Chapter Six

O. J. Simpson (1994): Can the Rich Buy Reasonable Doubt?

This is likely what happened:

Sometime during the hour after ten o'clock on the evening of June 12, 1994, a lone person came through the back entrance of a Spanish-style, four-bedroom condominium on Bundy Drive in the upscale Los Angeles suburb of Brentwood. In the small, almost caged area near the front gate, the intruder savagely slashed a woman, virtually severing her neck from her body, apparently after she had been rendered unconscious. The gaping wound ran from the left side of her throat to just below her ear and was so deep and so long that it exposed the victim's larynx and cervical spinal cord. In the same entryway, the killer stabbed a man to death, inflicting at least thirty wounds.

Determination of the order in which the two victims were slashed to death was based on the fact that there was no blood on the female's bare feet, while plentiful blood was present on the soles of the man's white shoes.

The woman, dressed in a black halter sundress, was thirty-five-year-old Nicole Brown Simpson, the recently divorced wife of O. J. (for Orenthal James) Simpson, a onetime football superstar and later a media notable. The couple had two children, both of whom were asleep in an upstairs bedroom in the condominium. The dead man, dressed in jeans, was twenty-five-year-old Ronald Goldman, a social acquaintance of Ms. Simpson. Goldman was a waiter at the Mezzaluna restaurant, where Ms. Simpson and her family had eaten earlier that evening. He was returning the gold-rimmed prescription sunglasses that Ms. Simpson's mother had dropped on the curb while getting into her car in front of the restaurant. A person with a mordant sense of humor later would place signs outside the Mezzaluna reading, "Don't forget your sunglasses."

At ten minutes after midnight the following morning—more than three hours after they had been slain—the bodies of Nicole Simpson and Goldman were discovered by a neighbor who had been led to the site by a howling brown-and-white Akita, a big dog that was obviously distraught. The dog, which belonged to Nicole Simpson, had blood on its belly, paws, and legs.

Few of the foregoing "facts" have gone undisputed, however. Some maintain that the killer's entry was from the front of the condominium. Others believe that Nicole Simpson, learning of the loss of the eyeglasses from her mother, requested Goldman to deliver them and was planning a sexual interlude with him—or perhaps with someone else. Her erotic invitations characteristically involved the lighting of candles in her residence, as she had done this evening. There are those who believe that there was more than one killer, and some who believe that drug dealing retaliation was central to the murders.

The savage killing of Nicole Simpson and Ronald Goldman and the subsequent arrest and trial of her former husband unleashed a cascade of events that preoccupied much of America for the following three years. Fiery disputes arose about the not-guilty verdict and the importance of the racial composition of the jury, which was made up of eight black and two white women and one black and one Latino man, though the initial pool from which it was selected was 40 percent white, 28 percent African American, 17 percent Hispanic, and 15 percent Asian. The twelve members of the jury looked like this: (1) All were Democrats. (2) Two were college graduates. (3) No one read a newspaper regularly. (4) Nine rented homes; three were purchasing houses. (5) Two had supervisory or management responsibilities at work; ten did not. (6) Eight regularly watched TV-tabloid shows such as *Hard Copy*. (7) Five said that they or a family member had a negative experience with the police. (8) Five thought it was acceptable to use force on a family member. (9) Nine thought O. J. Simpson was less likely to be the murderer because he had been a football star.

Commentators also pointed to what they saw as incompetence, perjury, and perhaps conspiratorial actions by detectives in the Los Angeles Police Department, to blatant racism in their ranks, to the considerable lawyering inadequacies of the prosecution team, and to questionable tactics by the defense lawyers. Dominick Dunne, a writer who was favored with a reserved seat at the proceedings, summarized events this way:

> *The Simpson case is like a great trash novel come to life, a mammoth fireworks display of interracial marriage, love, lust, lies, hate, fame, wealth, beauty, obsession,*

spousal abuse, stalking, broken-hearted children, the bloodiest of bloody knife-slashing homicides and all the justice money can buy.

Questions surfaced about whether television ought to be permitted in courtrooms, whether juries should be sequestered, and whether unanimous verdicts should be required in order to convict in a criminal trial.

The price of "justice" in the Simpson criminal case mounted to an estimated $6 million expenditure by the defendant and $9 million by the prosecution, of which $2.6 million went for housing, feeding, and other expenses associated with jury sequestration.

O. J. Simpson was the obvious initial suspect, and when he later was tried for the murders he became the most famous person ever prosecuted for homicide in the annals of American criminal justice, with the possible exception of Aaron Burr. As a football hero at the University of Southern California, Simpson won the Heisman trophy, awarded each year to the athlete deemed to be the outstanding football player in the nation. Subsequently, he was a running back for nine years with the Buffalo Bills and two with the San Francisco '49ers in the National Football League. His stellar athletic performances earned him a spot in the National Football Hall of Fame after his retirement. In the following years, Simpson appeared in widely seen Hertz commercials, served as a commentator on professional football games, and acted in several easily forgotten motion pictures.

Simpson's first marriage to his high school sweetheart, Marguerite Whitley, produced two children. He met Nicole, eleven years younger than he, when she was an eighteen-year-old waitress at the Daisy, a fancy Beverly Hills nightclub. They dated for a year, then lived together for six more before their marriage in 1985. The marital relationship turned tumultuous, with several raw incidents of domestic violence, usually associated with drinking, that resulted in calls to the police. Jurors heard Nicole's terrified scream, "He's going to kill me," recorded when she called a police dispatcher on New Year's Day 1989. The Simpsons would separate, then reconcile, usually on Nicole's initiative, and then split again. They were divorced in 1992; Nicole received a sizable settlement and child support payments of $10,000 a month. In April 1993 Nicole was imploring Simpson to consider reuniting the family, writing that she loved him deeply. Along with her letter she sent videos showing their marriage ceremony and the birth of their children. But three weeks before she was killed, Nicole appeared to have emotionally distanced herself from Simpson.

Along with her will, Simpson's former wife had left a picture of herself in

her safe deposit box showing her face severely abraded and bruised, the result of a dispute between them. For some, the only worthwhile thing to emerge from the trial was a growing public concern with domestic violence—or "domestic discord," as the defense sought to label it in order to de-escalate the emotions engendered by terms such as "spousal abuse" and "wife battering." Defense attorneys debated introducing evidence that very few episodes of domestic violence lead to murder, but they decided that it was best to downplay the entire issue. During the year following the trial, reports to police of domestic violence increased by sixty percent in Los Angeles; the family of Simpson's slain ex-wife established the Nicole Brown Simpson Charitable Foundation for Battered Women to fight domestic violence, naming Nicole's father president and her three sisters to the board of directors.

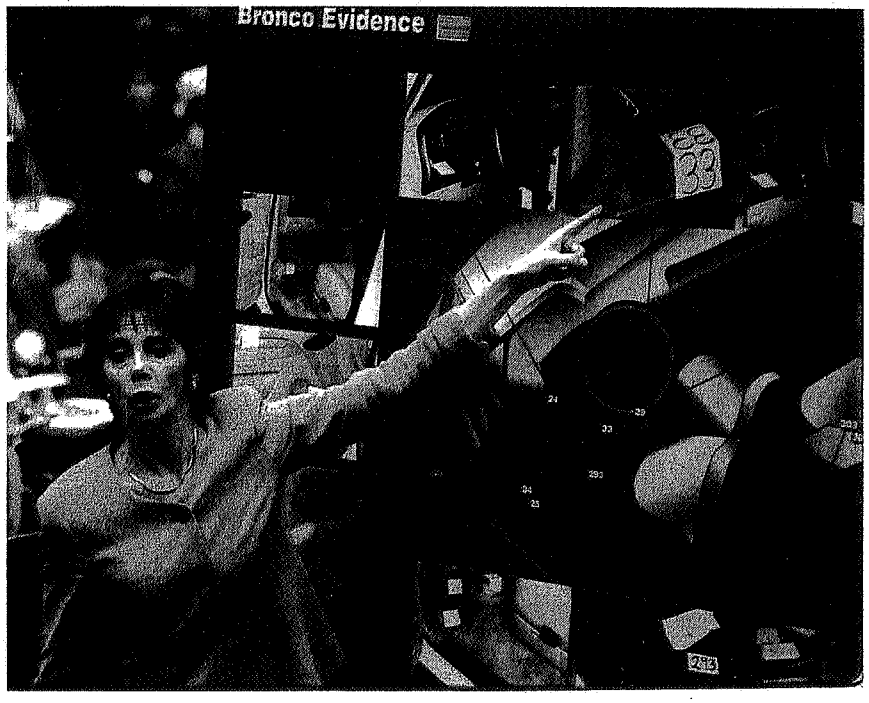
Nicole was a self-described party animal, part of a group of fast livers who played a lot, often dancing at nightspots until the early hours of the morning. As was her husband, she was sexually promiscuous. A *New Yorker* writer suggested that oral sex with male partners, whoever they might be ("virtual strangers" it was claimed), had great appeal for Ms. Simpson and that she spent a considerable amount of time and energy indulging in that pastime. She apparently did not have a sexual relationship with Goldman, though he had been seen driving her $90,000 white Ferrari Mondiale convertible (with the personalized license plate L84AD8—late for a date). Goldman and Ms. Simpson had met casually at dances and at The Gym, a trendy Brentwood fitness center and health club. He had filed for bankruptcy in 1992, listing debts of about $12,000. In a typical tactic of slander by innuendo, defense attorney Robert Shapiro would write after the trial that "our investigation was to discover much information about Nicole that was of an intimate and possibly inflammatory nature. It was relevant to the case and we chose not to use it as part of the defense. I choose not to use it now."

