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| |  | | --- | |  |  |  |  |  |  | | --- | --- | --- | --- | | **George Cardona** is Lecturer in Law, UCLA Law School. He spent seven years as an Assistant U.S. Attorney for the Central District of California, serving for a period of time as a Deputy Chief of the Major Frauds section.     |  | | --- | | **Read other reviews:**  -[Paul Bergman](http://docs.google.com/practice_bergman.htm)  [-Taunya Lovell Banks](http://docs.google.com/practice_banks.htm)  -[Carrie Menkel-Meadow](http://docs.google.com/practice_meadow.htm)  [-](http://docs.google.com/practice_meadow.htm)[Jeffrey Thomas](http://docs.google.com/practice_thomas.htm)  -[Official site](http://abc.go.com/primetime/thepractice/index.html)  -[Internet Movie Database](http://www.us.imdb.com/Title?0118437)  -[All Movie Guide](http://allmovie.com/cg/avg.dll?p=avg&sql=A242083) |       The initial decision by the senator's attorneys, one increasingly common, is to stonewall police efforts to talk to any of the three people present at the scene of the crime.                    All of this mirrors actual tactics in high-profile criminal cases, which, despite the best efforts of many judges, inevitably end up being tried in the media at the same time as in the courtroom. | |  | | --- | | ***The Practice*: A Search for Truth?**  by George Cardona  This season's premiere of *The Practice* begins at the scene of a crime already committed, the house of a state senator in whose bed there is the very bloody body of a very dead man. The body is not the first thing seen, however. The opening shots of the episode turn only last to the body, focusing first on the three others in the house: the state senator, sitting upright in the living room, clothed only in underwear, waiting for someone; his daughter, vomiting in a bathroom; and his wife, showering. This focus is appropriate, for as it unravels the episode is far less about the crime than it is about the efforts of these three to manipulate perceptions of the crime, feeding misinformation to and relying on faulty assumptions by the prosecutors, the police, the media, and even their own attorneys to conceal what really happened in the senator's bedroom. That these efforts are ultimately successful (the true turn of events is revealed only at the very end of the episode, under circumstances-- a privileged conversation between attorney and client -- that ensure that the true facts will never be publicly known) rests on two aspects of the criminal justice system that are (accounting both for dramatic license and the time constraints imposed by the need to resolve everything within a two-hour, less commercials, time slot) remarkably well conveyed: the ability of criminal suspects with the necessary knowledge and resources to hinder discovery of the truth and the extent to which criminal prosecutions are affected by public opinion.  Criminal investigations move forward under a number of constraints imposed by the Constitution, ethical rules and practices, and common-law privileges. Intended to prevent innocent suspects with limited resources from being overwhelmed by an overreaching state enlisting its formidable resources to pursue a conviction counter to the truth, these same constraints can be used by those with the resources and the will to make it very difficult for a well-meaning state to uncover the truth. The state senator is clearly not one without resources. Nor is he one unfamiliar with or unwilling to use the mechanisms for manipulation available to those suspected of a crime. The first to arrive, for whom the senator is waiting, are not the police, but his attorney. And the senator's first words make clear both his intent and his awareness of the means to accomplish it. Not for him a panicked confession. Instead, his first words, essentially "Tell me what I can tell you that will not prevent you from representing me," signal what is just the start of a relationship in which the attorney-client relationship will be used by the senator as both a shield and a sword, his consultations (and those of his family members whom the firm also represents) with the firm's attorneys protected from discovery by the state, while he uses them to shape the misinformation he will provide. The episode captures particularly well the dilemma this poses for the senator's attorneys; though they come to suspect they are being used, their ethical obligations to their clients limit their ability to do anything about it.  