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Not Guilty!

Not guilty - I could not believe what I saw and heard. I was stunned, as was my good friend, Bill Booker, as we sat fixated upon the TV at Applebees. The lunch crowd, mainly white, gave a collective gasp of disbelief. How could the jury have returned a verdict of not guilty and in 4 hours? They could not have even deliberated in good faith. Why had the jury members ignored the mountain of evidence the prosecution had introduced to prove, overwhelmingly, beyond all reasonable doubt, that O.J. murdered in cold blood Nicole Brown Simpson and Ronald Goldman. The verdict was a gross miscarriage of justice, I thought to myself. Our criminal justice system had failed - a guilty man had been set free; a murderer had beat the rap because he had the financial resources to confuse a jury and "buy justice."

My view of the verdict was confirmed by nearly everyone with whom I spoke, that is, my family, law partners, clerical staff, and social friends - all of whom were white. I soon realized, however, that my feelings were not shared by the vast majority of black Americans. You and I saw black

America's collective reaction - it glared, incomprehensible in my mind, from the television screen - the whoops of glee and exhilaration were disgusting. How could this be? Hadn't we all, whites and blacks, heard the same evidence?

The media's reaction was also split along racial lines: George Will, one of my favorite columnists, called Johnny Cochran "a good lawyer - bad citizen." William Buckley felt that "justice had not been done." He lamented the verdict should be protested. Cal Thomas called the verdict "the biggest travesty in the history of American justice." William Safire decreed that "the race card was played," and whether or not Simpson was guilty of the murders, Simpson was "guilty of ordering the exploitation of his race to the detriment of his race." In stark contrast, Paul Butler, a black law professor at G.W.U. Law who teaches criminal law, poignantly wrote in the *Washington Post*, "When I heard the verdict in the Simpson trial, I wanted to cheer, but I was the only black person in the room. When I saw the long faces of my colleagues, I thought: here we go again. More evidence of the cold war between whites and

blacks. But when I saw how angry some of my fellow law professors were, I got angry too. Why don't white people get it? Are they racist or just stupid?"

Butler's commentary gave me a wake up call. Is my reaction to Simpson's acquittal, and I think, most of your reactions, just a reflection of our innate racist attitude or our social stupidity? What an inflammatory charge from a black man against us white folks: are we whites either racist or stupid? I churned and denied this vituperative condemnation of my race. I don't like to think of myself as a racist, and I might be dumb about many matters, but I ain't stupid. Yet, I thought about the acquittals in the cases of John DeLorean, William Kennedy Smith, Claus Von Bulow, the Rodney King fiasco, and most recently, the Pittsburgh cop who beat to death a black motorist. Was I enraged, disappointed, or did I even give a damn, that the juries in these cases returned verdicts of not guilty - where the "public evidence" appears to prove guilt beyond a reasonable doubt. No, I was not - and I don't believe anyone here tonight thinks of him or herself as a racist.

I decided to undertake the task of trying to understand how a jury composed of nine blacks (eight of whom were women), two whites, and one Hispanic found O.J. not guilty. I reviewed the evidence that was presented by the prosecution at the trial; I considered the conduct of the Los Angeles Police Department in the investigation of the crime, and I realized very early that race, and to some extent, gender, was a prism through which all the evidence was reflected as it was presented to the jurors. It became apparent that the Simpson case was a morality play for Americans concerned about race relations, gender and violence, equality and inequality, and a wide range of other issues that have permeated the last decade of this millennium: issues such as passion and revenge, jealousy and hate, wealth and justice, trust and mistrust, honor and dishonor, and ethical behavior and dirty tactics.

Tonight, I want you to be a jury - listen to and weigh the evidence that I, playing three roles, (1) prosecutor, (2) defense attorney, (3) and finally, as judge, will present and comment upon. But, I ask you to realize and try to understand that you are, and will always be, incapable of ever being an entirely

objective person who can be true to your oath to be "indifferent to the cause" and render a verdict according to the "law and the evidence." It is psychologically impossible, as a juror and in weighing the evidence, to separate your views of life, justice, crime, and punishment from the objective principles of law as given to you by a judge. I dare to believe that most of us here tonight look upon the cops as the "good guys" - who always tell the truth and would do nothing to distort the truth or subvert justice. We like to believe, as Sergeant Friday said, "the truth ma'am, nothing but the truth" - this is our prism through which most of us would view evidence from police - that it is the "truth." Once we have heard the "truth" from the cops, then the prosecution has proved the case beyond a reasonable doubt and has overcome the accused's presumption of innocence - the two bedrocks of our criminal justice system.

