

by Geoffrey Norman

Juror Furor

Johnnie Cochran isn't why juries have become a joke.

Johnnie Cochran was on the radio, signifying. About the O.J. trial, of course, on some local talk show. He was very smooth and very persuasive and as I drove along the blacktop, listening to that mellow voice, I was almost sold, in spite of myself. The man said things in a way that made you suspend your resistance. He made good sense. He sounded reasonable.

If I had followed the trial more rigorously, I might have been more skeptical. But I wasn't expert enough in the minutiae of such things as the "blood evidence" and the "race card" to marshal the facts and sift the evidence. So I listened to Cochran as the miles melted under my tires and, for a while, he had me.

But then, the talk show host (a small timer, as out of his depth as I) asked him about the jury.

J.C. said he was glad his host had asked that question. And then he began singing hymns to the jury system and all juries everywhere. He quoted Abraham Lincoln (something about how jury duty was "the highest act of citizenship") and Jefferson ("the jury is the anchor of all our liberties") and carried on in a state of high rhetorical fever for a full five minutes. Halfway into the rap he had lost me and undone all the work that had gone before. He was just another jiving lawyer. There was no reason to believe anything he said. Not if he could say what he was saying about juries. To say those things he had to

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be either a liar or a fool (or maybe just a great lawyer). I might not have known about the "tainted evidence" in the O.J. case but I knew about juries first hand. I knew how much respect lawyers like Cochran—and everyone else in the judicial system—feels for juries and jurors. Which is none at all...or just about as much as they deserve.

When you are called to jury duty, you are inclined to feel a little surge of self-importance along with a sense of pride that goes along with doing your duty. But it passes quickly.

When called to participate in my first jury pool (a few months before listening to Cochran), I was warned to be at the courthouse promptly at 9 a.m. I live in the country (Vermont) and it is a forty-five minute drive from my home to the courthouse. I gave it an hour and a half just to be sure and bought the morning paper in case I was early and had some time to kill. I could have brought a book. A Russian novel.

I found a place to park—there were no designated spots for jurors as there were for all the judges and other members of the courthouse crowd. Jurors may be the anchor of all our liberties but that doesn't mean they rate parking privileges.

I located the clerk's office and announced myself. Once my name had been found on the list and a check mark entered next to it, I was asked if my employer was compensating me for my time spent doing jury duty. I said I was self-employed.

Well, the clerk asked, did I want to be compensated? The implication was, plainly, that a "yes" answer would put me in the company of welfare cheats and doctors who scam Medicare for millions.

I took the money anyway. I have no shame. It came to \$30 a day, for sitting around and mainly doing nothing. Much less than the government pays its full-time employees for doing the same thing.

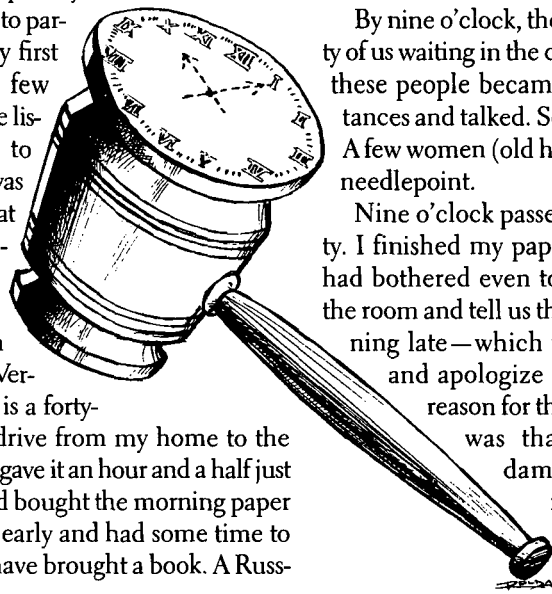
I was directed to a courtroom and told to wait there for instructions.

