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The Casey Anthony Trial and the Smartest Guys in the Media Room

In my earlier life, I was a Deputy Attorney General for the State of Delaware. It was a golden age for a young lawyer like me, when I could work with and learn from some of the best trial lawyers in the state. These are lawyers who today, forty years later, are recognized as giants of the Delaware and, indeed, the national trial bar. I speak of Dick Wier, Joe Hurley, Jim Erisman and prosecutor-turned-best selling author Charlie Brandt, to name but four.

While I didn’t follow all the proceedings on television, I must confess that as a former prosecutor I was more than casually interested in the Casey Anthony trial. I’d occasionally pause for 5 minutes here or there to hear about the day’s events. The bits and pieces of information I did glean came from Nancy Grace of HLN and other so-called knowledgeable and august TV talking heads.

Based on their pre-verdict arm chair punditry I was initially shocked to learn that the jury returned a “Not Guilty” decision on charges of first-degree murder, aggravated manslaughter and aggravated child abuse. My initial disbelief at the Anthony verdict reminded me of my reaction to the O.J. Simpson jury acquittal in 1995.

With curiosity piqued, the day after the verdict I then read news reports from the *New York Times* and the *Wall Street Journal* about the important facts as well as “non-facts” in the case. These were matters of which I was previously ignorant despite the wall-to-wall TV talking heads coverage.

I came to understand what the seven-woman, five-man jury learned, notwithstanding six weeks of trial. Several critical non-facts were (1) the absence of any physical evidence to tie Ms. Anthony to the location in the woods where the body was discovered, (2) the lack of Ms. Anthony’s DNA or fingerprints on the blanket or duct tape, and (3) the inability of the prosecution to establish a crime scene.

As the *NYT* put it:

> "There was no direct evidence tying Ms. Anthony to the death of her daughter. Forensic evidence was tenuous, and no witnesses ever connected her to Caylee's death. Investigators found no traces of Ms. Anthony's DNA or irrefutable signs of chloroform or decomposition inside the trunk of Ms. Anthony's car. . . [N]obody knows exactly when or how Caylee died; her body was too badly decomposed to pinpoint cause of death. The prosecution was not even able to show how the child, Caylee Anthony, passed away."

Given that summary of the evidence I was not surprised at the jury's verdict.

Lawson Lamar, the state attorney for Florida's Ninth Judicial Court, and the man who is the boss of the Anthony trial prosecutors, had this to say regarding the lack of hard evidence after the verdict was rendered: "This was a dry bones case. Very, very difficult to prove."

But ask yourself, emotions aside, were those missing and absent evidentiary links matters you had any inkling of as Ms. Grace and her cohorts verbally flogged the defendant those six long weeks before the verdict? Were you made aware of the weaknesses in the state's case? On the contrary, I was lead to believe the Anthony team couldn't stop a moving door with its side of the case.

Simply put, the prosecution may have amply proven Casey was a heartless, terrible person, but they failed to link her to the crime or the crime scene where Caylee's remains were found. So, as unpopular as it may be to the general public and contrary to my initial reaction, I now understand how, in eleven short hours, the jury could return a verdict following a six-week trial which said the state failed to meet its heavy burden of proof, namely that Casey Anthony committed murder beyond any reasonable doubt.

Why is that important to us as investors? There are two lessons to keep in mind from this case.

First, don't blindly accept the perceived wisdom of the experts. Just because all the so-called TV talk show hosts say, in so many words, "It's obvious Ms. Anthony is guilty" or "Real estate will always appreciate," keep your own counsel, be skeptical.

A little over ten years ago, in the late 1990s into 2001, technology and internet stocks were said to be a sure bet. You were told by the investment experts of the day that you could throw a dart, hit any of thirty different tech or internet ones, and see your “investment” grow ten-fold.

In 2000 AOL bought Time Warner for $164 billion, federal approvals coming a year later. It was the largest U.S-based and the world’s second largest acquisition ever. This was a “can’t miss” combination of two media and internet giants. Or so the universal wisdom was when the combination was announced. We know how that ended.

The bursting of the dot-com bubble coupled with the post-September 2001 recession caused the value of AOL to drop precipitously. AOL stock plunged from a value of $226 billion to $20 billion. The combined company was forced to report a $99 **billion** loss in just one year, 2002. At the time it was the largest loss ever reported. To put that $99 billion dollar number in perspective, a news leak this July 8th reports the Washington, DC solons are near agreement on tweaking the CPI cost of living calculation for social security as part of the debt-deficit reduction issue. The savings if enacted? $112 billion. The time period? Over ten years, not one.

So **Lesson Number One: Be particularly cynical when the perceived wisdom of the so-called experts is nearly universal. The best professional investors are those who swim against the current**.

Lesson Number Two: When it comes to investing, focus on the cold hard facts of a company. Don’t be distracted by the peripheral noise which surrounds it.

The Anthony talking heads did a marvelous job, as did the prosecution, of proving Casey Anthony was a bad person. As an unwed mother, she gave birth to a child whose biological father was neither acknowledged nor disclosed. She failed to report her daughter missing for 31 days. She created multiple lies, including that an imaginary nanny kidnapped Caylee, to hide her absence. While Caylee was missing, the mother went carousing and clubbing with her boyfriend in order to live the “belle vita” -– beautiful life -— as her tattoo exclaimed, a tattoo done after the child disappeared. Jailhouse recordings and photographs of Ms. Anthony partying hard with friends graphically showed the absence of even a scintilla of maternal grief for her daughter’s disappearance.

