

1-1-2000

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Laurie L. Levenson

Recommended Citation

Laurie L. Levenson, *Cases of the Century*, 33 Loy. L.A. L. Rev. 585 (2000).
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CASES OF THE CENTURY

*Laurie L. Levenson**

I. INTRODUCTION

I confess. I am a “trials of the century” junkie. Since my college years, I have been interested in how high-profile cases reflect and alter our society. My first experience with a so-called trial of the century was in 1976. My roommate and I took a break from our pre-med studies so that we could venture up to San Francisco, sleep in the gutters and on the sidewalks of the Tenderloin, all for the opportunity to watch the prosecution of newspaper heiress, Patty Hearst.¹ It was fascinating. The social issues of our time converged in a federal courtroom. While lawyers may have been fixated on the technical legal issues of the trial, the public’s focus was on something entirely different. Would a woman from the highest classes of society be held responsible for her actions with a revolutionary group like the Symbionese Liberation Army?²

* Professor of Law and William M. Rains Fellow, Loyola Law School, Los Angeles. I am extremely grateful for all of the hard work my research assistant, Steve Sidhu, contributed to this Essay. Without him, it could never have been written. I would also like to thank the many friends and family members who have supported me during my coverage of several “trials of the century” during the past decade. Without them, I would never have survived. Finally, I want to acknowledge the outstanding journalists who have covered these cases. Their friendship has been my ultimate reward.

1. In 1976, Patricia C. Hearst was indicted for bank robbery and use of a firearm in commission of a bank robbery. *See United States v. Hearst*, 563 F.2d 1331 (9th Cir. 1978). She was represented by the legendary F. Lee Bailey. During her trial, Hearst claimed she had been brainwashed and coerced by members of a radical group called the Symbionese Liberation Army (“SLA”) into participating in the robbery. Because of the Hearst family’s notoriety and the radical actions of the SLA, the media coverage of the trial was intense. Ultimately, the jury rejected Hearst’s defense and found her guilty. For an excellent discussion of this case and most other trials of the century, see EDWARD W. KNAPPMAN, *GREAT AMERICAN TRIALS* (1994).

2. Hearst was sentenced to seven years’ imprisonment, but in 1979 Presi-

Since then, I have witnessed many more trials of the century. From the Rodney King beating trial³ to the trial of the Menendez brothers for shot-gunning their parents⁴ to the infamous O.J. Simpson murder trial,⁵ I have watched and commented on many trials of the century presented during the last decade of this century. After each one, I ask the same questions. Why bother? What difference does it make whether we pay attention to these cases?

Far from just providing entertainment to the masses, high-publicity trials also offer social commentary on some of the most important issues facing our community at the times they are tried. In many ways, trials of the century capture and chronicle our history.

Consider, for example, the O.J. Simpson murder trial.⁶ For three years, the saga of "Who killed Ron and Nicole?" captured the fascination of America and much of the world. Although the case made very little impact on legal doctrine,⁷ it dramatically demonstrated a

dent Jimmy Carter conditionally commuted her sentence. See GREAT AMERICAN TRIALS, *supra* note 1, at 650.

3. For a detailed account of the trial, see LOU CANNON, OFFICIAL NEGLIGENCE (1997), and Laurie L. Levenson, *The Future of State and Federal Civil Rights Prosecutions: The Lessons of the Rodney King Trial*, 41 UCLA L. REV. 509 (1994). See also GREAT AMERICAN TRIALS, *supra* note 1, at 824.

4. On August 20, 1989, Jose and Maria ("Kitty") Menendez were shot to death in their Beverly Hills home in California. The police soon arrested and charged with murder their two sons, Erik and Lyle. Both young men had returned from a shooting club and gone into their home and used their shotguns to kill their parents. At their trials, the Menendez boys tried to paint a picture of overbearing and abusive parents, and they argued that they killed them for fear of their own lives. The prosecution was successfully able to overcome the doctor-patient privilege and recover from the Menendez brothers' psychiatrist tapes of their confessions. Ultimately, the brothers were convicted of first degree murder and sentenced to life imprisonment. See Ann W. O'Neill, *Menendez Brothers' Attorneys File for a New Trial*, L.A. TIMES, June 1, 1996, at B3.

5. Approximately thirty books have been written regarding the Simpson case. For a detailed description of the criminal trial and the parties' behind-the-scenes activities, see LAWRENCE SCHILLER & JAMES WILLWERTH, AMERICAN TRAGEDY: THE UNCENSORED STORY OF THE SIMPSON DEFENSE (1996).

6. In 1995, famed All-American football star and movie personality, Orenthal James Simpson was tried for the murder of his former wife, Nicole Simpson Brown, and her friend Ronald Goldman. In a trial that was broadcast around the world, Simpson was acquitted.

7. Ironically, one of the key legal reforms to result from the Simpson trial came in the aftermath of Simpson's custody hearing in which a California appellate court made it more difficult for a defendant charged with killing his

host of social issues confronting our society at the end of this century.⁸ These issues are important: Is there equal justice? Are celebrities treated differently by the criminal justice system? How does race impact the quality of justice? Can we trust police officers? How much trust should we put in scientific advances, such as DNA profiles? Why has our society turned a blind eye toward domestic violence? Is the media our friend or foe? Should there be cameras in the courtroom?

Other high-profile cases of the 1990s also spotlighted our societal ills. The Rodney King beating case forced our country to confront difficult issues of race, the trial of multi-millionaire Charles Keating⁹ demonstrated how greed and lies can destroy our financial institutions, the William Kennedy Smith trial¹⁰ challenged our

spouse to obtain custody of his children. *See* Guardianship of Simpson v. Brown, 67 Cal. App. 4th 914, 79 Cal. Rptr. 2d 389 (Ct. App. 1998).

8. *See* Laurie L. Levenson, *Media Madness or Civics 101*, 26 U. WEST L.A. L. REV. 57 (1995).

9. Charles Keating trials: 1991-93

Charles Keating was convicted for securities fraud in connection with the largest savings and loan collapse in history, which cost the American taxpayers \$2.6 billion. The repercussions reached the U.S. Senate, where five senators were investigated for ethics violations in connection with helping Keating avoid federal regulators in return for large campaign contributions. After federal deregulation of the S&Ls, Charles Keating used his Lincoln Savings and Loan to funnel millions of dollars to cover real estate losses in another Keating company, American Continental Corporation (ACC). ACC salesmen convinced thousands of elderly citizens into investing in ACC junk bonds that were not federally insured. Following his conviction in California state courts, Keating lost a civil lawsuit brought by defrauded investors in Arizona. The civil damages amounted to \$3.3 billion. Keating ultimately succeeded in overturning both his state and federal convictions, only to end up pleading guilty to lesser federal charges. He is still embroiled in various other suits stemming from the S&L fiasco. *See* GREAT AMERICAN TRIALS, *supra* note 1, at 806; *United States v. Keating*, 147 F.3d 895 (9th Cir. 1997).

10. William Kennedy Smith trial: 1991

The Kennedy family name, charges of a sexual assault, and global media attention made it inevitable that this would be the most scrutinized rape trial in history. Patricia Bowman met Smith at a Florida nightspot and then accompanied him to the Kennedy compound. The events that followed their walk along the beach presented the millions of viewers with the first glimpses of the extraordinary problems that attend "date rape" cases. While Bowman contended that Smith had raped her, Smith stated that they had had consensual sex. The defense exposed holes in Bowman's stories by showing that screaming from the beach would have been heard by those in the house. Bowman's credibility

attitudes toward date rape, the prosecution of the Unabomber awakened us to the hidden rebellion against technology and the plight of the brilliant but mentally ill members of our society,¹¹ the trial of President William Jefferson Clinton exposed our society's obsession with sex,¹² and the Oklahoma City bombing trial¹³ reminded us that terrorism is as much a threat from within as it is a tool of our nation's enemies.

