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DIFFERENT WORLDS, DIFFERENT REALITIES

*David P. Leonard**

I. INTRODUCTION

When a Los Angeles jury acquitted O.J. Simpson of double murder, I was shocked. The prosecution's case seemed airtight at the beginning of the trial, airtight in the middle, and a slam dunk at the end. I said as much to my Evidence class. There were problems with the prosecution's presentation of its case, but I was certain the jurors would see the evidence the way I did. There was the DNA, after all, and the defense's suggestion that the DNA might have been planted by a rogue cop with a racist streak seemed simply implausible. So when the jury let the judge know that it had reached a verdict after only a few hours of deliberation, I was even more sure that Simpson would be convicted. I was, of course, utterly wrong.

Initially, I thought the verdict might be explained by the phenomenon of jury nullification, but that idea did not hold up to scrutiny; I no longer believe that the jurors were exercising their prerogative of telling the court that they did not approve of the law (the charge was murder and the validity of the murder statute was never the issue). Nor do I think the jurors were trying to "send a message" about the behavior of law enforcement officers. As for reasonable doubt—the possibility that the jurors believed Mr. Simpson was guilty but had sufficient doubt to require acquittal—that would have been a reasonable explanation were it not for jurors' comments otherwise and opinion polls taken after the verdict. In the years since the verdict, taking into consideration both the Simpson verdict and the outcomes of a number of other well-known recent cases, I have

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come to the conclusion that the most sensible explanation for Simpson's acquittal was that the jurors just did not see the world the way I do, and that it is not simply a matter of beliefs. I still feel certain that Simpson is guilty, but I have also come to appreciate, more than ever, that my world is not the only world—that in America, many different realities exist. I simply had to face the reality that the jurors genuinely believed that Simpson was not guilty. Indeed I have to face the possibility, unimaginable as it might be to me, that Simpson actually is innocent.

The ongoing Rampart scandal presents us with an opportunity to test whether different groups of Americans experience different realities. I believe we do, and that the Rampart scandal provides strong evidence for the proposition that, at least as far as the system of justice in the United States, we do not all live in the same world. In this Essay, I will explain how, and why, that might be.

II. DIFFERENT REALITIES

Is there only one reality? For purposes of understanding and surviving daily life, no. Even putting aside the philosophical question of whether there exists an objective world, we all know that “reality” is largely a matter of social construction.¹ Human beings construct reality from the social, cultural, and historical context in which they live, and because ours is a society of many such contexts, it is only natural to expect that there will be many realities. We are all

1. See PETER L. BERGER & THOMAS LUCKMAN, *THE SOCIAL CONSTRUCTION OF REALITY: A TREATISE IN THE SOCIOLOGY OF KNOWLEDGE* 1 (1966). One author writes that the branch of institutional analysis called New Institutionalism

makes the cultural claim that routinized sequences of behavior eventually come to define normalcy, or more broadly, reality. Established constellations of action are seen but not noticed, relied upon but not considered, to such an extent that they become natural—“the world of daily life known in common with others and with others taken for granted.” Thus, accepted complexes of action become paths for forming judgments about the social world, even as they provide the terms by which one acts in that world.

Ian F. Haney López, *Institutional Racism: Judicial Conduct and a New Theory of Racial Discrimination*, 109 *YALE L.J.* 1717, 1723-24 (2000) (quoting HAROLD GARFINKEL, *STUDIES IN ETHNOMETHODOLOGY* 35 (1967)) (footnotes omitted).

aware of regional differences in the way Americans view the world,² and certainly of different realities for those who live in cities as compared with those whose lives are largely centered in rural environments. But enormous differences also exist within American cities themselves.

How different can reality be for different groups of Americans? There is no easy way to answer this question, but one approach is to consider the different environments in which people live. In an increasingly diverse world, Los Angeles is a true world city. Even the 1990 figures reveal the stunning diversity of Los Angeles County. In that year, the White population was just over 5,000,000, comprising 57% of the population. African Americans numbered nearly 1,000,000, or 11% of the total, followed very closely by Asian or Pacific Islanders, who comprised just under 11%.³ Even in 1990, the Census Bureau's "Hispanic"⁴ classification included nearly 38% of

2. More than parochialism or regional bias explains the concept of a "midwestern" outlook, or a "New York attitude." These different world views in fact exist; people in different parts of the country *do* view the world differently.

3. See U.S. Census Bureau, *1990 U.S. Census Data—Database C90STF1A: Los Angeles County*, at <http://venus.census.gov/cdrom/lookup/970699200> (last visited Oct. 4, 2000) [hereinafter *Database C90STF1A*].

4. The term "Hispanic" is used by the Bureau of the Census and encompasses a broad category of persons. The Census Bureau explains:

The data on Spanish/Hispanic/Latino origin were derived from answers to questionnaire item 5. Persons of Hispanic origin are those who classified themselves in one of the specific Hispanic origin categories listed on the questionnaire—"Mexican," "Puerto Rican," or "Cuban"—as well as those who indicated that they were of "other Spanish/Hispanic/Latino" origin. Persons of "Other Spanish/Hispanic/Latino" origin are those whose origins are from Spain, the Spanish-speaking countries of Central or South America, or the Dominican Republic, or they are persons of Hispanic origin identifying themselves generally as Spanish, Spanish-American, Hispanic, Hispano, Latino, and so on. Write-in responses to the "other Spanish/Hispanic/Latino" category were coded.

Origin can be viewed as the heritage, nationality group, lineage, or country of birth of the person or the person's parents or ancestors before their arrival in the United States. Persons of Hispanic origin may be of any race.

U.S. Census Bureau, *ACS Data Definitions—Hispanic Origin*, at http://www.census.gov/acs/www/html/meth_doc/datadef/hispanic.htm (last visited Oct. 3, 2000).

the population,⁵ and that number has grown dramatically in the decade since. Nationally, the Census Bureau reports that the non-Hispanic Whites share of the population declined from 74% to 72% between 1995 and 2000; by 2050, non-Hispanic Whites will comprise only 53% of the population.⁶ The same report predicts that every year from the present to 2050, the group adding the largest number of people to the population will be Hispanics, and that by 2010 they may become the second largest racial/ethnic group in America.⁷ By 2050, the African American population of the United States is projected to double to 61,000,000.⁸ In short, nationally, the non-Hispanic White population of the United States is becoming a minority. In Los Angeles, that is already the case.

As ethnically diverse as the nation is as a whole and Los Angeles County in particular, those numbers do not, in themselves, indicate that we live in different worlds. After all, many different ethnic groups share similar visions of American life. I doubt, for example, that in America today, people of German ancestry see the world very differently than people who trace their ancestors to France or England, despite past conflicts among those nations. Though there is strong evidence that different racial groups see the world in different ways,⁹ we need to look beyond race and ethnicity to appreciate more fully the sources of our different worlds.

A fundamental part of the story of America's diversity lies in the distribution of wealth. By that measure, the differences among us are enormous. In what many consider an affluent era, poverty is still rampant, particularly in the cities, and Los Angeles is no exception. The United States Census Bureau estimates that in 1995, nearly 23% of the Los Angeles County total population lived in poverty.¹⁰ For

5. See *Database C90STF1A*, *supra* note 3.

6. See U.S. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CURRENT POPULATION REPORTS, POPULATION PROJECTIONS OF THE UNITED STATES BY AGE, SEX, RACE, AND HISPANIC ORIGIN: 1995 TO 2050, at 1 (1996).