As I present the evidence from these three viewpoints, I not only want you, as a member of the jury, to focus on guilt or innocence, but also upon several larger issues which are raised by the Simpson trial. There are many such issues on which I will make comment, but I will focus on four.

1. The search for truth in the adversarial system.
2. Police perjury.
3. Jury nullification.
4. The role of race and wealth in the administration of the justice.

In presenting the evidence, I will on occasion express my viewpoints on these issues. I ask you to reflect upon my comments and share your opinions or feelings about any issue you feel is raised by the Simpson verdict and its aftermath. Some see the Simpson verdict as a symbol of a larger racial division in our country; can poor blacks or whites who can't afford John Cochran and the Dream Team obtain justice in our criminal justice system? Did the jury send a message to us by its verdict of not guilty - and should "the sending of a message" be the appropriate response of a jury in a criminal trial, particularly where two innocent human beings have been brutally murdered; should a jury ignore the law and render a verdict it deems just and disregard the

instructions of the court, and will the Simpson case leave an indelible mark upon the administration of our system of criminal justice.

Finally, consider this: would your view of the evidence be different if Cal Ripken was the defendant, charged with murder of his wife - who, for purposes of this paper, we will say is an African-American.

Search for Truth in an Adversarial System

The term "search for truth" was repeatedly invoked by the prosecution and defense in the Simpson case. Each side ad nauseam told Judge Ito and the jury that its proffer of evidence was to assist the jury in its search for the truth, and the opposition, in objecting, was trying deliberately to obscure it. For example, the prosecution wanted to introduce all of Nicole's complaints of spousal abuse; the defense wanted to introduce all of Fuhrman's racial slurs; neither side got what they wanted. I ask: would the introduction of all of this evidence have helped the jury in its search for the truth? In reality, both the prosecution and defense were really interested in winning. In OJ's trial, the old Lombardi axiom rang true: "winning isn't everything, it is the only thing?"

There is a story of an old rabbi, who after listening to a husband complaining bitterly about his wife replied "you are right my son." Then after listening to a litany of similar complaints from the wife, he responded "you are right my daughter." The rabbi's young student then remarked, "but they can't both be right." To which the rabbi replied, "you are right my son."

Both Marsha Clark and the Dream Team thought their side was right, but none knew the truth (a cynic might suggest none of them cared) - but they desperately wanted a victory. That meant that the prosecution tried to exclude evidence from which the jury may find Simpson not guilty, and the Dream Team tried to exclude evidence from which the jury may find the defendant not guilty. You, the jury, must understand the multilayered process in a criminal trial and how complex the role "truth" plays in it. The criminal trial is not a laboratory or library where truth is sought through investigation and research. For instance, historical and scientific research is conducted by experts in the field who consider, test, and retest all of the evidence (there are no fourth amendment exclusionary rules in history or science), and then arrive at a

scientifically or historically objective conclusion: their means and methods may be fair or unfair; the researcher may be a bad person; it does not matter so long as objective truth is validated by accepted, verifiable, and if possible, replicable historical and scientific tests. Further, the persons who conduct the study are not randomly selected from the population on the basis of their ignorance of the underlying facts, as in a jury case. And there is no requirement that the fact finder be representative of the general population, in race, gender, religion, or anything else, as you the jury should be. So in the OJ trial, the search for truth is quite different from Julius or Cary's professions. You, the jury, must realize that truth, although one important goal of the criminal trial, is not its only goal. If it were the only goal, Judge Ito would not instruct you to acquit OJ even though you probably believed he did it. The requirement is that guilt must be proved beyond a reasonable doubt. Paradoxically, this standard of truth is inconsistent with the quest for "objective truth," because it explicitly prefers one kind of truth to another. OJ is presumed innocent; that is a preferred truth that OJ did not do it, and our system demands that you err on the side of that truth,

even if you believe he probably did it. Justice John Harlan said in a 1970 Supreme Court decision "I view the requirement of proof beyond a reasonable doubt in a criminal case as bottomed on the fundamental value that it is far worse to convict an innocent man than to let a guilty man go free." Blackstone said, "it is better that 10 guilty people escape than let one innocent man suffer."