In each decade of this century there have been high-profile cases that have highlighted the key societal issues of that time. The 1900s had the Harry Thaw trials.¹⁴ Thaw, heir to one of the wealthiest

was again attacked when variations in her stories were exposed as being caused by her desire to embellish them for the \$40,000 she received for her story from a TV program. The prosecution strategy was ill-conceived and poorly executed, highlighted by the prosecution calling Senator Edward Kennedy to testify only to get a 40 minute account of Camelot and Kennedy tragedies. The jury deliberated only 79 minutes before finding Smith not guilty. See GREAT AMERICAN TRIALS, *supra* note 1, at 811.

11. For almost twenty years, Unabomber suspect Ted John Kaczynski terrorized the nation by sending bombs to targets around the United States. See *18-year Trail of Destruction*, USA TODAY, Apr. 8, 1996, at 4A. He was finally apprehended when his brother identified him from a manifesto Kaczynski had published on his exploits. At trial, Kaczynski's defense counsel sought to portray him as mentally disturbed and not culpable for his actions. Ultimately, a plea bargain was struck and Kaczynski pled guilty to murder and was sentenced to life imprisonment. For an analysis of Kaczynski and his crimes, see James Alan Fox & Jack Levin, *Multiple Homicide: Patterns of Serial and Mass Murder*, 23 CRIME & JUST. 407 (1998).

12. In 1998, President William Jefferson Clinton was impeached and tried before the United States Senate for lying in a civil deposition and before a grand jury regarding his affair with White House intern, Monica Lewinsky. A detailed report of Clinton's alleged sexual activities was issued by Independent Prosecutor Kenneth Starr. Clinton was not removed from office, but his influence as President was greatly reduced by the scandal. See Charles Tiefer, *The Specially Investigated President*, 5 U. CHI. L. SCH. ROUNDTABLE 143 (1998).

13. Timothy J. McVeigh and Terry Nichols were charged with bombing the Alfred P. Murrah Federal Building in Oklahoma City on the morning of April 19, 1995. A massive explosion tore apart the building and killed 168 men, women, and children. In separate trials, McVeigh and Nichols were convicted of the bombing. See *United States v. Nichols*, 169 F.3d 1255 (10th Cir. 1999); *United States v. McVeigh*, 153 F.3d 1166 (10th Cir. 1998).

14. Harry Thaw trials: 1901-1908

In 1907, Harry Kendall Thaw shot and killed Stanford White at a public performance in Madison Square Garden. What followed were two trials with all the trappings of a Hollywood movie: money, ambition, and sex. Thaw, the son of wealthy Pennsylvania industrialists, was expelled from Harvard, and

estates in Pennsylvania, killed the former lover of his wife. The case spotlighted American's attitudes at the turn of the century about sexuality, insanity, and celebrity.

In 1911, the McNamara brothers trial,¹⁵ defended by the legendary Clarence Darrow, brought to the courtroom Los Angeles's struggle with the growth of organized labor. The same year, the Triangle Shirtwaist fire trial¹⁶ brought to a courtroom on the other side

had a gambling habit and a penchant for sadistic sex. In 1905, Thaw married glamorous showgirl Evelyn Nesbit, formerly White's mistress. Thaw was apparently obsessed with the details of his wife's sexual encounters with White. Nesbit claimed to have been drugged and raped by White when she was his mistress. Defense attorney Delphin Delmas concocted the phrase "Dementia Americana" to convince the jury that Thaw was insane at the time he shot White, as any American would be upon seeing the person who had outraged his wife's modesty. When the first jury deadlocked, the prosecutors were happy to accept a not guilty by reason of insanity verdict in the second trial. Over the next few years Thaw was in and out of mental asylums. He eventually lived out his life on his family's allowance. See GREAT AMERICAN TRIALS, *supra* note 1, at 239.

15. McNamara brothers trial: 1911

On October 1, 1910, a bomb exploded in the Los Angeles Times building killing 20 people. Shortly thereafter, there was another explosion at the Llewellyn Iron Works in Los Angeles. Investigators linking evidence to two brothers, James McNamara and John McNamara, forcibly brought them from Indianapolis to Los Angeles. Both defendants were active in the construction workers union, the International Association of Bridge and Structural Iron Workers. At the time, the unions were trying to organize the work force and fighting to gain legitimacy against entrenched corporate and government opposition. The *Los Angeles Times* was targeted because of the publisher's tirades against the unions. The leading American criminal defense lawyer, Clarence Darrow, handled the case for the McNamara brothers. Surprisingly, while both sides appeared to have geared up for a long fight, as the case was called on the day of the trial, both men pleaded guilty. The case set back for decades the cause of organized labor on the West Coast. See GREAT AMERICAN TRIALS, *supra* note 1, at 251.

16. Triangle Shirtwaist fire trial: 1911

The 1911 fire at the Triangle Shirtwaist Company in New York killed 146 people. The company operated as a "sweatshop," manufacturing women's clothing using the labor of mostly young women, some barely in their teens. Working conditions were appalling, with supervisors routinely locking the doors from the outside to ensure workers did not leave their stations. When the fire erupted on the ninth floor, most workers burned in the flames trapped behind locked doors, while others jumped to their death. Following national attention and a public demand for action, the owners Max Blanck and Isaac Harris were charged with manslaughter. Prosecutors presented a compelling case including dramatic testimony of survivors, but the jury returned not guilty ver-

of the nation the deplorable conditions under which young workers toiled in American factories.

The 1920s were highlighted by the Sacco-Vanzetti trial,¹⁷ a murder trial that became a referendum on Radicalism, and the John Thomas Scopes trial,¹⁸ a referendum on evolutionary theory. There was so much public interest in the Sacco-Vanzetti case that when the verdict was announced, 28,000 police and troops were needed to hold back crowds besieging American embassies around the world.

dicts. The judge's instructions, stating that the jury had to find that the owners "knew" that the doors were locked, were the key in helping acquit the company owners. Jurors believed the doors were locked but did not attribute knowledge of this act to the owners. A subsequent re-trial was dismissed on double jeopardy grounds. *See* GREAT AMERICAN TRIALS, *supra* note 1, at 255.

17. Sacco-Vanzetti trial: 1921

Nicola Sacco and Bartolomeo Vanzetti were tried, convicted and executed for the robbery and murder of a shoe manufacturer's paymaster and his guard. Admitted radicals with communist connections, Sacco and Vanzetti became a rallying cry for labor organizations, communists, and radicals worldwide. Their convictions, the subsequent rejection of their appeals, and their executions prompted attacks on American embassies in Europe and South America. When the two were first arrested, police recovered loaded firearms and bullets on both the defendants. The prosecutors effectively laid bare the defendants' stories about where, when, and for how much they had purchased the weapons with evidence that directly contradicted those stories. The most compelling pieces of evidence were the obsolete bullets recovered from the defendants. The bullets were so obsolete that none could be found for state testing, though the same type of bullets were recovered from the victims. After years of appeals and motions and even reviews by a special committee, the two were unable to convince the court that they were wrongly accused radicals and not murderers. They were executed on August 23, 1927. Fifty years later, Massachusetts Governor Michael S. Dukakis cleared their names. *See* GREAT AMERICAN TRIALS, *supra* note 1, at 288.

18. John Thomas Scopes trial: 1925

The "Monkey Trial," as it was known, is significant not for putting a murderer, rapist, or other heinous criminal behind bars, but for forever displacing religious faith and rural values with scientific skepticism and cosmopolitanism in American thought. Scopes, a science teacher at a high school in Tennessee, was recruited to teach a lesson on the evolutionary theory in violation of the then recently enacted state statute proscribing teachings in contradiction of the Biblical story of creation. The ACLU's chief attorney anchored the defense team, while the cause of the prosecution was championed by William Jennings Bryan. In the end, while Scopes was found guilty, the evolutionists won the war by preempting other states from enacting such statutes. The guilty verdict itself was overturned by an appeals court based on the technical violation of the fine being imposed by the judge instead of the jury. *See* GREAT AMERICAN TRIALS, *supra* note 1, at 312.