7. See *id.*

8. See *id.*

9. See *infra* notes 34-38 and accompanying text.

10. See U.S. Census Bureau, *Model-Based Income and Poverty Estimates for Los Angeles County, California in 1995*, at <http://www.census.gov/hhes/www/saipe/estimate/cty/cty06037.htm> (last modified Feb. 17, 1999).

those under eighteen years of age, the percentage was even worse—nearly 34% of that group lived in poverty.¹¹ The raw numbers are themselves staggering; over 2,000,000 people in Los Angeles County are poor.¹² And as a matter of geography, poverty is not evenly distributed. Though most poor people do not live in inner city ghettos,¹³ the poverty rate in central cities is about twice that in the suburbs.¹⁴ In Los Angeles, we all know where the money is, and where it isn't. It does not take a Census Bureau study to tell us which neighborhoods harbor the well-to-do and which do not. The national figures tell part of the story. In 1997, among metropolitan areas with populations of 1,000,000 or more, the median income in central cities was \$31,789.¹⁵ For outside central cities, it was \$47,981.¹⁶ We also know that central cities are increasingly dominated by minority groups, and this is significant in understanding the underclass of our city centers. Whites living outside large central cities earned a median income more than double that of African Americans and Hispanics living inside those central cities.¹⁷

Our exposure to crime also varies tremendously depending on our backgrounds, economic class, and where we live. A 1999 United

11. *See id.*

12. *See id.* The Census Bureau estimates the Los Angeles County population in 1999 as 9.3 million. *See* U.S. Census Bureau, *Population Estimates Program*, at http://www.census.gov/population/estimates/county/co-99-1/99C1_06.txt (information released on March 9, 2000).

13. *See* Georgette C. Poindexter, *Beyond the Urban-Suburban Dichotomy: A Discussion of Sub-Regional Poverty Concentration*, 48 *BUFF. L. REV.* 67, 71-72 (2000); Ruth Eckdish Knack, *The Once and Future Suburb*, *PLANNING*, July 1986, at 6, 9.

14. In 1997, the United States central city poverty rate was 18.8%, while that of the suburbs was 9%. *See* JOSEPH DALAKER & MARY NAIFEH, U.S. DEP'T OF COMMERCE, *CURRENT POPULATION REPORTS, SERIES P60-201, POVERTY IN THE UNITED STATES: 1997*, at xi (1998).

15. *See* U.S. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, *CURRENT POPULATION REPORTS, P60-200, MONEY INCOME IN THE UNITED STATES: 1997*, at 1 tbl.1 (1998), available at <http://www.census.gov/prod/3/98pubs/p60-200.pdf>.

16. *See id.*

17. The Census Bureau estimates that the median income of Whites living outside central cities with at least one million residents was \$49,290. For African Americans living in these central cities, it was \$23,156; for Hispanics, it was \$23,398. *See id.* at 2-4 tbl.1.

States Department of Justice study¹⁸ looked at the realities and perceptions of crime in twelve cities, including Los Angeles.¹⁹ The study's findings show that wealth is the best indicator of the likelihood that one will be victimized by crime. Although African Americans are more likely to be victims of crime than are Whites,²⁰ that fact is influenced more by wealth than by race. Among the many national findings were the following:

- (1) The less people earn, the more likely they are to become crime victims. While 33.1 persons per thousand who earn between \$50,000 and \$74,999 annually reported having been crime victims during the twelve-month study period, nearly twice that figure, 65.5 persons per thousand, who earn less than \$7500 annually were victimized.²¹
- (2) When factors of income and race are both considered, crime rates are similar. For example, Whites earning

18. STEVEN K. SMITH ET AL., U.S. DEP'T OF JUSTICE, CRIMINAL VICTIMIZATION AND PERCEPTIONS OF COMMUNITY SAFETY IN 12 CITIES, 1998 (1999). The study's principal authors were Steven K. Smith, Greg W. Steadman, and Todd D. Minton of the Bureau of Justice Statistics, and Meg Townsend, formerly of the Office of Community Oriented Policing Services.

19. The others were Chicago, Kansas City (Missouri), Knoxville, Madison, New York City, San Diego, Savannah, Spokane, Springfield (Massachusetts), Tucson, and Washington, D.C. See SMITH ET AL., *supra* note 18, at 15 tbl.16.

20. For example, Whites reported being victims of property crime at a rate of 212.6 per thousand. For African Americans, the rate was 248 per thousand. See BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, CRIMINAL VICTIMIZATION IN UNITED STATES, 1998 STATISTICAL TABLES tbl.16 (2000), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/cvus98.pdf> [hereinafter 1998 STATISTICAL TABLES]. Hispanics reported being victims of property crimes at an even higher rate: 267.6 per thousand. See *id.* at tbl.17. In Los Angeles, African Americans were far more likely to be victims of crime than Whites. Sixty-two Whites per thousand reported being victims of violent crime, while for African Americans, the number was nearly double, at 114 per thousand. For property crimes, the number for Whites was 308; for African Americans, it was 503. See SMITH ET AL., *supra* note 18, at 3 tbl.1.

21. When specific crimes are considered, the differences remain. For example, 63.8 per thousand of those earning less than \$7500 were victims of violent crimes, while only 32 per thousand of those earning between \$50,000 and \$74,999 fell into that category. For robbery, the numbers for these groups, respectively, were 6.5 and 2.8. See 1998 STATISTICAL TABLES, *supra* note 20, at tbl.14.

\$7500 or less reported being victims of violent crime at a rate of 66 per thousand; for African Americans, the number was 63.4 per thousand. In the \$50,000 to \$74,999 income bracket, the number for Whites was 32.9 per thousand, while for African Americans it was 28.4 per thousand.²²

Location of the household is also an important factor in crime victimization, though once again, income and ethnicity play a role. The Department of Justice study found:

- (1) Among those who owned or were buying homes, residents of urban areas reported being victims of property crime at a rate of 256.2 per thousand during the study period. For suburban areas, the rate was 181.8, and for rural areas, it was 149.9.²³
- (2) For renters, the differences were less marked: 291.9 per thousand urban renters reported being victims of property crime. Suburban renters reported a rate of 262.9, and rural renters reported 237.6 crimes per thousand.²⁴ Because renters, as a whole, tend to be less affluent than homeowners, these numbers suggest that the combination of household location and income has a significant effect on crime victimization.
- (3) Race does not appear to be as significant a factor in the different crime rates in urban, suburban, and rural areas. For example, White homeowners in urban areas reported a property crime rate of 254.3 per thousand persons, while African Americans reported a rate of 269.1 per thousand.²⁵ For suburban owners, the rates, respectively, were 180.7 and 200.6, while for rural owners, the rates were 149.8 and 145.3.²⁶ The same trend exists for urban, suburban, and rural renters. For White urban renters, the rate of property crime was

22. *See id.* at tbl.15.

23. *See id.* at tbl.56.

24. *See id.*

25. *See id.*

26. *See id.*

300.7 per thousand; for African Americans, it was 281.3. The suburban rates were 261.4 and 279.6, respectively. For rural renters, the rates were 241.4 and 203, respectively.²⁷

Attitudes toward the police might also be a measure of our different realities. Before I began examining the study's findings, I assumed there would be a marked difference among racial groups in attitudes toward the police. The study does not validate these assumptions. Several findings show little difference between African Americans and Whites. Among them:

- (1) Similar numbers of Whites, African Americans, and Hispanics²⁸ report victimization to the police. For all personal crimes, 44.1% of Whites, 51.3% of African Americans, and 45% of Hispanics contacted the police.²⁹
- (2) When people who had been the victims of personal crimes but had not reported the incident to the police were asked why they had failed to report, roughly the same percentage of Whites answered that they believed the police would not want to be bothered (5.5%) as African Americans (5.7%).³⁰ Similar numbers of Whites (2.5%) as African Americans (3.3%) answered that they believed the police were inefficient, ineffective, or biased.³¹
- (3) Whites and African Americans appear relatively satisfied with their local police. Nationally, 90% of Whites and 76% of African Americans stated that they were "satisfied" with local police.³² I was surprised to learn that in Los Angeles, the percentages were also high, at

27. *See id.*

28. There is, of course, an overlap between the White and Hispanic groups.

29. *See id.* at tbl.92.