The defense had learned from simulated jury tests that black women harbored a biting dislike of Nicole Simpson—a white woman they saw as milking the money of a famous black man and living an irresponsible life of luxury. The black female jurors also were hostile to prosecutor Marcia Clark, offering credence to the observation of the novelist Toni Morrison, a Nobel Prize–winner, that black women are very different from white women, but that black and white men are much the same.

During the trial, the defense dealt with Nicole's behavior and character with care, making certain that they did not too meanly blacken the reputation of a victim when nothing that she had done could possibly exculpate her murderer

from legal guilt. But they pointed out that Simpson had supported her in grand scale, putting a paid-for half-million-dollar house in San Francisco in her name, and sending two of her sisters to college until each in turn dropped out. (One writer observed of the Brown sisters, "All four had breast implants, but not one had a college degree." One of the sisters, Dominique, sold pictures of her murdered sister and her children, including a snapshot of Nicole sunbathing topless in Mexico, to a newspaper for $32,500.) Simpson also had secured the Hertz franchise at the upscale Ritz-Carlton Hotel in Orange County for Nicole's father and had directed considerable business to her mother's travel agency.

Simpson had flown to Chicago for a business meeting on a late-night flight the evening that Nicole was killed. When he returned home the following day, he was interrogated at police headquarters for thirty-two minutes by homicide detectives, who primarily focused on the nasty cut that he had on his right hand. Simpson claimed at first that he did not know how he had gotten the



Marcia Clark, the lead prosecutor, presenting evidence about the white Bronco. Reed Saxon, AP/Wide World Photos

injury, then suggested that it probably was the result of his reaching into his Bronco when he was hurriedly preparing to leave for Chicago. The wound had reopened, he maintained, when he broke a glass during the period of anguish in his hotel room after he had been told of the murder of his ex-wife. Details of the police interrogation, stunningly short and totally inept in regard to asking tough follow-up questions, would not be introduced into the trial. The prosecution presumably preferred not to have the jury hear Simpson's proclamations of innocence, and the defense wanted to avoid any focus on the inconsistent stories about the source of Simpson's cut hand.

When a warrant for Simpson's arrest was issued, his lawyer said that he would turn himself in at police headquarters. Instead, Simpson took off in the early afternoon with his close friend, A. C. (Al) Cowlings, Jr., in Cowlings's white Bronco. After the car was spotted by another motorist at 6:20 in the evening in nearby Orange County, where Nicole's family lived, it was followed by a phalanx of a dozen police cars, its every move filmed by news reporters from helicopters as it slowly wove its way along sixty miles of southern California freeways before going to Simpson's Brentwood home.

Media accounts, labeling this the most famous ride on American shores since Paul Revere's, reported that ninety-five million Americans watched the convoy. Simpson had left behind a long note, saturated with misspellings and full of self-pity and self-righteousness. He insisted on his innocence and indicated rather clearly that he intended to commit suicide. The letter ended: "Don't feel sorry for me. I've had a great life. Great friends. Please think of the real OJ and not this lost person. Thanks for making my life special. I hope I helped yours." There also were some indications that Simpson might have intended to flee the country. The destination seemed to be Mexico, until the car was spotted. In the car were his passport, $8,750 in cash and traveler's checks, and a loaded gun. There also was a disguise, a false goatee and mustache, bought two weeks before the murder at the Cinema Secrets Beauty Shop in Burbank. Neither the note nor the presumed attempted escape would be placed before the jury.

For some persons, the crucial miscalculation by the district attorney's office was made well before the first trial witness was called. It involved the decision to try the case in downtown Los Angeles rather than in Santa Monica, the court that typically assumes jurisdiction over crimes that occur in its vicinity. In Los Angeles, juries are recruited among persons who live within a twenty-mile radius of each courthouse. If the trial had been held in Santa Monica, the odds are that the jury would have had a majority of white members rather

than racial and ethnic minorities. Numerous explanations would be offered for the venue change, including the central location of the downtown courthouse and its ability to more readily accommodate the media crush. There also was expressed concern about the recent earthquake damage suffered by the Santa Monica courthouse.

Some people believe that the downtown site was selected to avoid any implication that the jury might be stacked against Simpson. Earlier, a jury of white persons in suburban Simi Valley had acquitted police officers of the severe beating of a black man, Rodney King, despite a videotape that vividly showed what they had done to him. Street rioting erupted in the wake of that jury decision, an outcome the authorities wanted to avoid in the Simpson case. Others say that the choice was ruled by the arrogance of the district attorney, who was determined to be closely involved in dictating prosecution tactics and who believed that he had an open-and-shut case against Simpson. Marcia Clark, who would prosecute the case, reassured one skeptic that the state "would do equally well in L.A." and "would have a clear-cut guilty verdict regardless of where O.J. was tried." Bill Hodgman, Clark's superior until illness early in the case forced him into a background role, has offered an even simpler explanation for the case's not being tried in Santa Monica: "Nobody even thought about it at the time."

The prosecution also forfeited another strategic advantage when it decided not to seek the death penalty, though the twin killings would have permitted it to do so. This decision undoubtedly was based on the fact that Simpson did not match the stereotype of a "real" criminal, and the prosecution feared alienating jurors who might have believed a death penalty demand was too merciless. But "death-qualified" jurors, it is well known, tend to convict a defendant more readily than panels whose members may not be willing to inflict capital punishment.

The Trial

The trial of O. J. Simpson on the double-murder charge began on July 22, 1994, with the defendant answering the judge's request "How do you plead?" with "Absolutely one hundred percent not guilty, Your Honor." The trial would last until October 2, 1995, more than a year and two months later. Simpson spent 473 days in jail before the jury rendered its verdict. The prosecution called seventy-eight witnesses; the defense, with nine attorneys, summoned seventy-two witnesses. The original jury panel melted down as one

after another of its members was dismissed for cause or themselves asked to be relieved. During the trial, the jury was sequestered for 266 days—housed in the Inter-Continental Hotel and permitted only weekend visits from family members. The sequestration produced an esprit de corps within the group, a climate that undoubtedly played into the rapid return of a verdict.

Two very distinct trials of O. J. Simpson were taking place. One was held in the courtroom, the other in the newspapers and, particularly, on television, with several major channels broadcasting everything that took place during the court sessions. What the cameras chose to focus on was what the viewing public saw: particular people's expressions, the judge's activities, a restless bailiff. These often were different images from those that imprinted themselves on the jurors' minds.

Besides, jurors heard only segments of what the public learned. Television showed arguments between the lawyers while the jury had been removed from the courtroom. Court intermissions and recesses were filled by a host of commentators and lawyers ("talking heads") who offered opinions about what had gone on. These people typically felt compelled to turn each day into a sporting contest, asking: "Who won?" "Who does this benefit?" "Who is ahead?" Notable was the remark by juror Marsha Rubin-Jackson when interviewed on NBC's *Dateline* after the trial. "I don't want to get this wrong," she said, "because I am standing by my verdict, but based on what I've heard since I've been out [of the courtroom], I would have to vote guilty."

The Evidence

During the afternoon before the murders, O. J. Simpson had attended a dance recital in which Sydney, his and Nicole's eight-year-old daughter, performed. There was tension between Simpson and his former wife: they did not talk, though Simpson socialized with Nicole's sister and her mother. That evening Simpson was not invited by his former wife to the family get-together at the Mezzaluna. At his home, at about nine o'clock, he and Brian (Kato) Kaelin, who roomed in the guest house on Simpson's property, took Simpson's Bentley to McDonald's and ordered take-out Big Macs and french fries.

From 9:36, when he left Kaelin, until four minutes before 11:00, when a limousine chauffeur picked Simpson up to take him to the airport, his whereabouts cannot be pinned down, though we know that he called (but did not reach) his girlfriend Paula Barbieri at 10:03, using the telephone in his Bronco. Why Simpson would use the car telephone if he was still at home, as he

claimed he was, stood as one of the many incriminating bits of evidence that never was satisfactorily resolved.

Allan Park, the twenty-four-year-old part-time employee of the Town and Country Limousine Company, made a particularly good witness. Park seemed to have no ax to grind and to be relating as scrupulously as he could what he had done and seen. The limousine chauffeur arrived at the Simpson house at 10:25. Nobody answered his ring and he would testify that he did not see the Bronco parked on the property, either at the entrance where he waited or at the side of the house to which he drove in an attempt to determine if there was another entrance. At 10:56 (the driver had logged several calls to his employer, so the times were readily verified), he said that he saw Simpson go in the front entrance of the house. Lights went on in a few moments, and after a while Simpson responded to the chauffeur's ring, saying that he had been showering. His attorneys would insist that before then Simpson had been in the back of his property practicing his golf strokes.

Simpson waved Kaelin off from loading a small black bag into the limousine with the rest of his luggage, saying that he would handle it himself. Park testified that Simpson said that he felt warm, although it was a chilly night, and that he seemed nervous during the ride to the airport to catch American Airlines flight 668, the red-eye to Chicago that departed Los Angeles at 11:45. The bag apparently was no longer with Simpson's luggage at the Los Angeles airport, fueling the belief that it may have contained the murder weapon and perhaps bloody clothes, and that Simpson had gotten rid of it somewhere along the route.

Later, the only request for information from the jury during its deliberations would be for Park's testimony. After his acquittal, Simpson would say that Park had been quite accurate when he said he saw him enter the house, but the truth was that he had only momentarily stepped outside to leave his baggage on the driveway.

DNA Testimony

A large part of the trial was consumed with detailed and complicated testimony about DNA (deoxyribonucleic acid) tests on blood samples. The more than fifty DNA tests of blood showed the following five major results:

1. DNA profiles consistent with Simpson were found in five blood drops on the walkway at the Bundy Drive murder scene and in three bloodstains on the rear gate.

