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WHAT I LEARNED COVERING THE TRIALS OF THE CENTURY

*David Dow**

Courtroom life in the decade of “trials of the century” did not imitate *Perry Mason*. Nor *L. A. Law*. Nor *Law and Order*. It was infinitely more exciting. And far less predictable. Who could have conceived—much less sold—fictional plots in which:

A defense attorney offers his client’s boot into evidence, rests his case without calling any witnesses—and wins an acquittal? (Harland Braun, defending Theodore Briseno against federal civil rights charges stemming from the Rodney King beating.)

A courtly African, speaking the accented English of his tiny homeland, Gambia, wins an acquittal of the most serious charges against a client televised in the act of committing crimes that sparked national outrage? (Edi O. Faal, representing Damien Williams in the Reginald Denny beating case.)

An accused killer puts on his alleged murder gloves and his lawyer dons the accused killer’s knit cap en route to acquittals? (O.J. Simpson and defense lawyer Johnnie Cochran, *People v. Simpson*.)

A star witness becomes a criminal defendant? (Detective Mark Fuhrman, *People v. Simpson*.)

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A jury's verdicts pitch the nation's second largest city into three days of deadly rioting? (The not guilty verdicts of the Rodney King beating trial.)

Those were some of the improbable ingredients of the unlikely parade marching through California courtrooms in the 1990s. As a reporter, it was hard not to become hooked on the seemingly endless supply of free entertainment. More than once, I questioned whether I was in the grips of some kind of occupational addiction.

But it is hard not to feel a sense of sadness as this century's turbulent courtroom procession lurches into a new millennium. Money still buys a kinder, gentler brand of justice. O.J. Simpson's wealth bought the nearly exclusive services of an eight-lawyer "dream team" for almost a year. In 1992, a caseload of 700 clients shared the services of New Orleans public defender Rick Teissier.¹ Jurors often reap suspicion rather than gratitude for their hard decisions at the end of long trials. The avowed "search for truth" almost inevitably becomes a single-minded search for victory. And justice is often remote, at times inaccessible, to the average citizen. It is conducted in what used to be known as "banker's hours," except most banks have added weekend and early evening hours to accommodate a public that is generally busy with its own business during the nine-to-noon, 1:30-to-4:30 periods that typify court hours. Tardiness and long waits seem to be an accepted, systemic part of American jurisprudence. I cannot remember the last time I covered a court session that actually began at the scheduled time or a "ten-minute" court recess that was limited to ten minutes. Adding insult to apathy, court participants and spectators who arrive a few minutes early are often left standing, in chairless, benchless corridors waiting for courtroom doors to be unlocked.

However, justice *did* become accessible, as never before, during the O.J. Simpson criminal trial. Wall-to-wall television coverage opened the system, warts and all, to national public examination. Vast segments of the population were both fascinated and alarmed by what they saw. But instead of channeling their concern into reform,

1. See HELEN PREJEAN, DEAD MAN WALKING: AN EYEWITNESS ACCOUNT OF THE DEATH PENALTY IN THE UNITED STATES 250 n.8 (1993).

the public by and large turned away in disgust. The people who run the courts took advantage of public aversion to make California courts even less accessible. Rule 980(b) of the California Rules of Court was rewritten to give judges unassailable power to keep cameras out of court. Little wonder that the civil sequel to the “trial of the century” was a particularly inhospitable event.

It unfolded in a boxy edifice with all the warmth of World War II infantry barracks. Jagged cracks still creased the interior walls of the Santa Monica courthouse as opening statements began in *Rufo v. Simpson*² on November 15, 1996, nearly three years after the Northridge earthquake that inflicted the cracks. For more than three months, arriving courtroom visitors were required to empty pockets and purses twice for a double set of metal detectors, one at the courthouse entrance, the other just outside the Simpson courtroom. A section of the hallway outside the court was placed off limits to the public, reserved as a private retreat area for Simpson and his lawyers.

Vowing not to repeat “the experience of the [Simpson] criminal trial,” Judge Hiroshi Fujisaki barred television coverage of the civil case.³ This action ensured that only the forty reporters assigned courtroom seats, plus forty persons occupying the remaining “public” seats, would witness the real life *Perry Mason* “moments” that were pivotal in the Simpson saga—the unraveling of Simpson’s credibility on the witness stand under the relentless probing of plaintiff’s attorney Daniel Petrocelli, and the unveiling of the Bruno Magli photos—depicting the defendant in the same, unusual style of Italian shoes that tracked blood from the bodies of Nicole Brown Simpson and Ronald Goldman.

The judge, hearing his last big case before retirement, often carped at attorneys to push the case toward conclusion. With no worries about his television appearance, Fujisaki was free to be irascible to the point of rudeness. Or as Associated Press Special Correspondent Linda Deutsch put it: “I think that, had the camera been on

2. *Rufo v. Simpson*, No. SCO31947 (Cal. Super. Ct. Nov. 15, 1996).

