



ACQUITTAL

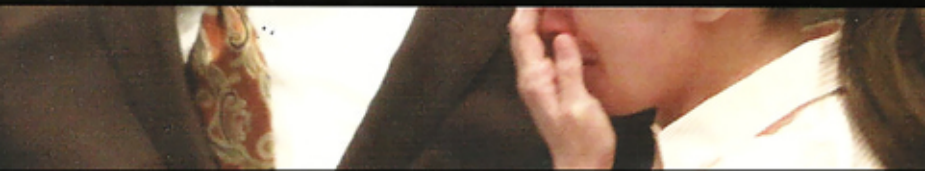


AN INSIDER REVEALS THE STORIES AND
STRATEGIES BEHIND TODAY'S
MOST INFAMOUS VERDICTS



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PRETRIAL WORK

One of the biggest concerns the defense team had was that the unprecedented pretrial publicity, along with the release of the 911 calls, would prejudice the public into prejudging Simpson. Indeed, numerous public opinion polls conducted by news organizations already indicated a majority of Americans were predisposed toward Simpson's guilt. We thought that the more potential jurors were exposed to the mostly pro-prosecution stories in the media, the more they would be preconditioned to Simpson's guilt, making it exceedingly difficult to seat a fair and especially impartial jury. However, when Strand's polling came back on a couple of refined questions, we found an interesting result. The more people had heard about the case, the more they were inclined to think Simpson was *not* guilty. Even more important was that half of those polled didn't *want* to believe that he was guilty.

We were learning, as became more apparent in later "celebrity" trials, the great barometric test in the changing weather of public opinion is how much the public *wants* an O. J. Simpson, Michael Jackson, or Martha Stewart to be guilty or innocent of the alleged crime. And early on in the Simpson case, the images of the crime so contrasted with the public's image of the man that most did not want to believe that the USC and Buffalo Bill running back they had rooted for, or Officer Nordberg in the Naked Gun movies that they had laughed at, could have done such a horrible thing.

Experienced trial consultants spend a great deal of time in trial listening to juries in voir dire and talking to them, if possible, after a verdict. However experienced, smart, or intuitive we think we are, the real staple of consulting is research. Because research in the form of surveys, mock trials, and focus groups lets you look at a jury's decision-making patterns. Good jury research digs below the surface of a jury's reaction to the case and looks at the blueprint of the decision-making machinery of *how* they arrive at a verdict. The *how* allows the consultant and the trial team to present the evidence in trial so that the jury

you have will more easily understand and be influenced by your case. Lawyers and judges talk about juries being unpredictable, but they are actually unpredictable in very predictable ways. Juries have patterns in their decision making, and if you ask the right questions and listen carefully enough, they will tell you exactly what they need in order to come to the verdict you want.

We decided to have two tracks of research, public opinion polling and our own research. I asked Dr. Sharon Gross, a brilliant social psychologist and one of my mentors, to track the public opinion polling. Predictably, it was overwhelmingly negative toward Simpson. Armchair jurors around the country were seeing news reports about the 911 calls, hearing leaks about the blood evidence, and listening to District Attorney Gil Garcetti's proclamations about Simpson's guilt.

However, as we have seen from the public's outrage to other high-profile cases, the public mind and the private juror mind often differ. In addition to Strand's survey, we also wanted to understand how our jury pool thought about what they had heard in the news. We had to carefully plan the research as we knew the media was hungry for stories, and would love to hear about how the trial consultants would "spin" the case. So we carefully screened our focus group "jurors" to make sure that there were no leaks. Ironically, DecisionQuest, a national trial consulting firm who was hired by the district attorney's office, decided to conduct their focus group research in Phoenix to avoid being discovered by the press. This was an odd choice, as Maricopa County jurors are nothing like Los Angeles residents, so any feedback they got would have been a false read for the Los Angeles jury pool. The media managed to discover their focus group location and hounded the DA team all the way back to Los Angeles. We managed to conduct our focus group research undetected.

When we looked at our survey data and our focus group results, some interesting patterns emerged. While only a little more than a third of our respondents thought Simpson was actually innocent, two-thirds thought that Simpson did not have enough time to commit the

murders, giving the defense team an insight to an important theme in the case. When looking at our research, two other key findings emerged: almost half of those expected to show up in the jury pool had been treated poorly by police at least once, and almost a third believed that blacks were rarely treated well in the justice system.

CBS's hit show *CSI* did not premiere until 2000, so DNA evidence was a relatively new concept for the general public. In our research, the prosecution's evidence of a DNA match to Simpson did not get a strong reaction except for one particular demographic: young people. Almost two-thirds of the under-thirty-five set leaned toward acquittal but also believed in the strength of DNA evidence. We knew we would have to keep an eye out for this group, as these jurors could swing toward either acquittal or conviction.

And in another counterintuitive twist, almost half of the divorced or widowed women we spoke to leaned toward acquittal. Surprisingly, Nicole Brown Simpson's history of 911 calls and domestic abuse did not impress them as a motive for murder. We knew from the release of the 911 calls that the prosecution would be trying an escalated spousal abuse case. We believed that the prosecution's primary motive evidence would be:

1. O. J. was possessive of Nicole and extremely jealous, even after they were divorced.
2. In uncontrolled rages, he would lose control and beat Nicole.
3. He would obsess about Nicole and spy on her.
4. He felt excluded and dismissed at his daughter Sydney's dance recital on the day of the murder, which made him furious.
5. He killed Nicole and Goldman in a jealous rage.

