**UH Law Center/UH Writing Center Partnership:**
**Writing Diagnostic Assessment, Project 2**
**Summer 2008**

The readings below will be used for the take-home writing assessment you will complete following the timed assessment.

## Sources:

### 1. The American Lawyer

The Scott Peterson trial has now changed venue, the Michael Jackson parties and their attorneys are (blessedly) gagged, Kobe Bryant's accuser's medical records are sealed, for now, and the Martha Stewart jurors have been carefully screened to keep out anyone who has ever socialized with her daughter, or slept on her 300-thread-count Embroidered Tambour sheets. Each of these strategies is meant to ensure an untainted jury pool in one of the dozen trials-of-the-century playing out on a cable network near you. Each is nearly comic in the scope of its ineffectiveness. . . .

The research is not at all conclusive, but most experts agree that although juries generally do very well, they are influenced by pretrial publicity in ways that either lead them to be too hard on, or too soft on, famous defendants. Empirical studies have shown that when juries perceive their verdict will be important, they will hold the prosecution to a higher standard of proof. One study from 1993 showed that jurors will be far more likely to acquit the attractive versus unattractive defendant. A 1976 study revealed that jurors find high-status defendants less blameworthy. A study in Basic and Applied Social Psychology recently revealed, interestingly, that black jurors are harder on black defendants, and white jurors go easier on white ones. One Northeastern University study showed that while athletes were arrested at a much higher rate than unknown defendants, the athletes were convicted at a significantly lower rate. Northeastern's and other studies also suggest that many assume that the famous and talented are either too good to behave badly, or that their victims are opportunists—witness the central defenses in both the Jackson and Bryant cases. . . .

One modest proposal: Let's give legal effect to the phrase "jury of one's peers." What if we could impanel only jurors unimpressed with the magic of Neverland, or indifferent to the prospect of hobnobbing with NBA athletes? It could happen. In a curious accident, among the 85 potential jurors in Robert Blake's murder trial, two of the folks filling out questionnaires last January were Christina Applegate and Harry Shearer--actors who would justifiably be less impressed with Baretta's star power than their own. But lesser lights, if sufficiently jaded, would also qualify.

## 2. Legal Times

"We intend to try our case in the courtroom, not in the public or the media," said Michael Jackson shortly after he was charged with child molestation and weeks before he appeared in a nationally televised interview on "60 Minutes." The statement was published on Jackson's Web site, which, according to the singer's publicist, will enable him to "communicate with his fans and the news media" during the course of his trial. You might wonder why a defendant who has vowed not to try his case in the public or media would enlist the services of a spokesperson, dispatch celebrity friends to speak in his defense, and construct a new Web site to carry his side of the story. Then again, you might not. Chances are, you already understand what Michael Jackson, Martha Stewart, Kobe Bryant, and their legions of lawyers understand all too well: A celebrity defendant has no choice.

In contrast to mere mortals who become entangled in the criminal justice system, celebrity defendants face greater threats and enjoy substantial advantages. They can choose whether to leverage their fame and mobilize their fans to mitigate those threats and maximize those advantages—or not. But they can't ignore the unique calculus that applies only to celebrity trials. As the lawyers to the stars fully understand, these considerations must be an essential element of their legal defense strategy.

## 3. Texas Lawyer

Oprah Winfrey captured the heart of Amarillo. But some are wondering if she also lassoed the hearts of jurors during the beef defamation "mad cow" trial. Plaintiffs' lawyers, who praised the jury's attentiveness, became concerned early on in the trial when they claim several jurors were seen either winking, nodding, waving or smiling at Oprah. "It surprised me that the jury would do that in the case," says plaintiffs' lawyer Kevin Isern, an Amarillo solo. "A couple of times a juror was smiling and I would look at Oprah and she was smiling back. At one point, we raised the issue with the court clerk. We had to do something."

Although plaintiffs' lawyers relayed this information to the clerk, U.S. District Judge Mary Lou Robinson never mentioned the issue in open court, Isern says. But the winks and smiles decreased toward the end of the trial, he says, adding that none of the plaintiffs' lawyers plan to raise the issue on appeal. "Her presence was influencing," says plaintiffs' lawyer David Mullin, a name partner in Amarillo's Mullin, Hoard & Brown. "They were just connecting with her. I think these things hurt us with the jury." Lead defense lawyer Charles Babcock, along with several jurors, deny the plaintiffs' allegations. According to Babcock, there were a few jurors who on occasion smiled at both sides, even at the plaintiffs' wives. "I don't think there was discrimination in terms of who they were smiling at." Juror Cynthia Williams, a third-grade teacher, agrees. "I never saw anybody winking or waving at Oprah," Williams says. "I think everybody

smiled at everybody."