So tonight, realize you will never know the truth with absolute certainty. Only O.J. knows the absolute truth. And you are not being asked to vote on whether you believed he did it; you are being asked whether the prosecution's evidence proved beyond a reasonable doubt OJ did it. OJ does not have to testify, and you cannot consider this fact in your deliberation. You must weigh the credibility of those persons who did know OJ, Nicole and Ron and those who conducted the investigation. Even if you feel that OJ probably murdered Nicole and Ron Goldman, the law does not allow you to convict Simpson on a mere probability.

The question then is what constitutes proof beyond a reasonable doubt. Courts are reluctant to define it, and semantically struggle to tell a jury exactly what the term means.

Consider this law school hypothetical case. A fatal accident is caused by a blue bus in a town where 90% of the blue buses are owned by the A Company and 10% by the B Company. That is all the evidence presented at the criminal trial of the A Company. Is this 90% likelihood that an A bus caused the accident enough to prove that fact beyond a reasonable doubt? Are you willing to convict a company, or in the Simpson case in the face of a 10% likelihood of innocence?

As for legal definition, the modern instructions on reasonable doubt go somewhat along these lines. "Proof beyond a reasonable doubt does not mean that the state must prove its case beyond all doubt . . . nor must the state prove the essential elements in this case beyond a shadow of a doubt; it does not mean that at all . . . no defendant is ever entitled to the benefit of any and all doubts . . . the oath that you take requires you to return a verdict of guilty if

you are convinced beyond a reasonable doubt, and members of the jury, equally, your oath requires you to return a verdict of not guilty if you are not convinced beyond a reasonable doubt."

Is this definition helpful to you in reaching your verdict?

Members of the jury, in your search for the "truth", that is truth beyond a reasonable doubt, consider the evidence that I summarized and provided to you.

See Attachment #1 - For the Prosecution

But consider the defense's evidence:

See Attachment #1 - For the Defense

Jury members munch on these facts - weigh them as a historian or scientist might consider them, but with your understanding of reasonable doubt - if you have a reasonable doubt, you must acquit.

Police Perjury?

As a young attorney trying to build a practice and be ethical and earn the respect of my colleagues and the judges, I tried many criminal cases in the first few years of my practice in Lynchburg. Often, my clients, the defendant's versions of the facts were at odds with the account given by police officers, and everybody was under oath. My reaction, probably the same as yours would have been, was the defendant was lying, and I had to swallow hard when the accused took the stand and directly contradicted a police officer's testimony (the defendant didn't tell me he was lying). My normal reaction (even in my role as an attorney) was probably the same as yours: why would a police officer lie about the facts he discovered during his investigation? What would be his purpose? In most instances, there was evidence from other witnesses, separate from the facts revealed by the police's investigation, to convict the defendant beyond a reasonable doubt. And who would the jury believe, my client, usually a poor minority, uneducated, a downtrodden soul, or a police officer, clean shaven (there were no women police officers then), and in

a blue uniform. Yet, in retrospect (and after my research for this paper), there was a nagging question in my mind then, felt but unarticulated, about the veracity of some police officers. For example, a common experience that irked me, but about which I did nothing was the jailhouse confession. At trial, the prosecution, upon information from the police, would have a felon testify that my client confessed in the jail cell. This evidence was admissible, and usually sealed the fate of my client. My client would deny the jailhouse confession, but whom do you think the jury believed: my query answers itself, does it not?

Members of the jury, need I remind you that Mark Fuhrman, under oath, denied using the “N” word during the last ten years. When I heard his denial upon cross examination, I suspected that he had not told the truth. There is probably not any member of this jury that has not used the “N” word in the last 10 years, whether in a pejorative way or in any other context. For Fuhrman to deny it, was simply incredible to me. You know about the tapes and how Lee Bailey exposed Fuhrman as a liar. Do Fuhrman’s lies about his personal

code of behavior taint the balance of his testimony and other police officers.

What do you think members of the jury? I believe it did.

