THE SIMPSON JURY

by Jon M. Van Dyke

Tuesday's jury verdict finding O.J. Simpson "not-guilty" of murder has bewildered and perplexed many observers. How could the jurors have ruled for acquittal when most of us following the trial through the media thought that the evidence pointed toward a "guilty" verdict? And how could they have reached this verdict so fast, with so little deliberation and discussion?

The speed with which the jury reached its decision was certainly a surprise. After nine months of sitting in the courtroom, listening to 126 witnesses, and presented with 1,105 pieces of evidence, wouldn't the jurors want to discuss and debate the credibility of witnesses, the weight to be given to pieces of evidence, the theories offered by the two sides, and so on? This group of jurors did not want to engage in that process. They were united in their conclusion that the evidence was not sufficient to establish guilt beyond a reasonable doubt. And their subsequent statements have made it clear that their doubts were based on their fundamental mistrust of the police and law enforcement agencies of Los Angeles.

Because the evidence presented was to a large extent "circumstantial"--that is, based on logical conclusions from circumstances rather than on direct eye-witness testimony--the mental process of giving meaning to the evidence became crucial. Most of us following the trial from the media were inclined to

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accept the version of the evidence presented by the prosecution because it seemed logical enough. But not this jury, which consisted of nine African-Americans, one Hispanic, and only two Caucasions. They all live in Los Angeles, and most of them were apparently deeply suspicious of the Los Angeles police and the prosecutor's office. These jurors accepted the doubts planted by the defense lawyers and their witnesses because they had experienced the racial hostility that has marked the conduct of the Los Angeles Police Department during recent years.

When prosecuting attorney Marcia Clark had to disown her main witness--Detective Mark Fuhrmann--at the beginning of her closing statement, because it had been revealed that he was a liar and a racist, the experiences of the jurors regarding the racism in their community were reinforced. They were undoubtedly also troubled by the apparent falsehood offered by Detective Philip Vannatter who testified that O.J. Simpson was <u>not</u> a suspect when he (and Detective Fuhrmann and two others) went to Simpson's home without a warrant (and found incriminating evidence), and that they had gone there merely to inform Simpson that his wife had been killed. (Because half of the women murdered in the United States are killed by their husbands or boyfriends, and because it was known that Mr. Simpson had abused his wife in the past, probabilities and logic automatically made Mr. Simpson a suspect.) Finally, the testimony of credible criminologists that the Los Angeles police officer and laboratory mishandled blood samples raised doubts about the DNA evidence found in the blood.

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Jury Nullification. The jury's conduct in rejecting what Marcia Clark characterized as a "mountain of evidence" pointing toward guilt was an act of "jury nullification" designed to send a message to the rest of us--a message that modern multiracial juries will no longer tolerate racism in law enforcement. For this group of jurors, sending this message was apparently more important than resolving the particular murder case being tried before them.

Until the early 1800s, jurors were told that they could determine the law as well as the facts in a case. Gradually, courts changed this instructions, and Judge Ito gave today's typical instruction that the jurors are to determine the facts, but must accept the law as it is given to them by the judge, and then apply that law to the facts.

Even with this limiting instruction, however, jurors have the ultimate--and nonappealable--power to acquit when they feel that justice requires such a verdict. This power has been used over the years to free those fighting against oppression--such as William Penn in the 17th century, the printer John Peter Zenger in the 18th century, and those who helped fugitive slaves travel on the underground railway in the 19th century. More recent beneficiaries of juries exercising their power to acquit in the face of government efforts to convict include Angela Davis (for her opposition to the Vietnam War), the "Camden- 28" (who were tried in 1973 for destroying the records in a selective service office), John DeLorean (who was accused of financing drug deals to raise funds for his automobile venture), Mayor Marion Barry of

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Washington, D.C. (who was convicted for a relatively minor charge but acquitted on most charges related to drug use despite videotaped evidence), Oliver North (who was convicted on only three of the 12 charges against him in connection with his role in the Iran-Contra affair), and Bernhard Goetz (for shooting a group of teenagers who were assaulting him on a New York subway).

