

Predicting how the Simpson case will be won: Evidence, opportunity and motive

Litigation Strategies provides expert commentary

Despite the unprecedented publicity surrounding the O.J. Simpson trial—Judge Ito reported the other day that the news had reached Tibet—the case will ultimately be decided by the answers to three fundamental questions. First, can the prosecutor prove beyond a reasonable doubt that Simpson had opportunity and motive to commit the crime? Second, can Simpson be tied to the scene of the crime with substantial physical evidence? And third, how much reasonable doubt can the defense create in the mind of the jury to counter the prosecution’s case?

An uphill battle for the prosecution?

The jury that has now been selected—8 blacks, 3 other minorities and 1 white—combined with the evidence made public thus far, indicates that the prosecution faces an uphill battle. While there is a strong likelihood that Simpson had opportunity to commit the crime, reasonable people could disagree with the evidence. Much depends on whether or not O.J. testifies and how he deals with questions about where he was at the time of the murders. If O.J. can simply break even on this issue, it will probably not hurt his overall chances of being acquitted.

Motive is perhaps the most critical issue for both prosecution and defense. Motive is the swing issue—the issue that, while not decisive in itself, works with other issues to swing the scales of justice strongly one way or

the other. It is an issue likely to cause considerable dissension among jury members. Was O.J.’s jealousy of Nicole so great that he could be driven to such a violent and inhumane act? How much testimony about O.J.’s temper and violence toward Nicole and other women will the prosecution present? How credible will this testimony be? Will the “911 tape” be admitted? If he takes the stand, will O.J. be able to convince the jury that nowhere in his past is there any indication that he would become so violent? Could the jury be convinced that such behavior is actually exculpatory, an indication of how O.J. reacts under the stress? Men and women are likely to view the answers to these questions very differently, setting the stage for the kind of emotionally charged deliberation that often leads to a hung jury, especially with a jury as this, composed of 8 women and 4 men.

“Motive is the swing issue.”

What holes will be found in the physical evidence?

Ultimately, the key to the case lies in the physical evidence: to what extent can O.J. be tied to the scene of the crime? What exactly does the trail of blood from the murder scene indicate? How conclusive are the DNA tests and, more importantly, are there alternative hypotheses that explain how O.J.’s and the victims’ blood or

hair was found where ever it turns out to be? How will the defense team attempt to control the crime scene? What can be made of the fact that the Los Angeles coroner admitted during the preliminary hearing that it would have been difficult for one person to have committed the crime? How could O.J. have committed such a hideous crime and not been so covered with blood or to leave more than a speck on the Bronco? What evidence was found in his house and what are the possible explanations for what was found there?



Dr. Louis Genevie, President of Litigation Strategies, discusses jury selection with News 1 anchor, Lynda LaVergne.

The answers to these questions will interact psychologically with the jury’s perception of opportunity and motive to determine the outcome of the trial. True, media-driven biases, both for and against O.J., will play a role in the outcome. But the core of the case—and the jury’s decision making—will lie in which side controls the perception of O.J.’s motivation and whether or not that perception is strong enough to overcome whatever exists in the way of physical evidence.