But did the LAPD lie about other important facts in the OJ investigation of these two brutal murders? Could evidence have been planted? Consider the following: (1) At the very onset of the investigation, four police officers, one of whom was Fuhrman, without a warrant, scaled the walls and made a search of the OJ residence from which they garnered critical evidence for the prosecution. You jury members certainly know the Constitution forbids law officers from making an unreasonable search and seizure of Simpson's dwelling without the issuance of a search warrant upon probable cause. When the Dream Team challenged the constitutionality of the search, the police in court, under oath, justified its warrantless search by swearing that they feared for the safety of Simpson's children; they denied vehemently that Simpson was a suspect. This explanation, I submit to you - members of the jury - does not wash when weighed in the light of the experiences of police officers in murder investigations. How could Judge Ito have believed the explanation that these

four officers were merely relaying a message to Simpson and his children of Nicole's death when (1) these four officers certainly knew, from their vast experience, that statistics reveal that half of the woman murdered in the United States are killed by their husbands or boyfriends? I submit to you that this fact alone made Simpson a suspect and prohibited a search of his residence without a warrant. (2) Fuhrman had been to the Simpson residence years earlier when Simpson was abusing Nicole. As Scott Turow said: if the veteran police officers did not arrive at the gate of Mr. Simpson's house thinking he might have committed these murders, they should have been fired. Yet Judge Ito denied the defense's motion to suppress the evidence which would have precluded the introduction into evidence of the bloody glove found behind Simpson's house; the socks found in his bedroom, the blood found in the driveway. I ask you; what would have been the public reaction if this evidence had been suppressed by Judge Ito, and Simpson had gone free as a result of Judge Ito's application of exclusionary rule which prohibits the introduction of evidence obtained during an illegal search. I submit it would have created a

furor even louder than the one that erupted after Simpson's acquittal by a jury of his peers. And remember also, Judges in California run for their office just as any other politician.

So there is compelling evidence that police officers sometimes lie about their reason for failing to obtain a warrant for search and seizures? I am not an authority, but my thought, based on my research, is that police know they can get away with certain kinds of common lies in testifying before judges who have become numb and lackadaisical about routine inquiries by the defense into probable cause for the issuance of search warrants, and they often lie to the court to justify their improper conduct. While I do not practice criminal law at the present time, I have confirmed my judgment with some lawyers who earn their livelihood by practicing in the criminal law system.

You, jury members, may protest this is shocking and preposterous - how can police get away with lies - this is not right, much less justice. There are several reasons

(1) Many judges have a benign attitude toward this legally treacherous area of Fourth Amendment rights: they know the public and press are looking over their shoulders, and that they may well be scalded in the public arena and in the press if they suppress evidence which is necessary for the prosecution to prove their case beyond a reasonable doubt. They, like politicians, do not want to be soft on crime.

(2) The blue wall of silence; that is a code which forbids one policeman from testifying against another and requires a policeman to back up a fellow officer, even if he is lying. This police ethic is self-justified, as police see themselves as fighting a two front war - against criminals on the street, and liberal rules of law in the court. All is fair in this conflict - including perjured testimony.

My view on police ethics is confirmed by the report of an independent study of the Los Angeles police department commissioned after the Rodney King beating. Further evidence: an article in the *New England Law Review* in 1993 reported that every objective study of police perjury has come to

the conclusion that police perjury is widespread and condoned. It may be shocking to you, members of the jury sitting here in the City of Lynchburg, and while I'm not saying it is predominant in Lynchburg, there is no question that policy perjury is a serious national issue.

I report to you that several of the real jurors simply did not believe Detective Vannatter when he said that Simpson was not a suspect, and that they went to Simpson's home to notify him of Nicole's death and protect the children; and several jurors also related that they felt the police had conspired to lie about the reason four detectives went to Simpson's house, and why Fuhrman was authorized to scale the wall and open the gate.

Members of the jury, having heard Fuhrman's testimony and the other officers explanation of the warrantless search of Simpson's residence, consider the following items when you assemble to deliberate (1) Detective Vannatter carried Simpson's blood around with him for almost three hours before checking it into police laboratories for storage and analysis. If you were initially suspicious of the police, Vannatter's neglect may give you further

