her murderer punished. I also hope the cases of a couple of young women killed in Athens will be solved someday. I speak of Jennifer Stone, killed in 1992, and Tara Baker, murdered in 2001. These cases continue to arouse strong reaction from the public. For example, shortly after it was announced that I would give this Founder's Day address, an email came in, earnestly asking that I raise the issue of the Jennifer Stone murder. This communication came from a former UGA professor, and it reminded me that this case continues to stimulate profound interest and emotion. As does the Tara Baker case. A memorial gathering was held in her memory under the arch just last week. It is good that the public remembers, and that these cases do not die.

#### **Sunshine Week**

Because of the official gagging of information, especially in the big celebrity cases like those we have talked most about today, the national association of newspaper editors as well as the nation's radio broadcasters have responded with Sunshine Week. What is "Sunshine Week?" This is an unprecedented national effort by the American Society of Newspaper Editors and the National Radio and Television News Directors Association to combat "the alarming trend toward secrecy at all levels of the government." These organizations note that from police chiefs offices to the Attorney General's office there is an epidemic of secrecy which is unmistakable. A week in March -- Sunshine Week -- marks a wholesale effort through editorials, op-eds, and news and feature stories to educate the public about the need for openness in government.

#### **Martha Stewart**

One defendant about whom there is very little secrecy is Martha Stewart. A big TV contract (including spots on the Today Show) awaits Martha as soon as she completes her sentence of prison plus a period of home confinement. Martha Stewart is famous, and Americans respect fame and notoriety. Accordingly, good things appear to be in her future. She seems to be adjusting to prison surprisingly well. As she serves her sentence, at the same moment she is prosecuting the appeal of her criminal court conviction. Her appeal has new appeal because of a 2005 Supreme Court decision announcing new sentencing guideline rules which might invalidate her sentence.

#### **Public Intellectual**

We now shift gears to something Dr. Adams said last week in his State of the University speech. He was talking to the faculty of this institution when he made this plea to them. "Now more than ever you must help us make sure that UGA's sponsoring public understands the totality of your work as a member of the faculty at the University of Georgia. Help them understand that in addition to your time in the classroom, you do research, provide public service, serve on committees and task forces, advise students, grade papers and fulfill a myriad of other tasks. Talk to your representatives and senators in the General Assembly. Tell them what you do during an average day."

In that same spirit, let me suggest that scholars here can assist the University by spreading their scholarship to the broader public. This is a topic which Journalism Professor Conrad Fink and I discussed in a meeting with public relations directors of a number of our University departments and schools. The notion

is simply this: Whether sociologist or statistician, geologist, geographer, artist or astronomer, the scholar's academic experience has generated an understanding of a subject which is profound. See R. Kingston, Higher Education Exchange. When the scholar shares that knowledge with the public at large through the many venues available here to do so, it generates great good will for UGA. It is called "public scholarship."

This is in the tradition of the University, and Ron Simpson has wisely reminded us that tradition should not be forgotten. Ron put it this way at the Fifth Anniversary dinner of the UGA Teaching Academy: "When we drink the water, we should not forget who dug the well." An honored tradition through the 220 year life of this institution has been to prepare students for a life of civic engagement in a deliberative democracy. As noted in the position paper developed by the Pew Partnership for Civic Change, there is a challenge to doing this because of the "dominance of academic departments in today's colleges and universities which tend to overemphasize the marketability of technical skills and de-emphasize a student's contributions to civic life." Fortunately, the last decade has witnessed increased momentum in the direction of making students more aware of the governmental, legal and political forces swirling around them -- it is called the civic engagement movement -- and I hope our work here today has contributed to that effort.

### Saddam Hussein

As I look over my notes, I see there is one final defendant about whom we need to report. When I had the high school honor students vote on Michael Jackson and Kobe Bryant as I noted earlier, I also had them vote on the guilt or innocence of another personality -- Saddam Hussein. How did that one come out? It turns out the high schoolers were harder on Saddam than they were on the other defendants whom we sampled with them. The vote? Saddam -- 138 guilty; not guilty, 2.

As we can see, this is one defendant who does not have to worry about prejudicial pretrial publicity or his place in history. Those aspects of his career seem to be well beyond repair. But even though most people know his name and record, that does not mean that the court where he will be scheduled for trial will be immune from a change-of-venue motion. I expect one. Once Saddam gets fully lawyered up and the Iraqi Special Tribunal gets constituted, look for Saddam to try to change the case to the International Criminal Court in the Hague. The reason: there is no death penalty in the international court. However, the prospects for the success of any such motion are very slim.

### Conclusion

At this point, I want to thank you for being a wonderful audience -- for your good humor as well as your careful attention to serious points which have been advanced today. We appreciate you, and we appreciate UGA.