2. The right-hand glove found at Simpson's residence was saturated with blood. Most of it matched the victims', though three tiny samples taken from near the wrist showed DNA mixtures for Simpson and from one or both of the victims.
3. A dark, tightly woven sock recovered from Simpson's bedroom was found to have a large bloodstain at the ankle that contained Nicole Simpson's DNA profile.
4. Most of the samples taken from Simpson's Bronco were consistent with the DNA of its owner. But three small smears of blood collected six weeks after the murder from near the console contained a profile matching Simpson, his former wife, and Goldman.
5. Blood drops on Simpson's driveway and in the foyer of his house were consistent with his DNA profile, though, as the defense would stress, no blood was located on the white rug leading from the foyer to the bedroom, or elsewhere on the house furnishings.

The defense's response to the DNA on the blood-soaked sock illustrates tactics it employed to debunk the test results offered by the prosecution. The defense first highlighted the fact that the blood on the sock had not been noticed until two months after the sock was found. The prosecutor claimed that the oversight was a result of the less-than-ideal lighting conditions that made it difficult to spot the dark-brown bloodstain on the black socks. Two defense experts testified that they believed that the bloodstain had been pressed into the sock while it was lying flat, and not while on someone's leg. They said that the blood had soaked through one side of the sock and left a "wet transfer" on the opposite inner part at a point that would have been directly underneath the stain on a sock lying flat. Had Simpson been wearing the sock, such a transfer could not have occurred. The defense also argued that the blood would have dried by the time Simpson returned home and there would have been no transfer of blood to the inner segment. The prosecution retorted by insisting that the "extra" blood spot was the result of the sock being taken off inside out—the way that many people remove socks.

DNA results remain inadmissible in four American states (California, of course, is not one of them) on the ground that a high enough degree of scientific consensus does not yet exist regarding their reliability. Prosecutors declared that the DNA tests established beyond any reasonable doubt that Simpson had murdered Nicole Simpson and Goodman. The chances, they said,

that the DNA droplets could have come from another person were one in several million. They also pointed out that the killer had worn size-12 Italian-made Bruno Magli shoes, which sell for $160 a pair and are carried by only forty stores in America, one of which is New York's Bloomingdale's, where Nicole Simpson often shopped. Only 299 pairs of the shoes had been distributed in the United States. The defense, however, emphasized that no record had been located that indicated that the shoes had been purchased by either Simpson.

The forensics defense, carried by two lawyers imported from New York City, insisted that the blood was contaminated, that it had been sloppily gathered and examined, and that it very well might have been planted by the detectives who sought to frame Simpson for a crime that he had not committed. The defense also claimed that Simpson could not possibly have done all the things the prosecutor said he had during the time frame proposed by the prosecution. The defense team also suggested that the murders might have been done by Colombian drug enforcers who were targeting Faye Resnick but killed Nicole Simpson and Ron Goldman by mistake. Resnick was an admitted drug user who had lived with Nicole until four days before the murder, when she checked herself into Exodus, a drug rehabilitation program. The prosecution sought to rebut this last point by noting that professional killers use guns with silencers, and that the Simpson-Goldman bloodletting was the product of rage. It also was suggested by Simpson's defenders that there had been more than one killer.

The Lawyers

Most postmortems of the trial concluded that the prosecution, led by Marcia Clark, forty years old and a veteran with the Los Angeles district attorney's office, had stumbled very badly. The district attorneys may not altogether have deserved the searing scorn that Vincent Bugliosi, a former lead prosecutor in their department, heaped upon them, but in the eyes of most law-trained observers Bugliosi was not far off target. "The prosecution of O. J. Simpson," he proclaimed, "was the most incompetent criminal prosecution that I have ever seen. By far." Bugliosi added: "There have undoubtedly been worse. It's just that I'm not aware of any." A newspaperman in court throughout the trial was equally biting in his appraisal: "Marcia and her troops," he wrote, "were . . . incredibly stupid, inexcusably arrogant, almost daily unprepared, and totally leaderless."

For one thing, the prosecution's jury consultant, on the basis of interviews staged with a focus group whose makeup resembled that of the actual jurors,

had shown that Clark would be unpopular, disliked because her personality struck the panel members as too strident and hard-edged; to use a word they often employed, she was seen as "bitchy." The prosecution also had turned its back on reports from its jury consultant when he rated most of the jury members as twos and threes on a scale of ten, with ten indicating that they could be presumed to favor the prosecution's views. Clark believed, based on her experience, that she could form emotional ties with female jurors, through which both she and they would come to empathize with the victims and turn against the accused. She badly miscalculated the jurors' lack of fellow-feeling for Nicole, the charisma of Simpson, and the skill of his legal team. After the trial, one juror would point out that the prosecution showed "signs of stress and frustration." On many occasions, she noted, Clark "would sigh and make gestures with her hands as though she were throwing in the towel." Subtle things also probably hurt Clark. Jurors, for instance, came to resent the fact that she often arrived in court late; they were awakened at 5:30 each morning so that they could be on time. That prosecutors develop an emotional rapport with jurors is generally regarded as essential in a tough case. Clark was faulted by courtroom observers as well for what was seen as inappropriately flirtatious behavior with defense lawyers, particularly Cochran.

Clark also was severely criticized for placing Mark Fuhrman on the stand and presenting him as a choirboy when she was well aware of his racist views. Fuhrman blandly perjured himself by declaring that he had never used the word "nigger," a statement blasted to bits by the later surfacing of a tape recording he had made with an interviewer. Clark's assistant, Christopher Darden, was faulted for an experiment in which he had Simpson in open court try on the dark brown, cashmere-lined glove that was said to have been worn by the killer. Simpson struggled to get it onto his hand, allowing the defense to argue that the glove did not belong to him. Others suggested that this was one of the former motion picture actor's better performances in a career unremarkable for any display of acting talent, though several jurors would later maintain that they never doubted that the glove was Simpson's. The defense turned the episode into a slogan, which was repeatedly intoned thereafter: "If it doesn't fit, acquit." An Associated Press news report, delicately excising the offensive word for family newspapers, noted that a trial groupie outside the courtroom carried a sign that read: "If they acquit, they're full of [expletive]." The defense mocked the claim of the lead detective on the case that he had not secured a warrant before allowing Fuhrman to climb over the fence to get into Simpson's house because he feared there might be people inside who

needed help. The detective said that he did not at that time suspect Simpson of the murders (which would have required him to secure a warrant), an observation that the defense and most everybody else who followed the case sensibly considered ridiculous.

The Judge

In addition, the judge, Lance A. Ito, came in for almost unremitting criticism. It was claimed that Ito was awed by celebrity, a matter he demonstrated by his invitations to well-known persons who visited the courtroom to accompany him to his quarters while the trial proceedings came to a standstill. Though his rulings almost invariably favored the prosecution, Ito was hostile to Marcia Clark but rather fawning to Cochran, a man he had worked for when both were with the district attorney's office. Ito's rulings were regarded as slow and inconsistent; most particularly, possibly because of the presence of television cameras, he was said to have allowed the trial to drag on unconscionably long because he did not have the will to take a stronger stand against aimless and endless arguments and presentations of evidence. "I think he made what should have been a six-week case into a yearlong nightmare," one of his colleagues on the superior court bench said. "He gives patience a whole new meaning."

Race

Race figured prominently in the case, though blacks on the jury would deny that it had any influence on their verdict. The defense had hired Cochran, a black attorney, and the prosecution countered by adding Darden as second in command of its courtroom contingent. Cochran later was described scathingly by a newspaper columnist as oleaginous—that is, slippery and slimy—a judgment heartily endorsed by his first wife in her book-length depiction of their roller-coaster marriage. He offended many viewers by his smooth, ingratiating manner, his moralizing and Bible quoting. David Margolick, who covered the trial for the *New York Times,* pinpointed Cochran's style, the "familiar voice—[alternately] effusive, soothing, unctuous, smoothly indignant, polysyllabically hypersincere, an amalgam of the preachers he heard as a child, the insurance salesman he once was and the disk jockey he could have been." Whites assumed that what he had to offer was something that the jury preferred to buy, but the three jurors who put their thoughts on paper faulted Cochran for "showboating" and maintained that they had not been greatly impressed by what they characterized as an overdone performance. In his

summation, Cochran put on the ski cap that Simpson was alleged to have worn to disguise himself at the murder scene, trying to demonstrate that it hardly camouflaged his appearance. Commentators found this an effective tactic; the jurors later would insist that it only made Cochran look silly. Nonetheless, there was little disagreement that Cochran was extremely effective in court, and probably the most important figure producing the jury's not-guilty verdict.

Cochran's most controversial action came in his summing up, when he compared the case against Simpson to the work of the Nazis:

> *There was another man not too long ago in the world who had those same views who wanted to burn people who had racist views and ultimately had power over people in his country. People didn't care. People said he's crazy. He's just a half-baked painter. And they didn't do anything about it. This man, this scourge, became one of the worst people in the world, Adolf Hitler, because people didn't care, didn't try to stop him. He had the power over his racism and his anti-religion. Nobody wanted to stop him. . . .*
>
> *And so Fuhrman. Fuhrman wants to take all black people now and burn them or bomb them. That's genocidal racism. Is that ethnic purity? What is that? We're paying this man's salary to espouse these views. . . .*

A few moments later, Cochran told the jurors: "There's something in your background, in your character that helps you understand this is wrong. Maybe you're the right people at the right time at the right place to say, 'No more.' . . . This is wrong. What you've done to our client is wrong. . . . This man, O. J. Simpson, is entitled to an acquittal."