doubts because it gave, as the defense submitted, Vannatter the opportunity to plant evidence. Item 2, the nurse who extracted the blood from Simpson on June 13, 1994 swore to the Grand Jury that he had taken 7.9 to 8.1 cc's of blood from Simpson's arm. However, at trial, only 6.5 cc's of Simpson's blood could eventually be accounted for by the prosecution. Thus, 1.55 cc's of Simpson's blood was missing and unaccounted for. Item 3, three weeks after the blood sample was taken, the police would claim to find traces of blood on Simpson's sock and glove on which no blood had been found during the initial investigation immediately after the murder. Item 4, the official police inventory report said that "with regard to the presence or absence of blood on the socks, none obvious." Item 5, the police, particularly Fuhrman, had the opportunity (and arguably the inclination) to sprinkle blood on the socks found on the floor in Simpson's bedroom during the morning after the murder, on the back gate at Nicole's condominium and in Simpson's Bronco. These socks were visibly inspected by both the prosecution and defense experts, neither of whom initially saw any blood. Item 6, the prosecution sent the socks to an FBI lab to have the

blood tested for the presence or absence of a preservative called EDTA. This element is not present in blood taken from the human body, but is present in blood which has been preserved in a test tube. Accordingly, the absence of EDTA would conclusively prove that the blood on the socks came directly from Simpson and Brown, and not from a test tube. However, the FBI tests demonstrated the presence of EDTA in the blood found on the socks. Item 7, a defense expert testified that any human being whose blood contained that much EDTA, which is an anticoagulant, would bleed to death. Item 8, the police found no EDTA in the area surrounding the blood on the socks, which was important because EDTA could have been in the socks through laundry detergent. Item 9, the blood splatter pattern on the socks was not consistent with the blood having been splattered while Simpson was wearing the socks; rather the pattern was consistent with the blood being splattered on the socks at a time when they were not being worn by Simpson. Item 10, the socks bore none of the fibers, hairs, dirt, berry juice, or other material that abounded at the crime scene. Item 11, the video inventory taken by the LAPD to protect itself

from claims that anything could have been stolen from Simpson's house showed no socks on the white rug where the police later claimed they found it. Item 12, no blood was inventoried on the gate at Nicole's condominium during the original search. But, strangely, OJ's blood was found approximately three weeks later, and EDTA was found in the blood, but not on the control areas surrounding it. Item 13, the blood had high concentrations of DNA - higher than those in the blood found immediately after the murders. Experts found this very suspicious because if the blood had been exposed to the elements for several days, it would have been degraded by the weather.

Item 14, the renowned defense expert, Dr. Henry Lee, put it bluntly, something is wrong, seriously wrong. Item 15, if your suspicions are raised on the blood and socks issues, are your suspicions enlarged about the other evidence. Item 16, take the issue of the bloody glove found by Fuhrman on the morning of the murder. The glove was highly incriminating, but at the same time, it raised suspicions for several reasons. First, it was found in an unlikely place, in Simpson's backyard. The police never could satisfactorily

explain how it got there. They jumped from theory to theory. The first theory was that it was accidentally dropped by Simpson as he climbed over the wire fence from a neighbor's adjoining yard. When an analysis of the surrounding vegetation showed that there was not a possibility, the prosecutors changed their theory. They then claimed that Simpson had deliberately thrown the glove behind his house in order to hide it. But this theory seemed preposterous in light of the argument that OJ, who had successfully hidden the murder weapon and his bloody clothes, would have deliberately thrown the single most incriminating item of evidence and the easiest to dispose of, in the first location any good detective would look. The third theory that Simpson dropped it in his backyard when he hit his head on an air-conditioning unit which caused him to drop the glove, and when he was supposedly planning to bury his clothing in the backyard. There was no evidence of any bruise on Simpson consistent with having hit his head against the air conditioner. Also difficult to explain, the glove was still damp from blood when it was found. Why was this suspicious: there was no rain, dew, or moisture that night. If the glove had been dampened

by blood at about 10:30 p.m., and dropped behind Simpson's house at 10:45 p.m., it would have been dry at 6:15 a.m. when it was found. Blood dries quickly in the night. Guess who found the glove, while alone: Fuhrman, a man who bragged on tape about planting evidence to assure a conviction of an accused, who lied about using the "N" word, and who abhorred mixed marriages. And further, the glove did not fit. You all saw this did you not?

So, members of the jury, do police sometimes lie in court? Yes.