By nine o'clock, there were about thirty of us waiting in the courtroom. Some of these people became instant acquaintances and talked. Some, like me, read. A few women (old hands, I figured) did needlepoint.

Nine o'clock passed. Then nine-thirty. I finished my paper. At ten, nobody had bothered even to stick his head in the room and tell us that things were running late—which was self-evident—and apologize for the delay. The reason for this, it became clear, was that nobody was a damned bit sorry for making us wait or keeping us uninformed. We were jurors. It

was our job to be treated with high-handed contempt and we were being paid for it. Thirty bucks a day.

I went to the door and was stopped by a man who wore a uniform and carried a sidearm. He was so fat that the exertion of



pulling the gun would have probably given him a coronary. His presence did not make me feel all that secure but, of course, he wasn't there to protect us; he was our jailer.

"Sorry," he said, "but you can't leave the room. We got lawyers and defendants out in the halls."

I said—politely, I thought—that I didn't quite understand. Defendants—people who were charged with crimes—were free to roam the halls. Jurors—those of us doing our civic duty for a cool thirty bucks a day—had to be confined to a room with an armed guard at the door.

The fat man with the Glock gave me a look that pretty much summed up what the courthouse gang thought of jurors.

"Well," I said, "when are we going to get started?"

"When the judge gets ready."

It was then that I began to understand that the judicial system runs at its own, leisurely pace; one that is not inconvenienced, like the rest of the world, by deadlines. Lawyers and judges take as much time as they feel they need. They will not be hurried. Which explains, no doubt, why it takes a decade or more to execute a convicted murderer.

Jurors' time might be wasted but—to use the punch line of an old joke—what is time to a pig?

I went back to my uncomfortable seat and my newspaper. I had been reduced to reading the bridge column.

Still, nobody came to tell us anything.

At 10:40, the courtroom was opened. Bailiffs entered and a couple of men in dark suits took places at tables in the front of the courtroom. The prosecutor and the lawyer for the defendant. We all knew that from watching the television.

The defendant also took his place. He was a surly looking young man who had dressed in his newest jeans and cleanest sweatshirt for the occasion.

The bailiff instructed us to rise. The judge entered and told us to be seated. More and more, I felt like I was back in kindergarten.

Over the next half hour or so, the judge and the lawyers went through the motions of a plea and sentencing for the man in the stylish sweatshirt who had

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been accused of beating up his girlfriend. While those of us in the jury pool had been confined to our room, his lawyers and the judge had worked out a guilty plea and a suspended sentence. This, I was told by a man who'd done several tours of jury duty, is pretty much routine. Defendants wait until the last possible moment to deal. Which often means jurors are not needed.

The deal was done. The defendant and his lawyer left the courtroom. The bailiff called the next case. Another scruffy defendant walked up to the front table, accompanied by his lawyer, who then asked the judge to continue the case. The judge didn't have a problem with this. What's a couple of months, after all, against the imperatives of justice?

The case was rescheduled.

By now it was 11:45 and since court normally recessed for lunch at 12:00, the judge decided there was no point in working for a mere fifteen minutes. He called recess.

I ate chicken and dumplings at the local diner and was back in my assigned seat at one o'clock sharp. No sign of the judge.

He finally showed at about 2:40 and, once again, we all stood up when he entered the room, as though we were honored.

But this time it looked like we might get a case. We had a defendant who wasn't going to cop a plea. A stocky, middle-aged man with the look of someone who had done hard jobs for small pay, he was seated at his table, alone, since he had decided to act as his own lawyer. As our names were read off, we took our places in the jury box. Then the prosecutor and the judge asked us the pre-

dictable questions. Did any of us know the defendant? Did any of us have relatives on the police force? Had any of us been the victims of a crime? The defendant asked if any of us thought that kids should not be held accountable for their actions. It was the one question that contained any hint of what the trial would be about or any element of originality.

We made it through the questions in a little less than an hour. Then before the trial could actually begin, the judge called another recess.