Although the prosecution does not have to prove motive, jurors always consider it when they are trying to solve a crime, especially a gruesome murder. It did not take an expert to figure out that the dis-

trict attorney would want women on the jury who could relate to Nicole's circumstances and condemn O. J. as an abuser. And it was here where our research provided some insight into our jury-selection profile. I asked some of the women in our focus group why they were reluctant to convict Simpson. Some who had been in troubled relationships shared that they themselves had contributed to the volatility with their partners. And the stronger women I spoke to were proud to claim they gave as much as they got. They said that although they did not stay in relationships with their abusive husbands and boyfriends, it was too big a leap to say that the fights and physical abuse alone provided motive for murder.

The prosecution, in pursuing this "abuse equals murder" angle, also left narrative inconsistencies in their motive story. The physical evidence pointed to a rage or impulse killing, while the prosecution's timeline suggested a carefully premeditated murder to fit into a prearranged alibi for Simpson. The premeditation scenario did not fit our jurors' perception of domestic abuse being a "heat of passion" reaction and the gruesomeness of the attack. And the jealous rage scenario did not make sense with the prosecution's theory of how Simpson had carefully planned the killings to be able to make his flight, as well as the coincidence that he just happened to be carrying a knife. These may seem like small inconsistencies, but for a jury considering a first-degree murder conviction, these can be the seeds of doubt. In our focus groups, a number of jurors spoke about how these stories did not seem to "fit."

So we learned from the research that we did not have to be overly concerned with strong women who had been in physically combative relationships with boyfriends and husbands. And this provided a big strategic advantage by allowing us to keep jurors that the prosecution would also want, gambling that our research was better than their intuition.

Finally, the jury research told us that the pretrial publicity had a counterintuitive effect. The media's furious competition for the "exclusive story" made rampant rumors and speculation fair game. And

because most traditional journalists had no-pay policies, the *National Enquirer* became one of the most trusted sources for breaking news on the case, specifically because they could pay and pay well. So everything Simpson was a story. Everything was for sale. The trial became a commodity, fueled by the public's insatiable desire to hear anything and everything related to not only O. J. and Nicole, but the police, the lawyers, and anyone who knew a family, friend, or foe associated even remotely with the trial or that terrible night in Brentwood.

The more that prospective jurors heard about the case, the more they could not distinguish real facts from the hype and sensationalized coverage. Thus, evidence got buried in the slag heap of hearsay and rank speculation that ran amok in the scramble for scoops. Jurors were already suspicious and had more than a modicum of doubt about everything that they had heard, even the prosecution's hardest of hard evidence.

This unprecedented media feast also desensitized jurors to the evidence they were going to hear in the actual trial. The 911 calls and pictures of the Bundy crime scene had lost the visceral punch of the first time seeing those bloody images and hearing the fear and anguish in Nicole's voice.

All of the defense lawyers were savvy enough to understand that the trial had started long before jury selection. The police and the prosecutors were conducting their investigation. The defense also set up a tip line and fielded hundreds of calls and letters. And the media was conducting their own investigation, fueled by advertising dollars and Nielsen ratings. Tracie Savage of KNBC News in Los Angeles had to testify in a court hearing after she reported on a DNA match of Nicole that was found on one of O. J.'s socks, even before the defense had heard of the lab results. Credible witnesses became discredited overnight when it was found out that they had sold their stories to the tabloids.

Between evidence leaks from the prosecutor's office, the separate investigations conducted by hundreds of journalists, and the interviews given by the Goldman and Brown families on one side and O. J.'s

friends and family on the other, the pretrial PR wars were at a fever pitch. Hundreds of letters flooded the jail in support of O. J.

And in this both heady and noxious air of public scrutiny, everyone became an instant celebrity. Robert Kardashian, whose young children Kim, Khloe, Kourtney, and Rob would later become famous for being famous, would get better tables at his favorite restaurant in Beverly Hills. Jo-Ellan went to the White House Christmas party with Larry King and met Bill Clinton. *Vanity Fair* wanted to do a glamour photo spread of the defense team.

At the office, we received dozens of calls every day from media outlets in Japan, Sweden, and Australia asking us about this strange phenomenon called the jury trial. And everyone wanted in on the action. Graphologists, phrenologists, and psychics all called to help us “read” the jurors and to be a part of the Big Show.

Larry King famously quipped, “If we had God scheduled and O. J. wanted to be interviewed, we would have to move God.” Ultimately both prosecution and defense teams paid way too much attention to the media in the case. It was all new, the spotlight was seductive, and no one really knew how important it would be for the case or their careers.

In this environment, the mantle of impartiality, including Lady Justice’s blindfold, is ripped away, revealing the naked body of justice with all of its scars and flab. Presumption of innocence and burden of proof take on new meaning. The prosecution’s challenge was to present a case that had already been presented, to meet the expectations of those who had already heard the evidence and arguments.

Our job was to maintain the balance of power prior to jury selection. In the iconography of this trial, we wanted to make sure that the defendant Orenthal James Simpson remained a human being and not the crazed, manipulative monster in the evidence leaks and news stories. In humanizing the defendant, we wanted our jury, at the begin-

ning of the trial, to presume him innocent of the crimes for which he was charged. More importantly, we wanted them to still *want* to believe he was innocent.

The following was an excerpt from the chapter “People of the State of California v. Orenthal James Simpson” of *Acquittal* by Richard Gabriel