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THE APPEARANCE OF JUSTICE: JURIES, JUDGES AND THE MEDIA TRANSCRIPT*

FEATURED SPEAKERS: LESLIE ABRAMSON AND TWO MENENDEZ JURORS

MS. BIENEN: Leslie Abramson is a graduate of U.C.L.A. Law School. Her specific experience has been in the area of criminal defense. While a public defender, she was assigned to central felony trials, and handled over 600 felony cases and over forty felony jury trials, which included charges of murder, rape, murder, robbery, kidnaping, arson, burglary, and other crimes. She has extensive jury and trial experience, mainly in felony cases, and was chief counsel in fourteen death penalty cases.

MS. ABRAMSON: It's impossible for someone who has practiced criminal defense for twenty-five years come to a conference like this and not have 10,000 things to say, actually I think the people who are here, that you will hear from today, who are much more interesting than myself are Hazel Thorton and Betty Burke. We have been talking here about jurors. We have a lot of notions about jurors, but we are not jurors, they are. And they are two extremely intelligent, and thoughtful, and diligent jurors who have lived through an experience that I wouldn't wish on my worst enemy. And they did it as citizens who were drafted to do their duty for which they have been called bimbos, sluts, morons, Oprah fans, idiots, emotionally brain damaged; and this is how we treat jurors in our system today while we are asking them to show up every morning, rain or shine, and get paid five bucks, and wait around forever.

I have listened to the comments of judges and litigants who are so concerned that the jury system is in crisis, that it's broken and can't be fixed. I think the first thing that I want to tell you is about the state of the criminal law in the once great State of California right now, is the only aspect of the system in which I have any confidence is the jury system. It may be broke, it may be busted, but it's the only thing that even approximates a chance for justice in California. California has passed two three-strikes laws. California, as of two years ago, has pro-

* Edited by Leigh Buchanan Blenen, Senior Lecturer, Northwestern University School of Law.

hibited attorney *voir dire*. California has increased its death penalty and the crimes that are covered by it every single year for the last ten years. California has more people incarcerated than most countries, and California was once, with all due respect, the greatest state in the nation. And having practiced law for twenty-five years in what once was a great state, and is now, as we used to say, a shame—and those of you who need a translation, someone else at the table will tell you what that means—basically, a crying shame. I must say that when I walk into a courtroom, if there isn't going to be a jury there, I am frightened. If there is going to be a jury there, I have some hope that justice can be done.

In its good days, California was one of the first states to understand the need for racial diversity on juries. So we incorporated the DMV list, the Department of Motor Vehicles list, very early into our jury selection pool. We also have some very fine cases on the issue of representational cross section of ethnically diverse people, and it has been, at least had been—I sense everything is changing—it had been common practice if you drew a jury panel for a trial and it was obvious just looking at them that various ethnic groups were under represented—and Los Angeles has so many various ethnic groups that there are 180 separate bilingual language courses in our public school system. We provide bilingual education in 180 languages. We are talking about diversity central.

In any event, recognizing that problem, it was common practice if a jury pool showed up that was obviously skewed against ethnic minorities, for the judge to similarly call down the Jury Commissioner—we have a totally computerized jury pool system, by the way—and tell the Jury Commissioner I don't like the way this panel looks. It's obviously under-represented. How can we reconfigure the computer to pull a panel that would better reflect the breakdown in this particular community? We are also a county of 10,000 communities, and routinely good judges would do that. In fact, even bad judges would do that. They are not bad on that issue, and haven't been, at least in Los Angeles County.

So I haven't felt when I've represented people of color that they were being judged by juries that did not reflect their peers. And beyond that, I would insist on racially diverse juries when I'm representing white people, as well, because the fact of the matter happens to be that, in my opinion, our racially diverse cultures have a lot of common sense. I like those folks, and I want them on the jury pool. They think properly; they are not elitist; they are not superior; and I think that they are quite capable to do what juries are supposed to do most of the time, which is to decide who is lying and who isn't. So I don't feel

that the crisis that I think the criminal justice system is facing is coming necessarily from the jury system.