Cochran was accused, most vehemently by Robert Shapiro, the attorney in his own group who had hired him, not only of "playing the race card" in the case but of having "dealt it from the bottom of the deck." Some irony, of course, lay in the fact that Simpson had little connection with the bulk of the black community. He had married a white woman, lived in an all-white neighborhood, and contributed virtually none of his money and little of his effort to assist blacks. The calculated appeal to the jurors' racial identification with Simpson was particularly well illustrated when the panel members were bused to the crime scene relatively early in the case. At Simpson's house, a picture of Paula Barbieri, Simpson's girlfriend, was replaced by a Norman Rockwell print from Cochran's office showing a black girl being escorted to a southern school by federal marshals. Other pictures of Simpson with white golfing buddies and girlfriends were taken down and pictures of Simpson's mother and other black people were installed. In addition, a Bible was placed on an

end table in the living room; however, the "redecorators" forgot to hoist an American flag on the pole in front of the house.

Perhaps most important to the trial outcome was the fact that the prosecution, in a term favored by attorneys, "over-tried" the case; that is, it put on altogether too much evidence that was not essential to clearly connect the accused and the deed. "Nothing was left on the cutting-room floor," one attorney noted, comparing the trial to the making of a movie. If you wanted to know what time it was, another critic noted, the prosecutors would tell you how to make a watch. Jurors, overwhelmed with this mass of material, readily were able to fix on parts of it that they quite reasonably could doubt, and they extrapolated this uncertainty to embrace the entire case. "As far as I am concerned," one juror noted after the trial, "Mr. Simpson would have been behind bars if the police work had been done well."

During his summary argument, Barry Scheck, the defense's DNA expert, specifically invited jurors to focus on the reasonable doubt of particular matters, understandably ignoring other issues that might incontrovertibly have led to a guilty verdict. Scheck revived an analogy first introduced by Henry Lee, the defense's highly regarded criminalist. If you find a cockroach squirming in your spaghetti, Scheck asked rhetorically, do you take every strand of that bowl of spaghetti to look for more cockroaches, or do you throw it away and eat no more? As an appeal to the jury's emotions, Scheck made some points; as an appeal to logic, the illustration leaves a good deal to be desired. For outsiders, the argument was but one more illustration of how lawyers will resort to any stratagem to aid a client, even if they themselves are perfectly aware that what they are saying makes little sense when it is examined dispassionately.

Another defense attorney, Gerald Uelmen, specifically detailed the defense strategy. The prosecution had offered what it called a "mountain" of incriminating evidence. Said Uelmen:

> *By going around, under, and over the "mountain" of evidence, we were suggesting that some evidence could not be trusted because those who handled it were incompetent or negligent, some evidence could not be trusted because the procedures and facilities utilized to preserve it were inadequate, and some evidence could not be trusted because it had been corruptly altered or manufactured.*

"Once you accepted these three premises," Uelmen declared, "you were left in a state of reasonable doubt about *all* of the evidence." The very considerable flaw in the argument, however, is that it too flies in the face of logic. You could readily reject many of the prosecution's premises and still find sufficient

remaining unimpeachable evidence of Simpson's guilt. Put another way, the presence of a single cockroach in the spaghetti may indeed signal the likely presence of others, but it does not demonstrate that there are not other foods totally free of cockroach infestation. The lawyers' arguments, however, were not directed at logicians but at ordinary mortals who understandably saw sufficient taint in the prosecution's case to bring all of it under suspicion of failing to prove guilt "beyond a reasonable doubt." One of the jurors who originally had voted "guilty" said that she relied on just such reasoning when she quickly joined the majority: "In spite of it all," she said, "I still feel he's guilty. But the evidence just was not there and I had no other choice. He did it, they just screwed up on the evidence." This viewpoint is encapsulated in a witticism about the essence of the Simpson trial: "They framed a guilty man."

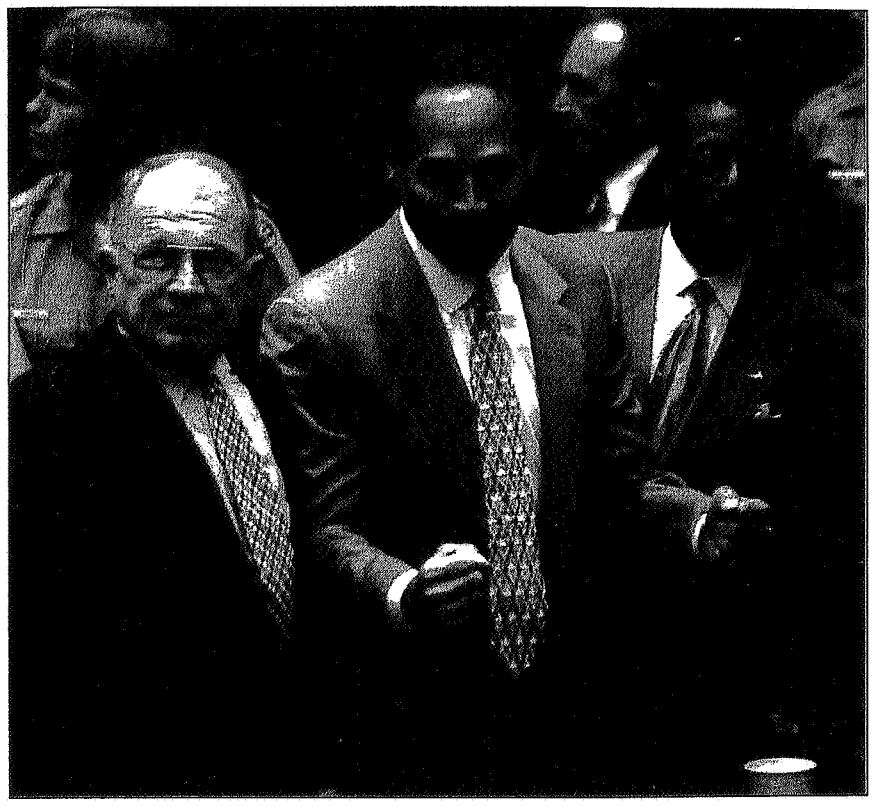
In just thirteen words prosecution attorney Christopher Darden may have come the closest to pinning down the dynamics of the case when he sought to portray Cochran's strategy: "He knew those jurors wanted to let O.J. go. They just wanted permission."

Simpson did not take the stand on his own behalf, undoubtedly because he and his legal team believed that he could be acquitted without doing so, and because they feared that if he did testify, too much evidence would be dredged up that might seem incriminating to the jury. In a mock session with Christine Arguedas, a northern California attorney playing the part of Marcia Clark, Simpson had considerable difficulty dealing with questions about domestic violence. The official explanation for his decision not to testify was that, however eager he was to tell his own story his own way, Simpson did not want to prolong the jury's services, particularly since the prosecution case obviously was "in shambles." Afterward, legal professionals distressed by the verdict suggested that American criminal jurisprudence might adopt the provision recently incorporated into British law that permits the judge and opposing attorneys to draw inferences before the jury about a defendant's failure to testify.

Virtually every commentator had expected the jury to take a week or considerably longer to reach a decision. The jurors took their first vote on October 2, 1995, less than an hour after they began their deliberations. They tore up scraps of paper, wrote their opinion, and dropped the papers into a glass jar. They stood 10–2 for acquittal. Unanimity was achieved three hours and forty minutes after deliberations began. That agreement was reached at 3:00 P.M. in Los Angeles; the judge said that the verdict would be announced the

following morning at 10:00 in order to allow the attorneys to reassemble. One of the two jurors who initially voted to convict said she had changed her mind because she saw that there was no chance she would sway the others. "It doesn't make me feel very good," she said, "but on the other hand [Simpson is] not a serial killer."

Life in the United States came to a virtual standstill that next morning as Americans awaited the announcement of the jury's decision. Long-distance calls dropped dramatically during the half hour before court opened. Following the not-guilty verdict, photographers across the country took pictures of the reactions of downcast whites and jubilant, cheering blacks. The pictures provided a vivid demonstration of the stunningly sharp splintering of opinion by race that had marked the Simpson case since its inception.



O. J. Simpson reacting to the jury's unanimous not-guilty verdict. Reports said he had been told about the outcome by court personnel hours before it was officially announced. Myung J. Chun, AP/Wide World Photos

The Racial Divide

Innumerable polls at various points before and during the trial indicated the striking split between whites and blacks. The judge, commenting on racial issues that arose during the trial, noted: "This is the last great challenge to us as a nation. And for those of us who grew up in the sixties and had hoped this would go away, it's a big disappointment. How we evolve and solve this problem will be our memorial in history."

In July 1994, near the start of the trial, a USA Today–CNN–Gallup Poll found that about 60 percent of the black population thought that the charges against Simpson were untrue, a view with which only 15 percent of whites concurred. Sixty-four percent of the black respondents compared to 41 percent of the whites believed that Simpson would not receive a fair trial. Seventy-seven percent of the blacks against 42 percent of the whites said that they were sympathetic to Simpson.

These figures did not change significantly either during or after the trial, though we do not know the depth of feelings associated with the shorthand answers. Black respondents may have felt a need to be loyal to one of theirs, and what they said may not necessarily have been what they truly believed. An attitude that was said to be operative during the Anita Hill–Clarence Thomas hearings, when Hill accused the Supreme Court nominee of sexual harassment, may also have been at work. "You never go against your men," black women were reported as saying. Others believe that the long burden of oppression that blacks have endured in the United States led them to excuse or at least to favor Simpson. One black man offered this observation: "I think he did it. But I don't think he's guilty." Finally, it was pointed out that the black press, in contrast to the larger-circulation dailies, insistently portrayed Simpson as an innocent man wrongfully charged.

On a more personal level, blacks to a strikingly higher degree than whites have experienced or know people who have experienced discourteous and sometimes brutal police behavior. The City of Los Angeles pays out millions of dollars each year in judgments and settlements in lawsuits brought by minorities who charge law enforcement officers with excessive use of force. Nobody could deny the rotten image the police in Los Angeles often deservedly hold in the city's minority communities.

