

## Politics To Complicate Jury Picks In GWB Lane-Closure Case

By Jeannie O'Sullivan

*Law360, New York (September 7, 2016, 8:27 PM EDT)* -- Jury selection in the trial over the George Washington Bridge scandal could be a thorny, lengthy process complicated by the high-profile and unique allegations of hardball politics, creating hurdles for both sides in trying to seat jurors who will be open to controverting narratives of the lane closures, experts say.

The pool of candidates who will report to U.S. District Judge Susan G. Wigenton in Newark on Thursday are likely to be scrutinized on their attitudes toward state government and what they have learned from news reports about William E. Baroni Jr. and Bridget Anne Kelly, two former appointees of Gov. Chris Christie accused of colluding to orchestrate a traffic jam to retaliate against a political foe of the Republican governor.

The fact that the much-publicized corruption allegations involved no money changing hands and no one getting killed makes for an unusual set of circumstances for a jury of peers to consider, regardless of their long-standing views, white collar defense attorneys, former prosecutors and consultants told Law360.

While the goal of jury selection is always to find the most impartial set of minds, such a politically charged set of facts complicates the process further, said David I. Miller, a partner in Morgan Lewis & Bockius LLP's New York City office.

"Even if someone hasn't heard about the case in the news, they still come to jury selection with particular views and ideologies, and oftentimes big, white-collar cases can play into those views and ideologies one way or the other," said Miller, a former assistant U.S. attorney for the Southern District of New York.

"So the challenge is going to be whether or not they can continue to be impartial," added Miller, predicting that jury selection could drag out to a week or more.

Baroni, a former Port Authority of New York and New Jersey executive, and Kelly, a one-time Christie aide, purportedly arranged a bridge lane "study" designed to snarl traffic for five days in September 2013 in order to send a message to Fort Lee Mayor Mark Sokolich, a Democrat who refused to endorse Christie's re-election campaign. A third defendant, former Port Authority executive David Wildstein, pled guilty and is cooperating with the government.

The judge, prosecutors and defense attorneys are likely to first zero in on how jurors, even before

deciding guilt or innocence, will perceive such a plan — whether it amounts to Garden State politics as usual or an unacceptable abuse of power — and gear their screening questions accordingly, experts said.

Also looming over the trial is the national reputation of Christie, even though the former U.S. presidential hopeful wasn't charged, noted several experts.

"Gov. Christie is not a defendant in this case, but his name hangs over this case and he's now very much associated with one of the two presidential candidates," said Glen A. Kopp of Bracewell LLP's New York City office.

In a case with this much publicity, both the defense and prosecution are going to seek out jurors who aren't completely sealed in their convictions, says Greensfelder Hemker & Gale PC's Patrick J. Cotter in Chicago, who served as both a public defender and a prosecutor in the Organized Crime Strike Force in Brooklyn.

The perfect juror in the defense's eyes is a "fairly cynical," blue-collar type with a street knowledge of New Jersey's rough-and-tumble political landscape, according to Cotter, while the government is looking for jurors who see the alleged activities as a perversion of power.

"The defense wants the guy whose dad worked for the city of Newark for 30 years as a garbage man. They don't think party politics is dirty. It's just the way it works, and it's unfair to come along and start criminalizing stuff that [wouldn't have been] back then," said Cotter, who was part of the team that successfully prosecuted New York crime boss John Gotti. "There's not even a dead body here."

The ideal prosecution juror, Cotter said, "is the political science ethics professor, preferably at a Catholic university." Another former prosecutor, Kopp, concurred that the prosecution will likely want to avoid jurors who hold "anti-establishment" views.

"People who questioned not so much the facts but the message, those were the people I was scared of," said Kopp, a former assistant U.S. attorney for the Southern District of New York.

Yet trust or distrust of government or politicians isn't a surefire indicator of what side that juror will favor, cautioned Darren M. Gelber, a shareholder in Wilentz Goldman & Spitzer PA's Woodbridge, New Jersey, office. For example, a juror wary of political corruption might naturally be expected to favor the prosecution's case, but could wax sympathetic toward the defense if they suspect the lane-closure plan was machinated by higher-ups.

"You could certainly debate on who it would help and who it would not help. I could see both sides," said Gelber, who formerly prosecuted cases in the Bronx and now chairs Wilentz's criminal defense team.

The jury selection process is slated to begin with a questionnaire. The parties will return to court on Monday to determine which jurors will be invited back on Tuesday for voir dire questions.

All the usual questionnaire items will hold particular significance in this case, including inquiries about a juror's residence, work history, family members' professions, favorite news sources and political beliefs, experts said.

A potential juror's neighborhood gives "a lot of info" about their perspective considering the demographic information that abounds, says Cotter. Likewise, the newspapers, television shows, periodicals and books that jurors consult will be indicative of how closely they follow the state's politics, Kopp said.

As for unique questions, the court might try to determine who uses the George Washington Bridge and other well-traveled commuter thoroughfares, said Kopp. He noted the school bus riders and other types of travelers impacted during the traffic jam, which took place during the first week of classes.

"You're going to have perhaps a different take on what was done [because commuters] might be little more enraged," Kopp said.

The jurors are also likely to be queried about their views on Wildstein's participation in the trial, according to Gelber. When an informant or cooperator is used, the jury questionnaire usually asks if the juror will be able to remain impartial with the knowledge that that witness is likely receiving leniency for cooperating, he said.

And questions designed to unearth any hidden agendas would be wise, said trial consultant Ray Fuentes of Atlanta-based R&D Strategic Solutions.

Fuentes, who has conducted more than 1,000 post-trial interviews with jurors, said that given the media attention heaped upon jurors at the conclusion of a case, the high-stakes nature of the trial is likely to appeal to potential jurors seeking the limelight in television news shows and newspaper articles.

"When you see someone with a strong personality, that's concerning at times because you don't really know why they're eager to serve," Fuentes said. "If it turns out that they don't like your side, then they're probably going to have more of an impact than someone who just feels they have a duty to serve."

Yet despite all of the research dedicated to the psychology of jurors, which has become a consultancy industry in itself, selection for this trial will likely be much more of an "art than a science," according to Gelber. This particular case is very much based on human perception and human experience, he said.

"Ten attorneys going through the same jury panel are likely to pick 10 different sets of jurors," Gelber said.

--Additional reporting by Bill Wichert. Editing by Philip Shea and Kelly Duncan.