

THE NATIONAL LAW JOURNAL

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The Female Factor

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May 18, 2009

When Christy Steensma wound up on the jury in the recent trial of billionaire schemer Edward Okun, she wasn't at all fazed that most of the jurors were women. "The only thing I thought during the trial was that it was odd that we didn't have a black man," said Steensma.

Steensma was one of eight women and four men who convicted Okun in March in a \$126 million scam that victimized hundreds of clients. The 39-year-old mother of three and part-time school bus driver from Weems, Va., conceded that, although women tend to be more sympathetic than men, the Okun verdict had nothing to do with emotion, but with facts. "There wasn't much sympathy going on in there. If [the lawyers] were going for that with us, they picked the wrong women," Steensma said.

The Okun conviction is just one in a string of verdicts handed down recently from juries dominated by — or made up entirely of — women. An all-female jury in Baltimore on May 6 convicted a couple of murder and handgun charges for killing a New York-based drug dealer. In March, an all-woman jury in Limestone County, Ala., convicted a man of reckless murder in connection with an alcohol-related wreck in 2006. Last October, a jury of nine women and three men convicted O.J. Simpson of 12 robbery, kidnapping and weapons charges for robbing a pair of sports memorabilia dealers at a Las Vegas Hotel.

Get used to it, say litigators, law professors and jury consultants. Women, long a minority on juries and often actively avoided by litigators during voir dire, are more and more often dominating the jury room. And as Steensma suggests, they often bring their own point of view about their role in deciding a case — a factor that's not lost on litigators. "They want clarity," said Michele Roberts, a partner in the Washington office of Akin Gump Strauss Hauer & Feld with more than 30 years of litigation experience. "They are very conscientious. It's sort of like how men don't want to ask for directions when they're on a trip. Women — they are not shy about asking a court to explain things. Whereas men, I don't think that they want to admit that they don't understand. I think that's why we like women jurors. They really want to get it."

It wasn't until 1973 that all 50 states allowed women to serve on juries — 16 years after the Civil Rights Act of 1957 guaranteed the right of women to serve on federal juries. In 1975, in *Taylor v. Louisiana*, the U.S. Supreme Court held that the exclusion of women from juries is impermissible. And as recently as 1994, the high court was still grappling with the issue, deciding in *J.E.B. v. Alabama* that jurors could not be struck simply because of their gender.

"If you turn back the clock 30 years and you went into deliberations with six women and four men, you might hear after the fact that the four men led the discussion," said Philip K. Anthony, a veteran jury consultant and CEO of DecisionQuest Inc., a jury consulting firm. "But today, what you would hear is all 10 jurors deliberated evenly and equally...lawyers are hungry for educated jurors in general. Certainly, if they can have an educated female juror, they see that as a bonus."

Anthony, who has been a consultant for 30 years, said that the shift has been recent: "There's no doubt about it, in recent years, the perception of women on jury panels has migrated to a position in which they are perceived as being on par with male jurors," Anthony said. Now, Roberts and others see women — particularly educated women — as highly sought-after potential jurors. "Frankly, that is becoming the more typical juror in my eye," Roberts said. "The typical juror is a woman."

CONVICTING O.J.

Naturally, for some defendants, a jury stacked with women may not be ideal. Yale Galanter, O.J. Simpson's lawyer, is painfully aware of that. He acknowledges that when the jury in Simpson's robbery trial ended up with nine women on it, he had some concerns. "I'm representing someone who was a football star and an athlete. Obviously, I would have preferred to have people who were more familiar with all of the good things that Simpson had done in his life. I don't think there were too many women on the jury who would have known that early on in

his career he won the Heisman trophy," Galanter said. "If I had a wish list, sure, I would have liked more men on the jury."

That probably wouldn't have made a difference, said Michelle Renay Lyons, 42, a pharmaceutical representative and mother of two from Las Vegas who sat on the jury that convicted Simpson. Lyons said that "it was a group of very intelligent, very put-together women" that made a decision based on fact, not emotion. "We listened to the evidence numerous times. There really was no emotion involved in it," Lyons said. "There was a crime committed, and there was overwhelming evidence."

Lyons also cautioned against stereotyping female jurors. "They better be very careful with that," Lyons said of lawyers. "I've met a lot of women who have no maternalistic instincts whatsoever, so it's premature of [lawyers] to make that judgment that they're going to be more protective, or maternal or understanding or more sympathetic." But, "I might feel different if it were a rape case or a kidnapping case involving a child. I don't think I could have been as objective, to be honest."

It's that kind of empathy that lawyers are picking up on. Criminal defense attorney Kent Dean, a solo practitioner in Oak Park, Ill., said he prefers female jurors in drug cases. "Women are more likely to look at my clients more sympathetically," said Dean, who believes that men identify more with police officers. "They aren't going to identify with this skinny young black kid in the box sitting next to me. Whereas women, white or black, can see across the differences."

Plaintiffs' attorney Gerald "Jerry" Sterns of Oakland, Calif.'s Sterns & Walker, which specializes in aviation litigation, said he prefers female jurors in injury cases involving damages, where empathy is crucial. "My ideal juror would be a female, in her 40s or 50s, with a stable home and some kids, and maybe work[ing] part-time. They tend to react with their gut, which is what you want."

And despite the Simpson verdict, Galanter, a defense attorney for more than 30 years, also said that he prefers female jurors in nontraditional rape cases where, for example, date rape is alleged. "I happen to like female jurors because I think they relate a lot better to the emotion," Galanter said. "I think a female juror who has had significant relationships can understand how a guy can get a mixed signal."

Donna Shestowsky, who specializes in the psychology of juries and jury selection at the University of California, Davis, School of Law said research shows that female jurors tend to be harsher on defendants than men in cases involving violent crimes against women. Women, perhaps not surprisingly, also have different views on what constitutes sexual harassment.

"Case-specific attitudes are the best predictor of thinking on a case, and gender has seldom proven to be a reliable predictor of general attitudes, notwithstanding what lawyers might think," Shestowsky said. "They are better off basing voir dire decisions on answers to case-relevant attitudes."

FLOUTING CONVENTIONAL WISDOM

Corporate defense lawyers are also warming up to women jurors in cases alleging corporate wrongdoing. In California, a female-dominated jury last fall delivered a defense verdict in *Seeno v. Mentor*, a products liability case involving a woman who claimed that she was injured by a woman's health product. "I think the old-school conventional wisdom might have been — as the defendant in the case — to try to avoid women jurors if possible...but we found that, in this particular case, the women jurors were very attentive to the defendant manufacturer's arguments," said John Lewis, a partner in Jones Day's Cleveland office who represented the defense in the products liability case. "Even though the case involved a woman's health product, we didn't discern any difference at all among the jurors."

In the end, Lewis said, the sex of the jurors didn't matter: "Many attorneys are finding out that those barriers are not really in existence any longer."

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