

Response to “Dramatic Moments in the Pursuit of Justice”

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I am delighted to participate in today’s “Dramatic Moments in the Pursuit of Justice” program because Founders Day is such an important event in the University’s calendar and because I have the opportunity to follow the footsteps of my good friend, Ron Carlson. Since Ron directed some attention to Martha Stewart in his presentation, I am compelled to add that I tried to enlist her participation in today’s events but she insisted on going to prison early.

More seriously, in my remarks this afternoon I will direct some general attention to the cases that Ron considered in his presentation. In this, I refer to these as “celebrity cases” because they are so highly publicized and because, in many ways, they are not typical of ordinary or more everyday justice. In these remarks, I will direct attention to three questions: (1) why celebrity cases are so compelling; (2) what are some important systemic issues that are illustrated in some of these cases; and (3) what we learn and don’t learn about criminal law and the administration of justice in these instances.

Why are celebrity cases so compelling? Underlying all celebrity cases is a fascinating story and these are invariably entertaining. Some years ago, Milner Ball, also one of our distinguished law faculty, said in conjunction with courts that “the play is the thing.” In those criminal and even civil cases that proceed to trial, there is often high drama. This is one of the reasons that trials are often so captivating and why so many people turn to them for entertainment. This is especially applicable in the so-called celebrity cases that we have been considering today, particularly where television and print media coverage is so pervasive. These cases, then, are compelling because they exhibit the dramatic characteristics that make trials so fascinating, because they typically tell an interesting story, and because of the notoriety of many

of the litigants.

Another reason why these highly publicized cases are so compelling is that we live in a culture that puts a high value on celebrity. In many of the cases that Ron Carlson talked about today, the defendants were famous before their cases came to court. However, there are some where the defendants become celebrities of a sort during their trial. Scott Peterson, for example, was unheard of prior to the murder of his wife and unborn son but his name is now a household commodity. Interestingly, though, in the scheme of homicides, the Peterson case is not that different from many other murder or manslaughter convictions. Many homicides take place between those who are related to or know each other, something that clearly applies in the Peterson case. What makes this case so compelling is not that it is like so many other homicide cases but that it involved an unborn child and struck many as especially horrendous. Non-celebrity defendants, then, can become notorious celebrities by virtue of the unusual characteristics of the crime itself.

Celebrity and notoriety are also, frankly, encouraged and even stimulated by the pervasive press and media coverage that in many cases seems to resemble voyeurism. In this, I question whether any public or legal issue of any consequence is really served by saturated coverage but having said this, it is possible to understand why people find the underlying stories, conflicts, and crimes so compelling. Regardless, media coverage can take an ordinary criminal case and transform it to one of celebrity status.

In spite of my preceding claim that public and legal issues of consequence are rarely served by extensive media attention, there are instances where celebrity cases do direct attention to matters of systemic importance. Two cases - one that Ron mentions in his presentation and another that he does not - help to illustrate this. The first - the trial, conviction, and

imprisonment of Martha Stewart - calls attention to many of the controversies surrounding criminal sentencing in federal courts and incarceration more generally. Although Martha Stewart received, in many respects, a trivial term of imprisonment, the fact that she was sentenced to any prison term helps to direct attention to the high incarceration rates in the United States. Today, we imprison approximately two million people, we have one of the highest incarceration rates in the world, and our prisons and jails are not filled with Martha Stewarts. They are filled with the less advantaged members of society who are there for far longer terms. The Martha Stewart case, then, clearly raises several questions: whom should we incarcerate in our prisons? how long should they be confined? and what should we do with those who commit crimes but for whom prison does not seem to be a reasonable or even cost efficient punishment?

I don't have any ready answers to these questions and certainly there is considerable debate surrounding each. There are those, for example, who argue that so-called white collar defendants like Martha Stewart should serve severe prison terms and others who think that she and some other "white collar" defendants have been made scapegoats. Whether one concludes that prison was or was not appropriate for Martha Stewart, it is clear that her sentence has helped to direct attention to incarceration and to the critical policy issues associated with it in today's society.

