

Can We Really Expect Justice From This?

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The O.J. Simpson trial must seem confusing, boring, and erratic for jurors. This judicial proceeding is presided over by a judge that California trial lawyers lavished praise upon at his appointment to the case. Mr. Simpson has what has been referred to as the "dream team" for his defense. The L.A. prosecutor's office is one of the largest and well equipped in the land. These factors should result in an efficient, smooth, almost error free model trial. Alas, such has not been the case!

In one day of the televised Simpson trial, there were 22 side bar sessions, instances where lawyers consult with the judge out of jury hearing range to decide on lawyers' arguments. These side bars consumed 25% of the day; the jury was teased, confused, and frustrated with interruptions and delays. Such events insure that: jurors lose any rhythm the case may develop and that they wonder about and try to provide for themselves answers to what occurs during the indeterminable interruptions. Such is not the ingredients of reasoned and deliberate jury concentration.

The criminal justice system goes beyond the courtroom; it includes the police, investigators, and evidence gatherers and interpreters. In the Simpson case, at least one police officer is facing interrogation about racist comments and actions in his past as a means of impeaching his testimony relevant to his finding material evidence. Although the officer's feelings or past actions regarding racial matters in cases outside the jurisdiction of the Simpson case have nothing to do with whether or not the evidence was found by that officer, his character is fair game. The jury will undoubtedly be told by the defense that such a man should be suspect and the prosecution will equally strongly claim that there is no relation between earlier feelings or acts to the case at hand. But the jury, who gets a limited exposure, will likely perceive that it is germane since the judge allowed it to be included as testimony.

Jurors are faced with impossible contradictory commands. They are told to only consider evidence presented in court; and then they are (1) told to ignore certain utterances they hear that are objected to; (2) they are left for up to a week at a time wondering why nothing seems to be happening while they are sequestered; and (3) they are asked to distrust, even suspect, the police and the prosecution, the very institutions central to our criminal justice system. Such dissonance is stressful on juries and it adds to the likelihood of erratic verdicts.

Typical Simpson case court sessions are ended by 3:00 to 3:30 PM on many days. Court sessions are

frequently delayed at the start by lengthy side bars, with obtuse arguments over opposing lawyers' decorum. Further session delays occur by unending interrupting objections and by opposing sides requiring foundation questions so that obvious reasonable questions can be asked. Foundation requests are essential when there is doubt that such a basis for certain questions are present; however, in this case, with its endless discovery [disclosures to the other side of what evidence and witnesses you have], there is little need for this tactic. The jury must be bored to death and wondering if everyone in the courtroom thinks jurors are stupid by these silly sounding and endless foundation demands.

Endless lawyer objections, most of which are overruled and many that seem reflexive and predictable, which are aimed at getting the opposing attorney off stride, must be another source of juror frustration. Top rank lawyers know what is permissible; and the judge knows these are first rate lawyers. Why, then, doesn't Judge Ito come down hard on instances where violations that are not incidental or close calls thus reducing the urge by the lawyers to "get one in" even though it will be ruled as impermissible?

One police officer testified for two and a half days. I counted, with the aid of a video recorder, 29 questions that were asked eleven times; 22 questions asked ten times; 13 questions asked nine times, 9 questions asked eight times; and only 4 questions were asked only once and 6 questions were asked only twice! Is this is quality courtroom management and decorum? It wouldn't surprise me that a jury of reasonable people would come to the conclusion that this case is so confusing as to leave them in grave doubt and would result in a hung jury. These jurors, who are faced with a judge who cannot or will not manage his courtroom any better than the Simpson case has been managed; with a prosecution who summons witnesses who appear unprepared and who, in the cases of evidence gatherers and handlers, seem at times incompetent and sloppy; and with defense and prosecution lawyers delaying testimony with what seems endless side bars, redundant questions, sniping at each other, and objecting all too often are to be commended for sitting there and not screaming in frustration or feigning illness to get out of this nightmare. Such jurors are to be commended for putting up with this.