3. Transcript at 2, *Rufo v. Simpson*, No. SCO31947 (Cal. Super. Ct. Sept. 25, 1996). Fujisaki’s initial order barred even sketch artists. But artists were eventually allowed in after a higher court relaxed part of the judge’s order.

him, the public would have said, 'What's with this guy? Why is he so nasty?'"⁴

The so-called trials of the century projected a kind of caricature of the American legal system—the best and worst of lawyering, the gaudy influence of big money, witness stand marathons, and of course, the seemingly endless mega-trials that give California a well-earned reputation for “eternal justice.” Given access to similar trials in California and almost any other state, Court TV founder Steven Brill claimed that he would reject California to avoid a longer commitment of his equipment and employees. Or, given no immediate choice, he would ask: “Is there any case like this coming up somewhere else so we don't have to do (it) in California?”⁵

In my experience, a truer picture of the U.S. legal system is found in courtrooms with few or no reporters, in cases involving trials of a few days, or no trial at all—in short, the bread and butter of our justice system. In the 1980s and 1990s, I served as a juror in four such trials—yes, journalists *do* get selected for jury panels—and what I witnessed was a brand of low-key professionalism that I found generally reassuring. However, I was *not* reassured by the defense attorney in an assault case who exercised only one of his peremptory challenges in what appeared to be an attitude of indifference. He lost what was probably an unwinnable case.

Jurors have become a scorned class in the wake of the deadlocks of the first Menendez brothers panels and the O.J. Simpson acquittal. “A bunch of retirees and postal workers,” is the usual aspersion. But, in fact, the juries I served on were diverse groups. One panel had two Ph.D.'s. Another included a medical doctor, an engineer, and an office manager. Without exception, we worked together comfortably, reasonably, and cordially, with rare traces of impatience.

The deliberations of one panel were interrupted for several days by the 1994 Northridge earthquake. When we returned, one juror begged off to attend to her badly-damaged home; another to tend to business at the damaged restaurant he managed. Alternates filled in.

4. Interview with Linda Deutsch, Associated Press Special Correspondent, as research for MARJORIE COHN & DAVID DOW, *CAMERAS IN THE COURTROOM: TELEVISION AND THE PURSUIT OF JUSTICE* (1998).

5. Interview with Steven Brill as research for *CAMERAS IN THE COURTROOM*, *supra* note 4.

We began deliberations anew, just as we were instructed. A day and a half later, we reached the verdict that the original panel seemed to be approaching. By year's end, our work would be affirmed by an article in the *Los Angeles Times*. A six-month jail sentence now behind him, one of the two defendants—we had found both guilty of cocaine possession—confessed to a *Times* reporter to a long history of drug peddling. Now “sick of playing the game,” he had joined his father in the construction business.⁶ His co-defendant, I later learned, had slipped into harder crime, leading to a state prison sentence.

Unfortunately, jury duty also gave me a painfully intimate insight into one of the one-size-fits-all legal “Band-Aids” we wear into the new millennium. Prosecutors and politicians love to rave about the crime-fighting powers of “three strikes” laws. They have even attributed the statistical fall-off of violent crime in recent years to three strikes crackdowns. But three strikes laws have also fed us a steady stream of stories about the inequities inherent in such laws, beginning with the “pizza case”—the Los Angeles saga of a man sent to prison for at least twenty-five years for stealing a pizza. In another case, which I covered, jurors were horrified to find the conviction they had rendered would sentence a homeless man to a lifetime in prison for a clumsy effort to steal a guitar from a church. The jurors and church pastor convinced the judge to depart from three strikes sentencing guidelines.

And, as a juror, I helped convict thirty-three-year-old Marcus Showers of an *attempted* daylight burglary of a Baldwin Hills home, foiled by the arrival of homeowner Angela Long-Truluck. After rendering our verdict, I was chagrined to learn we had pitched Showers his third strike—that he would be spending at least thirty-five years in prison, although he had never been convicted of a violent crime. He, in fact, fled rather than confront the victim of his final crime. Moreover, before his conviction, he had been a productive, employed resident of the area. Is this truly the kind of criminal the framers of three strikes legislation had in mind? This experience has

6. John L. Mitchell, *A Neighborhood Scourged by Crack Finds Redemption*, L.A. TIMES, Dec. 21, 1994, at A1.

left me feeling like an accomplice to a crime, albeit an unwitting accomplice.

Still, I am grateful to have been immersed on both sides of the courtroom railing in a justice system that acknowledges the need—and has the means—to reform itself. And I have a sense that Americans know more about their least understood branch of government than they knew before *Simpson*, *Menendez*, the Rodney King case, and all the other trials of the century. Each was a distorted example of American justice, in the same way the Playboy Mansion is a distorted sample of American housing. Few co-defendants are tried with two juries, as were Lyle and Erik Menendez. No trial, except *Simpson*, has had the benefit of three sets of DNA tests. But extensive broadcast coverage of the trials gave Americans a feel for the nuts and bolts of American jurisprudence that few had ever had before. One of my English professors maintained that the purpose of a college education was to create “better critics of life.” The lessons of *Simpson*, *Menendez*, and others have helped mold a more enlightened society of legal critics. I like to think that this journalist and juror shared in the enlightenment.