The second case that has received significant attention recently and that I think helps to shed light on some systemic dimensions of criminal law and courts is the prosecution of a suspect in the murder of three civil rights workers in Mississippi that took place approximately forty years ago. This is an interesting and notorious case not because of the identity of the defendant(s) but because it marked a horrendous chapter in the civil rights movement and has gone unsolved for so many years.

The criminal prosecution of a suspect in these murders helps to illustrate an important point that those of us in the social sciences have long made with respect to criminal adjudication, specifically that criminal court processes are uniquely tied to the prevailing social and political culture of specific times and places. In the 1960s there were many people who committed terrible crimes on those who worked or advocated for civil rights for African-Americans. Many of these people were not brought to justice, largely because the legal system in operation at the time was closely rooted in the social and political culture that nurtured Jim Crow laws and that was resistant to any challenges that would affect changes in the status and rights of African-Americans. Since that time, the social and political culture of many of these states and local communities has changed and with that older criminal cases have been resurrected and pursued. What the current prosecution of a former Ku Klux Klan leader tells us, then, is that justice is closely aligned to the prevailing social and political order and that criminal cases are invariably constrained or affected by that order.

What do we learn and what don't we learn about criminal law and the administration of justice in celebrity cases? As noted earlier, we don't learn about the regular operations of criminal courts and in that routine applications of criminal law because celebrity cases are, almost by definition, atypical and unusual - high profile defendants, equally high profile defense attorneys, and protracted trials. These features contrast sharply with the majority of criminal cases that are resolved outside of trial where the defendants are nameless and faceless and where the quality of defense counsel is mixed.

Two of the cases that Ron Carlson features today, however, tell us some important things about criminal law and the administration of justice. First, we learn about the consequential, albeit unintended, effects of efforts to reform or improve criminal case processing. Let's return

to the Martha Stewart case to illustrate this point. As noted earlier, Stewart was sentenced under federal law and in that under a system of guidelines that went into effect in 1987. These guidelines sharply curtailed judicial discretion in sentencing with restricted penalty ranges determined for a set of combinations of offense severity and criminal history that were applied in all federal criminal cases. A recent U.S. Supreme Court decision has concluded that these sentencing guidelines will now be advisory and not mandatory in federal courts, but at the time of Stewart's sentencing, federal judges were obligated to apply the sentence specified in the administratively constructed guidelines that have generated tremendous controversy in the federal justice system. In Stewart's case, the prison term was very lenient, five months, but in many of the criminal cases before federal courts since 1987, the terms specified are anything but lenient. About 55% of federal prisoners today are incarcerated for narcotics offenses and they are in prison for terms that far exceed five months. Along with the recent U.S. Supreme Court decision, Martha Stewart's case and her developing concern about the fairness of federal sentencing law and procedures have called attention to the unintended consequences of the federal sentencing reforms adopted in 1984 and enacted in 1987. Originally designed to help reduce disparity in federal sentencing, the guidelines have generated a new kind of sentencing disparities, developed into a particularly convoluted system, enhanced prosecutorial at the expense of judicial discretion, and changed the character and, to some extent color, of the federal prison system.

The second thing that we can learn from the celebrity cases reviewed here today is the simple fact that justice is inevitably illusive and that law is not necessarily going to be effective in addressing every grievance, every conflict, and even every injury as serious as a crime. In the celebrity cases that Ron has highlighted, some defendants were convicted, some were not. Of

those convicted, some appeared to have been punished appropriately and others not. This applies to all criminal cases in both federal and state courts systems whether celebrity or ordinary. Simply put, our court systems are finite, human, and inevitably imperfect. While we cannot forsake the goals of justice and the value that we place on fairness, liberty and order in our constitutional system, we must acknowledge that legal decisions, like other political decisions and policies, are not always going to advance the cause of justice. On balance, we hope that our criminal courts will achieve justice more often than not, but so long as law is defined and applied by human beings, it will always be limited. This is clearly illustrated in the cases that Ron has highlighted so vividly this afternoon and challenges all of us to learn more about criminal courts and the administration of justice as both are expressed in celebrated and ordinary fashion.