"The guy must have a prostate problem," one of my fellow jurors said.

Twenty minutes later, the first witness was called.

It was now after three. Like the rest of the jurors, I was eager and impatient to do some justice. What we got was a case involving some stolen bottles.

The essentials of the case were as follows: A couple of kids—young teenage boys—were on their way to school one morning and saw some returnable bottles stacked outside a neighbor's trailer. Needing some cash so they could play the video games, they decided to "take" the bottles and cash them in for the deposit. The man who owned the trailer—and the bottles—and was now sitting in front of us as a criminal defendant, happened to look out of his window and see the theft in progress. He went out and gave chase. The boys dropped the bottles and split up. The man chased one of them through the neighborhood and across a city street. The kid went into an apartment building to hide but the man followed, cornered him, and gave the kid the business.

As jurors, our job was to consider the case against the man whose bottles the kids had tried to steal. He was charged with recklessly endangering the kid when he chased him across the street and with menacing him when he caught up with him in the apartment building and got in his face.

The prosecutor seemed to read my mind.

"The state," he intoned in his opening remarks, "does not condone the theft of private property. But that is not what this case is about. This case is about a defendant who took the law into his own hands ..."

The judicial system, when it is not on

break, takes a very dim view of anyone who does this. It reacts pretty much the same way any monopoly does when faced with competition. It sets out to annihilate its rival.

The defendant said that he would attempt to prove to the jury that he had not threatened anyone, that he had done what anyone in his shoes would have done, and that his conduct had actually been fairly restrained.

After these opening arguments, we heard from the cop who had arrested the defendant, a couple of women who had called to complain about the disturbance, and the boy whom the defendant had chased.

The prosecutor made his case smoothly. The defendant, who had the impertinence to act as his own lawyer, was repeatedly interrupted by the judge and told to frame his questions properly.

"The bottles were clearly mine, right, anybody would know that?"

"Objection."

"Sir, I must remind you again that your questions must be framed in such a way that the witness can respond as to matters of fact."

"Sorry, Your Honor. I'll try again. Is it true that the bottles were found on the ground, approximately 200 yards from my trailer?"

"Yes."

And on it went.

The star witness, of course, was the kid. The prosecutor stressed the chase. The defendant, when his time came, got the kid to admit that, yeah, he and his buddy knew those bottles didn't belong to them but they had decided to take them anyway. And, yeah, he'd heard somebody yelling at him to stop but he kept running anyway. And, no, he hadn't been hit when he was cornered in the building. Just yelled at and cuffed a little, maybe.

"Do you recognize the man who yelled at you?"

"Yeah. It was you."

I had my mind made up even before the judge spent thirty minutes or so telling us what our duties were and how we had a solemn duty to find according to the law and blah, blah, blah. He

spoke very slowly, as though we might not understand the epistemological subtlety of "reasonable doubt."

Who does? According to polls, two-thirds of the people on any jury believe in alien abductions. So what is reasonable? For that matter, what is doubt?

I had no doubt when I walked into the jury room.

Neither did two other jurors. Both men. We all believed that the defendant ought to get a medal. He had probably done the kid a favor by throwing a scare into him. If the defendant had called the police to report the theft and the police had been able to find the boy and charge him, he would have been delivered into the hands of the juvenile justice system where he would have learned that nothing much happens to you if you steal someone's property. You will be counseled.

The three of us made our argument. The other jurors—all but one, women—wanted to convict the defendant. "Because he did break the law," one of them said.

We argued, back and forth. And slowly, our side wore their side down. Our most persuasive argument was experience. We all knew about boys who did worse than the kid who stole the bottles and never suffered. But more than that, we all had our own immediate experience with the judicial system—our day of jury duty. If this was the way they ran things, my side argued, then we needed more vigilantes.

After an hour or so, we prevailed in a clear cut case of jury nullification. According to the judge's instructions, we should have found the defendant guilty. We went with justice instead of the law.

