

BERNHARD GOETZ CASE (1987)

Following a 1981 beating that left him with a permanently damaged knee, Bernhard Goetz, a 36-year-old electrical engineer, took to carrying a gun everywhere he went. On December 22, 1984, while riding a New York City subway train, he was approached by four black youths, one of whom demanded \$5. Goetz's response was to yank a revolver from a special quick-draw holster and begin spraying bullets. As two of the youths fled, Goetz shot them in the back. One, Darrell Cabey, fell. Goetz approached him and said, "You seem to be all right; here's another," firing a second open-nosed bullet that severed Cabey's spinal cord. Then Goetz calmly left the scene and disappeared.

Nine days later Goetz gave himself up at a police station in Concord, New Hampshire. Following several lengthy confessions he was charged with 13 various offenses, from attempted murder to criminal possession of a gun.

Bringing the case to court took time— more than two years. Selecting a jury for such an obviously volatile trial proved almost as laborious, as neither side wanted to concede any advantage in this most critical phase of the judicial process. Eventually, after one month, a jury of 10 whites and two blacks was impaneled, and on April 27, 1987, they heard Assistant District Attorney Gregory Waples make the opening presentation. He outlined the salient facts, then said: "These terribly destructive shots...were fired not by a typical New Yorker, not by a reasonable person such as yourselves, responding to provocation in an appropriate and limited manner, but by an emotionally troubled individual." Goetz was, said Waples, "a man with a passionate but very twisted and self-righteous sense of right and wrong...an emotional powder keg, one spark away from explosion." To drive home this point, Waples highlighted Goetz's refusal to wear gloves, even on the coldest winter day, so that he might remain "fast on the draw" should trouble arise. Such an obsession, the prosecutor reasoned, was far more likely to lead Goetz into conflict rather than avoid it.

The Defense Attacks

Quite naturally the defense, led by Barry Slotnick, saw things in an entirely different light. His opening statement left no doubts about their intention to turn this trial into an indictment of the "aggressors...this gang of four." Excoriating them as "savages and vultures...who got what the law allowed," Slotnick launched into a vitriolic assault on the character and credibility of James Ramseur, one of the alleged assailants. Five months after the Goetz incident, Ramseur had been arrested for participating in the savage gang-rape of a pregnant woman. "And to add insult to injury," thundered Slotnick, "Mr. Ramseur and his friends took her earrings and her ring, and left her bleeding on the rooftop landing." So heavy-handed and graphic did Slotnick's depiction of this rape become that it drew a sharp rebuke from Justice Stephen Crane: "Why don't you get off this Mr. Slotnick."

But the damage had been done. The impression of the four black youths as rampaging

sadists was firmly implanted in the jury's mind. This skillful defense manipulation of proceedings went a stage further when one of the state's witnesses, Detective Michael Clark, referred to "the four victims on the train." Slotnick was on his feet immediately. "Your Honor, I would object to the characterization of the 'victim'. That's a decision the jury will have to make." Surprisingly, Waples yielded to the point, when there was no real need for him to do so, agreeing to the much meeker term "young men." It was another small, but important, victory for the defense. Slowly Bernhard Goetz was being turned into the victim in the case, not the perpetrator.

Central to the prosecution case was a taped confession that Goetz had made to police. Because Goetz would not take the stand, this was the jury's only opportunity to hear him speak. In a rambling two-hour account, Goetz gave his version of the attack. It contained many damaging statements. Most incriminating of all was his clearly expressed intention "to murder them, to hurt them, to make them suffer as much as possible." Also revealed was his aversion to being "played with... as a cat plays with a mouse."

Several witnesses from the subway train testified. Through careful questioning, Slotnick succeeded in drawing admissions that the action had happened so quickly as to impair their recollection of what actually occurred. In particular, Slotnick created doubt about the actual number of shots fired. The intention here was to undermine the prosecution's claim that Goetz had cold-bloodedly stood over Cabey and fired the fifth and most damaging shot. Slotnick desperately needed to demonstrate that this injury had occurred just in random gunfire. By far the most resistant to this line of questioning was Christopher Boucher, a San Franciscan vacationing in New York at the time of the shooting. Boucher testified that he initially heard gunfire but that his view was blocked. However, he then saw Goetz "standing, looking down at the man in the seat." Waples asked, "How far was the defendant from him [Cabey]?"

Answer: Two to three feet.

Question: Did you see the gun at any point?

Answer: Yes.

Question: And what did the person, who was sitting down, do at the moment the shot was fired?

Answer: Well, he was sitting, grasping the bench, and he just tightened.

Slotnick, aware that this was the most damaging eyewitness testimony yet, did everything in his power to discredit it. He began by implying that Boucher had been unduly influenced by media accounts of the shooting, an allegation that Boucher strenuously denied. Next, Slotnick asked Boucher, had he not been "shaken and traumatized" by the violence, perhaps enough to compromise his memory?

"Actually no," Boucher replied. "That's the funny thing."

Effective Demonstration

Slotnick fared much better with Joseph Quirk, a ballistics expert hired to re-create the crime scene in court. For the purposes of this demonstration, Slotnick had engaged the services of four black youths, dressed like street toughs, to act out the parts of the attackers. Had the defense only been interested in demonstrating bullet paths, the color of the assistants would have been immaterial, but the sight of the four black teenagers jostling Quirk, a white man, was highly inflammatory. So much so, that Judge Crane ordered Slotnick to use court employees in the future should he need to carry out any further demonstrations.

Without meaning to be, Prosecution witness James Ramseur was far and away the defense's strongest card. He entered the court in prison dungarees, pugnacious and petulant, determined to face down Slotnick. At first he refused to testify, earning for himself several citations for contempt. When he eventually condescended to take the stand, Ramseur foolishly bandied words with counsel. "When was the last time.... that you.... committed a crime against a human being?" Asked Slotnick.

"When was the last time you got a drug dealer off?" sneered Ramseur. Three days later, in sentencing Ramseur for contempt, Judge Crane upbraided him for his stupidity:

Your conduct has played right into the hands of Mr. Goetz's lawyer. He owes you a vote of thanks... The jurors saw your contemptuous conduct. That can never be erased from their minds.

On Friday, June 12, 1987, the jury retired to consider their verdict. By the following Tuesday, they had reached agreement on all 13 counts. Twelve times jury foreman James Hurley, intoned, "Not guilty." Only once did he respond "Guilty"--to a charge of criminal possession of a weapon in the third degree.

Three months later, on October 19, 1987, Judge Crane passed sentence: six months in jail, plus a fine and probation. Upon review in January 1989, the jail sentence was increased to one year.

The Bernhard Goetz trial opened up many old wounds and left a peculiar sense of public dissatisfaction at its outcome. Many believed that he should have never faced a court; they saw him as acting well within his rights. Others, fearful of vigilantism adding to the problem of already dangerous streets, were outraged by the jury's refusal to convict on all but the least serious charge. In the final analysis, skillful advocacy emerged as the only winner in this case. It wasn't elegant, but it was effective.