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O.J. Simpson Verdict Raises Questions about Jury System

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When the jury took the first vote at the start of deliberations in the case of *The State of California v. O. J. Simpson*, the division was 10–2 to acquit. One dissenting juror remains anonymous; the other was Anise “Ann” Aschenbach, a 61-year-old retired woman, Juror No. 3. The name “Aschenbach” is an interesting coincidence in a case replete with unexpected twists and turns; ironically, the most famous name in the scientific annals of social conformity happens to be Solomon Asch, whose last name resembles that of Juror No. 3.

In a landmark study reported in 1955 in *Scientific American*, Asch found that blind conformity to a clearly incorrect but unanimous majority occurred in more than one-third of his experimental tests. Nearly 30 percent of Asch's subjects complied with the incorrect majority more than half the time. Only one-quarter, by contrast, consistently resisted an incorrect group consensus. Asch's work vividly demonstrates the significant impact of conformity on human behavior.

Obviously, the mere coincidence of a Simpson juror with a name reminiscent of Solomon Asch has no direct bearing on the nature of the jury's decision; however, it does serve as a timely reminder of pressures to conform during the deliberation process and, by implication, the adequacy of juries as the final arbiter of justice in our criminal justice system.

To study the jury process, researchers convene simulated (mock) juries. One such investigation found that roughly one-third of mock juries reach consensus on the first vote; the remainder required further deliberation to seek consensus.

Juries are known to take that responsibility very seriously. In her book, *The Jury: Its Role in American Society* (1980), jury expert Rita James Simon asserted that jurors generally strive to reach a verdict “consistent with the spirit of the law and with the facts of the case.” However, other scholars have amply documented the power of conformity in juries. In *The American Jury* (1966), authors Harry Kalven and Hans Zeisel reported that close to 90 percent of simulated jury deliberations yielded a final verdict identical to the majority opinion on the very first ballot, which is taken before any formal consideration of the facts of the case.

In the film *Twelve Angry Men*, actor Henry Fonda portrays a lone holdout who successfully reverses the decision of a unanimous majority of eleven during hours of protracted confrontation. Realistically, however, studies show little evidence of minority influence in jury deliberations. According to jury scholars Steven Penrod and Reid Hastie, the minority prevails in less than 3 percent of mock juries.

The basis for thoughtful analysis and meaningful discussion, of course, is diversity of opinion and an open mind. Conversely, unity of perception and reluctance to consider all sides of an issue may defeat the purpose of trial by jury. This problem can be compounded by excessive group cohesiveness, which, incidentally, is most likely reinforced by the process of jury sequestration.

A common reasoning flaw, known as “confirmation bias,” may add to the conformity pressures exerted by cohesive majorities. The confirmation bias is a pervasive tendency to seek information that confirms one’s beliefs while ignoring disconfirming evidence. Racially prejudiced people, for example, are likely to notice behaviors that confirm their stereotypes while dismissing disconfirmatory observations or treating them as exceptions to the rule.

The confirmation bias, in turn, contributes to “belief perseverance,” the tendency for people to cling to preconceived ideas in the face of contradictory evidence. With reference to the charges against O. J. Simpson, these tendencies are implicit in *Newsweek* writer Ellis Cose’s assessment of the American public: “We formed our opinions early. And, facts and testimony be damned, we stood our ground. That was as true of whites ... as it was of blacks.”

Could it be possible the Simpson jury fell victim to conformity pressures, the confirmation bias, and belief perseverance? Although we cannot know for sure, there is some evidence to support that notion. In its October 16 issue, for example, *Newsweek* described the Simpson jury as a “hostile jury” “made to order for Simpson’s acquittal.” Furthermore, it was widely reported after the verdict that computer analyses of responses by prospective jurors in pre-selection questionnaires showed that, before the trial, nine of the jurors believed that Simpson was unlikely to have been the killer. There is a telling correspondence between that figure and the actual 10–2 division in the Simpson jury’s straw poll prior to its brief deliberations.

This does not, of course, prove that anything out of the ordinary happened on the Simpson jury; however, the fact that it took less than four hours to reach a verdict in this lengthy case with its reams of testimony casts reasonable doubt concerning the nature of the group dynamics and decision-making processes operative in the jury’s deliberations.

The jury tradition dates back nearly a thousand years. Although it has generally served us well, many of its principles and procedures evolved without recourse to scientific knowledge. The day we understand human behavior and mental processes well enough for computers accurately to predict jury verdicts will be a good day to reexamine our assumptions concerning the viability of the jury system for the next millennium.

Note. A version of this article was published as the opinion column “Simpson case verdict raises questions about jury system: Will jurors be too predictable before hearing testimony?” in the *St. Cloud Times*, October 22, 1995, p. 9A.

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