An Experienced Jury. One important feature of the Simpson jury is that it included a number of individuals who had served previously as jurors. One, a 60-year-old white woman, had persuaded eleven jurors in an earlier case to change their views completely and come around to her position. Another juror, a 43-year-old black man, had been selected to serve as foreperson for an earlier jury. Several of the jurors said in their questionnaires that they had had personal run-ins with authority. One perhaps significant anecdote regarding all the scientific evidence presented to the jury came from the 50-year-old black woman who was elected foreperson. She reported that she once submitted a urine sample to a doctor who had incorrectly intepreted it to say that she was pregnant, when in fact she was not.

The jury had ten women and only two men, and it is surprising that the issue of domestic violence was not of more significance to them. The foreperson said during earlier questioning that she viewed such domestic battles as "personal problems." And Brenda Moran, a 44-year-old black woman, has said in interviews this week that she viewed the evidence on the earlier battles between O.J. and Nicole as "irrelevant" to the murder charges.

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Sequestration. Did Judge Ito act correctly in ordering these jurors to be "sequestered" at a hotel, away from their families, during this trial? Many experts on the jury system advise against this practice, because the number of potential jurors who seek to be excused for hardship is increased dramatically, and the representativeness of the resulting jury is affected. In addition, the sequestered jurors tend to feel they are being punished, may blame the government for their isolation, and may feel greater sympathy with the imprisoned defendant. Juror Brenda Moran said "I feel free," when interviewed the day the verdict was announced.

Sequestered jurors frequently form a bond with each other, because they have all suffered deprivations together. When the time for deliberation arrives, the jurors may not be speaking as individuals with different perspectives, coming from different parts of the community, because they may have formed strong relationships with other jurors. The Simpson jury went to Universal Studios together, took a tour in a Goodyear blimp, and had a private audience with comedian Jay Leno. They had long boring periods outside the courtroom while Judge Ito allowed the lawyers to hold forth regarding evidentiary matters. They also engaged in a demonstration together to protest the dismissal of deputy sheriffs who had been assigned to them. Their lack of deliberation in the jury room on Monday may be attributable to their long months together during which they developed a group mentality. Although sequestration is designed to eliminate outside

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influences on a jury, it exerts its own influences which may distort the jury as representing a cross-section of the community.

Television. Was the decision to allow the trial to be televised a factor in the outcome? The lawyers, the witnesses, and to some extent the judge, played to the cameras, and the trial was undoubtedly prolonged because of the television coverage. At the same time, the country received a real education regarding our criminal justice system. Probably the outcome itself was not affected. Television must be used with care, but it can be a powerful tool in a democracy to provide a link between the government and the governed.

Was money a factor? Certainly the ordinary defendant cannot afford the high-powered defense team that O.J. Simpson bought, or the experts who challenged the evidence presented by the prosecution and planted seeds of doubt. A defendant with fewer resources would not have been able to wage the same kind of defense, and the outcome might well have been different.

Civil Trials. O.J. Simpson is not out of trouble, of course, because the families of the slain victims can and will bring civil actions for money damages against him. In a civil case, the jury decides by a "preponderance of the evidence" rather than by the "beyond a reasonable doubt" standard that governs criminal cases. In California, only nine (out of 12) jurors must agree on a verdict in a civil case, while criminal verdicts must be unanimous. The ambiguities that troubled this criminal jury may not seem so significant to a civil jury, which will be asked to determine

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whether it is "more likely than not" that O.J. Simpson assaulted and killed his former wife and Ronald Goldman.

Should we reassess the jury system in light of this outcome? Juries have served the Anglo-American legal system well for almost a thousand years, and the outcome of one trial should not lead us to abandon a device that has protected common citizens effectively from government abuses and overreaching. This jury was in some ways not a typical one--it had "too many" nonwhites and women in comparison to their percentages in the community. But these jurors clearly took their responsibilities seriously. The listened to the evidence for nine months. They quickly reached a unanimous decision.

Even if we think its verdict was wrong, we need to reflect on the message sent to us by this jury. We need to work harder to bridge the gap between the whites and nonwhites in our communities. And we need to prevent law enforcement agencies from acting in a manner that makes common citizens innately mistrustful of those in authority.

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