The judge thanked us, with some distaste. And then he spoke to us from the heart. If we felt inconvenienced by the delays and the inefficiencies of the system, he said, there was an easy remedy. Tell your legislator to vote for more money for the courts. The problem was overwork.

He said it with a straight face. And then adjourned the court. We had actually worked about four hours of a nine-hour day. Like the O.J. jury we had returned a flawed verdict, based largely on our resentments.

We were, I fear, increasingly typical. ☼

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by Benjamin J. Stein

Hello, Larry

A Saturday breakthrough day in the life of Tommy Stein and his Dad.

Off to the soccer semifinals in Rancho Park, a large park near Twentieth Century Fox studios. Tommy is playing center defense man and he is playing brilliantly. He is rushing up to the ball, kicking it really far, roaming the field to see what he can do to help, playing like a champ. Over and over he has blocked the other side's advance and sent the ball flying back toward their goal. As a result, our team is ahead by one goal and the other side is demoralized.

I am standing on the sidelines looking at him, shouting encouragement. Never a discouraging word, and he looks like a little god of soccer out there. I can't believe that little deity is my son. He is so big and brave and strong and I love him so much. Thank you, God, for giving me this angel. I actually fell to my knees on the sidelines, pretending I was tying my shoes, to thank God for my little star. This is as good as it gets.

But then, disaster: as the fourth quarter begins, our coach, a difficult personality at best, takes Tommy out of the game and sends in the worst player we have.

Tommy is in shock and almost in tears. "What are you doing?" I ask our coach, an emergency-room physician who fancies himself a sort of Hebrew version of The Terminator.

"What are you? The new coach?" he asks.

In short order, the other side breezes right by the new center man, and they win and our team is out of the running. Amazingly, our coach is happier when

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we're losing than when we're winning—at least so it appears to little me.

After the game, trophies are handed out. The coach also gives a highly accented little speech praising every player. When he comes to Tommy, who was a giant star this season, he says, "And Tommy, who didn't show up a lot, but came back with a lot of spirit."

Now, this is because Tommy missed three practices when it was raining and he had a cold. He also missed a game when he was traveling to Philadelphia with my wife. The coach does not like games to be missed. Then he shows his real philosophy. He gives special kudos to two players. "And little Jimmy played one day with a 103-degree fever and little Billy played with a broken collarbone. That's the way to do it."

This is a doctor telling kids to play when sick. He is a major danger. A doctor telling kids to endanger their health for AYSO soccer?

The old Ben Stein would have yelled at him and sued him. But the new Ben Stein just took Tommy, rubbed his tousled head, and said, "You played so well that I am going to buy you a really high-end paint-ball gun."

He was ecstatic. "But," I said, "we have to go biking first so Daddy can get some exercise."

This put him into a big tailspin. I think he was tired and dispirited from the game and the dopey coach, but he just refused to go biking. When we got to the beach, he sulked and protested. I

told him he could just sit there and read. "But," I said, "you are being very selfish not keeping your old Dad company. That means I am not getting you the paint-ball gun after all."

He nodded and sat down and read. I rode my bike a long, long way, and then I picked up a big bag of hot, juicy french fries and brought them to Tommy. He ate them right away, and his mood picked up. Not a lot, but it picked up. A hungry, tired boy is not the best boy to have around. I was tempted to relent and get his \$200 paint-ball gun, but then I thought that I would be harming him more than helping him if I gave way.

We drove home with him sulking and not speaking. When we got home I noticed an immense tree limb had blown over from my neighbor's yard onto the street in front of our house. But it was still attached to the tree by a cord of thick bark and integument (or whatever the inside of a tree is called). "I'm going to get a saw and cut that down," Tommy said.

"No," I said. "It's cold and you're tired. Plus it's much too hard a job for a ten-year-old boy to do."

"I want to do it," Tommy said. "I can do it."

"No, you cannot do it," I said. "No way."

"I want to try," Tommy said.

He ran into the house, got a little saw