The Scopes trial encapsulated a national debate on evolution versus creation. Two great lawyers of their time, prosecutor William Jennings Bryan and defense counsel Clarence Darrow challenged Americans to decide whether their faith would be placed in science or religion.

In 1931, our nation's prejudices were once again put on trial in the Scottsboro trials.¹⁹ The "legal lynching" not only exposed the unfairness of Southern courts, but the politics of race in America. Yet, as a trial of the century, it had a hard time competing with a case that commanded unprecedented media coverage. The 1930s was the decade of the Lindbergh case.²⁰ Bruno Richard Hauptmann, a

19. The Scottsboro trials: 1931-1937

The Scottsboro trials provided the nation a glimpse into prejudice in the South, as the trials were essentially legal lynchings of nine young blacks, ages 12 to 20. When seven bedraggled white youths reported being thrown off a train by a "bunch of negroes," the local deputy sheriff arrested the nine defendants. Also found on the train were two white females, who claimed to have been raped by the blacks. After the usual gathering of a lynch mob, the accused were put through a day-long trial which can be best described as a sham. The appointed defense attorney was from Tennessee, who admitted not knowing Alabama law and was drunk at the trial. The doctors who examined the victims did not find any evidence of rape. While the state had asked for death for the other defendants, prosecutors sought life imprisonment for 12-year-old Roy Wright. Yet seven members of the jury insisted on death for Roy, causing a deadlocked jury. Inexplicably, the convictions were upheld by the Alabama Supreme Court, though they were later overturned by the U.S. Supreme Court. In the subsequent state re-trial, all but four of the defendants were again convicted and served lengthy sentences. See GREAT AMERICAN TRIALS, *supra* note 1, at 351.

20. Bruno Richard Hauptmann trial: 1935

The Lindbergh baby kidnapping trial was the first conviction under American jurisprudence based entirely on scientific crime detection and circumstantial evidence. In 1932, America's hero, Charles Lindbergh's baby was kidnapped, and while a \$50,000 ransom was paid, the baby was found dead. When two years later Hauptmann was seen purchasing gasoline with the rare gold certificates like the ones used in the ransom, the stage was set for a trial that had all the trappings of a circus coming to town. Prosecutors presented blow-ups of the ransom notes and Hauptmann's handwriting samples including expert testimony regarding the Germanic spellings on the notes. A ladder used to enter the baby's nursery was examined, and detailed scientific and expert testimony was provided to show that a rail on the ladder came from Hauptmann's attic. About \$15,000 of the ransom money was recovered from Hauptmann's garage. The various defense witnesses were discredited either for being professional witnesses, convicted criminals, or former mental institu-

German immigrant, was charged with kidnapping the beloved son of a national hero, Charles Lindbergh. As reporters literally climbed on counsel table to get their shots, society was confronted with the issue of what type of impact the media can and should have on a case.

On the international front, the 1940s provided a trial of the century that put humanity itself on trial. From November 20, 1945, to October 1, 1946, the Allied Nations tried Nazi leaders for war crimes during the Nuremberg trials. The Nuremberg trials became a landmark in social and legal history, marking the first time that victorious nations used legal proceedings to pass judgment on the wartime actions of defeated enemies.²¹ They chronicled the nightmares of World War II and the power of hate and modern technology to try to accomplish the most heinous of crimes, genocide.

tion patients. Hauptmann was electrocuted in 1936. Mrs. Hauptmann continued to seek his innocence and bring appeals to clear his name until 1990. See GREAT AMERICAN TRIALS, *supra* note 1, at 386.

21. Nuremberg trials: 1945-46

Arguably, the Nuremberg trials were the most significant trials of the century. After nearly 12 million people had been killed by the Nazis, the victorious Allied nations put captured Nazi leaders on trial. They were charged with conspiracy to wage wars of aggression in violation of international agreements, crimes against peace, war crimes against prisoners of war, and newly-recognized crimes against humanity. An International Military Tribunal conducted the trial that was prosecuted by a team led by Judge Robert H. Jackson. As the Nazi leaders sat impassively, prosecutors presented evidence of the Nazi effort to exterminate all Jews. The prosecution began with a film of piles of corpses in concentration camps. Survivors who packed the courtroom cried and the world gasped. But the defendants by and large remained unrepentant. Ultimately, most of the defendants were convicted and ten were executed. Hermann Goering, one of the key officials to implement the Nazi's "Final Solution" plan, escaped execution by committing suicide. The Nuremberg trials stand out in history as the first time that the world's nations proclaimed that "following orders" is no defense and that there are standards of conduct even during war. See FRANK MCLYNN, FAMOUS TRIALS: CASES THAT MADE HISTORY 98-105 (1995).

The Hollywood Ten trials of 1948-50,²² the Alger Hiss trials of 1949-50,²³ and the Rosenberg trial of 1951²⁴ marked this nation's

22. Hollywood Ten trials: 1948-50

What started as a dispute between rival unions in the entertainment industry ended as a landmark in the history of the abuse of civil liberties. When the Conference of Studio Unions (CSU), some of whose members were viewed as radicals, called a strike, the rival union started espousing a theory that the CSU was communist dominated and attempting to take over the motion picture industry. The House Committee for the Investigation of Un-American Activities (misnamed HUAC) pounced upon this chance to purge the communists from the United States. With the help of "friendly" witnesses like Jack Warner, Gary Cooper, and Ronald Reagan, 19 suspected communists were subpoenaed to appear before Congress. Of the 11 called before Congress, one denied being a communist and moved to East Germany, the remaining ten, mostly writers, had to suffer through unsubstantiated charges and accusations by Chairman J. Parnell Thomas. Refusing to answer the questions, all ten were cited for contempt of Congress. Following their trial in U.S. District Court, and their subsequent denial of review by the U.S. Supreme Court, all served sentences of six months to one year and paid fines. All ten were blacklisted in the Hollywood community and for many years had to work under pseudonyms. Ironically, Chairman Thomas was convicted of conspiracy to defraud the government and served time in the federal penitentiary at the same time as two of the Hollywood Ten. See GREAT AMERICAN TRIALS, *supra* note 1, at 435.

23. Alger Hiss trials: 1949-50

In 1948, Alger Hiss, a former State Department official and the U.S. representative in conferences launching the United Nations, was accused by senior *Times* editor Whittaker Chambers of being a Soviet agent. Hiss denied the charge or even ever knowing Chambers and filed a defamation suit against Chambers. At the preliminary hearing, Chambers produced copies of State Department documents, microfilm, and memorandum in Hiss's handwriting. Hiss was indicted for perjury. What followed was a trial filled with intrigue, political involvement, and shaky evidence. While Hiss identified Chambers as George Crosley, to whom he had rented his apartment, Chambers insisted that his intimate knowledge of the Hiss houses in Baltimore and Washington was a result of knowing Hiss as a Soviet agent. Chambers asserted that Hiss used Mrs. Hiss's old typewriter to copy State Department documents which he then sent to the Soviet Union. After a hung jury, a second trial resulted in convictions on both counts of perjury and a five year sentence for Hiss. Hiss's attorney in the appeals, Chester T. Lane, conducted his own investigation and found that the typewriter produced in court incriminating Hiss was different than the one the Hisses were supposed to have owned and that this fact was known to the FBI. Further incriminating statements regarding the manufacturing of the typewriter have also been attributed to former President Richard Nixon by former Presidential Counsel John Dean. To this day, for many, Alger Hiss is either a traitor or the victim of a framing at the highest political levels. See GREAT AMERICAN TRIALS, *supra* note 1, at 441.

obsession with the threat of communism. The nation played out its fears in the courtroom, labeling as enemies of the state those persons whose loyalty could fairly or unfairly be challenged.