Unfortunately, my career took a very peculiar turn a few years ago when I agreed to represent Eric Menendez, and it turned out to be a much higher publicity case than I thought. But it wasn't so much the amount of the publicity, but the quality of it that utterly shocked me, and horrified me, and frightened me. And that, I think, poses the greatest threat to justice in America today. It is not just that the media was interested and the media was reporting what was going on in court, it was that we now have a media that has absolutely no ethics, no boundaries, no limits, no taste, no decency, and utterly no intellectual honesty about what they are doing.

When *Current Affair* can come into court and wrap themselves in the First Amendment and talk about the public's right to know, and pooh-pooh the Sixth Amendment issues, you know we are in serious trouble. These are media outlets that do absolutely no fact checking of any kind. Anyone who claims to have information about a criminal case can appear in their programs. Nothing that they say is challenged, and nothing they say is checked.

I will tell you one tiny story. Three weeks ago on a talk show called *Jennie Jones*, which I am happy to say I have never seen, a man showed up who claims that he, every three weeks, goes into the Los Angeles County Jail to service Lyle Menendez's hair piece. Now, if you've got half a brain, you'd say to yourself what kind of service does a hair piece need every three weeks? What? Is it growing? You know, are the rats in the county jail chewing on it? But they don't ask questions, and he goes on. Not only is he Lyle's best buddy who services his hair piece, according to this person, but Lyle also is housed—you should all know from this authority—right next to O.J., who is his best buddy. They have all their meals together, and discuss their past history, their mutual friendship from the past; and Eric is two cells down.

The Los Angeles County Sheriff's Department is a very large organization and very well staffed and well funded, and it has, on average, 12,000 people a day incarcerated. It also has an entire office called Press Liaison in which seven people work. One call to that office would have told the producer of *Jennie Jones* that every word that I just repeated that individual told them was an utter and complete lie.

Nobody services Lyle's hairpiece. This man is completely unknown to everyone. O.J. is housed all by himself on a module from which all other prisoners are excluded, and is monitored by video cameras. He doesn't even see deputies. Lyle Menendez is nowhere near him, and Eric Menendez is on the entirely opposite side of the

jail. Now, they could have learned all about that, but that way they couldn't have had a show.

This is the way that the media is now covering criminal cases. Perhaps it wouldn't be so bad if they only did this after cases were over, but they do this while cases are being in the pretrial stage. They do it during trial. They do it when there have been hung juries and there's going to be a retrial. In fact, when there is a hung jury and there's going to be a retrial, they sometimes see that as an additional license to be even more outrageous and fallacious than before.

There have only been a handful of high publicity cases historically, but the creeping territory of *Court TV* is growing every day. And the public's fascination with their hate/love affair with crime is only increasing. The televising of trials, of many, many trials every year, is guaranteed. I think *Court TV* won't be the only outlet to do the gavel-to-gavel coverage of ordinary cases; therefore, I think these are issues that are going to impact on more than just the occasional O.J. or the occasional Menendez case. We have to deal with them.

What we have to start thinking about is the comparative values of the First and the Sixth Amendments. When I watched Lance Ito, who is a very bright man and one of those judges, the kind that all of us from law school on admire the most, those judges who really love being judges, who have tremendous reverence for law, who are excited by it. The fact that he has been helping first year Harvard law students—I think there were fifty-nine students in that class—by asking them all to brief the press access issue in the O.J. case, that demonstrates not his quirkiness, but his real love for legal education and his desire to have the public understand more what the legal system at its very best is like.

When you have a judge, though, who is clearly floundering in the face of the runaway media, you know there is a serious problem. This isn't some bumbling fool. This isn't a particularly emotional person. But unless you have been on the other side of those 6,000 cameras, you don't understand how helpless and out of control you feel. When you have an interest in a case and you are exposed to the publicity and you realize the level of falsity, it is a very frightening experience, and he is scared. He is scared that he cannot do what he has been sworn to do, which is to provide a neutral forum and a fair trial for all the parties in the case. So he floundered about, and he ran into the brick wall of the First Amendment.

Now, in the Menendez case, before the Fox Television movie, we filed for an injunction. We knew it wasn't going to go anywhere, but we were hoping that our filing in federal court seeking prior re-

straints—you know, the most vicious thing the press can imagine—that would give us at least a forum in which to talk about the unbelievable falsity of that movie. And it did, but nobody read what we said. But we went into court and we wind up in the courtroom of what is indisputably the toughest and the meanest federal judge in Los Angeles, the Honorable Manny Real. He is truly scary. I mean, it doesn't matter how long you've been a lawyer, you walk into Manny Reals' court and your knees are knocking.