What the prosecution could have done (but did not) in the Simpson trial was to acknowledge the shame of the brutality but to insist that the jury differentiate such acts from the framing of innocent suspects, a behavior rarely docu-

mented and one making little sense in the Simpson case, where evidence against the defendant would have had to be planted well before the police even knew whether he might have an airtight alibi.

What the Jurors Said

It is an axiom of social-science research that if the motive for various kinds of human behavior is not apparent, it will do little good to ask those who engaged in the behavior why they did what they did. They are not likely to tell you, and, more important, they are not likely to truly understand what prompted their action. People almost invariably try to present themselves to others and to themselves as reasonable and sensible. It is a rare criminal, for instance, who will say, "I committed that crime because it gives me considerable pleasure to hit little old ladies over the head and steal their purses."

So the reasons the Simpson jurors claimed were behind their verdict have to be seen as explanations about what satisfied their desire to make sense, and not necessarily as accurate or complete insights. Nonetheless, what they said is important because it reflects what they think will persuade others of the integrity of their verdict.

Three of the jurors, including its forewoman, a fifty-one-year-old black woman whose dignity and dedication drew universal admiration, put into print their reflections about what led them to their decision. A good deal of what they reported, including the fact that they thought Cochran was showboating and that they were unimpressed by the glove experiment, contradicted analyses by trial onlookers. An observation by one of the jurors about the flowery closing arguments gives a taste of their views.

> *The whole thing with those closing arguments was I felt it was all a script. Everybody had his or her little script. I hated it because at that point you're supposed to be tying in all the evidence and tying in everything. So you're sitting there and trying to just focus on the issues and here they are, Marcia Clark, the woe-is-me and blah, blah, blah, trying to get the tear thing. And Johnnie Cochran is going on about Proverbs and this, that, and the other, and the hat routine and "if it doesn't fit, you must acquit." You don't need all of that. . . . We hated it. When we brought up the subject everybody [on the jury] said, "God, wasn't that the most miserable thing you ever had to deal with in your life?"*

The jurors did, however, put considerable credence in the testimony of the expert witnesses, though they resented being condescended to by some of

them. They found Henry Lee's discussion for the defense of the forensic evidence particularly impressive. Self-presentation, at least in part came to overrule content. Jurors remarked how much they appreciated it when Lee walked toward them and smiled genially before he took the stand.

Lee may well have been a pivotal person in the defense's case. Amanda Cooley, the jury forewoman, noted: "Dr. Henry Lee was a very impressive gentleman. Highly intelligent, *world-renowned.* I had a lot of respect for Dr. Lee." Another juror told a newspaper reporter after the trial that the jury viewed Lee as "the most credible witness. . . . Dr. Lee had a lot of impact on a lot of people." Even the judge, counseling a prosecutor, told him that with Lee he should "accentuate the positive in a friendly and professional manner, given his reputation, and then get out." One of Lee's well-rehearsed observations, variously reported in vernacular Chinese-English as "something wrong" or in grammatical English as "something is wrong," made a powerful impression on the jury. So effective was Lee that the prosecutor who cross-examined him felt compelled (out of frustration) to later label Lee's notably shrewd remarks "one of the most ambiguous, unclear, utterly meaningless statements that I have ever heard any forensic scientist offer in a court of law." Perhaps the prosecution would have preferred the language Lee reportedly employed when he first reviewed his findings with the defense team: "Something is fucked up here," he allegedly told his "breathless audience."

Vincent Bugliosi, in a careful analysis of Lee's testimony, insists that much of it was misleading and misinformed, and that jurors were overpersuaded by Lee's reputation and style (he always looked the jurors in the eye, for instance). Lee testified that he found three important "imprints" on the terra cotta walkway at the crime scene when he visited it. One was a size-12 print introduced by the prosecution; the other two, Lee said, also "could be" shoe prints, thus suggesting that there might have been a second assailant. In fact, however, blown-up photographs demonstrated that one mark identified by Lee had been made by a trowel when workers laid the cement years earlier and that the other was a worker's shoe print that was permanently embedded in the concrete. The jury, insists Bugliosi, "should have been skeptical of every single one of his conclusions once the imprint testimony proved to be claptrap."

The Civil Suit

Simpson's legal troubles did not end with the not-guilty verdict in the criminal case. A year later, he was back in court to defend against three wrongful-death

civil suits, one brought by Goldman's father and sister, the other by his mother, divorced from the father, and the third by the Browns on behalf of Nicole Simpson's estate. The suits, which later were consolidated into one case, had been filed by the survivors of the murder victims during the early part of the criminal proceedings in order to be on record before the one-year deadline. By law, the civil case had to be delayed until the conclusion of the criminal trial.

The civil trial, held in Santa Monica, took just three months; the standard for the verdict was the preponderance of evidence, not the criminal trial's criterion of "beyond a reasonable doubt." The unanimous jury verdict, reached after seventeen hours of deliberation, declared that Simpson was financially liable for the deaths of his former wife and her ill-starred friend. The Browns and the Goldmans were to divide compensatory damages of $8.5 million and punitive damages of $25 million, though there was doubt that either party would see much of the money, given Simpson's depleted finances and his considerably weakened future earning power. The civil jury, in contrast to the jury that heard the criminal trial, was made up of nine whites, one Asian American, one Latino, and one person of mixed black and Asian descent.

Besides its more rapid pace, there were striking differences between the criminal and the civil trials. The judge, Hiroshi Fujisaki, ruled with a no-nonsense hand. He would not allow the defense to introduce what he regarded as fanciful explanations of what might have happened—the "shotgun approach" Fujisaki labeled it—unless they could cite "chapter and verse" of some reasonable basis for their theory. There were no courtroom cameras; neither were artists permitted to sketch participants during courtroom sessions. Interviews with the media outside the courtroom by lawyers or relatives were also banned; so was transmission of the day's proceedings over the Internet.

The testimony that the civil jury heard differed from what the criminal trial jury had listened to, particularly since Simpson by law had to take the witness stand. This time he was confronted with photographic evidence that he had owned size-12 Bruno Magli shoes: Simpson granted that the shirt and jacket in a picture of him were his but maintained that the picture must have been doctored to include the shoes. That brought forth many more pictures of Simpson wearing the inculpating shoes, including one that had been published in a newspaper years ago. On the witness stand, though he held up reasonably well, Simpson often had to fall back on "I don't know" and "I have no idea" responses when confronted with tough questions, such as how his blood had come to be found in the bathroom of his house. He continued to deny cate-

gorically that he had ever beaten Nicole, a position contradicted by unimpeachable evidence. Civil jurors also heard about a call that a female named Nicole had made to a battered woman's shelter days before the murder, about Simpson's poor performance on a lie detector test (though the jury later was told to ignore this evidence), and about his freeway flight. The last included his car telephone statement during the chase to one of the detectives, in which Simpson declared that "the only person who deserves to be hurt is me."

In addition, this jury learned that Simpson had owned a blue-black sweatshirt similar to what the killer was presumed to have worn and that not long before the murder he had received a telephone message from Paula Barbieri breaking off their relationship. Mark Fuhrman did not testify; the judge had decided that his racial opinions had no bearing on the case.

There were, despite it all, a few positive gleamings for Simpson. He had to sell his house in the face of the verdict against him, but he can rely on a $25,000-a-month income from a judgment-proof $4.1-million pension fund that he had established earlier. In addition, another judge, just prior to the civil suit verdict, awarded custody of his children to Simpson, removing them from Nicole's parents. California law heavily favors keeping custody with a biological parent; besides, a psychologist's report to the court had said that though he was "impulsive," Simpson's capacity for empathy was higher than either of Nicole's parents'. And, the report added, "The children love him."

Should We Change the System?

None of the postmortems on the Simpson criminal trial gave it a clean bill of juridical health. Critics found fault with many aspects of the proceedings. Alan Dershowitz, for instance, looking at things from the defense perspective, offered this laundry list:

> *The trial took too long. Much of the expert testimony was incomprehensible to* me*—and I have been teaching law and science for a quarter of a century. There were too many attempts, by both sides, to manipulate the jury pool. Judge Ito permitted far too much argument—and paid attention to far too little. There was far too much bickering over trivialities. Too many lawyers placed their own agendas before that of their client. Too many prospective jurors managed to avoid jury service. And the judge treated the jury in too patronizing a manner.*

These are some of the major issues that came to the fore in the wake of the Simpson trial:

Money and Justice

Questions about what had gone awry inevitably arose in the minds of those who believed that Simpson was flagrantly guilty of the twin murders of his former wife and Ronald Goldman. Many agreed with the judgment of William Julius Wilson, who thought that the Simpson trial had demonstrated that "[t]here's something wrong with a system where it's better to be guilty and rich and have good lawyers than to be innocent and poor and have bad ones." Honoré de Balzac, the French novelist, had long before put the same matter another way, characterizing a jury as "twelve men [for then only men could serve on juries] chosen to decide who has the better lawyer."

Some say that the Simpson case represents an example of jury nullification, a situation in which the panel rejects the law on the books and that enunciated by the judge and imposes a personal opinion about what ought to be done with the accused. Others believe that the case merely provided a much-publicized illustration of an obvious theme, that money trumps justice. Simpson had purchased attorneys who were more skillful than the prosecution team, even though the county's lawyers could draw on the very considerable funds and resources of the government to help them in their case.

Dershowitz grants that Simpson likely would have gone to prison had he been a defendant with less money. But, Dershowitz argues, if you need a difficult and very serious operation and have a great deal of money, wouldn't you hire the very best surgeon that money could buy? Gerald Uelmen, another defense attorney, offers the argument that "we accept without question the reality that the wealthy among us live in nicer houses, drive nicer cars, eat better food, and get better medical care." The underlying premise of both statements is arguable. There are some people who do not "accept without question" such conditions. Perhaps a bit more persuasive is the view that especially talented defense attorneys, in those rare cases where they appear, can so shake up law enforcement agencies that the police will straighten up their act and no longer slumber comfortably with an assurance that they can get away with all kinds of shabby, even illegal operations.