And then there were the 1960s. The civil rights movement was in full swing and so were the courtrooms. From the Huey Newton trial²⁵ to the prosecution of the Berrigan brothers²⁶ to the Chicago

24. Trial of Julius and Ethel Rosenberg: 1951

In 1949, President Truman announced that the Soviet Union had conducted an atomic explosion. Panic and hysteria gripped the nation. Soon thereafter, Dr. Klaus Fuchs, who had worked on developing the atom bomb in America, was arrested in England and confessed to transmitting atomic information to the Soviet Union. As other couriers and operatives for the spy ring were arrested, they soon implicated Julius and Ethel Rosenberg as being engaged in espionage. The Rosenbergs, who had previously been members of the communist party, were arrested and charged with conspiracy to commit wartime espionage. At the trial, prosecution witnesses, including Morton Sobell who had escaped to Mexico, linked the Rosenbergs with convicted Soviet agents. A special console table alleged to be used for microfilming was never produced. Sentenced to death, the Rosenbergs appealed. The appeals, including a motion to reduce the sentence as "cruel and excessive," were denied. Millions of clemency letters, around-the-world protests, and even appeals by Albert Einstein and the Pope failed to move the Court. Finally, in 1953, the Supreme Court, recalled from vacation in an unprecedented session, vacated the third execution stay. Following President Eisenhower's denial of clemency, the Rosenbergs were executed. *See* GREAT AMERICAN TRIALS, *supra* note 1, at 452.

25. Huey P. Newton trial: 1968

Huey P. Newton's 1968 case was not just a murder trial, but also one of the most politically charged trials of the period. Newton, a co-founder of the Black Panther Party, was stopped by officers Herbert Heanes and John Frey in Oakland, California, while driving in a van with another man. Responding to a distress call, other officers arrived at the scene to find Frey bleeding to death and Heanes seriously wounded. Newton was found at a nearby hospital with a bullet wound in the abdomen. Newton was charged with first-degree murder, felonious assault, and kidnapping. Defense attorney Charles Garry's use of the *voir dire* provided a model for choosing juries for racially and politically sensitive trials. Garry argued in pretrial motions that the Alameda County grand jury system was unconstitutional, secretive, and prejudiced against minorities and the poor. During the *voir dire*, prospective jurors were questioned about race, the Black Panther Party, the Vietnam War, and the police. The testimony of a witness who claimed to have seen Newton with a gun was discredited, marijuana matchboxes found in the van had no fingerprints, and no concealable weapons were found. The jury found Newton guilty of voluntary manslaughter, a conviction that was overturned by the California Court of Appeals because of the trial judge's incomplete instructions to the jury. *See* GREAT AMERICAN TRIALS, *supra* note 1, at 568; *People v. Newton*, 8 Cal. App. 3d

Seven trial,²⁷ the decade used the courtroom to put on trial rebellious attitudes toward the Vietnam War and the government's treatment of minorities. Protests in the streets were paralleled by trials in the courtroom. Defendants were more interested in advancing their political agendas than saving their skins.

The 1970s brought other types of social issues to the forefront. The hippie movement took a frightening turn in the trial of cult leader Charles Manson and his followers for the Tate-LaBianca murders.²⁸ America was made to confront the dark side of drugs and the

359, 87 Cal. Rptr. 394 (1970).

26. U.S. v. Berrigan: 1968

In October 1967, two Roman Catholic priests, Philip and Daniel Berrigan, opposed to the United States involvement in Vietnam, entered the Customs House in Baltimore and poured blood over draft records of the Selective Services Administration. Along with the other protestors, both were charged with criminal violations of laws against willfully destroying United States property, mutilating public records, and hindering the administration of the Selective Services Act. At trial, the Berrigans stated they knew they were breaking the law, but made impassioned pleas about the justification of their acts based on moral opposition to the war and a higher purpose to save lives. The jury returned guilty verdicts for all the defendants. In upholding the guilty verdicts, the Fourth Circuit Court of Appeals refused to recognize moral opposition to the Vietnam War as a legal defense for criminal acts of defiance. See GREAT AMERICAN TRIALS, *supra* note 1, at 574.

27. Chicago Seven trial: 1969

The late 1960s were a tumultuous period of anti-Vietnam War protests and demonstrations. The 1968 Democratic National Convention in Chicago attracted hundreds of such protestors committed to drawing attention to their cause and confronting the authorities. In the riots that ensued, eight people were brought up on charges of violating the newly enacted statute prohibiting crossing state lines to incite riots. The courtroom had a dramatic and charged atmosphere with 73-year-old Judge Julius Hoffman presiding over a trial in which the defendants openly derided him. Bobby Seale was bound and gagged after referring to Hoffman as a plantation slave owner. Seale's case ended in a mistrial. Hoffman did not help matters much with his pugnacious behavior, jailing two defense attorneys who had withdrawn from the case. Five of the defendants were found guilty of the crime charged, and Judge Hoffman also found all seven defendants and their attorneys guilty of 159 counts of contempt. The appeals court overturned all the convictions based on error by Judge Hoffman. Four of the defendants were retried on the contempt charges and found guilty, but Judge Edward Gignoux ended the matter by refusing to impose sentences on the defendants. See GREAT AMERICAN TRIALS, *supra* note 1, at 586.

28. Charles Manson trial: 1970-71

On August 9, 1969, police in Los Angeles, California, responding to a

new counterculture. At the same time, America's oldest institutions were put on trial. In the William Calley Court-Martial,²⁹ the military and rules of war were challenged. In 1973, *Roe v. Wade*³⁰ was used as a test case to challenge the laws against abortion. In 1978, affirmative action was put on trial in *Regents of University of California v. Bakke*.³¹

call from actress Sharon Tate's house, found the actress and three guests stabbed to death and another person shot to death outside the house. The next day Leno and Rosemary LaBianca were found violently stabbed to death. Tips from motorcycle gang members and cellmates led the police to arrest Charles Manson and his followers Susan Atkins, Patricia Krenwinkel, and Leslie Van Houten (the Manson "girls") as the culprits. Prosecutors decided to try all four members of the "Family" together, but had to abide by the U.S. Supreme Court's rules established in the 1965 *Aranda* decision. In addition to testimony by cellmates of the accused, prosecutors presented damning testimony by a former "Family" member, Linda Kasbian, who testified about Manson's desire to start a race war between blacks and whites by committing the murders. All four defendants were convicted and sentenced to death. The nine-month-long trial was one of the longest and costliest trials in California. With the state's abolition of the death sentence in 1972, all the sentences were transmuted to life imprisonment. See VINCENT BUGLIOSI, *HELTER SKELTER: THE TRUE STORY OF THE MANSON MURDERS* (1974); GREAT AMERICAN TRIALS, *supra* note 1, at 591.

29. William Calley Court-Martial: 1970

On the morning of March 16, 1968, soldiers of Charlie Company of the U.S. 11th Light Infantry Brigade entered unopposed into the Vietnamese hamlet of My Lai. By midday almost 500 unarmed civilians, mostly women, children and elderly men, in the village had been massacred. An Army photographer captured the heinous tragedy on film. For this act, the platoon commander, Lieutenant William Calley was charged with the murder of 109 "Oriental human beings." While many soldiers refused to testify, others provided chilling details of rifle fire and grenades used to butcher women and children cowering in ditches. Lt. Calley insisted that he was merely following orders. In March 1971, the six-member military jury sentenced Calley to life imprisonment. Three days later, on President Nixon's orders, Calley was freed from Fort Leavenworth and placed under house arrest at Fort Benning pending his appeal. On appeal, the sentence was reduced to 20 years and Calley was paroled in 1974. The trial was unique in American military history in providing insight into the horrors of combat and the reaction of ordinary people to extraordinary circumstances. See GREAT AMERICAN TRIALS, *supra* note 1, at 598.

30. 410 U.S. 113 (1973).

31. 438 U.S. 265 (1978).