He dismissed our lawsuit, as all federal judges do, saying, well, the jury selection process will weed out any potential prejudice that may occur from the airing of this film. Now, that's a wonderful idea theoretically, but two years ago California passed an initiative that prevents lawyers from conducting voir dire. That may not shock New Jersey lawyers because you're not allowed to do it there anyway, but our judges don't get trained in conducting voir dire. Some of them that I have tried cases in front of are actually very good. In some areas, a very, very good judge conducting voir dire on some topics can be even more effective than a lawyer. But a judge who has utterly no sympathy for your side, a judge who is an ex-prosecutor, which is, I don't know, ninety-nine percent of everybody appointed in the last twelve years in California? And judges who have had no training, and judges who want to maintain their jury panel and don't want it to drag over where they have to pull more bodies in, don't do a very good job in jury questioning.

So this notion that all the evils of a runaway press will be remedied by these very clumsy systems—everyone talks about what happens in court is a system. I'll talk about the "system" too. This system called jury selection, which is a very ineffective way in general to find out what people think, is going to remedy the effects of these fallacious reports. I mean, there is a person who calls himself a journalist. He is my nemesis, and I am his, I'm honored to say, and his name is Dominic Dunne. He writes, among other things, for *Vanity Fair*, and he announced in the first of four articles that he wrote for *Vanity Fair*—and this was two years before the trial began—that he loathed and despised the Menendez brothers, whom he does not know, and he is completely biased against them. He announced this. I give him credit for that.

He proceeded to write a series of incredibly vicious hit pieces, selecting out pieces of evidence from the case that appealed to him, and where he didn't have enough support for his theory that they are Jack the Ripper and the Hillside Strangler combined, he made things up. He claims to have information he can't possibly have. He claims to know things about them that he cannot know. He talks about facts

that never were on the prosecution's list of evidence because they don't exist. And he announces every step of the way that he's biased. He got on every single television program that did commentary about the Menendez case after the hung jury, the two hung juries were declared, and no one challenges him. And his information, ninety percent of which is utterly false, has become, in the public's perception, the factual record of the Menendez case. So I'm not really shocked and appalled when even law professors say they "got off," the implication being that they were guilty and should have been convicted, when I know that what the public believes are things like the things that Dominic Dunne made up.

Now, this is the kind of media coverage that you have to deal with. I'm not keeping it a secret that I am absolutely terrified of the retrial in this case. Not because I don't believe in my client; I do. Not because I don't have fifty-eight defense witnesses to corroborate their claims of abuse; I do. I did. In fact, I have about 150, but the judge wouldn't let us call the other hundred. Not because I worry about the quality of the law in California as it applies to that case because the California Supreme Court most recently and most definitively indicated that imperfect self-defense is still a defense in our state and reduces a murder to manslaughter. But because I don't know how to purge from the minds of the jury pool these lies; and not only print lies, but visual lies.

This piece that Newton N. Minow, and Fred H. Cate wrote in the *Wall Street Journal* about why juries should know about peoples' prior convictions when they are trying to decide whether they are guilty or innocent, or why a jury should know all about evidence that is probably inadmissible. The cynicism of such articles is truly frightening to me because these guys are smart; these aren't dummies. They know damn well that if on a weak evidence case you allow in evidence that the defendant was previously convicted of a similar crime that is going to guarantee a conviction. They don't really believe that it isn't fair; they don't care. So these are the things that I find extremely frightening. I find it extremely frightening when someone is so intellectually dishonest as not to admit that he simply has right wing biases. Just tell us that. You know, we will understand who you are.

The notion in this country today is that anybody arrested should be convicted. If they're not convicted, ooh-ooh, the jury system is not working; or ooh-ooh, the D.A.'s office has screwed up; or ooh-ooh, it's the end of civilization as we know it, and no one seems to have the slightest bit of concern about overreaching governments and overzealous prosecutors, and lying cops, and lying witnesses anymore, until their son is arrested. Then the light—the dawn breaks over that mid-

dle class family, and the next time they go to the polls they don't vote for the crime bill initiative of the week.

