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Peter Keane
Golden Gate University School of Law, pkeane@ggu.edu

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Search for truth or reality show?

By Peter Keane

Take away the hoopla, and the Scott Peterson case is a fairly garden-variety domestic homicide prosecuted on strong circumstantial evidence. Scott went fishing and his eight-months pregnant wife went missing on Christmas Eve; both events were highly unusual. Bodies of the wife and child were found four months later near the place he fished. Scott's behavior was quite strange for a spouse whose wife and expected child were mysteriously and suddenly gone. He gave conflicting stories, and he carried on a fantasy life with a secret mistress who knew nothing about his background. In the end, that is the entire case for jury deliberation.

As the jurors conscientiously do their analysis in private, all the sideshow high jinks and fandango that consumed media coverage of the trial will be totally irrelevant to them. Those countless sound bites, dueling commentaries, insider revelations and "bombshell evidence" of each day will affect absolutely nothing that makes up the jurors' final decision. That is one fascinating irony in this whole saga.

During the trial, the story was the flash and dazzle of the defense lawyer's personal style, contrasted with a plodding and lackluster approach by the prosecutors. Daily coverage churned out highlights in which the public was told who "won" or "lost" that day. "Red faced D.A. sits on whooppee cushion!" "Defense lawyer pulls 11-foot snake out of witness' ear!" The formula never varied: Report the provocative. The provocative, however, was almost always the superficial; it was of no real importance at all. How the case was really developing remained a mystery.

Let's look at the prosecutors. Quiet, unassuming, midlevel civil servants from Modesto, they were uniformly lambasted for their deliberate approach of going one step at a time. Why didn't they occasionally throw a book at the judge or roll a cherry bomb into the well of the court to show they, too, could raise everyone's adrenaline like the defense lawyers?

The simple truth is they properly and effectively put in their circumstantial-evidence case by following the methodical pace of all prosecutors in a long trial. They did it brick by brick, with no single brick dramatically different from the other. But when finished, they had built the structure of a circumstantial case that a jury could find convincing.

The dilemma for journalists covering such long criminal trials is that, for all the notions of riveting drama in a murder case with Hollywood formulas of sex and infidelity, the day-to-day trial is boring and tedious. Instant news coverage needs a round peg of excitement each day. But a trial produces one triangular peg of boredom after another. So at the end of each day, the media frantically grab a couple of pegs, chews off the corners and bashes them with a mallet into round holes labeled "exciting."

If all this amounted to just some more distortion and oversimplification in our oversaturated media culture, it wouldn't matter much. After all, we could simply justify this glitz as entertainment.

Unfortunately, though, some damage is done to a vital institution of our society. The effectiveness of the American criminal-justice system depends upon the public's belief and trust that a trial is a logical and respectable search for the truth. In the accounts of the Peterson case, people instead heard about a distorted game that purported to be the accurate workings of our courts but was really some second-rate reality show. The result is that, for no valid reason, the public loses confidence in our courts as serious places that do justice.

With that, we all lose.

Peter Keane, professor of law at Golden Gate Law School and former president of the San Francisco Bar Association, was a criminal trial lawyer for 30 years.