30. *See id.* at tbl.103.

31. *See id.* Even if one takes this last difference (2.5% to 3.3%) as significant, the number of people in both groups who gave that reason seem surprisingly small.

32. *See SMITH ET AL., supra* note 18, at 25 tbl.34.

89% for Whites and 82% for African Americans.³³

These figures do not tell us that race plays no role in one's perception of crime in general or the police in particular. The phenomenon of racial profiling, which includes the practice of stopping motorists for "Driving While Black," for example, knows no class distinctions and certainly affects the views of all those subjected to such treatment.³⁴ In addition, there is evidence that African Americans of more privileged economic status also view the justice system and the police differently than Whites. Professor Taslitz has argued that African American judges, whose incomes obviously place them in relatively privileged economic positions, have a different sense of fact—a different sensibility about the evaluation of evidence—than do White judges.³⁵ Reviewing interview data presented in the book *Black Judges on Justice*,³⁶ Taslitz identifies several ways in which the world views of African American judges differ from those of White judges:

First, Whites place tremendous emphasis on perceived evidence of character. To Blacks, character also matters. However, Blacks understand, in a way that Whites do not, that the exigencies of the situation—poverty, lack of education, structural unemployment—rather than character, explain much behavior, including crime.

Second, Blacks are particularly wary of the roles of stereotypes, generalizations, assumptions, and preconceptions in fact-finding. It is, of course, impossible to reason without these hallmarks of human cognition. But African-American jurists seek to minimize these influences, and to individualize justice by focusing as much as possible on the unique particularities of each case.

Third, Blacks are skeptical of the police. They are aware of police abuses and police motives to lie. Consequently,

33. *See id.*

34. *See* Tammerlin Drummond, *It's Not Just in New Jersey*, TIME, June 14, 1999, at 61 (citing American Civil Liberties Union report by David Harris showing "Driving While Black" to be a nationwide problem).

35. *See* Andrew E. Taslitz, *An African-American Sense of Fact: The O.J. Trial and Black Judges on Justice*, 7 B.U. PUB. INT. L.J. 219, 221-22 (1998).

36. LINN WASHINGTON, BLACK JUDGES ON JUSTICE (1994).

Black jurists do not automatically accept police testimony as gospel. They will subject such testimony to careful scrutiny.

Fourth, Blacks fear that they have unequal access to the resources necessary to fair fact-finding, such as information, competent counsel, and an unbiased and diverse jury. Black jurists are on guard against the way that these inequalities can affect the accuracy of verdicts.³⁷

Naturally, as Taslitz recognizes, many White jurists hold the same views just described, and many Black jurists might disagree with these positions.³⁸ But the statements of Black judges support the conclusion that one's race has an effect on one's view of the world, and of the evaluation of evidence.

What do these statistics, in the aggregate, tell us? Among many things, they show that being a crime victim today is more a function of economic status than it is of race. This is not a startling conclusion; economic status profoundly affects one's view of the world. If America is really two societies, it is perhaps no longer best to characterize them as "Black" and "White." A more accurate designation would proceed along both race and class lines. To understand the connection between these conclusions and the Rampart scandal, we must examine the economic status of people who live in the area comprising the Rampart district. As we shall see, because there is a high concentration of poverty in that area, people who live there experience crime on a much higher level than those who live in the suburbs.

III. THE RAMPART POPULATION

The Los Angeles Police Department's Rampart Division encompasses most of the neighborhoods west of the Harbor Freeway, east of Normandie Avenue, south of Sunset and Santa Monica Boulevards, and north of Washington Boulevard.³⁹ Among these areas are some of the poorest and most crime-ridden neighborhoods in

37. Taslitz, *supra* note 35, at 221-22 (footnotes omitted).

38. *See id.* at 223.

39. *See Los Angeles Almanac: Los Angeles Police Department Field Divisions*, at <http://www.losangelesalmanac.com/topics/Crime/cr70ac.htm> (last visited Oct. 3, 2000) [hereinafter *LAPD Central Bureau Map*].

Los Angeles, including the Pico-Union district, which has long been plagued by drug activity and prostitution, and Koreatown. The neighborhood is also home to many recent immigrants from Central and South America, as well as to the new Staples Center and Loyola Law School. In 1992, parts of the area, including a large building just a few hundred feet from Loyola Law School, were torched in the disturbances that followed the verdict in the criminal trial of four officers accused in connection with the beating of motorist Rodney King.

To convey an idea of the population of one Rampart Division neighborhood, consider Loyola Law School's own zip code, 90015. In 1990, the area's population was 87.1% Hispanic. By 1998, persons of Hispanic background comprised 93% of the population.⁴⁰ In 1990, 32.3% of households in zip code 90015 earned less than \$10,000 per year; 48.5% earned less than \$15,000. In 1998, incomes were only slightly higher—24.2% of households earned less than \$10,000 per year, and 38.7% earned less than \$15,000.⁴¹ The median household income for 90015 in 1990 was \$15,638; for 1998, it was \$20,098. By way of comparison, median income for Los Angeles households as a whole in the three-year period from 1996 to 1998 was \$39,111, nearly twice the 90015 figure.⁴² In 1990, 73.3% of 90015's residents had achieved less than a high school education, 11.6% had a high school diploma but had gone no further, and only 7% had a college degree or higher. The median number of years of school completed was 8.9.⁴³ Persons residing in zip code 90015 also hold lower level jobs. Only 4.8% hold managerial or professional positions, for example, while 44.3% are classified as machine operators, transportation/material moving personnel, or equipment handlers. The 1997 civilian unemployment rate for 90015 was 8.3%.⁴⁴

40. The numbers for 1990 are final. For 1998, they are estimates. See *1999 Market Statistics, Zipcode 90015*, available at WESTLAW, Population Demographics Database, POPDEMO [hereinafter *1999 Market Statistics, Zipcode 90015*].

41. See *id.* Adjusted for inflation, the difference is not as great as it seems.

42. U.S. Census Bureau, *Income 1998*, at <http://www.census.gov/hhes/income/income98/in98med.html> (last modified Sept. 30, 1999).

43. See *1999 Market Statistics, Zipcode 90015*, *supra* note 40. The U.S. Census Bureau has not yet reported education figures by zip code for 1998.

44. See *id.*

Take another zip code in Rampart, 90006. It picks up west of 90015, and encompasses much of Koreatown. In 1990, Hispanics constituted 75.3% of the area, and by 1998, they had reached 82.8%. Approximately 25.1% of households earned less than \$10,000 in 1990; the figure for 1998 was 19.3%. In 1990, 40.5% of the population earned less than \$15,000; in 1998, that number was 32.6%. Median household income was \$18,166 in 1990, and \$22,257 in 1998. In 1990, 61.8% of the population did not hold a high school diploma; 17.5% had obtained a high school diploma but nothing more; only 7.5% had received a college degree or higher. The median number of years of school completed was 8.9. Occupations of residents of 90006 are similar to those of 90015. Only 4.9% hold managerial or professional positions, and 29.7% work as machine operators, transportation/material movers personnel, or equipment handlers. The zip code had a 7.6% civilian unemployment rate in 1997.⁴⁵

Now consider zip code 90025, comprising part of West Los Angeles, including areas not far from the UCLA campus.⁴⁶ In 1990, the population was 82.4% White, with only 15.2% identified as Hispanic. In 1998, the Hispanic population had risen to 19.1%. In 1990, only 10.8% of households earned less than \$10,000 per year; that number had sunk to 9.1% by 1998. Households earning less than \$15,000 per year comprised 17.8% in 1990, and 14.5% in 1998. Median household income in 1990 was \$36,164; in 1998, it was \$45,530, well above the Los Angeles average of \$39,111. In 1990, 11.1% of persons had not obtained a high school diploma; 14.4% had completed only high school. College graduates comprised 28% of the population, and fully 20.9% had obtained a higher degree. The median number of years of education was 15.8, close to double the 8.9 years in zip codes 90015 and 90006. Occupations of those in zip code 90025 are also very different from those in the Rampart zip codes just discussed. Fully 39% of residents hold managerial or professional positions. By contrast, only 5.1% operate machines, work

45. See *1999 Market Statistics, Zipcode 90006*, available at WESTLAW, Population Demographics Database, POPDEMO [hereinafter *1999 Market Statistics, Zipcode 90006*].