And with that persona now indelibly and firmly drawn, it is certainly true that upon her release from prison, having been convicted on some minor peccadilloes, that she will be as welcome in anyone’s neighborhood as a hooker at a picnic.

But ask yourself, did any of that noise prove the cold, hard facts of the crime of murder?

Likewise, when making an investment decision to buy, a good investor ignores the noise surrounding a company. Instead, a good investor asks if the company can prove its self-worth. Are the company balance sheet and income statements financially strong? Is there a strong and stable cash flow, both now and historically? Is there undue leverage? Is the service or product it sells a dominant one in its industry? Is its management experienced and knowledgeable, able to ride out the storms of recessions, able to fend off the fierce competitors in its field? Will the industry grow or shrink?

Do you remember Pets.com? It went from an initial public offering on the NASDAQ stock exchange to liquidation in 268 days. If AOL Time Warner was the “hurry up, get-on-board train” for the technology experts a decade ago, then Pets.com was the can’t miss poster child for the dot-com crowd.

Launched in August 1998, the business model for this company called for it to sell online pet supplies <u>at a loss</u> to retail customers. The smartest guys in the room, the venture capital guys at a firm called Hummer Winblad, raised oodles of money from sophisticated investors to throw at this idea. Turned out Pets.com was a shell of a company, a marketing whirlwind selling air, not substance, via a medium which was untested and unneeded. In the famous words of Walter Mondale when he spoke of Gary Hart, investors should have asked of Pets.com, “Where’s the beef.”

After rolling out its national advertising campaign (TV, radio and print) in the first nine months of 1999, the nascent company appeared in the Macy’s New York Thanksgiving parade two months later. Still privately held, it then proceeded to advertise on the Super Bowl in January 2000. The ads were wildly successful, garnering several awards, including being ranked as the #1 Super Bowl ad by *USA Today*. The Pets.com sock puppet featured on those ads took on cult-like status, making appearances on *Good Morning America*, *Live with Regis and Kathy Lee*, etc. In short, and just like the hype surrounding the Anthony trial, the buzz was there.

Soo . . . a month later in February 2000, the company went public. That month investors snapped up those shares for $11.00 each.

However, had you ignored the noise and read the prospectus before you made a decision to buy into the IPO, this financial fact might have figuratively smacked you in the head: For the fiscal year before the IPO, total revenues of Pets.com were $618,000 while its advertising expenses alone were **19 times** as large, at $11.8 million. Notwithstanding those cold hard numbers, and with the excitement and emotion of the retail investor raised to a fever pitch by its truly excellent advertising, the venture capital investors recaptured their investment dollars many times over when it went public, leaving the retail investor to hold the ongoing risk or reward of Pets.com.

So which was it? Risk or reward? The noise of the times suggested reward, the facts would prove risk. Catastrophic risk.

The industry profit margins for pet suppliers were terribly narrow to begin with, at a mere 2-4%. Yet, this was the industry selected by Pets.com. The company then compounded that issue. Thinking it could eventually move customers to higher margin products, it deliberately lost money from the get go on the sales it did make over the web, choosing to sell pet supplies for less than half the price it paid to acquire them. As if that weren't enough it also offered free shipping, but free shipping of heavy bags of cat litter or dog food turned out to be a less-than-wise decision.

Pets.com thus ended up hoist on its own petard. Sure enough, it saw a dramatic upswing in customer sales, but since it was selling product at less than cost, that exacerbated its negative bottom line. The company's thesis that once hooked its customers would move into higher margin products turned out to be a colossal miscalculation. And incredibly the management of Pets.com had never tested this hypothesis before going public. So it was literally flying blind with this "lose money now to make money later" business concept. The day of its liquidation announcement in November, those $11 shares traded for 19 cents each. CNET named Pets.com as one of the greatest disasters in dot-com history.

Investors who rushed into this stock clearly never asked the right questions. They just jumped on board the publicity train and assumed the truth coming from the noise. Turns out they inherited the wind.

LISTEN TO THE MUSIC

We had a former winner take the prize in our last newsletter. Steve Siegel, estate and tax lawyer and national speaker extraordinaire, correctly placed these Doobie Brothers' songs in correct chronological order:

Listen to the Music 1972
Long Train Running 1973
Blackwater 1974
What a Fool Believes 1979

Let's move from music to sports. Several events of note have caught my fancy lately. Are you a golfer? Tennis enthusiast? Do you follow the Phillies? You can prove your sports trivia brilliance and enjoy a small restaurant tab, courtesy of Westover Capital Advisors. Here you go:

1. Name the winners of three of the last four golf majors. Hint: none of them were Americans.

2. Two parts: How many majors has Novak Djokovic won in his career? This year his record is an amazing 50-1. To whom did he lose and in what tournament?

3. The Phillies have a sterling triumvirate of pitchers, this year -– Roy Halladay, Cliff Lee and Cole Hamels. They also have a rookie who has surprised, Vance Worley. Each one has an earned run average under 3.00. Place those four pitchers' ERAs in the correct order, lowest to highest. Hint: the rookie will fool you.

We'll award a $50 certificate to the winner of each question. You can enter every contest, and submit up to two answers for each. You can involve your buddies in helping with the responses. But it's not an open internet quiz. You can't go there to find the answers. Your guess comes to us with the unstated representation that you played fairly by these rules.

On our end, we presume your innocence from rule breaking when we get your answer. That same presumption however is not likely what will be accorded Ms. Anthony for the rest of her life. But remember, in our system of justice, the state must prove the crime charged beyond a reasonable doubt with the jury's decision based solely on the evidence presented to it in the courtroom. That's our constitutional system.

Peace. July 11, 2011