In 1973, Allan Bakke, a Caucasian male, applied to the University of California at Davis School of Medicine. The school reserved 16 of its 100 seats for special admissions programs for minorities. The grade point averages

The 1980s began with a look at our government officials with the ABSCAM trials³² demonstrating that corruption ran rampant. The political trials were soon accompanied by the trials of the rich and famous—trials that made us question whether the rules for the rich are the same as those for the poor. For example, Claus Von Bulow³³ was tried and ultimately acquitted for attempting to murder

and standardized test scores for the special-admissions entrants were lower than for regular-admissions entrants. Although four of the special-admissions seats were left unfilled, Bakke, with a fairly high score, was not admitted. Following the school's rejection of his application in 1974, Bakke filed a lawsuit alleging that the school's special admissions program violated his Fourteenth Amendment rights on the basis of his race. The California trial court, and later the Supreme Court, agreed with Bakke and ordered the school to admit him. On appeal by the school to the United States Supreme Court, Justice Powell in a 5-4 decision, announced that the school's special admissions program constituted reverse discrimination and was thus illegal. The Court held that race could be one factor in the admissions program but not the exclusive factor. *See Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).

32. ABSCAM trials: 1980 & 1981

The Federal Bureau of Investigation led a sting operation resulting in the conviction of the largest number of highly placed corrupt political figures. Using a convicted swindler, Melvin Weinberg, and undercover agents, the FBI established a company called Abdul Enterprises Limited (from which the ABSCAM name was derived). Posing as American representatives of the Arab company, the FBI undercover operation let it be known that the company would be willing to pay heavily for influence and favors. Over the course of the sting operation, the FBI videotaped councilmen, congressmen, and senators accepting bribes of thousands of dollars in exchange for their word to help influence matters in favor of Abdul Enterprises. A total of eight trials were conducted and a U.S. senator, six members of Congress, a mayor, a New Jersey state senator, and various others were convicted. While the defense raised the issue of entrapment and the credibility of Weinberg, none of the convictions was overturned. *See GREAT AMERICAN TRIALS*, *supra* note 1, at 699.

33. Claus Von Bülow trials: 1982 & 1985

Claus and Martha "Sunny" Von Bülow had been bulwarks of Rhode Island's blueblood colony. However, when in 1980 Sunny inexplicably slipped into a coma and Claus dithered over summoning medical attention, the Danish-born aristocrat's \$14 million inheritance, house, and mistress seemed all to be in jeopardy. In the subsequent trial for attempted murder, expert witnesses testified that the coma was induced by insulin. Even more damaging for Von Bülow was the claim by Sunny's secretary that she had seen vials of insulin and an insulin encrusted hypodermic needle in Von Bülow's closet. Convicted and sentenced to 20 years, Von Bülow appealed. The 1985 retrial saw defense attorney Thomas Puccio, the famous prosecutor on the ABSCAM trials, expose the impossibility of the hypodermic needle having been used and still have insulin encrusted on it. The expert recanted his assertion that only insulin

his socialite wife. Finally, there were the trials that forced us to confront our hidden racism and fears in society. Bernard Goetz and vigilantism were put on trial and they won.³⁴

The century has ended with a swarm of trials of the century. Beginning in 1990 with the trial of Washington, D.C. mayor, Marion Barry,³⁵ to the Noriega trial,³⁶ to William Kennedy Smith, to Rodney

could have caused the coma and witnesses testified to Sunny's drinking and drug usage as being the possible cause of the coma. Acquitted after six days of deliberation by the jury, Von Bülow was seen as a rich man who was able to use his money to buy his freedom. See GREAT AMERICAN TRIALS, *supra* note 1, at 718.

34. Bernhard Goetz trial: 1987

The Goetz trial highlighted issues of how far an American citizen should be allowed to go in the defense of his life and liberty. In the end, it opened old wounds and left public dissatisfaction with the outcome. In 1984, four black youths on a New York subway train approached Goetz, a 36-year-old white electrical engineer. A victim of a previous beating, Goetz had resorted to carrying a gun and in response to the demand of \$5 by one of the black youths, Goetz drew his gun and opened fire. As the youths fled, he shot them in the back, walking up to one and shooting him while he lay on the floor. The volatile trial started two years later with prosecutors presenting a picture of Goetz as a vigilante, a walking time bomb with a gun in a quick-draw holster. The defense attorney, Barry Slotnick, effectively portrayed Goetz as the victim and the four black youths as marauding savages to whom Goetz had merely responded, as any scared person would have. Goetz was acquitted of all counts except criminal possession of a gun and was sentenced to one year in prison. See GREAT AMERICAN TRIALS, *supra* note 1, at 750; GEORGE P. FLETCHER, A CRIME OF SELF-DEFENSE (1990).

35. Marion Barry trial: 1990

The arrest of Washington, D.C., Mayor Marion Barry on charges of cocaine possession in 1990, was sensational in of itself, but the resulting verdict was even more remarkable. In a sting operation, federal and local police videotaped Barry smoking cocaine in a hotel room with an ex-girlfriend, Rasheeda Moore. While the prosecution's case seemed airtight, the defense, in a superb feat of advocacy, destroyed the credibility of the prosecution's star witnesses. The defense exposed Moore's testimony as being bought and the drug dealer who supplied Barry as having only come forward after his own conviction. The jury deadlocked on 12 counts and found Barry guilty on only one count of possession. Barry was sentenced to six months' imprisonment. See GREAT AMERICAN TRIALS, *supra* note 1, at 779.

36. Manuel Noriega trial: 1991

An arrest that was unprecedented in its cost and lives lost led to the conviction of General Manuel Noriega in 1987. By the trial's end, the conviction had been procured at a cost of \$168 million and 25 people killed during a U.S. invasion of Panama. Using Noriega's own pilot, aides, and even associates from the Colombian Medellin drug cartel, the prosecution painted Noriega as a

King, to O.J. Simpson, to the impeachment of the President, to the 1999 Jon Benet Ramsey investigation,³⁷ almost every aspect of today's society has been played out in the courtroom. Drugs, police violence, racism, sex, and celebrity justice have been the issues du jour. We can retell the history of our nation by closely inspecting the major trials of our century.

Of course, using trials to retell our history is nothing new. The famous trial of John Peter Zenger for seditious libel reflected the 1700s fight in America for freedom of the press.³⁸ The Boston Massacre trials of 1770 chronicled the Revolutionaries struggle for freedom.³⁹ The John Brown trial recorded our nation's tumultuous fight

man willing to use his country and his position as a conduit for drug trade into the United States. The defense tried to undermine the credibility of the witnesses, most of whom had already been convicted on drug charges. The jury apparently bought the prosecution's assertion that they were all "small fish" being used to get the "big fish," and that Noriega was "the biggest fish of all." The jury found Noriega guilty on eight counts and he was sentenced to 40 years' imprisonment. See GREAT AMERICAN TRIALS, *supra* note 1, at 798.

37. On Christmas Eve of 1996, a young beauty contestant, JonBenet Ramsey, was brutally killed in her home in Boulder, Colorado. Although investigators believed her parents played a role in the crime, prosecutors ultimately concluded that they had insufficient evidence to bring charges. The grand jury was dismissed in 1999 with the crime unsolved. See LAWRENCE SCHILLER, PERFECT MURDER, PERFECT TOWN: THE UNCENSORED TRUTH OF THE JONBENET MURDER AND THE GRAND JURY'S SEARCH FOR THE FINAL TRUTH (1998).

38. John Peter Zenger trial: 1735

John Peter Zenger was prosecuted in one of the most significant political trials in our nation's history. In 1735, he was charged with seditious libel for criticizing the royal governor of New York, William Cosby. Zenger was literally thrown in a dungeon, his lawyers were disbarred, and the judge did the best he could to direct the jury to return a guilty verdict. Nonetheless, the jury acquitted Zenger following a rousing summation by Zenger's lawyer, Andrew Hamilton of Philadelphia. See GREAT AMERICAN TRIALS, *supra* note 1, at 23.