What may be called a justifiable lie when it is necessary to convict an accused who the police and D.A. think is guilty? Did Fuhrman and the other three investigating officers lie to you about their search and the fruits thereof? It is not unreasonable to believe so. And remember, you have been instructed by the court that "a witness who has wilfully testified falsely on one material part of his testimony is to be distrusted in others. You may reject the whole testimony of the witness who has wilfully testified falsely to a material point unless, from all the evidence, you believe the probability of truth favors his testimony and other particulars." So the court has instructed you that Fuhrman and any other

officers who you believe testified falsely is to be mistrusted, and their testimony may be rejected.

Members of the jury: this is a mystifying, complex, brutal, and cruel case, but you may not convict if you have reasonable doubt. All the prosecution's case is based on the reliability of circumstantial evidence, most of which is based on the credibility of the testimony of impeached witnesses. No one single strand of facts would lead directly to Simpson as the murderer. For the prosecution's motive-domestic violence; the incident on which you heard evidence occurred five years ago. On the day of the murders, you saw OJ smiling, proud of his daughter's dance performance. Was this the demeanor of a man planning to murder his ex-wife? Can you believe that on this same day Simpson committed two brutal and bloody murders, cleaned himself up, got back home between the wails of the dog (at the crime scene) and three bangs on the air-conditioning unit (from Kato Kaelin), disposed of all his clothing and the murder weapon, and washed most of the blood from himself and his car? Could

he have done this? Is this the evidence upon which you can find OJ guilty of murder beyond a reasonable doubt.

Jury Nullification

Do you have the right to disregard the instructions of Judge Ito if you believe it is wrong to convict OJ? If you believe that the police lied and planted evidence against OJ and framed a man who you think probably committed two murders: will you vote for conviction? Historically, there is ample precedent of juries imposing their own sense of justice and fairness even though their verdict may not follow the law. Judge Jack B. Weinstein has articulated a judicial justification for jury nullification:

"The legitimacy of the jury process demands respect for its outcomes, whatever they may be. Attempting to distinguish between a 'right' outcome - a verdict following the letter of the law - and a 'wrong' one - a 'nullification' verdict - can be dangerous, and this

endeavor depends largely upon personal bias.

Nullification is but one legitimate result in an appropriate constitutional process safeguarded by judges and the judicial system. When juries refuse to convict on the basis of what they think are unjust laws, they are performing their duty as jurors."

Juries have refused to convict and sentence to death fugitive slaves that effectively nullified fugitive slave laws. Martin Luther King urged jury nullification as a partner to civil disobedience during the civil rights trials of the 1960's; all white juries used nullification to free white murderers of black victims. So juries nullify when they disagree not with the law, but how it is being enforced. Juries, in effect, are policing the enforcement of the law. A modern example is the battered woman syndrome. Although the law of self-defense is clear - a battered woman may kill or maim her batterer only if her life is in imminent danger and she has no other option, such as leaving or calling 911 - several juries have acquitted battered women who did not meet

these stringent criteria. The Lorena Bobbitt case was an unusual example.

More typical have been the acquittals of several battered women who have shot their batterers while the men were sleeping.

So, members of the jury, if you cannot bring yourself to vote for conviction, if you believe the police lied or planted evidence, you may return a verdict of not guilty - even if you believe OJ may have done it.

Is this an explanation for the juries' verdict?

The Role of Race and Wealth in the Administration of our Criminal Justice System.

There is no doubt that Simpson's wealth played a significant role in his quest for justice; the Dream Team was expensive. Most defendants, black or white, could not begin to afford this price to get justice. Do you believe that Johnny Cochran played the race card? Should race or wealth be neutral factors in a criminal trial? Whether you believe so or not, race and wealth are not neutral factors. Was race a factor in the acquittal of the Rodney King case? I think so! Was it a factor when an all white jury acquitted the Pittsburgh police

officer? Was wealth a factor in the acquittal of William Kennedy Smith? Yes, I think so!

The Anita Hill-Clarence Thomas conflict showed the world that blacks, particularly black women, see the world more through the prism of their experience as blacks than through the prism of their experience as women. Most blacks, including women, sided with Thomas.

Race plays a part in how you were treated by the police, and in turn, how one thinks about the police. White folks generally tend to trust police, but many blacks tend to distrust police, based on their experiences with them. Each of you probably can think of an example where a black person has been treated differently than a white person under mutual circumstances. Many criminologists relate the issue of race to the death penalty. This could be the subject of another paper. What is your reaction when a white person is killed by a black man? Is it the same reaction when a white murders a black or a black murders a black? Statistical evidence shows that predominately white juries impose the death penalty far more frequently on blacks who kill whites

than on whites who kill blacks. So people, blacks, whites, hispanics, asians, jews, male, female, gay, and heterosexual view the world through the prism of their experiences. Are you, members of the jury, less susceptible to an attack on the credibility of the police officers than a predominantly black jury?