46. I have deliberately not chosen a zip code in an almost uniformly affluent neighborhood. Zip code 90025 includes many apartments and low income areas as well as more affluent ones.

in transportation/material moving, or are equipment handlers.⁴⁷ The 1997 civilian unemployment rate for this zip code was only 3.2%, less than half that of either 90015 or 90006.⁴⁸

These statistics show that, at least for the neighborhoods near Loyola Law School, the resident population of the Rampart Division is largely poor and under-educated. Because of the prevalence of crime in poor neighborhoods,⁴⁹ it seems reasonable to assume that Rampart residents are victimized by crime far more frequently than are those who live in more affluent parts of the city. Los Angeles crime statistics bear this out. The Rampart Division is part of the Los Angeles Police Department's Central Bureau.⁵⁰ Within the Central Bureau during 1997, the Rampart Division reported the largest number of homicides (51), aggravated assaults (2801), forcible and attempted rapes (97), and robberies and attempted robberies (1690).⁵¹ The division also ranked high in burglaries and attempted burglaries, vehicle thefts, and larceny.⁵²

As a whole in 1997, the Central Bureau reported the second highest number of violent crimes in the city of Los Angeles, with 185 homicides, 9100 aggravated assaults, and 299 forcible and attempted rapes.⁵³ This placed the Central Bureau behind only the South Bureau, which encompasses South-Central Los Angeles and other poverty-ridden areas.⁵⁴ Though the Central Bureau did not

47. See 1999 Market Statistics, Zipcode 90025, available at WESTLAW, Population Demographics Database, POPDEMO [hereinafter 1999 Market Statistics, Zipcode 90025].

48. See *id.*

49. See *supra* notes 20-27 and accompanying text.

50. A map of the Los Angeles Police Department's bureaus and divisions can be viewed on the Internet. See *LAPD Central Bureau Map*, *supra* note 39.

51. See LAPD Bureau and Station, *Total Number & Percentage of Crimes in the City of Los Angeles, 1997*, at <http://www.losangelesalmanac.com/topics/Crime/cr03ea.htm> (last visited Oct. 3, 2000) [hereinafter *Total Crime in Los Angeles*] (figures obtained from Los Angeles Police Department). Only two other divisions in the entire city of Los Angeles reported more homicides in 1997, both in the South Bureau (77th Street and Southeast Divisions). See *id.*

52. In 1997, there were 1550 burglaries and attempted burglaries (second in the Central Bureau, one crime behind the Northeast Division); 1827 vehicle thefts (second in the Central Bureau); and 3606 larcenies (third in the Central Bureau). See *id.*

53. See *id.*

54. See *id.*

rank as highly in property crimes,⁵⁵ one might suppose that this is primarily because the Central Bureau is not as fertile an area for thieves to work as other parts of the city.

In contrast, the Los Angeles Police Department's West Bureau, which comprises the Hollywood, Wilshire, West Los Angeles, and Pacific Divisions, and includes the 90025 area code discussed previously,⁵⁶ reported far fewer violent crimes in 1997. There were only 80 homicides (less than half the number in the Central Bureau), and 6073 aggravated assaults (about two-thirds the number in the Central Bureau).⁵⁷ Only in forcible and attempted rape was the West Bureau comparable to the Central Bureau.⁵⁸ If one compares the West Los Angeles Division, which includes the 90025 area code, with the Rampart Division, the differences are staggering. Whereas Rampart reported 51 homicides, there were 6 in the West Los Angeles Division, barely one-ninth as many. Rampart had 2801 aggravated assaults; West Los Angeles had 738. Rampart reported 97 forcible and attempted rapes; West Los Angeles reported 49.⁵⁹ Even in property crimes, Rampart vastly outnumbered West Los Angeles.⁶⁰

IV. TWO EMBLEMATIC CASES

As the statistics discussed above show, the Rampart population is very different from that of other Los Angeles neighborhoods. Rampart residents are overwhelmingly of Hispanic origin, earn far less money, are less well-educated, suffer from much greater levels of unemployment, have considerably lower level jobs when they are employed, and are far more likely to become crime victims. In addition, many Rampart District residents are recent immigrants from

55. These were robbery and attempted robbery, burglary and attempted burglary, vehicle theft, and larceny. *See id.*

56. *See supra* note 47 and accompanying text.

57. *See Total Crime in Los Angeles, supra* note 51.

58. The West Bureau reported 300 forcible and attempted rapes, compared to 299 in the Central Bureau. *See id.*

59. *See id.*

60. Rampart reported 1690 robberies and attempted robberies; West Los Angeles reported 651. Rampart even held a slight lead in burglaries and attempted burglaries (1550 to 1466), and in vehicle thefts (1827 to 1635). The West Los Angeles Division was only considerably ahead in larcenies, with 5119 to Rampart's 3606. *See id.*

Central and South America, who speak little English and who must send their children to public schools ill-prepared to meet their needs. In short, they are not like “us.”

Neither are they like the police officers assigned to their neighborhood. It is well-known that nationwide, police officers assigned to patrol poor neighborhoods do not typically live in those neighborhoods, nor do they share similar backgrounds with the people they are pledged to protect and serve. If nothing else, the middle-class status of Los Angeles police officers makes it highly unlikely that many live in the Rampart area. The enormous differences between police and Rampart residents help to create a relationship of suspicion and misunderstanding rather than one of cooperation. The following description of the antagonistic relationship between residents of poor, African American neighborhoods and its peace officers seems particularly apt:

A primary objection voiced by African Americans to current crime control efforts is that every black person, particularly every young black male, is viewed suspiciously by the police. This degree of surveillance has generated an antagonism between African Americans and the police that is much more fundamental than racial prejudice or excessive violence on the part of individual police officers or criminal acts perpetrated by individual African Americans—serious as these problems are “[T]here seems to be a reciprocating engine of resentment at work in the relations between police and minorities.” This engine of resentment particularly infects the police-minority relationship in the poor African American neighborhoods most plagued by high crime rates. Residents of these neighborhoods are too familiar with examples of verbal abuse, brutality, and physical assaults to view police officers, in the manner of those who live in low-crime suburbs, as there for their protection. Patrolling in low-crime suburbs may be designed to ward off crime, but in poor African American neighborhoods it too often provides an opportunity for routine harassment. And the reason for this harassment, many feel, is that the police are captured by an “us versus them” attitude—one that combines racial prejudice with an

instinct to use excessive force even for a routine arrest. The police, on the other hand, see themselves as doing a tough, dirty job that the public doesn't understand or appreciate. They feel constantly threatened by potential violence and develop in response an omnipresent sense of mistrust. This mistrust is triggered most intensely in poor African American neighborhoods where, as police officers recognize, residents have a powerful suspicion, even hatred, of the police. Moreover, the officers who work in these neighborhoods see them as filled with criminals and potential criminals who understand only toughness. Consequently, they define their job as requiring alertness to possible violence and a quick, authoritative response, rather than politeness or respect. It's not surprising, therefore, that they also come to believe that the only people they can trust in doing their job are their fellow officers. If so, it becomes critical to stand by them—no matter how they behave.⁶¹

Those of us who are privileged to live in upscale, mostly suburban neighborhoods, might find this description a bit hard to understand. But that is precisely my point. We do not experience the same daily reality as the residents of the Rampart Division. In our neighborhoods, the sight of a police officer on the street is reassuring, and a glimpse of a police cruiser in the rearview mirror sparks a quick but casual look at the speedometer. For the poor, generally Latino residents of the Rampart Division, the sight of a police officer in almost any context evokes an entirely different response, sometimes of anger, often of fear.