39. Boston Massacre trials: 1770

In the Boston Massacre trial, nine Redcoats were charged with the slaying of three colonists on the night of March 5, 1770. The trial opened the colonists' and British eyes on the problem of quartering British soldiers in Boston. It provided a preview of the issues that would arise to prompt the Revolution. See GREAT AMERICAN TRIALS, *supra* note 1, at 39.

over slavery.⁴⁰ The prosecution of Susan B. Anthony for unlawfully voting focused the nation on the plight of women.⁴¹

Our nation's trials have told our history. That is the most important reason for paying so much attention to them. But, our fascination with these cases should not lead us to overvaluing their influence on the law. Except for the "test cases" designed to change legal doctrine, generally it is not the trials of the century that have made the most profound impact on legal doctrine—at least not by judicial decision making.⁴² More often, it is the obscure case that will lead a judge to make a revolutionary change in the actual laws. Cases that were never noticed at their trial stage can lead to the most important changes in the law by the time their appeals are completed. As the trials of our century have demonstrated, high-profile trials may prompt legislative changes.⁴³ However, the courts are just as likely

40. John Brown trial: 1859

John Brown was charged in 1859 with insurrection and murder for leading a raid by abolitionists on a federal arsenal in Harpers Ferry, Virginia. His remarks before he was executed summed up what his case reflected about our national history. He said, "Now, if it is deemed necessary that I should forfeit my life for the furtherance of the ends of justice, and mingle my blood further with the blood of my children and with the blood of millions in this slave country whose rights are disregarded by wicked, cruel, and unjust enactments, I submit, so let it be done!" GREAT AMERICAN TRIALS, *supra* note 1, at 137.

41. Susan B. Anthony trial: 1873

In 1873, Susan B. Anthony was convicted of voting illegally. The nineteenth section of the Act of May 31, 1870 (16 Stat. 144) made it a crime for a person to knowingly vote when that person did not have a lawful right to vote. Under the constitution and laws of the state of New York, only males were allowed to vote. Susan B. Anthony voted for a representative in the Congress of the United States in Rochester, New York. The court found her guilty of violating the law and denied her claim that the New York law was unconstitutional. *See* GREAT AMERICAN TRIALS, *supra* note 1, at 166.

42. Judges are constrained in their lawmaking efforts by their duty to follow precedent. Appellate courts are at greater liberty to interpret the laws and create new precedent for the lower courts to follow. At the trial level, jurors may reject the law through their power of jury nullification, but the trial judge is bound to direct the law as it is currently established.

43. Trials of the century have frequently led to legislative changes enacted in response to strong public sentiment created by a highly publicized trial. One famous example is the passage of a new federal kidnapping law following the Lindbergh case. *See* Act of June 22, 1932, ch. 271, 47 Stat. 326 (current version at 18 U.S.C. § 1201 (1994)). Another example would be the changes in federal insanity law made following the not guilty by reason of insanity verdict

or even more willing to adopt new legal doctrines with the obscure cases than the ones grabbing national headlines.

As this Essay examines, cases that were barely a blip on the radar screen at the time they were tried have resulted in some of the most momentous changes to legal doctrine this century. They became important later for the legal issues they raised in appeals. Through those appellate rulings, the law itself was changed. While a so-called trial of the century may have a dramatic impact on the society in which it is tried, it does not necessarily have a dramatic impact on our laws. Therefore, the challenge for our society is to keep the trials of the century in perspective, taking them for what they are worth—a snapshot of societal issues at the time they are tried.

II. CLARENCE WHO?

He was a petty thief. Clarence Earl Gideon was arrested on June 3, 1961, for breaking and entering into a Florida poolroom. Charged with stealing from a cigarette machine and from a jukebox, Gideon went on trial in a Panama City courthouse. As historians have documented, “[n]o one present had any inkling that they were about to witness history in the making.”⁴⁴ In fact, Gideon’s trial was unremarkable. No great social issues were raised. The media did not flock to cover the case. Gideon, alone, stood to defend himself against the charges.

Not surprisingly, Gideon was convicted. The trial lasted one day, and Gideon was sentenced to the maximum term of five years’ imprisonment. From prison, Gideon entered the certiorari lottery. He submitted his five-page, handwritten petition for writ of certiorari to the United States Supreme Court, alleging that his constitutional rights were violated when he was denied the services of a court-appointed defense lawyer for his trial. The Supreme Court agreed to hear the case, appointing Abe Fortas, a future Supreme Court Justice, as Gideon’s counsel.

in the 1982 trial of John Hinckley for his attempted assassination of President Ronald Reagan. *See* FED. R. CRIM. P. 12.2 (amended 1983).

44. GREAT AMERICAN TRIALS, *supra* note 1, at 494.

The ruling in *Gideon v. Wainwright*⁴⁵ rocked the legal world. It established that there is a constitutional right for all felony defendants to be represented by counsel at trial.⁴⁶ Although not a trial of the century, Gideon's case made more of a change in the law than did the Rodney King, William Kennedy Smith, and O.J. Simpson cases combined.

The obscure trial of Clarence Earl Gideon does not stand alone in making a dramatic impact on the laws. In 1968, Ernesto Miranda, a man with a long history of emotional instability, was arrested for allegedly attacking a young theater attendant in Phoenix, Arizona. Although his victim could not positively identify him, Miranda was taken into a police interrogation room and told, inaccurately, that she had done so. Two hours later Miranda signed a written confession.⁴⁷

Miranda was convicted at trial of rape and sentenced to twenty to thirty years' imprisonment. Miranda's case received national attention when it was appealed to the United States Supreme Court. Miranda's counsel had argued that the confession should be suppressed because Miranda had not been advised that he had the right to counsel before speaking to the police. On June 13, 1966, Chief Justice Earl Warren issued a five-to-four opinion for the Court. In a decision that remains controversial to this day, the Court held that an individual in custody must be warned "prior to any questioning, that he has a right to remain silent, that anything he says may be used against him in a court of law, that he has a right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him."⁴⁸

Miranda's case changed the legal landscape for the remainder of the century. Although the rule is constantly subject to challenge,⁴⁹ the law now requires that all defendants be advised of their rights before custodial interrogation.

45. 372 U.S. 335 (1963).

46. *See id.*

47. *State v. Miranda*, 401 P.2d 721, 722-23 (Ariz. 1965), *rev'd by Miranda v. Arizona*, 384 U.S. 436, 479 (1966).

48. *Miranda v. Arizona*, 384 U.S. 436, 479 (1966).

49. *See United States v. Dickerson*, 166 F.3d 667 (4th Cir. 1999) (finding *Miranda* to be superseded by 18 U.S.C. § 3501).

Especially in the area of criminal law and criminal procedure, it has been the cases of ordinary criminals that have changed the legal landscape of the law. *Batson*,⁵⁰ *Blockburger*,⁵¹ *Bordenkircher*,⁵² *Chadwick*,⁵³ *Duncan*,⁵⁴ *Faretta*,⁵⁵ *Giglio*,⁵⁶ *Griffin*,⁵⁷ *Katz*,⁵⁸ *Payton*,⁵⁹ *Schneekloth*,⁶⁰ *Strickland*,⁶¹ and *Witherspoon*⁶² are now names

50. *Batson v. Kentucky*, 476 U.S. 79 (1986) (The Court held that the Equal Protection Clause forbids a prosecutor from exercising peremptory challenges based on race and that a criminal defendant can establish a prima facie case of purposeful racial discrimination based solely on the prosecutor's exercise of peremptory challenges. In this case, the prosecutor used his peremptory challenges to strike all four potential black jurors.).

51. *Blockburger v. United States*, 284 U.S. 299 (1932) (The Court held that each sale of drugs is a separate punishable offense under the Narcotics Act, even if a second sale is made to the same person within a day of the original transaction. The case established the "same elements" test for double jeopardy challenges.).

52. *Bordenkircher v. Hayes*, 434 U.S. 357 (1978) (holding that the 14th Amendment is not violated when a prosecutor carries out his threat to charge the defendant with an additional crime upon the defendant's refusal to plead guilty to the initial charge, where the additional charge applied to defendant's acts).