Now, the worse thing, though, now that I've gotten to share with you all of my grief and anxiety, the very, very worst thing about the kind of publicity that followed the Menendez case, as painful as it may be to the Menendez brothers—strangely enough they feel they deserve any rotten thing that happens to them because they are people with a conscience, and they never had a very high self-image, and they took a lot of abuse all their lives. So actually they do better with all this nasty stuff than the rest of us do because we are not abused kids, and they are.

But the very worst of it is that it wound up making abused kids out of the jurors. Nothing is, I think, as loathsome and indecent as what the media is doing to juries in the country who render verdicts that the cynical, hardhearted, smart-assed journalists disagree with, until their kids are arrested. But we are not at their kids' trials.

The impact of this that I see as really horrendous is not just how insulting it is to citizens who come forward to be jurors, but how discouraging it is to other people to become jurors. Or worse yet, how it may lead to people being fully willing to serve as jurors but who now know what kind of verdict they are supposed to come back with because you do not get criticized—I mean, here is a test. Does anybody remember a case where a jury was criticized for convicting recently? Like in the last fifty years? It is only when jurors acquit or when they hang on a case that the media has decided their verdict that they are being criticized, and I see that as the greatest threat to the jury system.

But I want to turn the microphone over to Hazel Thornton. Hazel Thornton is an engineer. She has a degree in mechanical engineering. She never watched the Oprah show. She is anything but a bimbo, thank you, and she works at Pacific Bell in Los Angeles.

MS. THORNTON: Thank you, Leslie. My name is Hazel Thornton, and I was juror number nine on the Eric Menendez trial. I'm going to try to limit my comments to the effects of publicity on me as a juror during this trial. Pretrial I didn't pay much attention actually to the Menendez case. I certainly heard about it. My exposure to the news normally is that I read the *Sunday Times*, and I listen to the radio. So whatever little five-minute news they give me every hour is basically it. But even so, even if you don't watch the tabloid television shows, you hear advertisements coming up that there's going to be such and such a topic on the tabloid show so you know what the news is without watching the news. And there are advertisements for the news. So you know basically what it is, even if you don't know all the details.

So when I was chosen for the jury panel, and we were not told what it was about, I heard a rumor that it was for the Menendez trial. Well, frankly, I didn't believe the rumor because I thought that not only had that happened too long ago for it to be coming to trial now, but hadn't they confessed? Weren't they cold blooded murderers who were greedy for their inheritance? This is what I heard, and what I believed, not knowing any differently, and not having had any jury experience previously.

So when I was sitting in the courtroom waiting for the voir dire to begin, and Eric Menendez walked into the room, my blood went cold. I thought I was sitting in the room with a cold-blooded killer. I wasn't sure how much I wanted to have to do with this trial. I didn't want to have someone's life in my hands. It was the comments of Judge Weisberg that put me at ease. He explained to us our role as jurors, and I realized—he didn't say this, but what I realized for myself was that the laws have been made and my role as a juror is to watch. It's a game, it's a sporting event. And if the prosecution has more and better evidence than the defense, so be it. And if there's something that's not allowed in the trial that I don't know about, I can't know about it. All I can judge is what I see. This is what the judge said to do: to weigh the facts of the trial as they are presented to me in the court, and I was willing to do that even though I had previously thought they were cold-blooded killers.

He did not admonish us to avoid the media altogether, but he admonished us daily to avoid news of the trial. So what I did, if something was coming up about the trial, I'd turn it off. So I got sound biased for anything coming up as news of the trial, and everything that I heard actually was so full of misinformation that I wasn't really even interested in the rest of the story. I wasn't even tempted to cheat because I would hear things like, oh, Eric just finished his testimony and Lyle's just about to begin his. Well, I was there. It was just the opposite. That's an inconsequential mistake, but I'm thinking if they can make that kind of a mistake, how many other little tiny details can they get screwed up which do have a big impact?

I remember seeing one television report—not the report, but the advertisement for the report. There was a picture of the prosecuting attorney, and underneath her picture was the caption Leslie Pisanich. Well, I'm sorry, it's either Pam Pisanich or it's Leslie Abramson. There's no Leslie Pisanich. It's little things like that that made me think I'm not even curious. I'm there, I am seeing what's really going on. It's the rest of the world that's not seeing what's going on. I don't need to know what they are saying.