Unquestionably, Cochran played the race card? He said that he would have been guilty of malpractice if he had not played the race card. But did he overstep his bounds by making a comparison between Fuhrman and Hitler? Here is what he argued:

"There was another man not too long ago in the world who had these 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 is just crazy. He is just a half-baked painter. They didn't do anything about it. This man, this scourge, became one of the worst people in the history of this world. Adolf Hitler, because people didn't care or

didn't try to stop him. He had the power over his racism and his anti-religion. Nobody wanted to stop him and it ended up in World War II. And so Fuhrman, Fuhrman wants to take all black people now and burn them or bomb them. That is genocidal racism."

Ladies and Gentlemen of the jury, I tell you that this argument is playing the race card. Bob Shapiro castigated Cochran for doing so, but what was Cochran trying to suggest. Here is Allan Dershowitz's spin on the argument:

There is, of course, no comparison between the incomparable evil inflicted by Hitler on millions of innocent Jews and the shakedowns, beatings, false arrests, perjury, swastika-paintings and evidence-planting allegedly done by Mr. Fuhrman. But Mr. Cochran did not suggest any such comparison, and his critics should have read what he actually said, rather

than the media's characterization. What he did argue was that there is a similarity of "views" between Hitler and Mr. Fuhrman, and he is right. Mr. Fuhrman has advocated genocide - the mass burning, shooting and bombing of blacks, especially those involved in interracial marriages. Mr. Cochran also reminded his listeners that we ignore people with such racist views at our peril, especially when they wear uniforms, badges and guns. . . In fact, Mr. Cochran explicitly differentiated Hitler from Mr. Fuhrman, pointing out that Hitler "ultimately had power" and was able to carry out his racism. We must, of course, be careful in making analogies to the Holocaust or to Hitler. But we should not shy away from reminding the world that we ignore institutional racism of the sort long condoned by the Los Angeles Police Department at our collective

peril. Mr. Cochran was absolutely on target when he warned his listeners that when people don't care about racism and don't try to stop it, it can get out of control.

Jury members do you agree with Dershowitz's analysis? Was he on target when he warned you (and society at large) that when people don't care about racism and don't try to stop it, it gets out of control? Many black people feel that the only difference between the police and out-and-out criminals is that the police wear uniforms. The jury had nine blacks (10 women). It has been observed that many black women may identify with a black male defendant such as Simpson, rather than a white female victim. Donna Franklin, a Professor of Child Welfare at the University of Southern California, believes this to be so because racism has prevented black women from being in an economic position to pursue feminism. She makes a very interesting observation: "the black women's envy of white women was that they had a man taking care of them. Black women never had that luxury. Black women have been deprived of a provider by the system. They wish they could sit in the suburbs and write the

feminine mystique. That is why black women and white women have always been apart. They cannot move to the next level until they have those first needs met.

Is Louis Farikan's Million Man March on Washington an attempt to respond to Franklin's observation about the role of the black man in our culture?

Paul Butler applauds the Simpson acquittal because it says that the criminal justice system can work for a black man who can afford to defend himself. He wrote:

"We were not applauding the release of a criminal, but rather that at last the system could work for an African-American man. Even one charged with violence against a white woman, an allegation with historical resonance in the United States - go look at the strange fruit on the limbs of Southern trees. Many of us do not doubt that OJ bought himself that reasonable doubt with a lot of cash, but we also know that's how

criminal justice works in the United States. White people didn't take it so personally when it worked that way for rich white men like John DeLorean, William Kennedy Smith, and Claus von Bulow."

Cochran has been severely criticized for making reference to Hitler and Fuhrman in the same paragraph: when people don't care about racism and don't try to stop it, it can get out of control. Cochran asked the jury to send a message. What was the message? Did the jury send a message when finding OJ not guilty? To whom was the message directed? Has it divided America? Has it contaminated our criminal justice system? Has it condoned spousal abuse? Is it a commentary on the weakness of our judicial system? These are issues that you may now address. The case is now in your hands. Let your deliberations begin.