This point is perhaps no better illustrated than by examining two sensational recent cases,⁶² the trials of the four police officers who beat Rodney King and O.J. Simpson, accused of the murders of his

61. Gerald E. Frug, *City Services*, 73 N.Y.U. L. REV. 23, 74-75 (1998) (quoting in part DAVID H. BAYLEY & HAROLD MENDELSON, *MINORITIES AND THE POLICE: CONFRONTATION IN AMERICA* 108 (1969)) (footnotes omitted).

62. The commentary on these cases in the legal press alone has been staggering. A search conducted on July 28, 2000, in the Westlaw Journals and Law Reviews database yielded 1462 documents mentioning the name "Rodney King." A similar search under the name "O.J. Simpson" yielded 2014 documents.

former wife and her friend. In the Rodney King matter, a state jury exonerated three of the four officers entirely and was unable to reach a verdict with respect to one; a federal jury later convicted two of the officers.⁶³ In the Simpson matter, a criminal jury, following one of the longest criminal trials in history,⁶⁴ deliberated for only a few hours before acquitting the defendant of all charges. A civil jury later held Simpson responsible for the deaths and awarded millions of dollars in compensatory and punitive damages.⁶⁵ To understand these results, one must look beyond the purely legal aspects of the cases to the human factors involved in the trials themselves.

In March 1991, four Los Angeles Police Department officers beat African American motorist Rodney King following a high-speed chase on freeways and surface streets. The beating, most of which was videotaped by a bystander, was brutal by any standard. As one commentator describes the event, King at first resisted, and then complied with an order to lie down in a prone position.⁶⁶ Sergeant Koon then ordered the other officers to handcuff King. King resisted, and the officers fell off him. Koon then fired his taser, sending King to the ground, incapacitated.⁶⁷ At that point, the videotape began rolling. One commentator describes what the tape shows, as well as the consequences:

King then rises quickly to his feet and takes a couple of steps. Defendant Powell, who is in a batter's stance with his PR-24 side handle baton, swings at King's head while he rises. Powell strikes King in the face, knocking him to the ground

Defendant Powell hit Rodney King in the head with his baton, at least once and perhaps more. Two prosecution

63. See Laurie L. Levenson, *The Future of State and Federal Civil Rights Prosecutions: The Lessons of the Rodney King Trial*, 41 UCLA L. REV. 509, 527, 532 (1994). The article contains a detailed description of the facts and procedural history of the case.

64. The trial lasted 252 days. See Christopher B. Mueller, *Introduction: O.J. Simpson and the Criminal Justice System on Trial*, 67 U. COLO. L. REV. 727, 727 (1996).

65. See Stephanie Simon, *Simpson Verdict: \$25 Million, Punitive Damages Bring Total to \$33.5 Million*, L.A. TIMES, Feb. 11, 1997, at A1.

66. See Levenson, *supra* note 63, at 518.

67. See *id.* at 518-19.

medical experts testified that blows fractured King's face in fifteen places. The injuries were so severe that fluid and tissue from King's eyesocket and brain dropped down into his crushed sinus cavities. King's face was split open and suffered multiple lacerations and bruising

After King fell down, Powell continued to strike him approximately ten times with his baton. After about fifteen seconds, King lay prone on his stomach on the ground. When he tried to move again a few seconds later, Powell raised his baton to strike King again. Defendant Briseno, who was watching Powell, raised his hand to block the blow. King then tried to get up, but both defendants Powell and Wind struck him repeatedly in the torso and legs with their batons. King fell to the ground again and lay on his stomach.

About thirty-two seconds into the beating, as King lay on the ground, defendants Powell and Wind continued to strike him in the legs, torso and ankles with their batons. As the defense admitted at trial, the officers were trying to break King's bones. King rolled over two times to avoid the blows. As he lay on his back, defendant Powell hit King in the chest with his baton

At sixty-five seconds into the videotape, after King had been lying motionless for approximately ten seconds, defendant Briseno stomped on King's neck, and King moved in response. Reacting to King's movement, defendant Powell struck King again. Defendant Powell continued the beating for the next twenty seconds, hitting King five or six times with his baton. During the same period, defendant Wind kicked King and struck him with his baton.

The beating ended eighty-one seconds after it began. Defendant Briseno handcuffed King and several officers dragged him across the asphalt to the side of the road, leaving him face down, hog-tied, and moaning in his own blood and saliva.⁶⁸

68. *Id.* at 519-21.

In 1992, a jury sitting in Simi Valley completely exonerated three of the four officers and was unable to reach a verdict on one charge with respect to Powell, the fourth officer.⁶⁹ The reaction to the verdict was swift. Looting and violence erupted in many parts of Los Angeles, lasting four days and resulting in nearly fifty deaths and about one billion dollars in property damage. Then-President Bush stated that he was "stunned" by the verdicts and had difficulty understanding them in light of the videotape.⁷⁰ Los Angeles Mayor Tom Bradley, himself an African American, said that the verdicts rendered him "speechless."⁷¹

How can one understand the acquittals when the brutal event itself was available for all to see? One possibility is jury nullification—what William Hodes calls "jury nullification of the third kind," an act of principled disobedience to the law done for the purpose of sending a message about the law or how it is enforced.⁷² In this case, perhaps the jurors believed the officers were guilty but thought convicting them of the offenses would send a message of lack of support for the efforts of police, and consequently chill their vigorous enforcement of the law. Many people believe this is what happened.⁷³ It is certainly possible that the Simi Valley jurors, consciously or unconsciously, saw the police as their last line of defense, protecting and separating them from the population of the city of Los Angeles.⁷⁴

69. See *id.* at 527.

70. See Richard A. Serrano & Jim Newton, *3 King Case Defendants Notified of U.S. Inquiry*, L.A. TIMES, July 31, 1992, at A1.

71. See Richard A. Serrano & Tracy Wilkinson, *All 4 in King Beating Acquitted*, L.A. TIMES, Apr. 30, 1992, at A1.

72. W. William Hodes, *Lord Brougham, The Dream Team, and Jury Nullification of the Third Kind*, 67 U. COLO. L. REV. 1075, 1079-80, 1096-110 (1996). Hodes writes that when jurors vote for acquittal to send a message about long-term justice, they have exercised this form of jury nullification. See *id.* at 1096-100.

73. See *id.*; see also Nancy S. Marder, *The Interplay of Race and False Claims of Jury Nullification*, 32 U. MICH. J.L. REFORM 285, 296-301 (1999) (citing a number of commentators who had reached that conclusion, but disagreeing).

74. One person stated that the jurors were afraid "that if they punished these cops they would be less safe in their little community up there." Don DeBenedictis, *Cop's Second Trial in L.A.*, A.B.A. J., July 1992, at 16 (quoting Prof. Bernard Segal); see also Margalynne Armstrong, *Protecting Privilege: Race, Residence and Rodney King*, 12 LAW & INEQ. 351, 358 (1993) (stating that

In fact, there are many police officers among the throngs of people who make the long commute each workday from Simi Valley to Los Angeles,⁷⁵ and a number of the jurors either had law enforcement jobs themselves or had relatives or close friends who held such positions.⁷⁶

Attractive as the jury nullification explanation appears to be, I do not think it best explains the verdicts. Although the verdicts were undoubtedly motivated by several factors, one key factor must have been the different worlds of the Los Angeles area where the events took place and the Simi Valley location of the trial.⁷⁷ In contrast to the broad diversity of Los Angeles, Simi Valley is largely White and middle-class.⁷⁸ No African Americans sat on the jury.⁷⁹ To the jurors in the case, the idea that police officers could have committed such a horrible act without justification, or indeed that what appeared on the videotape truly reflected the events of that night, must have been impossible to accept. And this was, essentially, the defense. Defendants argued that the officers believed King at one point was charging one of the officers or trying to escape into a nearby wooded area,⁸⁰ and a defense expert took the jury through the videotape

“[t]he acquittal of the officers . . . reflects this view of the police as a break-water”).