It's media other than the news that is the most damaging. The

talk shows, the tabloids, the uncorroborated information. I heard little teasers for all kinds of talk shows ranging from "Do you think the Menendez boys are cute?" To "Would you buy a house where a murder has been committed?" To "Are Eric and Lyle going to have a good Christmas?" Or "What do their astrologies predict for them having a good Christmas?" I mean, garbage. But it all was of a prosecution oriented bias, a guilt bias.

After the trial is when the most enlightening experience began concerning the media, beginning with leaving the courtroom and going to our cars to drive home after the trial was declared a mistrial. There were people from *Front Page*, I think it was, who were literally in the garage chasing us with their cameras to our cars.

There was no talk among any of the jurors in my presence of, we are going to be famous, we are going to make money, we are going to be on TV. There was none of that. Everyone took their responsibility very seriously. Nobody was out to get rich being on a high profile jury.

As far as anonymous juries go, in our case we were told that if we signed a particular form, we would be anonymous, but they never gave us the form. And even if they had, by the time I got home there were notices in my mailbox from *Inside Edition* asking, if I wanted to be on their show. They obviously knew who we were, anonymous form or no anonymous form.

The first newspaper article that I read after the trial, after I was allowed to read the newspaper articles about the trial, was about—well, let me back up. It was the Eric Menendez jury that was split along gender lines. Six men voted for first degree murder, and six women voted for voluntary manslaughter. The first article I read blamed the women for the lack of a jury verdict because they were too emotional. And not only that, they said that the reason we had voted that way is because we were "enamored with Abramson and her arguments."

Well, I hit the roof. I didn't even finish the article before I had written a nasty letter to *The Times* saying things like, hasn't anybody in this town ever heard of reasonable doubt and the burden of proof, and I don't call X number of years in jail getting away with it, and voluntary manslaughter is not the same as an acquittal. That's one of the most common misperceptions of the public that to not convict someone of first degree murder is the same as voting for acquittal.

Back to talk radio. After I was able to listen to the sordid talk shows, one of the most damaging, talk shows belittled the Menendez brothers every chance they got. They couldn't figure out what the plural of Menendez was, so they call them the "Menendi," and that

was a big, huge joke to them. Not only did they think that was funny simply to call them "Menendi," but they had a whole campaign called "Fry the Menendi." They even had a yard sale to raise money to give to the prosecution so they can get tried right next time.

Now this was not an isolated event. This had been going on since before I was chosen for jury duty for the Menendez brothers. These men, particular men on the radio, had made a whole career out of "Fry the Menendi," and to me it was more than just ratings. To me it was just an actual hate campaign, which was just beyond me. I feel that, you know, as silly as we may think it is to do things for ratings, I think there are plenty of people out there who take it seriously, and who feel the same way, and who are fueled by that kind of hate.

I made the mistake of calling a talk show. The topic of the day was the gender split on the Eric Menendez jury. I'm thinking, oh, I've got the day off; who would know better than me what happened on the Eric Menendez jury? So I called, and it was Dennis Breaker on KFI. I expected more from him because he has a very philosophical, moralistic kind of talk show, and not so ratings oriented. So he doesn't joke around like the other guys do. But he expertly side-tracked me and cut me off and had no interest in actually hearing what I had to say. His theory was that men are more interested in justice, and woman are too compassionate.

Also, after the trial when I was able to listen to the news, I watched some tapes of the *Court TV* coverage. I thought they did a pretty good job, and I do think that that may be, since the whole media frenzy has begun, it may be one of the only ways to educate the public as to what really goes on in a courtroom, so that they won't judge juries so harshly when they didn't understand the verdict. The danger in having the television in the courtroom, in my opinion, is that it brings out a certain breed of people who want their 15 minutes of fame and will say anything to get it, and that has to be weighed against the educational value.

MS. ABRAMSON: Let me ask a question about that last comment so the people will understand. What do you mean "it brings out people"? Who are those people that you're referring to? You mean witnesses?

MS. THORNTON: I do mean witnesses. She's wondering what kind of people televising brings out, and, in my opinion, there were at least three witnesses that appeared to me to be lying flat out. And it's not just, you know, my version of the story against yours, the way you saw it and I saw it, we're both a little bit right and, you know, what does the jury think. There were three witnesses that I think were flat

out lying. I don't know if they were flat out lying—you know, one of them—I really don't know, but I think that part of it may be, I'm going to get to be on television, or I can make some money, or—I don't know what their motive is. But I think they may not have been a factor without the television camera. I'm not sure.