Is there anything that can be done to make "justice" more equitable, less of a commodity the results of which can be purchased by those with sufficient wherewithal? Few people would limit the outlay that the wealthy defendant might make to defend against a criminal charge; but the playing field on which the contest that is criminal justice is waged might be made somewhat more level by encouraging outstanding lawyers, as the British do, to both prosecute

and defend in different cases, so that they acquire a sense of both sides and use their talents to secure convictions as well as acquittals.

Jury Issues

The Simpson jury had been selected after each person summoned filled out a 264-item questionnaire. Critics maintain that the process is not a search for an impartial jury, but rather the opposite, a quest for a panel that will be biased in favor of your side. Jo-Ellan Dimitrius, the defense's jury consultant, was the first person thanked by Cochran after the verdict was announced. She did not truly "select" the jury, Dimitrius said; instead, she "deselected" persons who seemed to be "foreclosed from hearing the defense's side of the case."

The Supreme Court ruling in *Batson v. Kentucky* (476 U.S. 79, 1986) disallowed "deselecting" jurors on the basis of race or gender. In *Batson* a prosecutor in a burglary case against a black man had used his peremptory challenges to strike all four blacks from the venire. Despite the ruling, attorneys often are accorded considerable leeway to make exclusions that are rationalized on other grounds, though fundamentally based on race and gender. In the Simpson trial the defense used its peremptories to exclude from the jury five whites and just one African American, while the prosecution eliminated eight blacks and just two whites.

Critics maintain that the process would be fairer if the judge was given a stronger role in jury selection and if peremptory challenges without cause were more limited and the reasons that allow potential jurors to be excused were more restricted. In England jury selection is an expeditious process. Lawyers are not allowed to question potential jurors and they cannot dismiss anyone from the panel without a specific legal ground. There also have been calls for restrictions or even the elimination of jury consultants who analyze the traits and views of prospective panel members.

Jury sequestration also has been attacked, though it is pointed out that of some 150,000 civil and criminal cases tried each year in the federal and state courts only about 100 involve sequestration. In the Simpson case, the long isolation of the jury seems to have led to a bonding that may have inhibited jury room confrontations. Besides, "pillow talk," that is, conversations with spouses during weekends, undoubtedly offered a conduit through which information and viewpoints that jurors were not supposed to hear were conveyed to them.

Other remedial approaches advocated include allowing jurors to discuss the case among themselves as it unfolds and to submit questions to the judge that might be asked witnesses. The argument is that through discussions jurors can

clarify things that concern them and that they therefore will find their job more rewarding. The argument on the other side is that once people express an opinion to others, they tend to hold on to that view even when strong evidence against it emerges, because they do not want to appear to be swayed easily.

Anecdotal evidence of the possible value of allowing juror questions is reported by Stephen Adler from a 1990 Chicago case against Johnson & Johnson that involved liability for merchandising a tampon that was blamed for a toxic shock syndrome death. The judge solicited juror questions following the testimony of each witness. More than forty questions, some with multiple parts, were forthcoming, and the judge asked the witnesses to respond to twenty-seven of them. "They were good, sensible questions," he later said. Adler notes that the process had the additional value of providing lawyers with ongoing information about which parts of the testimony might be confusing the jurors.

There also have been recommendations that there be a significant increase in jurors' pay, from current rates such as the $5 a day paid in Los Angeles to $40 or $50 daily. Some companies and most government agencies compensate employees who do jury duty for the difference between their salary and what they receive from the county, but this tends to tilt panels toward those with such reimbursement prospects or persons who are retired and for whom jury stipends represent extra income. Reducing the number of exemptions from jury duty and suspending the driver's licenses of those who fail to show up when called are other proposals to strengthen the representativeness of jury panels.

Calls for an end to unanimous jury verdicts have been heard as well, particularly in terms of allowing an 11–1 majority to carry the day, so that a single holdout cannot cost the taxpayer or the defendant the expense of another trial. This agenda item, however, lost a great deal of its power when the Simpson jury, contrary to most expectations, was not hung, but returned a unanimous verdict. Unanimity is the outcome of 87 percent of California jury trials and 95 percent of those throughout the nation. Only two states, Oregon and Louisiana, sanction nonunanimous verdicts in criminal cases, respectively allowing 10–2 and 9–3 outcomes to prevail. Both states still report hung juries, but at a rate slightly under the national average. In six states felonies can be decided by juries with fewer than twelve members: six jurors will do in Connecticut, Florida, Louisiana, and Oregon, and eight in Arizona and Utah. But these lower numbers are not allowed in cases in which there may be a death penalty.

Opponents of the elimination of the need for jury consensus say that it is as true today as it was when the principle was adopted centuries ago that in a free country it is preferable that one hundred guilty persons go free than that one innocent person be convicted. They also insist that when a 10–2 verdict is sufficient, the majority listens much less carefully to the minority, and thus avoids the possibility of being swayed by a convincing argument that may initially lack numerical support. In England, where less-than-unanimous verdicts are permitted, the jurors are required to deliberate for at least two hours before they may return a 10–2 or 11–1 verdict.

Police Perjury: "Testilying"

Johnnie Cochran's assignment when he was a district attorney was to deal with complaints against the police. When he entered private practice, Cochran's law firm specialized in civil cases seeking damages for police misconduct: during the year before the Simpson trial the firm had won judgments of more than $43 million. Cochran therefore was thoroughly conversant with rogue policing. Dershowitz, a criminal law professor at Harvard, has used the term "testilying" to denote police perjury in order to obtain a conviction in "their" cases. Together, Cochran and Dershowitz were able to mount a formidable assault on the integrity and the ability of the police officers involved in what the judge constantly referred to as "the Simpson matter."

Tacit understandings govern most of the work of our criminal courts. Defense attorneys, usually public defenders on the county payroll, soon learn that they pretty much must go along in order to get along. They may fight tenaciously for a client, but only to a point. If they too often take up too much court time, quarrel too strenuously, or otherwise disrupt the routinized workings of the court, judges will turn on them and prosecutors will no longer enter into plea-bargaining deals that make everybody's life (except perhaps defendants') a good deal calmer and more predictable.

Police perjury is a common ingredient of this cozy arrangement. The police often cannot make legal arrests, though they are aware (or think they know for certain) that a crime has been committed and that they have identified who did it. They develop an understandable interest in "winning" against what they come to define as "the enemy." They do not like to work diligently to solve a case only to have the evidence they illegally acquired thrown out of court because it is tainted.

In the Simpson case, detective Philip Vannatter very likely lied when he said that he did not suspect that Simpson was the murderer and therefore had not

deemed it necessary to obtain a search warrant before he entered Simpson's house by having Furhman climb over a wall. He presumably lied on the witness stand again when he said that he thought that Simpson might have fled the jurisdiction, since he had been clearly told by Simpson's daughter by his first marriage, who was in the house, that her father was in Chicago on a business trip. More dramatically, detective Mark Fuhrman brazenly lied when he said that he never had used the word "nigger" during the previous ten years. A taped record of an interview with Furhman by a would-be script-writer had him employing the term forty-two times, and others would testify to chilling stories that he told about how he hated blacks and other minorities and concocted evidence to send them to jail. In September 1996, Fuhrman, who had retired from the police, pleaded no contest to a single count of perjury for lying under oath about his use of racial slurs. He was given a $200 fine and three years' probation.

The impetus for "testilying" inheres in the exclusionary rule that declares that evidence obtained through searches and seizures in violation of the Fourth Amendment shall not be admitted in court against the accused. Federal criminal justice came under the exclusionary rule in 1914 as a result of the decision in *Weeks v. United States,* which declared that the police and the courts should not be aided "by the sacrifice of those great principles established by years of endeavor and suffering." The Supreme Court also would reverse state convictions if it felt that they had been obtained under conditions that violated "the sense of justice" of the people. The roster of such cases included instances of protracted questioning of terrified, retarded, or befuddled suspects, flagrant brutality, and the holding of suspects incommunicado. These reversals have included *Rochin v. California* (1952), where the police unlawfully entered the defendant's home and, after he allegedly had swallowed evidence, took him to the hospital and had his stomach pumped.

California adopted an exclusionary rule for its trial courts in *People v. Cahan* (1955) after concluding that "other remedies have completely failed to secure compliance [by the police] with constitutional provisions." Operating without an exclusionary rule, California trial courts (its supreme court declared) "had been required to participate in and, in effect condone the lawless activities of law enforcement officials." Then, in 1962, in *Mapp v. Ohio* the U.S. Supreme Court imposed the exclusionary rule on all American courts.

Before the *Mapp* decision, police officers could testify that they stopped a person because he "looked suspicious" and that when they searched him they found narcotics. In the wake of the *Mapp* ruling, police began to invent more

or less (often less) plausible tales about how they had found items such as drugs on a suspect. A New York criminal court judge, quoted by Dershowitz, comments on a case in which a law enforcement officer testified that a drug suspect just happened to drop a small plastic envelope that contained marijuana:

> *Were this the first time a policeman had testified that a defendant had dropped a packet of drugs to the ground, the matter would be unremarkable. The extraordinary thing is that each year in our criminal courts policemen give such testimony in hundreds, perhaps thousands of cases—and that is the problem of "dropsy" testimony.*

Like Lance Ito in the Simpson case, judges often arrive at their position by way of the district attorney's office, and by the time they join the judiciary they have become insensitive to the charade that permits acceptance of such testimony. Most often they justify their unwillingness to suppress the evidence on the ground that, were they to do so, a criminal would be turned loose and very possibly would prey upon others. In addition, it typically is the officer's word against the suspect's, and judges believe that, absent adequate proof of police wrongdoing, they are obligated to accept the version provided them by the officer.