53. *United States v. Chadwick*, 433 U.S. 1 (1977) (holding invalid under the protections of the Fourth Amendment, a warrantless search of defendants' footlocker where the search was not incident to defendants' arrests or another exigency, as they were already in police custody).

54. *Duncan v. Louisiana*, 391 U.S. 145 (1968) (establishing the right to a jury trial for all "serious offenses").

55. *Faretta v. California*, 422 U.S. 806 (1975) (establishing the constitutional right to self-representation at a criminal trial).

56. *Giglio v. United States*, 405 U.S. 150 (1972) (holding that a defendant is entitled to discovery of impeachment evidence to use against government witnesses).

57. *Griffin v. California*, 380 U.S. 609 (1965) (finding that a defendant's Fifth Amendment constitutional privilege against self-incrimination prohibits the prosecution from referring in closing argument to the defendant's assertion of the privilege).

58. *Katz v. United States*, 389 U.S. 347 (1967) (The Court held that a defendant's constitutional rights prevent the government from admitting evidence from the electronic surveillance equipment the FBI attached to the outside of a public telephone receiver. The Court concluded that antecedent judicial authorization was a "constitutional precondition of the kind of electronic surveillance involved in this case.") *Id.* at 359.

59. *Payton v. New York*, 445 U.S. 573 (1980) (holding that that Fourth Amendment protects suspects from warrantless searches and nonconsensual entry into their home to make a routine felony arrest, even where the police had probable cause to believe that the suspect has committed a robbery or a

used to describe specific legal developments. However, they were not stealing the headlines at the time that their cases were tried.

III. PASSING THE TEST

Of course, there have been a significant number of trials over the century that were designed to be test cases that would break new legal ground. Perhaps most famous of these was *Brown v. Board of Education*.⁶³ On March 22, 1951, the NAACP filed a lawsuit challenging Topeka, Kansas's segregated school system.

Linda Brown, a third-grader in Topeka, had tried to enroll in an all-white school. When the principal refused to admit her, Linda's father sought the assistance of the NAACP. The NAACP had been looking for a group of cases that they could use to challenge the Topeka system. Before the trial court, Brown argued that the *Plessy v. Ferguson*⁶⁴ "separate but equal doctrine" must be overturned. But trial judges are not at liberty to overturn Supreme Court precedent. They may pave the way with their findings for higher court action, but they generally are constrained by the law as it exists. Ultimately, plaintiffs carried their fight all the way to the Supreme Court where Thurgood Marshall convinced the Court to overrule *Plessy v. Ferguson* and to rule racially segregated schools unconstitutional.

Similarly, *Roe v. Wade*⁶⁵ was conceived of by lawyers seeking a vehicle to challenge the then existing law prohibiting abortion in Texas. Norma McCorvey's painful dilemma—break the law or bear

murder).

60. *Schneekloth v. Bustamonte*, 412 U.S. 218 (1973) (holding that where the brother of the owner of the vehicle has told the officers they can search the car and aids them in doing so, consent was voluntary because the court should consider the totality of the circumstances in determining whether the individual voluntarily consented to a search, and because it was unnecessary for the person consenting to realize that he has a right to refuse consent).

61. *Strickland v. Washington*, 466 U.S. 668 (1984) (establishing standard for claims of ineffective assistance of counsel).

62. *Witherspoon v. Illinois*, 391 U.S. 510 (1968) (setting standards for selection of jurors in death penalty cases).

63. 347 U.S. 483 (1954).

64. 163 U.S. 537 (1896).

65. 410 U.S. 113 (1973). The theory used by the plaintiffs was that inherent in the right of privacy was a woman's right to decide whether or not to become a mother. The theory convinced both the trial court and the U.S. Supreme Court.

an unwanted child—offered pro-choice advocates an opportunity to challenge the existing abortion laws. By using McCorvey's situation as a test case, attorneys Linda Coffee and Sarah Weddington were able to make one of the most significant changes in law this century. Developing a legal theory that had not yet been ruled on by the Supreme Court,⁶⁶ Coffee and Weddington won before the trial court and in the appeals.

While test cases have received a considerable amount of attention during their trial stages, they have done so primarily because they address important social issues. Segregation and abortion were both issues at the forefront of national debate at the time the complaints in those cases were filed. The importance of such trials is not necessarily linked to the trial court's ruling. In fact, in many test cases the plaintiff fully expects to lose before the trial court. Rather, it is when they become the "appeals of the century" that they take on the greatest significance in shaping legal doctrine.

IV. WHY DOES IT MATTER?

One might ask, "Why does it matter what kinds of cases make the most dramatic, long-lasting changes in the law?" There are several reasons that it is helpful to remember that the cases in the headlines today are not necessarily those that will title our legal doctrines of tomorrow.

First, we have repeatedly witnessed society overreact to the developments in a high-profile case. In our time, "no justice, no peace" has become a popular slogan. The public erroneously believes that the rulings by an individual trial judge in any case that happens to make its way onto television will become the legal standard for the country. In fact, a trial judge's decisions are not binding precedent for other judges. They may be a lightning rod for the legislature's reexamination of an issue, but they rarely have the potential for changing our trial judges' approaches to an issue. One downside to having the public mistakenly believe that trials of the century set the

66. To the extent that there was Supreme Court precedent, Coffee and Weddington were able to use it to their advantage. A few years earlier, the Court had decided *Griswold v. Connecticut*, 381 U.S. 479 (1965), which paved the path for Roe's argument.

law of the century is that the public overreacts and then loses track of the case as it winds its way through the appellate system.

Second, many cases capture the headlines of their time, not because they reflect or have an impact on legal doctrine, but because they involve celebrities or celebrity crimes. It might be said that celebrity trials are to justice as military music is to music. Many factors outside the law can and have affected the jury's decisions in such cases. For example, in the "Fatty" Arbuckle trial of 1921-22, Hollywood's most popular and highest-paid comedian was acquitted of the manslaughter of a young film actress, Virginia Rappe. The case involved crimes that unfortunately are not so uncommon in society then or now—rape and manslaughter.

Instead of focusing on whether a particular defendant committed a particular crime, the judge, jury, and media of the time did what often occurs with high-profile trials. They focused on how the trial impacts on social standards. In ruling on whether Arbuckle should be held over for trial, the judge concluded:

I do not find any evidence that Mr. Arbuckle either committed or attempted to commit a rape. . . . The district attorney has presented barely enough facts to justify my holding the defendant on the charge which is here filed against him.

But we are not trying Roscoe Arbuckle alone; we are not trying the screen celebrity who has given joy and pleasure to the entire world; we are actually, gentlemen, in a large sense trying ourselves.

We are trying our present-day morals, our present-day social conditions, our present-day looseness of thought and lack of social balance. The issue here is really and truly larger than the guilt or innocence of this poor, unfortunate man; the issue is universal and grows out of conditions which are a matter of comment and notoriety and apprehension to every true lover and protector of our American institutions.⁶⁷

The acquittal of Arbuckle, just like the acquittal of other high-profile defendants in our century, does not indicate that there is

67. GREAT AMERICAN TRIALS, *supra* note 1, at 296.

something horribly wrong with homicide doctrine. Rather, it is an acknowledgment that our legal doctrines depend, to a certain degree, on the social attitudes of our time. When a jury is asked to decide whether a defendant acted "reasonably," the jury is in fact deciding whether moral and social standards of those times supported the defendant's actions.⁶⁸ Knee-jerk attempts to change laws after high-profile trials must ultimately confront the reality that laws are only as neutral as those who apply them to a particular situation.

Third, the fixation on trials of the century distracts society from focusing on changes that would be helpful both for society as a whole, as well as for our justice system. Perhaps the best example is the recent impeachment trial of President Clinton. National business nearly came to a halt as the House of Representatives and Senate explored whether the President lied about his affair with Monica Lewinsky. Rather than focusing on Social Security, health care, education, or prison reform, the nation was fixated with the details of the President's personal life and his statements regarding his personal affairs.