I do think, though, that given the biased media coverage, it's no wonder the public can't understand unpopular jury verdicts. I know a lot of people who, because of media coverage and because of the public being so hard on juries, don't want to go on jury duty. I say go on jury duty; that's the only way you're going to know what's going on. If everybody went on jury duty, they would not be second guessing juries so much, because they would know what's going on.

Do you have some comments Betty? Betty Burke was an alternate on the Eric Menendez jury, and she also has a lot of interesting opinions.

MS. BURKE: I do have a couple of things to say, having been a juror on maybe six cases throughout my jury experience. It's been interesting to me today to hear the jurors talked about in such a microscopic way as if they are being examined as some different kind of a species. It's been very interesting to me. I just felt like I was a regular normal person.

I do want to speak for one moment, though, about the effect of the media, as well. I think because the Menendez killings took place so far before the trial, that whatever media coverage there had been and the folderol, it pretty well lost its zing as compared to the O.J. case. So that by the time we were questioned, I think whatever we had heard, that it was probably like Hazel said, 'we knew a couple of rich kids that killed their parents.' I think it pretty well lost its power.

However, after the case was finished was the hardest time. I still today hear supposed facts being represented by members of the media, and particularly by well thought of and well respected radio talk show personalities who consistently give statements that are completely at odds with the real evidence in the case. That's a very hard thing to hear because they speak with such credibility. People call up and they say we respect you so much and we believe what you say, and I know they are not saying the truth. I know that they got their information also from the media. They could not possibly have seen or heard the evidence and make the statements that they are making today. I find that very frustrating, very hard to deal with. In my mind I've composed I don't know how many letters to send to these people. I wouldn't dare call their programs because I know I will be just smashed. They are very skillful at what they do.

MR. DOPPELT: Jack Doppelt from Northwestern. I'm going to assume that the media, if the media is intended to mean all the muck that's out there, is disgraceful and is only going to get worse. I'm going to assume that.

I also assume that you answered the question honestly when you said whatever preconceived notions you had going into the case, you were able to divorce that from your ability to give the Menendez brothers a fair trial.

What I want to know is when you're listening to the facts in the case or in the deliberations, how did you go about putting aside the muck that didn't present itself as evidence? How did you do that, and were there places, particularly in deliberations, where you realized that your fellow jurors were discussing things in ways you couldn't quite figure because the evidence didn't show it? In other words, was it still there in the brain?

And then a question back to you, Leslie, did you, as you tried that case, and as you are going to do the retrial, did you somehow factor in I'm going to have to try this case beyond the evidence and attack and/or address questions that are part of the muck that you know aren't going to be in the evidence?

MS. ABRAMSON: There's a lot of questions there, but, Hazel, why don't you answer?

MS. THORNTON: The first part about how did I divorce myself from the muck, well, I said that this was an eye-opening experience, but I must have somewhere along the line picked up the notion that you don't trust everything you hear in the media. So when I found out that it was indeed the Menendez case, that indeed it had not been settled, I thought, oh, well, maybe there is something to it. I had no idea what the defense was, and I was completely open to hearing the evidence. That I didn't care about the Menendez brothers was maybe part of it. I think people who form all these opinions and come into cases, somehow they have invested themselves, they do care. And maybe because I didn't care I was able to ignore the muck.

The answer is yes, it did come up. People did very much have a hard time getting over their previously established notions. The only way I can explain it is that they had a prosecution bias going in, so they bought in to all the prosecutions arguments. Even though, in my opinion, there was far more evidence and far more credible evidence on the defense side to counter that, there were some people that couldn't get past it.

MS. ABRAMSON: Let me just say something about how are we going to do it next time. I haven't the faintest idea. It's absolutely

what keeps me up at night because the level of muck is very different now than it was before the first trial. Before the first trial, there was pretty much more or less factual reporting, at least of what the prosecution's theories were. I mean, the theories might have been muck, but they were their actual theories.

Now, it is not satisfactory to me to accept jurors who I believe have been exposed to this muck, and believe any part of it, to think that the remedy for it is to try, for example, to have to spend six or seven days proving that my client did not have a research library on child abuse in their jail cells. In fact, they had not a single book on psychology or child abuse. We prohibited them from having anything like that and could control entirely what they read. Beyond which their cells were searched every three weeks and there were no such books.