In his taped interview, Fuhrman offered examples of how he would tamper with evidence and make the grounds for arrest more compelling:

> *You find a mark [on a drug user's arm] that looks like three days ago, squeeze it. Looks like serum's coming out, as if it were hours old. . . . That's not falsifying a report. That's putting a criminal in jail. That's being a policeman.*

One solution to the testilying problem would be to eliminate the exclusionary rule. But the rule came into being only because an angry and aggrieved Supreme Court thought it had been driven to find a way to put an end to unconscionable violations of constitutional law. Some people who believe that illegally obtained evidence should be allowed to be introduced into the trial say that, if deemed necessary, there could be a separate proceeding—either in the regular courts or within the police department—to decide whether to penalize an officer who gathered such evidence. Objections to this procedure rest on the pragmatic ground that officers rarely would be disciplined, and the practice of violating the law would flourish.

Others take a much tougher stand against the exclusionary rule. They point out that crime is not a sport that is engaged in by gentlemen and gentlewomen and played under delicate rules that demand good sportsmanship. It is a cruel exploitation of innocent people. Tactics that contribute to the control of crime

ought to be permitted if they are reasonably tolerable. Thus, they declare, the only defense against evidence that is obtained illegally should be that the evidence is false; that is, for instance, that the narcotics found by the police actually were not the accused's. If the police are shown to have fabricated the evidence, then very stringent measures, including tough criminal penalties, should be taken against them.

Lawyers and the Press

The Simpson trial involved continuous feeds and leaks to the media, as each side sought to put its best foot forward. In England, cases that are *sub judice* (pretrial or in trial) cannot be discussed by the attorneys outside the court, a provision that many believe ought to be implemented in the United States. During the Simpson trial, the California State Bar Association adopted a rule, later approved by the state supreme court, that prohibits trial participants from making extrajudicial statements to the press that they know to be prejudicial. A complementary legislative enactment (informally called the "cash for trash" law) that would have kept jurors and witnesses from accepting more than $50 for information about a trial until ninety days after its conclusion was overturned as unconstitutional by a federal court.

Cameras in the Courtroom

The seeing-eye lens of the television camera was blamed by many persons for what they deemed to be the unholy fanfare surrounding the Simpson trial. Cameras were located behind the jury box, so that pictures of jurors would not be shown, and were operated by a remote control system; the judge had a panel on his desk that allowed him to shut down the cameras if he believed it necessary. Participants in the trial, most notably the attorneys and the judge, were said to posture and preen for the cameras, and the depiction of courtroom scenarios that unfolded beyond the jury's eyes was regarded as providing a distorted picture against which to evaluate its verdict.

Today, all but three states (Indiana, Mississippi, and South Dakota) allow cameras into courtrooms at the discretion of the judge. There are, however, limitations in many states on such coverage, so that only about twenty-six states routinely permit televising. Following the Simpson trial, judges were more likely to ban cameras from their courtrooms. The major argument against the use of cameras lies in the contention that they make a serious event into entertainment. President Clinton, voicing opposition to televising court

trials, used the Simpson case to support his view, saying that it was conducted in a "circus atmosphere."

The most prominent argument in favor of televised trials is that they allow citizens to take advantage of the provision of the Sixth Amendment that provides a constitutional right to a public trial. Televised trials, some maintain, provide viewers with a better understanding of how the criminal justice system really operates, thus forming a sound basis for reform if it is deemed necessary. Supporters of courtroom television declare that the cameras do not cause the behavior they transmit; they only expose it.

It has been argued that the television cameras added some dignity in the Simpson case to what otherwise would have been even more unseemly proceedings. Had the cameras not been in court, it is said, the only footage available to the public would have shown lawyers scrambling to get their sound bites on the air. "The case would have been tried in the press, but without the benefit of rules of evidence," Dershowitz insists. "Television in the courtroom," he claims, "helps to keep everyone more honest."

Others were less taken with the show business aura that came to envelop the Simpson trial. A Los Angeles newspaper reported that the lead defense attorney had purchased two new suits, that the judge's wife carefully checked his hair gel each morning, and that the court clerk made an effort to keep her pen out of her mouth. Noting this, one commentator asks, "Is it unreasonable to suggest that if people alter their physical appearance because of the camera, they might alter their words?" Such a critique, however, presumes, with no evidence, that the changes are necessarily for the worse. Knowing that they are being scrutinized closely, might not persons behave with more care than otherwise?

After a comprehensive review of the positive and negative consequences of televised trials, a legal scholar concluded that the disadvantages outweighed the benefits and that cameras ought to be banned. The primary objection was that irrelevant considerations stalked into the courtroom along with the television cameras:

> *[A] fair trial depends on detached neutrality. The remote public, by virtue of television, corrupts detached neutrality. The bias of television may coalesce around politics, culture, and the like. However, the biggest bias is self-interest, political and financial, but mainly commercial. The media is business. Big business. The one final question to ask is, whose story is it anyway? The humiliation of parading an alleged rape victim's undergarments in the courtroom as occurred in the William Kennedy Smith trial is a*

necessary part of the judicial process. Further humiliation by making such evidence the fare of national television may make for fair commercial television, but does it make for a fair trial?

The undergarment example may for some seem a weak point in what may be a strong argument: humiliation and a fair trial do not seem to be necessary correlates, though both may be considerations to be argued on their own merits. The author concluded, "though there is much potential good from in-court cameras, there is too much actual bad." That position may be impeccable, but it shows a lawyer-like skill in advocacy more than an attention to detail. After all, why not measure actual good against actual bad effects rather than the potential of one kind and the actuality of the other?

The ongoing role of television in courtrooms is for the moment uncertain. Particularly intriguing is the prediction of Don Hewitt, producer of the show *60 Minutes*, that in the future judges will approve network coverage of trials only if no commercials are sold and that cities will begin auctioning off the rights to trial television coverage as a means of recouping their expenses.

Inquisitorial Justice?

A more radical position on the need for reform and the way to achieve it has been adopted by those who view the Simpson trial as highlighting inherent and irremediable flaws in the American criminal justice system. Opinion polls demonstrate a startling absence of confidence among Americans in their criminal justice system. A 1993 poll, for instance, found 67 percent of the public expressing confidence in the military and 53 percent in the church. Congress got only 19 percent support, but even that exceeded the 17 percent favorable rating accorded the criminal justice system.

The belief has been growing that American criminal courts are combat zones, attorney driven, and that they are overdependent on the skill of lawyers to the neglect of a fair-minded search for truth. Some people argue that it is unfortunate that the administration of criminal law in continental European countries has been dubbed "inquisitorial" and suggest that this judge-directed method may in fact be superior to the traditional Anglo-American system.

Conclusion

Jeffrey Toobin, a lawyer who covered the Simpson trial for the *New Yorker*, thought that "the reason anyone will care about this case five years, ten years from now is because of what it illuminates about race in America." Others

believe that it was not race but money that carried the day in the Los Angeles courtroom. They note that nothing has changed since 1884, when William Howard Taft, then an assistant prosecutor, later a Supreme Court chief justice and president of the United States, said: "It is well-nigh impossible to convict a man who has money in this country under our present system of prosecution." For many, the fact that Simpson walks about freely, debating at Oxford University, attending a fund-raiser to support efforts against domestic violence, seeming to be having a jolly time, and, above all, trying to hustle money, seems shameless and unconscionable. For cynics, this indicates that in the end, whether justice was or was not achieved makes very little difference. The survivors of the victims may feel terrible, but Simpson's freedom poses little or no threat to anybody else. It is hardly likely to encourage others to kill, believing they will be exculpated, nor is Simpson (presuming that he is guilty), likely to harm another human being, given the almost two decades that it presumably took him to accumulate the rage manifest in the murders of Nicole Brown Simpson and Ronald Goldman.

For Further Reading

There has been an outpouring of book-length commentaries on the trial of O. J. Simpson, with no end in sight. Except for the judge, for whom it would have been unseemly, the major criminal justice personnel signed lucrative contracts with publishers to convey their spin on what had taken place.

Several volumes offer a straightforward chronology of the case, extracts from the testimony, and other information regarding what happened. Among them are Frank Schmalleger, *Trial of the Century: People of the State of California vs. Orenthal James Simpson* (Upper Saddle River, N.J.: Prentice-Hall, 1996); Robert J. Walton and LaGard Smith, *Trial of the Century: You Be the Juror* (Colorado Springs: Marcon Limited, 1994); *In Pursuit of Justice* (Los Angeles: Los Angeles Times, 1995); Linda Deutsch and Michael Fleeman, *Verdict: The Chronicle of the O. J. Simpson Trial* (Kansas City, Mo.: Andrews and McMeel, 1995); and Clifford Linedecker, *OJ A to Z: The Complete Handbook of the Trial of the Century* (New York: St. Martin's Griffin, 1995).

A collection of articles of varying sophistication appears in Jeffrey Abramson, ed., *Postmortem: The O. J. Simpson Case* (New York: Basic Books, 1996), and in Gregg Barak, ed., *Representing O.J.: Murder, Criminal Justice and Mass Culture* (Guilderland, N.Y.: Harrow and Heston, 1996). Symposiums on the trial appear in the *Southern California Law Review,* 69 (1996):1233–1678; and in the

Journal of Social Distress and the Homeless, 5 (1996):273–334. A second-guessing review of eight of the major books is found in George Fisher, "The O. J. Simpson Corpus," *Stanford Law Review,* 49 (1997):971–1019. Also of value is Devon W. Carbado, "The Construction of O. J. Simpson as a Racial Victim," *Harvard Civil Rights–Civil Liberties Law Review,* 32 (1997):49–103.

