

Legal Issues Involved in Martha Stewart Trial

Aired January 6, 2004 - 06:51 ET

CAROL COSTELLO, CNN ANCHOR: Ahead of today's jury selection, prosecutors issued a new indictment against Martha Stewart. The biggest change in the new indictment is in the wording, where the charge of making false statements was rewritten to say false and misleading statements. But the new indictment also forces Stewart to enter the not guilty plea once again.

It's a good topic over coffee this morning.

So let's head live to Miami and our legal analyst Kendall Coffey -- good morning, Kendall.

KENDALL COFFEY, CNN LEGAL ANALYST: Hey, good morning, Carol.

COSTELLO: So they're making prospective jurors fill out a questionnaire.

Is that unusual?

COFFEY: Well, in a case where there's this much high profile, it's not unusual because there's going to be a very important role in jury selection because even before the first witness is called to the stand, Carol, there are going to be lots of potential jurors who already have preconceived notions about Martha Stewart; many fans, and a few detractors, too. So that's got to be addressed up front.

COSTELLO: So what kind of questions will be on that questionnaire?

COFFEY: Well, they're certainly going to ask about the exposure to pre-trial publicity and they're going to ask people what they've heard about the case and what their impressions are. They may also try to find out what people's experiences have been in investment losses, because, let's face it, if you're the prosecutor, you'd love to have lots of jurors who have lost lots of money through some of the shenanigans on Wall Street in the last few years.

COSTELLO: Oh, most definitely.

You know, most people either really like Martha Stewart or really don't. That's going to be a big problem for defense attorneys.

How do you weed through the jurors to find people who kind of don't have an opinion?

COFFEY: Well, there's going to be a lot of people that have an opinion. And certainly one of the things that we've seen is in some of the polling on Martha Stewart, the community in New York is very, very divided. One of the interesting things is going to be will the jurors come clean and really say what they really think about Martha? And when

you get to the end of this trial, Carol, if people are that divided, could you have a higher probability than most cases for a hung jury? Because, let's face it, if there are some firm Martha Stewart supporters, she could end up getting some votes for acquittal no matter what the prosecution's evidence shows.

COSTELLO: And not only that, Kendall, but this is pretty heady stuff.

This is a difficult case to understand for most people not well versed in the world of finance, isn't it?

COFFEY: Well, and that may be why they focus -- took the focus away from insider trading and some of that confusing securities stuff and most of the case is focused on something very simple in human nature -- lying. That's the essence of the prosecution case. That's what they think they can prove Martha Stewart committed repeatedly over a course of several months.

COSTELLO: So that will be the key to the case.

So what will the major argument be? What's the best, I don't know, what's the best presentation of the case from defense attorneys?

COFFEY: I think what's going to be critical for the defense is to absolutely dismantle the testimony of Doug Faneuil. He is the cooperator, the former securities brokerage assistant. And the defense is going to try to portray him as a lying rat who is selling out his former boss and former client in order to get a favorable deal with the government. If they can destroy Faneuil, she's got a real shot at acquittal.

COSTELLO: It hurts that Sam Waksal is in prison now, doesn't it?

COFFEY: Well, everybody's got to know that what initially began this case led to a major indictment, a major conviction. Waksal is in prison for seven years. But, you know, when it comes down to it, Martha Stewart is a larger than life figure. I think the jury is going to focus on her, the evidence against her, and that's what's going to be critical to the outcome of this trial.

COSTELLO: All right, Kendall Coffey live from Miami.

Thank you.

COFFEY: Thanks, Carol.