



## Jury To Consider Penalty for Peterson Murders

[by Alan Dessoff]

In a case that has captured national attention as much for its dramatic elements as for its legal proceedings, Scott Peterson, the 32-year-old California fertilizer salesman, waited to learn his fate after a jury convicted him of murdering his pregnant wife and their unborn son.

As the penalty phase of the trial was set to begin to determine whether Peterson would serve life in prison or die by lethal injection, lawyers not connected with the case played Monday morning quarterback, analyzing where the defense failed and suggesting possible grounds for appeal.

People of California v. Scott Lee Peterson reached its first conclusion on November 12, when the jury found Peterson guilty of first-degree murder in the death of his wife, Laci Peterson, 27, and second-degree murder in the death of their child, whom they had named Conner.

The verdict came after San Mateo County Superior Court Judge Alfred A. Delucchi removed two jurors during the panel's deliberations and replaced them with alternates. The first juror to go was a woman who reportedly conducted her own research on the case. The next day, Judge Delucchi removed the foreman, a doctor and lawyer who wrote his observations through the trial in several notebooks. No reason was given for his dismissal.

The jury already had deliberated for nine days, and some observers thought the addition of two new jurors and a California law that requires deliberations to begin "anew" so replacements can fully participate in the process would further delay a verdict. But it came just two days later, greeted by a cheering crowd outside the courthouse and media coverage across the country.

The case that The Washington Post dubbed

"a saga of suburban adultery and betrayal" and "a full-blown soap opera" began to draw attention after Peterson reported on Christmas Eve 2002 that his wife was missing from their Modesto home. At the time, she was eight months pregnant.

A month later, Amber Frey, a massage therapist from Fresno, revealed that she was having an affair with Peterson. She said it began after Peterson told her he was single.

On April 13, 2003, the remains of a male infant were found on the shore of San Francisco Bay. The next day, a decapitated female body washed up nearby. The remains were quickly identified as those of Laci Peterson and Conner. Scott Peterson earlier had told police he had gone fishing in that area the day his wife vanished.

He was arrested on April 18 near the Mexican border, carrying nearly \$15,000 in cash. His hair and goatee had been dyed blond. Charged three days later in Stanislaus County Superior Court with two felony counts of murder with premeditation and special circumstances, he pleaded not guilty.

In a move that added to the drama of the case, Peterson hired prominent defense lawyer Mark Geragos, whose high-visibility client roster ranges from hip-hop star Nathaniel Hale, a.k.a. Nate Dogg, to Whitewater figure Susan McDougal and former first brother Roger Clinton.

The growing publicity the case was generating led to a change of venue to San Mateo

County, where Judge Alfred A. Delucchi barred cameras from the courtroom for the duration of the trial. It began June 1 of this year.

The prosecution charged that Peterson killed his wife and dumped her body into San Francisco Bay to get out of his lackluster marriage and avoid the responsibilities of being a parent. Prosecutors built much of their case on Peterson's affair with Frey.

Geragos suggested that Laci Peterson was a victim of a random attack and that her husband was being framed.

In a look back, Laurie L. Levenson, a professor at Loyola Law School in Los Angeles, said the defense began to lose its case in its opening statement to the jury. "I think the defense was ahead when they were attacking the prosecution's case and fell behind when they tried to prove their case," Levenson declared. Geragos "made promises to the jury that he didn't have to make and took on more of a burden than he had to. It was not a great strategy."

Daniel Horowitz, an Oakland defense specialist who was not involved in the case but paid close attention to it, agreed. "They should have promised much less and delivered a lot more," he said.

One promise that Geragos made was that "the evidence is going to show you that this baby was born alive." But Geragos called no eyewitnesses, and a fertility expert he put on the stand to counter prosecution testimony



about the baby's age at death admitted that he "made a mistake."

Horowitz said Peterson's lawyers could have put on a more structured presentation of their expert witnesses "by laying out the standard hypothetical foundation-the facts upon which the expert relied, showing where they are in the evidence, and then asking the expert to render an opinion."

Both lawyers see grounds for appeal. The most significant, Levenson suggested, will be the removal of the two jurors while the jury was deliberating. "That is a sensitive area in California law," she said. "Judges have to be careful not to throw jurors out just because they are holdouts."

"I think it was completely proper," Horowitz countered. "I know the judge well. I'm sure he made a complete record and had no choice but to remove them."

The only real grounds for appeal that Horowitz sees is evidence introduced by the prosecution of a dog that allegedly tracked Laci Peterson's body at a Berkeley marina pier. "It's impossible for the dog to have alerted on Laci's scent. It's totally unscientific. It never should have been admitted," Horowitz asserted.

Levenson said the change of venue to San Mateo County could be part of an appeal. The cheering crowds outside the courthouse following the verdict could bolster the defense's argument that "they never were able to get a fair trial in that venue," Levenson said.

Geragos cited the crowd's reaction in asking Judge DeLucchi to move the penalty phase of the trial to Los Angeles, but the judge denied the request. He also denied a move by Geragos to seat a new

panel of jurors. Geragos said he would appeal both decisions to the California Supreme Court.

But Judge Delucchi did grant Geragos' request to postpone the start of the penalty phase for eight days, until November 30. He said that once it starts it should take no more than five days and told jurors they will be sequestered again when they begin deliberating Peterson's fate.

He cautioned jurors not to be influenced by what they read or hear about the case in the meantime, warning them not to "blow it."