According to several jurors, serving in the trial that pitted Texas cattlemen against the queen of talk shows in a First Amendment case was a civic duty, and not a chance for publicity. And, even though 11 jurors dined with Oprah the day after the verdict, they deny contentions made by plaintiffs' lawyers that Oprah's celebrity status might have influenced their Feb. 26 verdict. "I think, if anything, it probably worked against her," says jury forewoman Christy Sams. "We wanted to be so sure not to lean on her side because she was a celebrity."

**4. Texas Lawyer**

Those who believe that O.J. Simpson got away with murder base their conclusion on what they know of the evidence, often gained second- or third-hand from television commentators and water-cooler analysts. Few saw all of the trial proceedings, and even those who did were not present in the same sense as the Simpson jury. We armchair jurors did not feel the obligation of the oath those 12 took; we weren't sequestered and we did not have a man's fate in our hands.

To say that the criminal justice system didn't work in the Simpson case is to ignore the basis of the system. Isn't the system working just as anticipated when a jury hears evidence, considers whether the government has met its burden of proof beyond a reasonable doubt and then finds the proof lacking? When the jury retires to consider its verdict and finds, in the face of two bloody and horrible murders and considerable evidence casting suspicion on the accused, that it still has a serious doubt about Simpson's guilt, which one of us can say he or she would not have had such a doubt?

The Simpson and McVeigh cases tell us remarkably little about whether our criminal justice system "works." They provide an opportunity to educate the public about that system, to discuss and re-evaluate some of the fundamental tenets on which the system is built and maybe even to move toward a better system of justice—nothing more, nothing less.

That system, it must be remembered, is not just for O.J. Simpson and Timothy McVeigh, or even for the lawyers and judges, but for the thousands and thousands of people who confront it every day as jurors, witnesses, victims and the accused. We all have an important stake in our criminal justice system, and now we have two shared experiences to prompt a national discussion about much more than the outcomes of celebrity trials.

If we have that discussion, we will do well to remember that the right question is not, "Does the criminal justice system work for celebrity defendants and celebrated cases?" The right question is, "Does the criminal justice system work for everyone?"

**5. New York Law Journal**

Some issues that might be less significant in an ordinary tax case can be magnified in a high-profile case. For example, most lawyers would agree that the race of the defendant is not normally a significant issue in a white-collar criminal case. However, when the client is a celebrity such as a sports or entertainment figure, prosecutors and defense lawyers will be far more sensitive to issues such as race and the potential impact on venue and jury composition.

Some lawyers believe that a jury in Manhattan or the Bronx might be partially influenced by the race of a celebrity defendant such as a major sports figure with the reputation of a hero. The U.S. Supreme Court has made it clear that neither the prosecutors nor the defense may challenge prospective jurors based on their race or gender. But there appear to be no real safeguards on such issues as venue. Given the breadth of conspiracy law, venue can become a very discretionary issue for the prosecution.

**6. The National Law Journal**

Sixty-one percent of lawyers surveyed think O.J. Simpson will beat charges that he killed his ex-wife and her friend, either by a hung jury or acquittal on murder and manslaughter charges, according to a National Law Journal poll.

In a case dubbed the trial of the century—in which race, media coverage and celebrity intersect—the poll also found that 78 percent of lawyers felt the avalanche of pretrial publicity will make a fair trial for Mr. Simpson less likely, and 64 percent said the celebrity he has gained from years as a football star, sportscaster and actor also will hurt his chances for a fair trial.

Former Los Angeles District Attorney Ira Reiner, of Los Angeles' Riley & Reiner, says he knows of no case that compares to this. "Irrespective of the evidence, it will be extremely difficult for the prosecution to get a conviction," he says, noting that jurors may be influenced by factors outside the evidence. "It is always extremely difficult to convict a celebrity. It is more difficult to convict someone who is a hero. Before a lot of this, O.J. Simpson was an authentic American hero, an icon."

**7. The National Law Journal**

According to Stephen J. Adler, author of "The Jury," the quintessential example of a prosecutor stymied by a star-struck jury is Asst. U.S. Attorney Charles LaBella. Mr. LaBella, who failed to convict Ms. [Imelda] Marcos in federal court in Manhattan on charges she looted the Philippine treasury, agrees. "They put her on a pedestal," he says. The supercharged atmosphere that surrounds celebrity trials has left him with mixed feelings about his own performance, which some faulted as "plodding." If he could do it

over again—“and here's the important part, if I wanted to win," Mr. LaBella says, "I would be more theatrical, more animated." Still, he considers such behavior sleazy and says he would advise fellow prosecutors facing celebrities to use their normal courtroom style. But for him, style probably did not matter: "The fact is, the jury didn't look at me. I could have come in there juggling every day for six months, and no one would have noticed."

The prosecutor who can't find ways to curb the candlepower of a star in the courtroom will regret it, say those who have had more success. During voir dire in the 1992 rape trial of Mr. [Mike] Tyson in Indianapolis, the team that prosecuted him says it weeded out fans by objecting to those who seemed too eager to be on the case, those who read celebrity news tabloids, those who knew "too much about boxing," and especially those who just couldn't quit staring at the champ.