

THE Trial of the Century

by S.L. Alexander

Anatomy of a Trial: Public Loss, Lessons Learned from The People v O.J. Simpson, by Jerriane Hayslett. University of Missouri Press. 272 pages. 2008. \$29.95.

More than 13 years have passed since THE Trial of the Century, the criminal case of athlete, sportscaster, and actor O.J. Simpson, acquitted on charges of the 1994 murders of his ex-wife Nicole Brown Simpson and her friend Ron Goldman. Scores of books have been written by trial participants: defense and prosecution lawyers, dismissed and remaining jurors, witnesses such as Kato Kaelin, the Houseguest from Hell—in fact, almost everyone involved, save Kato the Akita.

Scholars have studied such aspects of the case as race (the defendant is African-American, the victims white); humorists have written joke books and parodies. Simpson himself has written several books, most recently *If I Did It*, subject of a 2007 court case that temporarily halted publication and ended with the copyright and all profits turned over to Goldman's family, toward the 1996 wrongful-death judgment holding that Simpson owed the victims' families millions. So why did Jerriane Hayslett write *Anatomy of a Trial*, and why should anyone read it?

Discussion of the lasting effects of the trial on use of gag orders, sealed records, closed proceedings, and

courtroom cameras remains relevant. And Simpson is still a public figure: a recent Las Vegas robbery and conspiracy conviction, currently on appeal, has finally sent him to prison to serve what could be at minimum a nine-year sentence. Moreover, (now retired) Hayslett is uniquely qualified to write a broad overview with hindsight: as the longtime L.A. Court PIO and media liaison, she handled not only *Simpson* but cases involving the Menendez brothers, the Rodney King beating, and pop singer Michael Jackson.

And while almost everyone involved has discussed the case, the one person who has refused thousands of requests to do so, the focus of the world's attention during the trial (an estimated 150 million watched the verdict), is Judge Lance Ito, and Hayslett is likely the closest we'll ever come to the ultimate insider viewpoint.

The story of how Lance Ito, a highly regarded jurist before *Simpson*, became the worldwide poster boy for how not to conduct a criminal trial (due to the behavior of the lawyers, the press, the witnesses, and the jurors along with the admitted mistakes of the court itself) serves as an instructive how-not-to for today's media commentators, prosecutors, and defense lawyers, as well as the many criminal court judges whose fear of "Ito-ization" still haunts them today.

(Disclaimer: my work has included study of the case, including a survey of its early effects on courtroom camera usage for *Judicature* (January-February 1996) and a brief biographical sketch of Ito for a 2004 reference book. I have participated in several

of the same fair-trial/free-press conferences as Hayslett.)

According to Hayslett, the far-reaching and long-lasting impact of the trial is the result of four major factors, including Ito's character and approach; behind-the-scenes activities; interaction of the trial participants, the media and the judge; and the reactions of other judges to Ito's conduct of the trial.

To some extent, the book may rightfully be seen as an apologia. Since it is promoted as the "first account of the trial written with Judge Ito's cooperation," it is only natural that Hayslett would focus on the ways in which Ito was not the sole cause of the media circus, although she admits that his—and her own—"unwitting culpability...contributed to the enduring negative effect."

Hayslett describes the judge's Japanese-American cultural background, one of graciousness and rule-following, set in his coming of age in Berkeley in the freewheeling 60s and 70s, along with his naiveté about how journalists work. This explains, for instance, why early on during the trial, the judge granted a (highly criticized) interview with KCBS-TV on a subject familiar to him: a commemoration of the World War II internment camps where Ito's parents had met.

Although Hayslett praises deserving journalists such as the AP's Linda Deutsch, some media behavior certainly deserves her condemnation. An estimated 2000 media personnel were involved in covering the case, with a daily scrum of reporters, photographers, producers, and technicians outside the

courthouse in “Camp OJ” and swarming all over the courthouse itself. Hayslett says that she, not Ito, invited Larry King for that criticized visit with the judge in his chambers, not suspecting how King would grandstand. She reminds us that all kinds of celebrities dropped in: journalists Barbara Walters and Tom Brokaw, actors Richard Dreyfuss and James Woods—the BBC even sent comic Jackie Mason to add color to their coverage.

Inevitable problems

Despite Ito’s strict rules for decorum, many journalists took advantage of the situation. For example, a Court TV reporter repeatedly violated coverage rules, and she was eventually removed along with a *USA Today* reporter, after constantly talking in the courtroom. However, as Hayslett reminds us, it is unlikely all problems could have been avoided in such a high-profile trial. She cites the suggestion of Gary Hengstler, director of the University of Nevada’s Reynolds Center for Courts and the Media, that in addition to the underlying First/Sixth Amendment conflicts, problems are inevitable when goal-oriented journalists clash with process-oriented judges.

The use of courtroom cameras was the most controversial aspect of coverage. Several sources pointed out the tendency of some trial participants to play to the camera, while others reminded her that most of the deplorable media coverage—includ-

ing the endless nightly talk-show pundits (many of the commentators lawyers, not journalists)—was not directly related to camera usage. In fact, media coverage of other high-profile trials where cameras were banned might be perceived as even worse, such as nightly re-enactments staged during the 2005 Michael Jackson sex-abuse trial.

Jury problems were unprecedented: surely no judge could have conceived that the jurors would have ended up sequestered for nearly nine months, or that only two of the original 12 jurors would make it through the trial. Ito tried to show jurors consideration: allowing conjugal visits, amusing them at night with special TV shows, movies, and music, as well as command performances by Jay Leno and The Capitol Steps. But jurors lying, not paying attention, making secret book deals—one dismissed juror posed nude for *Playboy*—make it unclear what Ito might have done differently in many instances.

Hayslett also describes many examples of lawyers’ misbehavior, despite Ito’s public admonishments, private chidings, written orders, and thousands of dollars in fines and sanctions. And throughout the trial, Ito was the subject of endless mockery (think Jay Leno’s “Dancing Itos”) and of widespread criticism from other judges, many of whom to this day join the public in blaming Ito for having allowed the “circus” atmosphere. Hayslett cites an interesting theory from the AP’s Linda Deutsch as to

why even post-trial judge-bashing remained so intense: the verdicts. Deutsch says the public wanted Simpson to be convicted, and when he was acquitted, they blamed the judge.

Hayslett concludes with suggestions regarding how judges can do better in allowing the press trial access, for instance, by following strict guidelines for camera coverage—in fact, she suggests courts provide feeds only from their own cameras, with coverage streamed online live, gavel-to-gavel. And mutual discussions, such as those offered judges, lawyers, court administrators, and journalists at the Reynolds Center (which developed as a result of the fair-trial/free-press issues raised by the Simpson trial) help judges find the means to better balance First Amendment and Sixth Amendment concerns.

As Ito told Hayslett in a recent interview (p 203): “The public has a right to know what goes on in courtrooms. They can’t all get in there, so a camera allows that access. Despite what happened [as a result of *Simpson*], I believe the courts are public.” ☞

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