The first stage of the senator's defense further demonstrates the mechanisms available to hinder a criminal investigation. The initial decision by the senator's attorneys, one increasingly common, is to stonewall police efforts to talk to any of the three people present at the scene of the crime. The senator relies on his Fifth Amendment rights. His wife asserts spousal privilege. And the daughter relies on an ethical rule that prohibits the prosecutor from interviewing her without the presence of her counsel, in this case the same attorneys who represent the senator, a presence that can, and in this case does, eliminate the possibility of the interview generating any meaningful information. The growing frustration of the prosecutor at her inability to pierce this wall rings true, as does the result. Confronted with an inability to obtain any information about how the homicide occurred, and faced with a rapidly evaporating time frame in which to gather ephemeral physical evidence, the prosecutor is forced to guess at how the crime was committed and structure the investigation accordingly. Such guesses are not uncommon. But when they are incorrect, the investigation can take an initial wrong turn from which it never recovers. Such is the case here. The prosecutor makes the guess that many would, that the senator discovered his wife in bed with another man and, whether in a fit of rage or in cold-blooded hate, shot him; accordingly, she has the senator arrested, declares the wife a material witness, and seeks a court order to test the wife for physical evidence of sexual activity consistent with the suspected affair. As revealed at the very end of the episode, this guess is completely wrong, and it forestalls the police from gathering the physical evidence that might have revealed for what they are various witnesses' lies and faulty assumptions about what really went on in the bedroom in the moments before the shooting.  Throughout the investigation and trial, both sides are shown spending as much, or more, time seeking to gauge and shape public opinion as they do actually investigating and trying the case. Thus, the prosecutor seeks to parlay the stonewall tactics of the defense into a benefit by timely interviews suggesting (without violating ethical rules that would prohibit a direct statement) that the senator's silence must mean he has something to hide. The defense does not seek recourse because, as one attorney puts it (in paraphrase), "We are going to need the press more than they do." Soon, the defense takes the offensive, the senator holding a masterful press conference in which he garners immense sympathy by portraying himself as the cuckolded husband who, seeking to defend his wife from what he believes to be a rapist, unknowingly shoots the man who is her lover. The prosecution responds not in court, but with its own press statement. And during trial, the defense structures its case based in part on opinions of a shadow jury conveyed to the defense through an off-camera consultant while both sides constantly seek guidance in polls of public reaction reported by television legal experts. Putting aside a few excesses acceptable for dramatic purposes, all of this mirrors actual tactics in high-profile criminal cases, which, despite the best efforts of many judges, inevitably end up being tried in the media at the same time as in the courtroom.  Fittingly, even the resolution of the case is rooted not in any belief that it is factually correct, but in the need to cater to public perceptions. After a lie by the senator's daughter during her testimony places the prosecution's case at risk, a decision is made to offer a favorable plea deal, a decision rooted in the district attorney's recognition that this is a case he cannot afford to lose. The senator's attorneys, who in an earlier discussion are seen fretting that their reputation will hinge on this case, their firm being known forever after as the one that had either lost or won, had originally favored a deal, but now, with victory in their sights, advise against it. The senator, despite this advice, insists on accepting the deal, conditioned, however, on his ability to hold a press conference before being taken into custody; as that press conference reveals, the senator has agreed to the plea because it affords him an opportunity to once again portray himself as the victim, this time both the husband wronged by his adulterous wife and the father seeking to protect his well-meaning but misguided daughter from a possible perjury prosecution. Moreover, as we learn later, the plea has provided the senator an opportunity to ensure the concealment of facts he regards as more devastating to his public persona than his criminal conviction. All of the parties have at least suspicions (and in the senator's case actual knowledge) that the plea does not represent factual truth. Nevertheless, the plea is acceptable to all concerned both because it cannot be shown to be false and because it offers the best available means for preserving their respective public reputations.  Whether the rights accorded criminal suspects, the role played by the media in high profile trials, and more fundamentally the very nature of this country's adversarial system of criminal justice work to further a search for the truth (or whether they should) is an ongoing debate. This episode of *The Practice* aptly highlights this debate.  Posted October 29, 2001 |   **Would you like to comment on this article? 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