75. See Kimberle Crenshaw & Gary Peller, *Reel Time/Real Justice*, 70 DENV. U. L. REV. 283, 286 (1993) (describing Simi Valley as “disproportionately the home of L.A.P.D. officers and retirees”); Tim Schreiner, *Simi Valley, South Central L.A.—Sharp Contrasts*, S.F. CHRON., May 1, 1992, at A14 (describing Simi Valley as a white, middle-class “bedroom community” for police).

76. See Armstrong, *supra* note 74, at 352-53 n.5.

77. Others have suggested that this was an important factor in the verdicts. See, e.g., Steven Lowery, Comment, *Changing the California Venue Law After Rodney King*, 23 SW. U. L. REV. 361, 380; Marcia Chambers, *Sua Sponte*, NAT’L L.J., May 18, 1992, at 13; Erwin Chemerinsky, *How Could the King Jury Do That?*, LEGAL TIMES, May 11, 1992, at 23; Don DeBenedictis, *Cop’s Second Trial in L.A.: Judge Who Sent King Beating Trial to Simi Valley Decries Venue Change*, A.B.A. J., July 1992, at 16.

78. In 1990, African Americans made up less than two percent of Simi Valley residents. See *Database C90STF1A*, *supra* note 3.

79. Among the seven men and five women on the jury were ten Caucasians, one Latino, and an Asian American. See Richard A. Serrano & Carlos V. Lozano, *Jury Picked for King Trial; No Blacks Chosen*, L.A. TIMES, Mar. 3, 1992, at A1.

80. See Levenson, *supra* note 63, at 523.

frame by frame, arguing that King's behavior was aggressive and combative, which justified what the officers did.⁸¹ The jurors were sympathetic to the police and receptive to these arguments. One juror, for example, stated, "I don't know any police officers personally, but the ones I've come in contact with have been polite and helpful. I respect the job they do."⁸² Another stated that before the trial, she had wanted to find out "what really happened—not all the hype."⁸³ I simply cannot escape the conclusion that the jurors believed defendants were innocent—that the videotape did not tell the story.

Had the case been tried in central Los Angeles, before a jury comprised, at least in part, of poor African Americans or others with similar life experiences, the defense argument that the police were reacting to a combative, potentially dangerous suspect almost certainly would have fallen on deaf ears. It would not have been difficult for jurors chosen from an inner city community to believe what their eyes were telling them—that the police officers brutally and unnecessarily beat an African American man who had committed no serious crime.⁸⁴ Indeed, when the officers were later tried in a Los Angeles federal court on civil rights charges, a racially diverse jury⁸⁵ found two of the defendants guilty, though it acquitted the other two.⁸⁶

The second case involves the murder of O.J. Simpson's former wife and a friend. The crime and subsequent trial became an international sensation. Like Rodney King, Simpson is an African American,⁸⁷ and like the King matter, the arrest was preceded by a

81. *See id.* at 526.

82. Serrano & Lozano, *supra* note 79, at A19.

83. *Id.*

84. Perhaps telling in this regard is a pretrial poll of Los Angeles residents conducted in connection with the change of venue issue. Eighty-one percent of respondents believed the defendants were guilty. Though the poll was conducted before trial, it is hard to believe that many people would have changed their minds after hearing the actual testimony. *See Lowery, supra* note 77, at 363.

85. The jury was comprised of nine Caucasians, two African Americans, and one Latino. *See Jim Newton, Racially Mixed Jury Selected for King Trial, L.A. TIMES*, Feb. 23, 1993, at A1.

86. *See Levenson, supra* note 63, at 532.

87. Other than sharing racial background, King and Simpson are com-

police pursuit along Los Angeles's freeways and surface streets.⁸⁸ The gruesome murders had taken place several days earlier.

Many believed the evidence against Simpson appeared to be extremely strong. As one author explains, the evidence took three forms:

First was proof of Simpson's motive, mood, appearance, and behavior. He was angry at his ex-wife for breaking up with him a second time. They had divorced; then she had sought a reconciliation more than a year earlier. He had gone for it, but she dumped him again a month before the murders by returning his birthday gift and excluding him from the family circle at the dance recital and the dinner afterwards. Simpson was angry and withdrawn, . . . he was in emotional turmoil

Second was the physical proof. A left-handed blood-soaked Aris Isotoner glove and ski cap were found at the murder scene, and what seemed to be the right-hand blood-soaked mate to that glove was found in the outside walkway behind Simpson's house. Fibers on the ski cap matched fibers in the fabric in . . . [Simpson's] Bronco, and similar fibers were found on the gloves and on Ron Goldman's shirt. The glove at [Simpson's house] contained a blond hair that could have come from Nicole and a dark hair that could have come from Ron Goldman

Third was the scientific evidence. DNA tests of traces of blood discovered inside the Bronco matched O.J. Simpson, Nicole Brown Simpson, and Ron Goldman. Blood on the glove found at the Simpson residence produced a similar threefold match. A sock found on the floor of Simpson's bedroom had a spot of blood that produced a DNA match for Nicole Brown Simpson. And blood drops on the sidewalk at Bundy (the murder scene) and on the walkway and hallway at Rockingham matched O.J. Simpson [W]hat

pletely dissimilar. Simpson is a wealthy former football star; King is a struggling lower middle-class man.

88. This occurred after Simpson failed to turn himself in to police as his lawyer had arranged. For a description of the crime, including the events leading up to and following Simpson's arrest, see Mueller, *supra* note 64.

[the evidence] suggested is that the various reported matches are very rare⁸⁹

Simpson did not formally testify at the trial, but his defense attacked each of these forms of evidence. In particular, the defense suggested that the bloody glove found at Simpson's home had been planted by a racist police officer, who had claimed to find it in that location.⁹⁰ Evidence presented later at the trial showed that the officer had used racist language in an interview with a writer, that he described the police beating of a Black suspect, and that he asserted that the police planted evidence against Black suspects.⁹¹ The defense also presented evidence suggesting that the blood discovered at the scene of the murders could have been planted.⁹² Finally, the defense attacked the validity of the DNA evidence, showing that it was not handled properly and that the samples could have become contaminated.⁹³ Witnesses also attacked the prosecution's probability estimates for the DNA evidence.⁹⁴

None of the defense arguments had any effect on my own assessment of the case; I remained absolutely convinced of Simpson's guilt throughout the trial, which took place in the downtown Los Angeles Criminal Courts Building. The jurors, however, apparently saw things differently. After deliberating for fewer than five hours,⁹⁵ the jury of eight African American women, one African American man, two Caucasian women, and one Latino man unanimously acquitted Simpson of all charges.⁹⁶

As in the state court acquittal of the officers who beat Rodney King nearly to death, one can offer many explanations for the Simpson verdict. My initial reaction was that the jurors surely did not believe that Simpson was innocent, but only acquitted him because the

89. *Id.* at 731-32.

90. *See id.* at 733.

91. *See id.*

92. *See id.* at 734.

93. *See id.* at 734-35.

94. *See id.*

95. *See id.* at 727; *see also* Sheryl Stolberg, *Will We Ever Get Along?*, L.A. TIMES, Oct. 10, 1995, at S3.

