

Peter Perlman and the Nobility of Trial Practice



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By Don McNay

"Honesty is hardly ever heard
And mostly what I need from you"
-Billy Joel

We can blame it all on Judge Ito.

One of the worst moves in American judicial history was Judge Lance Ito's decision to allow the OJ Simpson murder trial in 1995 to be televised. Making a bad idea worse, Ito went on The Tonight Show and other entertainment programs like a small-time comic trying to work his way to Vegas.

The OJ Simpson trial was the precursor of the modern reality television series. Take OJ one step further and the next thing you know, we have Jersey Shore and Duck Dynasty.

Actually it's more like Ozzy Osbourne's reality show. One famous person, surrounded by not-so-famous people who are all thrust into primetime.

Santayana said that those who do not learn from the mistakes of history are destined to repeat them. Judge Ito was obviously not a history scholar. America had an early lesson with the 1954 Sam Sheppard murder trial that unrestrained media can result in justice being skewed.

After the Sheppard trials, televisions were basically banned from the courtroom until Judge Ito made his horrible decision.

And American justice changed for the worse.

A jury consultant who does extensive survey research said that the OJ Simpson trial completely changed how Americans thought about trial lawyers. The Simpson trial featured a ton of courtroom stunts, like the prosecutor attempting to get Simpson to try on bloody gloves from the murder scene (that one backfired on him) and the defense playing the "race card" by accusing one of the police officers of racism.

The American public came away with an overwhelming conclusion: trial lawyers were sleazy tricksters. Furthermore, the research revealed something more shocking.

Not only did they think that lawyers played sleazy tricks, they concluded that those who did not "play the game" and pull stunts were lousy lawyers.

Just like the trend in American elections where government leaders are reduced to using "gotcha" commercials, locking in on trivial issues and distorting the truth in order to get elected, it's easy for trial lawyers to fall into the same pitfalls.

Like Wall Street, Washington and in many forms of business, there are lawyers who look at the short term and think that bending the rules works for them. After the Simpson trial, you saw more and more attorneys trying funny courtroom stunts, playing to the camera and using distasteful advertising to get attention.

It hasn't worked. Jury verdicts are down in many jurisdictions. A number of states have spawned litigation to make it tougher for injured people to have access to the justice system. A very well-organized and well-financed political machine that wants to limit the income of trial lawyers, who are one of the biggest groups to contribute to political campaigns, can easily point to the trial lawyer stereotypes and use it to promote limiting legislation.

Some legal advertising is excellent. It may inform people who did not know they had a case and build the "brand" of the attorneys. Some legal advertising makes the entire justice system look like a really bad game show, where getting a big check is as easy as calling an 800 number.

After more than 30 years of working with injury victims, I am one of those rare people who feels it is a mighty feat for the average, working class American to prevail over a billion dollar corporation in a court of law. The only way that can happen is for a pure and impartial jury system to be maintained.

Peter Perlman feels the same way.

Perlman, Lexington, Ky, is a former president of the American Trial Lawyers Association and a lawyer's lawyer. He has devoted his life to the honor of the legal profession and received a boatload of accolades along the way. His low-key, but intensely focused demeanor is as far as you can get from mindset that the OJ Simpson trial spawned.

I've worked with Perlman many times over more than 30 years. His pursuit of excellence and perfection reminds me of the football coach Vince Lombardi. Pete pushes you to do the best work you have ever done in your life and then to take it one step further. No shortcuts, no quick solutions, no gimmicks. Just hard work, straight talk and being more prepared than the other side.

It was fascinating to watch Perlman speak at a meeting of the Southern Trial Lawyers Association in New Orleans last week. It was some of the best trial lawyers in the region, sharing ideas to help each other be better at their craft.

Pete's talk was about building credibility during jury selection. It's said that most cases are won or lost before the trial even starts and the process of jury selection is critical.

If an attorney comes off as slick, condescending or less than ethical, their client is dead meat, no matter how bad their injury or how good the case is.

Perlman, like all great trial lawyers, is very careful in who he picks to be a client. He weighs in for those who have severe injuries or where a miscarriage of justice has taken place. He goes all out for his clients and stays in their lives for decades afterward, because he believes in making their lives better.

His passion and commitment show when Pete is in front of a jury.

Perlman noted that many trial lawyers come into a courtroom paying lip service to the justice system, but then will use every trick to weigh a jury in their favor. Perlman has often knocked a juror off his panel when they seem biased. Not just biased against him, but biased FOR him.

He wants an impartial opportunity for justice, not a slanted one.

That seems counterintuitive, but it's not really. Perlman is looking for a fair and balanced jury. When he sets the example of being fair, jurors take it upon themselves to do the same, even if they don't agree with Pete's initial position.

If you look at the size and historic scope of many of Perlman's verdicts, the level playing field seems to work for him.

People are dying for straight talk, even if that straight talk seems to go against the client's perceived position.

John F. Kennedy is the president who defined my thoughts about public service and justice. When he said, "ask not what your country can do for you, ask what you can do for your country," he understood that the same Americans who united to win World War II would unite to push for an America that offered justice and fairness for all.

"Ask not what your country can do" was not a gimmick; it was deeply held value from a man who almost lost his life on PT109.

Kennedy also said in his inaugural speech, that history should be "the final judge of our deeds."

When we look back 100 years from now, no one will ever remember Judge Ito or even OJ Simpson for that matter. Ito got to be an instant celebrity, but, as Kennedy noted, there is an important distinction between fame and accomplishment.

Peter Perlman comes in on the accomplishment side. Although he is a big time player in trial lawyer circles, Pete is not universally known like Snookie on Jersey Shore. Nor does he want to be.

When history judges Peter Perlman, he will be noted for the people whose lives he helped. Case law will show that he was not afraid to take on the big corporations because he believed in his clients and believed in a system based on balanced justice.

It's a tough time for many trial lawyers. Record numbers of attorneys are entering the profession, even though law school admissions are dramatically down. They are finding that the public perception of trial lawyers is at an all-time low and legislation is making it harder to get a large verdict.

There are two options. Lawyers can keep using gimmicks and tricks, hoping they get lucky and get a jury to go for them. Or they can follow the Peter Perlman model of using hard work and preparation to communicate the plight of an injured person and let an impartial jury weigh the evidence.

If we are going to talk the talk about justice, everyone needs to walk the walk.

Peter Perlman is a good example of how to make that walk possible.

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