After the trial, from the prosecution side came *In Contempt* (New York: Regan Books, 1996) by Christopher A. Darden and Jess Walter, a best-seller largely because of its appealing personal revelations; and Hank M. Goldberg, *The Prosecution Responds: An O. J. Trial Prosecutor Reveals What Really Happened* (Secaucus, N.J.: Birch Lane Press, 1996), a book marred by the fact that, as a continuing employee, Goldberg felt compelled to whitewash all prosecutor flaws and miscalculations. Later, Marcia Clark and Teresa Carpenter checked in with *Without a Doubt* (New York: Viking, 1997). A reviewer for the *New York Times,* echoing others, found the book suffused with self-pity and noted that "as her title suggests, self-reflection and an appreciation of ambiguity are not Marcia Clark's strong points." Ms. Clark received a $4.2 million advance for the book. An idealized appraisal of one of the victims that also corrects some erroneous information is found in The Family of Ron Goldman, with William and Marilyn Hoffer, *His Name Is Ron* (New York: William Morrow, 1997).

The defense contributions include Johnnie L. Cochran, Jr., and Tim Rutten, *Journey to Justice* (New York: Ballantine, 1996); Robert L. Shapiro and Larkin Warren, *The Search for Justice: A Defense Attorney's Brief on the O. J. Simpson Case* (New York: Warner Books, 1996); Gerald F. Uelmen, *Lessons from the Trial: The People v. O. J. Simpson* (Kansas City, Mo.: Andrews and McMeel, 1996); and Alan M. Dershowitz, *Reasonable Doubts: The O. J. Simpson Case and the Criminal Justice System* (New York: Simon & Schuster, 1996).

Three books were written by jurors. A particularly important contribution is the combined thoughts of three panel members: Amanda Cooley, Carrie Bess, and Marsha Rubin-Jackson, *Madam Foreman: A Rush to Judgment?* (New York: Dove Books, 1996). Michael Knox and Mike Walker, *The Private Diary of an OJ Juror: Behind the Scenes of the Trial of the Century* (New York: Dove Books, 1995), is the report of a man who was removed from the jury about midway during the trial. Tracy Kennedy, who also had been taken off the jury, wrote *Mistrial of the Century* (New York: Dove Books, 1995) in collaboration with Alan Abramson.

Detectives on the case sought to defend their performances too; see Tom Lange, Philip Vannatter, and Dan E. Moldes, *Evidence Dismissed: The Inside Story of the Police Investigation of O. J. Simpson* (New York: Pocket Books, 1997), and Mark Fuhrman, *Murder in Brentwood* (Washington, D.C.: Regnery, 1997).

The civil case is reviewed in Daniel Petrocelli and Peter Knobler, *Triumph of Justice: The Final Judgment on the Simpson Saga* (New York: Crown, 1998). Some writers and newspaper folk who covered the trial have added their insights to the verbal flood. These include Jeffrey Toobin, *The Run of His Life: The People v. O. J. Simpson* (New York: Random House, 1996), well written but questionably accurate on some key points of fact and interpretation. Joseph Bosco's *A Problem of Evidence: How the Prosecution Freed O. J. Simpson* (New York: William Morrow, 1996) provides the most comprehensive roster of unanswered questions and rumors that could, if accurate, exculpate Simpson. Tom Elias and Dennis Schatzman, *The Simpson Trial in Black and White* (Los Angeles: General Publishing Group, 1996), features alternating chapters by a white and a black journalist. Lawrence Schiller and James Willwerth's *American Tragedy: The Uncensored Story of the Simpson Defense* (New York: Random House, 1996) provides some inside information, largely secured from Robert Kadashian, a close friend of Simpson, but the book is outrageously overwritten.

Jewell Taylor Gibbs, *Race and Justice: Rodney King and O. J. Simpson in a House Divided* (San Francisco: Jossey-Bass, 1996), and Toni Morrison and Claudia Brodsky Lacour, eds., *Birth of a Nation'hood: Gaze, Script and Spectacle in the O. J. Simpson Case* (New York: Pantheon, 1997), focus on the racial aspects of the case. The authors see deep-rooted white racism as driving public interest and the angry reaction to the jury's not-guilty verdict. Bitterness is the overpowering emotion in most of the essays in the Morrison-Lacour volume. Several are powerful and poignant expressions of African American sensitivity about hostile white attitudes toward blacks as demonstrated in overt and covert responses to the murders and the trial.

Also joining in are Simpson's niece, Terri Baker (with Kenneth Ross and Mary Jane Ross), *I'm Not Dancing Any More* (New York: Kensington, 1997), and his onetime girlfriend Paula Barbieri, *The Other Woman—My Years with O. J. Simpson: A Story of Love, Trust, and Betrayal* (Boston: Little, Brown, 1997). Ms. Barbieri's book reads like a Harlequin romance. It offers insight into the narcissistic worlds of modeling and acting and a story of newfound religious belief. The author's most perceptive observation is: "I have been many things in my life, but a great judge of human behavior isn't one of them."

The major "non-book" was not written by Joe McGinnis, who had a reserved front-row seat at the trial and a $1.75 million advance for his anticipated report on it. Returning the advance to his publisher, McGinnis labeled the trial "an utter farce," and declared that the judge suffered "total loss of control over the proceedings." Those proceedings, McGinnis said, involved

"ludicrous witnesses" and "that nauseating group of cretins" who made up the jury. Dominick Dunne would have been well advised to follow McGinnis's lead. His *Another City, Not My Own: A Novel in the Form of a Memoir* (New York: Crown, 1997) is the least worthwhile Simpson trial book. Dunne's effort is (in our opinion) a thoroughly self-indulgent, name-dropping, sophomoric production. We agree with Gary Indiana, a reviewer who described Dunne's work as "a gurgling mess of repetitious and numbingly banal opinions."

There was a rash of quickie books, including Marc Cerasini, *O. J. Simpson: American Hero, American Tragedy* (New York: Windsor, 1994); Don Davis, *Fallen Hero* (New York: St. Martin's, 1994); and Sheila Weller, *Raging Heart: The Intimate Story of the Tragic Marriage of O. J. and Nicole Brown Simpson* (New York: Pocket Books, 1995). Faye D. Resnick, who shortly before the murder had lived with Nicole Simpson, wrote two books, one with Mike Walker, *Nicole Brown Simpson: The Private Diary of a Life Interrupted* (New York: Dove Books, 1994), the other with Jeanne V. Belle, *Shattered: In the Eye of the Storm* (New York: Dove Books, 1996). The first is saturated with scandalmongering tales about the victim, whom Resnick called her best friend and portrays as a brainless, self-obsessed creature. One reader, understandably, said that he felt like taking a long, cleansing shower after reading it.

Books about trial participants include Clifford L. Linedecker, *Marcia Clark: Her Private Trials and Public Triumphs* (New York: Pinnacle Books, 1995), and Marc Eliot, *Kato Kaelin: The Whole Truth* (New York: Harper Paperbacks, 1995). There also is O. J. Simpson, *I Want to Tell You: My Responses to Your Letters, Your Messages, Your Questions* (Boston: Little, Brown, 1995).

The most provocative book of the lot was something of a sleeper. Written by Vincent Bugliosi, the former star of the Los Angeles County district attorney's office, the man who had prosecuted Charles Manson, among others, *Outrage: The Five Reasons Why O. J. Simpson Got Away with Murder* (New York: Norton, 1996) is, as the *New York Times* reviewer described it, a "well-informed analysis in welcome contrast to much of the insipid or pointless commentary about the Simpson trial." Bugliosi has stinging contempt for the way the prosecution handled the case and not much kinder words for the defense attorneys or the judge.

In *O.J.: The Last Word* (New York: St. Martin's Press, 1997), the prominent Wyoming lawyer Gerry Spence, an early candidate to defend Simpson, finds much to fault about the trial, including the language abilities of the television commentators (many of them, he writes, "thought syntax was a mouthwash"). Spence believes that the state should have sought the death penalty against

Simpson, noting that 39 percent of murderers executed do not have a previous conviction. He also advocates selecting judges not by election or political appointment but by putting the names of all practicing criminal lawyers with a certain level of experience into a hat and drawing names out. Those selected would then serve for a limited period of time.

An interesting if inconclusive attempt to scrutinize all possible murder scenarios in terms of the time lines proposed at the trial and material unearthed by the writers is offered in Donald Freed and Raymond P. Briggs, *Killing Time: The First Full Investigation of the Unsolved Murders of Nicole Brown Simpson and Ronald Goldman* (New York: Macmillan, 1996).

The jury system is discussed in three recent books: Jeffrey Abramson, ed., *We the Jury: The Jury System and the Ideal of Democracy* (New York: Basic Books, 1994); Stephen J. Adler, *The Jury: Trial and Error in the American Courtroom* (New York: Random House, 1994); and James P. Levine, *Juries and Politics* (Pacific Grove, Calif.: Brooks/Cole, 1992). The classic early research on jury behavior, still invaluable as a resource, is Harry Kalven, Jr., and Hans Zeisel, *The American Jury* (Boston: Little, Brown, 1966).

Regarding the televising of criminal trials, see Marjorie Cohn and David Dow, *Cameras in the Courtroom: Television and the Pursuit of Justice* (Jefferson, N.C.: McFarland, 1998). See also Paul Thaler, *The Spectacle: Media and the Making of the O. J. Simpson Story* (New York: Praeger, 1997).

The court decisions discussed here that enunciate the exclusionary rule are *Weeks v. United States,* 232 U.S. 383 (1914); *Rochin v. California,* 341 U.S. 165 (1952); *People v. Cahan,* 282 P2d 905 (Calif. 1955); and *Mapp v. Ohio,* 367 U.S. 643 (1961).

On the DNA testimony see Harlan Levy, *And the Blood Cried Out* (New York: Basic Books, 1996), especially pp. 157–188, and William C. Thompson, "DNA Evidence in the O. J. Simpson Trial," *University of Colorado Law Review,* 67 (1996):827–857.