96. *See* Jeffrey Rosen, *The Bloods and the Crits: O.J. Simpson, Critical Race Theory, the Law, and the Triumph of Color in America*, NEW REPUBLIC, Dec. 9, 1996, at 36.

defense had raised sufficient doubt. There is some support for that view in juror statements made after the trial,⁹⁷ but my sense is that it offers, at best, a partial and unsatisfactory explanation for the motives of some of the jurors. I also considered the possibility that the jurors might have engaged in the type of jury nullification discussed above.⁹⁸ Maybe, I thought, the jurors were convinced that Simpson was guilty, but believed that the police too often frame people of color for crimes they did not commit, and wanted to make that point by rendering an acquittal in a case of such high profile that some called it the "trial of the century."⁹⁹ Certainly, this was the explanation offered by many,¹⁰⁰ though not all,¹⁰¹ commentators. But this explanation is also, ultimately, unsatisfactory. It assumes, among other things, that a jury of ordinary citizens would be willing to free an unrepentant perpetrator of a gruesome double murder because of what police officers might do in other cases. Such an explanation would seem more plausible in, say, a drug trial than in a murder case.¹⁰²

I think, instead, that the result of the Simpson criminal trial, as well as of the state trial in the beating of Rodney King, can best be

97. See Marder, *supra* note 73, at 285 (reporting that in both the Simpson trial and the state court trial of the officers who beat Rodney King, some jurors explained their verdicts on the basis of reasonable doubt). Professor Hodes argues that the jurors were "savvy enough" to clothe their post-trial statements in reasonable doubt language, but actually exercised jury nullification. Hodes, *supra* note 72, at 1100.

98. See *supra* notes 72-77 and accompanying text.

99. See, e.g., Mueller, *supra* note 64, at 727 (using the phrase "trial of the century," but, by putting quotes around it, indicating some skepticism); Robert Marquand & Daniel B. Wood, *Lessons Drawn from Simpson in Black, White*, CHRISTIAN SCI. MONITOR, Oct. 5, 1995, at 1. In light of the many spectacular criminal trials that took place during the twentieth century, I hardly believe the Simpson case deserves that distinction.

100. See, e.g., Hodes, *supra* note 72, at 1101-04; Marder, *supra* note 73, at 288 (citing numerous articles in press explaining verdict as caused by jury nullification).

101. See, e.g., Marder, *supra* note 73, at 286 (arguing that nullification does not explain the Simpson verdict).

102. One author has argued that it would be appropriate for African American jurors to exercise jury nullification to free a guilty crack cocaine dealer, but not a perpetrator of a violent crime such as murder. See Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 YALE L.J. 677, 718-22 (1995).

explained by the existence of different views of the facts caused by the different realities that exist among groups in our society. There is evidence for that view in the Simpson matter. Opinion poll after opinion poll consistently showed that Whites overwhelmingly saw the result of the case as factually wrong, while African Americans, in similarly large numbers, believed the result was explained by the existence of reasonable doubt about Simpson's guilt, or that Simpson was, simply, innocent.¹⁰³ Indeed, when the civil case brought against Simpson by relatives and estates of the victims went to trial in a state courthouse in Santa Monica before a nearly all-White jury,¹⁰⁴ roughly half of whom were college educated,¹⁰⁵ the verdict went exactly the other way. The man found innocent of the crime of murder was found liable for the deaths, and ordered to pay 33.5 million dollars in compensatory and punitive damages.¹⁰⁶

Professor Marder explains this difference in views about the jury, and, ultimately, the meaning of the verdicts themselves:

[T]he press coverage assumed a view I will call "same reality/different values." In other words, the press assumed that jurors and those outside the jury room saw the same facts ("same reality") in both the Simpson and [King case] trials, but that jurors chose to reach a result contrary to the facts because of "different values." With the Simpson verdict, the mainstream press assumed the jurors chose to let a

103. See Marder, *supra* note 73, at 306 n.97 (summarizing poll results). But see Rosen, *supra* note 96, at 35 ("[C]lass envy, rather than shared experiences of racial and gender oppression, turned out to be the most important predictor of juror sympathies.").

104. See Taslitz, *supra* note 35, at 220 (describing jury as "predominantly White"); Tracy Gilstrap Weiss, Comment, *The Great Democratizing Principle: The Effect on South Africa of Planning a Democracy Without a Jury System*, 11 TEMP. INT'L & COMP. L.J. 107, 109 n.21 (1997) (describing the jury as "almost exclusively white"). The lone Black juror was dismissed during the trial. See Elaine Lafferty, *The Inside Story of How O.J. Lost*, TIME, Feb. 17, 1997, at 28, 36.

105. See Lafferty, *supra* note 104, at 28, 34 (stating that at least five members of the jury had a college education).

106. True, the standard of proof in the civil trial was not as difficult to satisfy as the "beyond a reasonable doubt" standard of the criminal trial. But, I find it hard to believe that the civil trial jurors would not have convicted Simpson under the tougher standard, had they had the chance.

murderer go free in order to send a message to the police or to white America ("different values"), and with the [King case] verdict, the mainstream press assumed the jurors chose to let the police officers go free because of the trust they had in the police and the disdain they had for the victim ("different values").

If the mainstream press had espoused a "different realities/same values" view, it would have devoted coverage to exploring how another group saw a different reality based on its different experiences. Instead, the mainstream press believed that jurors saw the same reality but simply held different values, and therefore, the press used nullification as a way of explaining what otherwise seemed to be untenable jury decisions.¹⁰⁷

In other words, as hard as it might be for many of us to appreciate, I believe the juries in both the King state trial and Simpson's criminal trial applied their experiences of the world to the evidence presented and reached the understanding of the facts reflected in their verdicts.¹⁰⁸

107. Marder, *supra* note 73, at 307-08; see also Edward S. Adams & Christian J. Lane, *Constructing a Jury that Is Both Impartial and Representative: Utilizing Cumulative Voting in Jury Selection*, 73 N.Y.U. L. REV. 703, 704 ("Although reasonable minds may not agree on the justness of the verdicts in the Rodney King and O.J. Simpson cases, they can agree on one thing demonstrated in the aftermath of both cases: Many African Americans and Whites use different perspectives to evaluate evidence and determine justice."); Tatzlitz, *supra* note 35, at 220 (referring to the "racial divide that creates profound differences in how Whites and Blacks view the world"); Leland Ware, *Essays on Race Reach Beyond the Superficial*, ST. LOUIS POST-DISPATCH, Feb. 18, 1996, at 5D ("[T]he reaction to the verdict proves, beyond any doubt, that white and black Americans view the same events from vastly different perspectives.").

108. At the very least, the realities shared by the jurors in the Simpson criminal trial allowed them to possess reasonable doubt about Simpson's guilt. One commentator takes us to task for our inability to understand what he believes took place:

Most African Americans were prepared to accept the jury's decision either way. Unfortunately, many White Americans still cannot accept the reality that, (1) African Americans can be fair and impartial jurors; (2) African American attorneys can be competent and highly skilled; and (3) an African American male can be charged with murdering a

V. THE SILENCE OF THE RAMPART COMMUNITY

The continuously unfolding Rampart scandal also demonstrates the existence of many realities in today's Los Angeles. For example, where I live, in Santa Monica, the very thought that a group of police officers would engage in a lengthy, systematic operation designed, among other things, to frame the innocent and to fabricate evidence against others they actually believed to be guilty of crimes, would be almost inconceivable.¹⁰⁹ Were such things to be alleged among the police officers of my own community, and I were to be assigned to sit on a jury with the task of judging the guilt or innocence of officers accused in such a scandal, I would have a hard time believing the allegations, even if shown videotapes that appeared to prove them. Moreover, throughout the duration of the investigation and trial, the entire community, not just the politicians and the media, would be transfixed, nearly electrified by the unfolding news.