Interestingly, there appeared to be a glimmer of hope during the impeachment trial that broader issues of integrity and credibility in the justice system would be seriously addressed. For once, the media was airing stories on whether there is a problem with perjury in our justice system. But, predictably, as soon as the case ended, the discussion disappeared. Thus, while trials of the century may momentarily raise our consciousness, they often do a disservice by misleading the public into thinking that the issue is resolved once the high-profile case is concluded. In the end, the overall impact of the exaggerated attention to a particular trial is that it detracts from long-term reform efforts and it misleads the public into thinking that the resolution of a single case can or will bring the changes that are needed by the system.

68. See Laurie L. Levenson, *Change of Venue and the Role of the Criminal Jury*, 66 S. CAL. L. REV. 1533, 1551-56 (1993) (discussing role of jury as "conscience of the community" and use of reasonableness standard to incorporate societal values into the law).

Consider, for example, the stampede of efforts following the O.J. Simpson case to change the unanimous jury system in California⁶⁹ and to bar jurors from receiving compensation for telling their inside story about a case.⁷⁰ After some initial attention, the efforts fizzled. Without the high-profile case to generate headlines, reform efforts lost their steam. Many members of the public, however, were left with the misimpression that something "would have to change" as a result of the trial.

High-profile trials must be kept in perspective because they do not reflect the overall operation of the justice system and their verdicts fail to change the system. A high-profile case is often labeled as such precisely because it is out of the ordinary. Therefore, it is dangerous to use the high-profile case as the standard from which to develop plans for reform.

Fourth, another danger in giving too much attention to trials of the century is that they mute the voices of those lawyers who have important legal issues but who do not represent important clients. If the quality of lawyers' ideas is judged more from their flash than from their substance, then the justice system is being greatly dis-served. As in law school classes, it is often the stealth advocate who has a better idea on the merits.

Trials of the century can be important triggers for reform, but they must be kept in perspective. Except for the test cases, they rarely accomplish the reforms themselves. Rather, it takes the lawyers who work in the trenches to make the long-term changes.

Despite the drawbacks of undue attention to high-profile cases, positive contributions can result. Although trials of the century may not offer immediate legal reforms, they shed light on the social issues of our culture. In many situations, changes that can be made outside of the justice system are more necessary than reform.

For example, the issue of domestic violence arose in the O.J. Simpson case. The case prompted important social dialogue regarding a difficult issue of our era. While legal reforms may be needed to address the domestic violence issue, there is an even greater need

69. See Akhil Reed Amar & Vikram David Amar, *Unlocking the Jury Box*, J. AM. CITIZ. POL. REV., May-June 1996, at 38.

70. See *Federal Judge Rules Against California Ban on "Checkbook Journalism"*, CHRIS. SCI. MON., Aug. 16, 1995, at 13.

for education and change in social attitudes. The trial of the century can be used to spotlight these social issues and prompt non-legal reforms.

Likewise, the Rodney King beating case offered important lessons for society, as well as for the criminal justice system. As the Christopher Commission proposed, there was an important need for changes in the structure and operation of the Los Angeles Police Department. Very few of the Commission's proposals related to legal changes. Rather, the case prompted social and political reform.

V. IDEAS FOR THE NEW MILLENNIUM

As we approach a new century (and millennium), there is an opportunity to focus on how cases should be handled in the future. Undoubtedly, the next sensational trial is just around the corner. The media, much more than the justice system, has control over how it will be covered.

However, the justice system has control over how it will react to high-profile cases and how it will present its issues to the public. Here are some ideas:

A. *Making the Real Justice System Visible*

Rather than rejecting television cameras in the courtroom, judges should encourage more coverage of routine cases. As history teaches, it is as likely that one of these routine cases will make fundamental changes in the law as the high-publicity case. To encourage the media to cover such cases, the courts and lawyers need to inform the media of the interesting legal and factual issues these cases present. Given that many journalists who cover courthouses are not themselves lawyers, it is important that they be advised why a routine case may raise issues of interest to the criminal justice system. For example, now that the issue of whether *Miranda* rights are constitutionally required is again a hotly contested issue,⁷¹ it is important

71. See *Kissing Our Rights Goodbye*, COPLEY NEWS SERV., Nov. 5, 1999; *California Attys v. Butts*, No. 97-56499, 1999 U.S. App. LEXIS 29309 (9th Cir. Nov. 8, 1999) (challenging police practices of training officers to disregard *Miranda* rights); see also *Dickerson v. United States*, 166 F.3d 667 (4th Cir. 1999) (challenging constitutional basis for *Miranda* rights).

that journalists and the public have an understanding of what role the *Miranda* rule plays in cases around the nation.

Particular efforts should be made to open our appellate courts to public scrutiny. Traditionally, justices of the Supreme Court have been resistant to the idea of allowing cameras in the Court. Only a few federal appellate courts have allowed cameras on an experimental basis.⁷² Yet, the decisions coming from these courts will have more of an impact on the law than the celebrity case du jour.

In the appellate setting, judges have a greater ability to control the impact of the cameras than the trial judge. The arguments are relatively brief, there is no jury to worry about, the defendant's every move cannot be scrutinized and critiqued, and there is safety in numbers. A single judge is unlikely to be put in the spotlight. Therefore, there is little, if any, downside to having cameras. The advantages, however, are great. The public can see how legal standards are tested and debated before changes are made. There would be greater understanding of how legal doctrines, as opposed to personalities, impact the future of the law.

B. Keep the Courts Focused

It is very easy for the justice system, and everyone in it, to get caught up the frenzy of the media's coverage of a high-publicity case. When this happens, courtroom laws and procedures can become distorted. Judges lose their focus; jurors can lose their perspective. Even when there is tremendous media coverage of a case, the court has the power to maintain normalcy in the courtroom. As difficult as it may be, it is important that the trial reflect a fair and critical examination of the culpability of the defendants. They, not society, are on trial.

C. Tell the History

Rather than criticizing the press for "hyping" high-profile cases, there should be an effort to encourage the press to put the trial in historical perspective. If a case reflects a broader societal problem, then it is fair for the press to examine that issue. However, there

⁷² *Cameras Considered for Federal Coverage*, AKRON BEACON J., Nov. 19, 1994, at A1.

must be a clear distinction made between the social practice at issue and the legal and factual issues that must be decided. Blurring the issues disserves the trial process and the importance of social debate.

D. Don't Wait for a Trial of the Century to Examine Injustices

Often times, the injustice examined in a so-called trial of the century has been a long-standing problem that does not receive attention until there is a single event, like a trial, to focus the public's attention. For example, it can hardly be said that the first incident of police brutality of an African American was when four Los Angeles Police Department officers were caught on videotape beating motorist Rodney King. Both the justice system and the media have a responsibility to critically examine issues before they headline the evening news. If the rights of Rodney King are important, so are the rights of numerous other individuals who may have been in the same circumstance.

E. Reject Celebrity Justice

Even before the age of television, the trials of the rich and famous took on exaggerated importance. While the media should be able to cover such cases, no special accommodations should be made for celebrities during their trials. A celebrity's status should not be the basis for an advantage or disadvantage in the justice system. It is unrealistic to believe that trials of celebrities will not continue to be marked as "trials of the century." However, it is not unrealistic to hope that the laws applied to these individuals will be the same as applied to other citizens.

VI. CONCLUSION

It has been an amazing century. We have gone from horse and carriage to trips to the moon, from "separate but equal" to debates over affirmative action, from prosecution of anarchists to prosecution of high government officials. As President Franklin Roosevelt said, "[The] United States [is not] a finished product. We are still in the making."⁷³

73. THE WISDOM AND WIT OF FRANKLIN D. ROOSEVELT 6 (1982).

In remembering how the justice system is made, our eyes are often on the so-called trials of the century. But, we shouldn't be myopic. The "everyday cases" have had a dramatic impact on how our legal future is shaped. In the century to come, we must make sure that the bright lights of the celebrity cases do not blind us from the importance of all of the other cases for which resolution is sought in our courts.