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Loose Lips Sink Ships, But Should John Gotti Jr. Have Testified In Order To Avoid Another Hung Jury?

Each of John Gotti Jr.'s previous three trials has ended in a hung jury. Insiders say the jury may yet again be deadlocked. As a criminal defense attorney who has followed the case and once represented Peter Gotti, I'm apt to conclude that the defense strategy to not allow Junior to testify was not only correct but will ultimately allow him to fight yet again in another trial. But like everyone else, I can't help but wonder, "Would there have been a different result if John Gotti testified on his own behalf?"

Some speculate that the defense should have reevaluated their strategy and allowed John Gotti Jr. to take the stand, hoping that his wit and engaging demeanor would have charmed the jury and resulted in an acquittal for the alleged former mafioso. His testimony would prove, beyond a reasonable doubt, that Junior did in fact disassociate himself from the Gambino crime family -- his team's main strategic defense.

If Junior had taken the stand, his testimony would have cast doubt on the prosecution's assertion that he was still an active member of the Gambino clan -- no alleged member of an organized crime organization would testify in open court and breach the oath to forever uphold the family. Furthermore, Junior would have been able to highlight his willingness to give up the privileged lifestyle he earned as an alleged mafia don -- something that was certainly difficult to do.

On the other hand, his testimony could have caused irreparable damage to the defense. If Junior had professed his past criminal activities in open court, he would have implicated family and friends as accessories in these acts. Under no circumstances would he have wanted to assist the government, whom he believes has unjustly deprived him of his freedom, in prosecuting and convicting his loved ones with his testimony.

For Junior's defense team, putting him on the stand resulted in a resounding no. After examining Junior's case closely, I do agree with the defense's ultimate decision to keep him from testifying for several reasons.

First, the prosecution set forth numerous miscreants and thugs who attempted to use the Gotti name as a "get out of jail free" card. These individuals, however, have consistently provided conflicting testimonies, preventing the government from proving the case beyond a reasonable doubt.

Secondly, the defense was successful in calling upon a former federal prosecutor as a witness for the defense; he provided information that showed Junior was no longer in the mob. More specifically, the prosecutor admitted to having known about a plot to kill Junior because he withdrew from the mafia, further aiding the defense.

But most importantly, during cross-examination and after calling additional witnesses whose testimonies contradicted the version of events provided by John Alite, the government's key witness, the defense was able to skillfully expose Alite as a brute and liar who would stop at nothing to smear Junior's name.

In the end, the government has the burden of proving its case beyond a reasonable doubt. The prosecution has failed to fully meet this task in all three of Junior's previous trials and therefore was unable to secure a conviction they so desperately sought. If Junior testified in this trial, it would have given the government a great opportunity to exploit him during cross-examination and possibly secure a conviction.

When John Gotti Jr was asked at a previous trial whether or not he would testify, he cleverly responded, "I will follow my head and not my heart and keep my seat." My sentiments exactly -- unless of course there is a fifth Gotti trial.

<http://www.dibenedettolaw.com/> Joseph DiBenedetto, born and raised in Queens, New York, is a prominent criminal defense attorney. At 32 years old, DiBenedetto is one of New York City's fastest rising stars in the criminal defense world. He has represented dozens of high-profile clients - including Peter Gotti and a NFL Buffalo Bill player - and has successfully advocated for fellow attorneys, law enforcement personnel, union officials, medical professionals, accountants and CEOs of major corporations at the federal and state level.

The son of two Italian immigrants, DiBenedetto credits his parents' hardships and language barriers as the driving force in his decision to become a lawyer. He wanted to speak for people unable to speak for themselves. He began his career in 2001 working with a notable sole practitioner and in 2008 developed a large enough client base to open his own firm.

DiBenedetto received a Bachelor of Arts from St. John's University and his Juris Doctor from St. John's University School of Law. He

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Joe has been interviewed and quoted as an industry expert in top tier media outlet, including CNN Money, E! Online, New York Daily News, The Jim Bohannon Show, Time.com, and Newsday.

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