



O.J. is finally out of luck

by John D. Whitaker

Well I doubt that anyone would need to explain the concept of karma to O.J. Simpson today. He is sitting in a jail cell in Las Vegas after being convicted of 13 felonies. He could spend the rest of his life in prison if the Nevada Supreme Court rejects the appeal his lawyers are already planning.

There will be a number of issues raised in his appeal, but the primary one his defense lawyer is already talking about is that the trial judge placed a number of what he claims to be unfair limitations on the voir dire process. Voir dire is a French term which means to speak the truth, and it is the term used to describe the process of selecting the jury.

Every jury trial begins with the voir dire process. The jurors are all summoned to the courthouse and before the trial starts the jury is questioned by both sides. The lawyers ask questions and try to glean any lurking potential prejudices the juror might have which could make them unfit to be a juror in a specific case.

In high profile cases it can be very difficult to pick a fair jury. Most people who can remember O.J.'s murder case from 13 years ago have very strong opinions about whether or not he got away with murder. A recent NBC news poll indicated that 3 out of 4 people surveyed believed he was guilty of murder. His defense lawyer in the new Las Vegas case has been quoted as saying that this verdict was "payback" for the old murder case. If that is true, then the jury has violated the oath that jurors must take to decide cases only on the evidence presented at the trial. Considering his prior case would be improper, and if that happened his conviction should be overturned on appeal. It sounds like this is where O.J.'s appeal is headed.

A trial judge has a great deal of discretion over how the jurors are questioned. The judge must supervise and, if necessary, control the process. The court is only bound to



exercise its discretion subject to the essential demands of justice. The only purpose for allowing the jurors to be questioned is to allow the parties to select an impartial jury and render a just verdict.

During the questioning, the lawyers are permitted to challenge jurors for cause. This means that if for some reason the juror is incapable of listening to the evidence and being fair, a cause challenge is available to disqualify the juror. You have to know a lot about the juror to be able to support a challenge for cause. Each side in a criminal case is also permitted a limited number

of preemptory challenges. These can be used to excuse jurors who, although qualified, may not be the best juror for that kind of case. Discovering how a juror feels about an old infamous case like O.J.'s would be a very delicate balancing act because so many people thought he got away with murder. There were significant racial overtones in the old trial that some people are still quite angry about. The lawyers would have to be permitted to inquire at a very personal level for each juror to make sure that each was able to set aside any opinions they might have about the old case. If the questioning was so restricted that it was not possible to fairly evaluate potential jurors to see if a challenge for cause was available, then there could be a problem. Apparently, there were several jurors that did express the opinion that they believed the old murder case came out wrong and that the prosecutors were incompetent, yet they made it on the jury.

I can't help but think that the prior trial could very well have had an effect on this jury, but in a press conference the jury denied it. Being a juror is a hard, thankless job. I think we owe them the benefit of the doubt, and unless O.J.'s lawyers can show that the entire record suggests a substantial miscarriage of justice, he will lose the appeal on that issue. In any event, this case is not over until the appellate courts have finished their work. For the sake of justice I sure hope they get it right.