Among the citizens of the Rampart Division, however, there is a curious silence about the police behavior to which they have been subjected. While the media and local politicians wrangle over the matter, fight for control of the investigations, and rush to assign blame, the ordinary people of the community seem largely unmoved. This might seem surprising at first, but it should not be. To residents of the Rampart Division, overwhelmingly poor and of color, the allegations, and the facts supporting them, are not at all shocking. Apparently, even African Americans of higher economic class would not find them surprising. In interviews, African American jurists have stated that they "find stories of police officer abuses—false accusations, excessive force, coerced confessions, and frame-ups—plausible."¹¹⁰ To the poor and to people of color, the allegations are

White woman and be found not guilty.

Keith W. Watters, *The Verdict*, N.B.A. NAT'L B. ASS'N MAG., Nov.-Dec. 1995, at 1.

109. Santa Monica is a separate city and maintains its own police force.

110. Taslitz, *supra* note 35, at 236. The author goes on to explain that [t]his attitude should not be confused with a dislike of the police or of their role. Many of the Black judges are former prosecutors who were tough on crime. They recognize the important role the police play in ensuring equal protection by providing Black neighborhoods with the same security as White neighborhoods.

Id. (footnote omitted).

simply the public revelation of what was already known, but which those of us on the outside would never have suspected. It is just business as usual, and that, perhaps more than anything, explains the relative silence of the community. Perhaps the only thing a resident of the area might find surprising is that those of us on the outside would notice, and, perhaps, even care.

VI. CONCLUSION

There are many lessons to be learned from the Rampart scandal. To me, the most important is the need to open our minds to certain truths about our communities that we would rather not know. There are people with whom we share this community who do not share our experiences of the world, and whose chances of fulfilling the dream of prosperity are thwarted by the very system that has welcomed *our* participation and supported *our* successes. Harmonious interactions among us depend on recognizing that not all people see the world as we do. Walking a mile in other people's shoes is not easy, but it is crucial that we try.

We also face the equally difficult, and to some extent conflicting, task of deciding how our criminal justice system should treat and respect the different life experiences of the American people. It is one thing to understand why Simi Valley jurors believed the officers who beat Rodney King were justified, or to understand why a racially diverse jury sitting in a downtown Los Angeles courthouse would find O.J. Simpson not guilty of double murder. It is quite another to accept these verdicts as legitimate reflections of the facts. Though I recognize that my own experience—my own social reality—prevents me from seeing the world the way the jurors in the Simpson criminal trial did, I simply cannot believe that they got it right.¹¹¹ Nor do I believe that the Simi Valley jurors correctly

111. When I say the jurors did not "get it right," I mean that they did not render an accurate verdict. Accurate reconstruction of facts is not the only function of a trial, but it is surely the most important. Federal Rule of Evidence 102 requires the trial court to construe the rules "to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence *to the end that the truth may be ascertained and proceedings justly determined.*" FED. R. EVID. 102 (emphasis added); see also David P. Leonard, *The Use of Character to Prove Conduct: Rationality and Catharsis in the Law of Evidence*, 58 U. COLO. L. REV. 1

determined the facts of the Rodney King beating case. The legitimacy of the legal system depends on the maintenance of a careful balance between recognizing different views of reality and achieving results that accord as closely as possible with historical truth. Social realities differ, but a legitimate legal system demands greater accuracy and consistency. Legal reality, in other words, cannot be as much a relative matter as social reality.

Perhaps we can begin to solve this problem by recognizing that our criminal justice system does not have an obligation to accept all possible views of reality. When a homicide defendant suffering from schizophrenia testifies that demon voices told her to commit the killing, we can believe the defendant has testified honestly, but we need not accept the validity of her reality. A person raised in a culture without a concept of human flight might believe that an airplane is a large bird, but we need not accept her testimony that the object in the sky was a bird, even if it is uncontradicted by other eyewitnesses. We can respect these people, and we can understand their different realities, but we are not obligated to accept contra-factual conclusions they reach. Similarly, showing respect for and validating the experiences of the Simi Valley jurors in the King beating case, or the downtown Los Angeles jurors in the Simpson criminal trial, does not require accepting their factual conclusions as accurate. The evidence contradicting their findings was simply overwhelming.

If verdicts such as these can best be understood as products of a world view that clouds jurors' judgment of the facts before them, the solutions are elusive. In a homogeneous society, virtually everyone would share the same basic perceptions about the world, whatever its condition. The result might not be perfectly accurate perceptions of reality—all world views color and cloud our judgment in some ways—but a more uniform sense of the world and its problems. Jury verdicts, in turn, would better reflect society's values and beliefs, even if on occasion, they did not accurately reflect historical fact. But a homogeneous society is neither possible to achieve nor desirable. America's strength as well as its uniqueness lies in the diversity of cultures from which it is built. All of our lives would be poorer if we were all the same.

At the same time, a good and just society does not benefit greatly from the existence of enormous economic disparities among its members. Economic differences will always exist, but in a nation so rich in resources and talent, there is no excuse for the extreme poverty of the inner cities.¹¹² The fear and hatred bred by this enormous divide—emotions that run both ways—destroy the foundation for understanding and respect on which civil society depends.

The answer, thus, does not lie in accepting as legitimate the factually incorrect verdicts in cases such as those described here, but in attacking the root of the condition that leads to them. We should not seek to spread America's wealth equally, but we must commit ourselves to ameliorating the conditions of the worst off among us. When we have ensured that all of us have the means to sustain a decent life, we will create the conditions that unite people rather than divide them. In that state of affairs, juries will be driven by a more common perception of reality, and verdicts will be the product of clearer thinking.

When the dust has settled on the Rampart scandal, we are likely to have to face the fact that police officers illegally beat, harassed, framed, and otherwise victimized a population that lacked the means and wherewithal to fight back.¹¹³ We must come to recognize that events such as these are far less likely to occur in an environment of trust and cooperation rather than hatred and antagonism.

Just across the street from Loyola Law School is the Tenth Street Elementary School. Almost all of the students who attend the

112. One could argue that a market-based economic system relies on wealth disparities to ensure the provision of all types of services. If everybody had the same economic means, some important jobs likely would go unfilled, and certain basic services provided by those jobs would become unavailable. Moreover, economic stratification is an inevitable feature of a developed society. But, to acknowledge these facts is not to sanction the degree of economic stratification that exists in cities such as Los Angeles. The wealthier segment of the population would not become impoverished by steps to pull up the bottom.

113. For a particularly chilling story of Rampart misconduct involving wanton beatings and efforts to cover up the crimes by manufacturing criminal charges against the victims, see Susan Goldsmith, *Rampart Rampage*, NEW TIMES L.A., Aug. 24, 2000, at 15 (describing humiliating and brutal actions against members of the 18th Street Gang and later efforts to prevent disclosure by arranging for deportation of some witnesses and prosecution of others).

school are the children of recent immigrants, and almost all of their families struggle to make ends meet. From my office window in the Burns Building, I often watch as parents walk their children to school, frequently hand in hand. These people are not criminals. They are doing their level best to make a life in Los Angeles, but they are being subjected disproportionately to crime, and the police often treat them as vermin. I am ashamed that a nation formed by waves of immigrants has turned its back on these people, and that rather than protect them from the common criminals who victimize them, victimizes them further. These people have important contributions to make, if only we treat them with the respect they deserve. We must open our minds and broaden our vision, recognizing that the differences among the people of our communities should not be feared, but present opportunities for the enrichment of us all. We are not all the same, thankfully. When we come to recognize that our differences are a source of strength, not weakness, we will be one step closer to avoiding the fate of the Balkans, and to achieving a lasting peace in our city.