But I'm put in the position where this is one of the big lies that's out there, and do I, therefore, launch this big campaign to disprove something that the prosecution wouldn't even try to prove because they know it's not true, and, in fact set up a straw man to knock down? It's very dangerous to do that. The one thing I did do in the previous trial, but it did not stop this lie from being constantly repeated, was that I made a big point of proving that at the time that the parents were killed, they were not eating anything and there was no food in the room. But I am sure you have heard they were eating strawberries and ice cream. Even now you will hear that. It will be repeated over and over again. Even Alan Dershowitz, in his most recent piece of recycled publicity repeats the strawberries and ice cream remark, and he is a law professor, ostensibly, and he should know better. But he got all his facts from *Vanity Fair* where, after all, all law professors get their facts about cases. That's the paper that he chases these days.

So in spite of the fact that for no reason, other than it riled me, that that kind of nonsense was said about the case, I went to great lengths with the investigating officer to prove that there was not a drop of food in that room. To the day they die, they will be accused of killing their parents while they were eating strawberries and ice cream.

I could not possibly try to overcome every lie that's been told about them in the next trial. I don't know how we are going to pick a jury. I pray the judge will let us ask some questions. I pray he won't cut my questionnaire down again from seventy-five pages to thirty-five pages to save time. I pray that he won't grant the prosecution's most recent motion, which is a motion to exclude the testimony of every defense witness, except the defendants and their experts, under Rule 352, which is to save time. Judicial efficiency means the defense should not get to call witnesses.

DR. KELLER: I have just one quick question. I do have a concern about these new defenses. So what do we do in terms of personal responsibilities?

MS. ABRAMSON: We make moral, and theoretical, and policy decisions like we always have in criminal law. We draw lines. We don't have to say there are going to be no defenses that are based on the individual's mental state in order to preserve civilization. I mean, we are intelligent people, we can draw lines.

What bothers me about these wholesale attacks on criminal defenses is that they want to throw all the babies out with the bath water. The Lorraine Bobbit verdict, for example, made absolute sense to me. I have been defending battered women for twenty years. I have read all the research. We have become theoretically, psychologically more informed and, therefore, the criminal law should reflect what we now know about how people really develop and what influences them in their lives.

Now, does that mean that every unfortunate circumstance in a person's life should lead to some kind of blanket defense? From a policy standpoint where there are countervailing interests such as the protection of society, you have to say no. But you can draw lines. That's why we all went to school, you know, to be taught how to think and how to reason; now the fact that our legislatures don't think and reason, and the fact what the people who draft initiatives don't think and reason, does not mean that the people involved in the justice system themselves can't draw such lines and make such distinctions.

MS. BIENEN: I have a question about line drawing. Leslie, you speak with a great deal of passion about how the media routinely lied, performed certain misrepresentations, and so on, which may or may not be true all the time, but certainly is true some of the time. It's also absolutely clear that the First Amendment includes the right to lie, put forward things that are not true, make misrepresentations, mischaracterizations to whomever you can get to listen to them, and often to the tune of large amounts of money being paid for it.

So if you are talking about drawing the line with the media and trials, and public events, where were you going to draw it?

MS. ABRAMSON: I can come up with some notions about how to limit speech with respect to criminal cases along the English or Canadian models. These are theoretical debates and they do get into your basic slippery slope. But I have another suggestion, another method, I think to try to rein the press in, and that is to loosen up the libel laws. The fact of the matter is they feel perfectly free to libel, to prejudice anybody. So long as they have made them a public figure, then

they can say anything they want, and the *Times v. Sullivan* standard is virtually impossible to prove.

Not only would I loosen the libel laws, and I would do it with respect to those kinds of issues that I think impact on the administration of justice, like the way they write about criminal defendants and the participants in criminal trials. I would also build into such a law an attorney fee award for the prevailing party; he or she who can prove the untruthfulness of the news story, or the recklessness in checking facts.

I practiced law in Los Angeles for twenty-five years, and many people could say many negative things about me because I am something of a stinker, but my reputation in that county, in that state, for twenty-five years was as an absolute straight shooter. No judge, no juror, no adversary—and you can imagine I pissed off my adversaries—ever suggested that I ever did anything unethical, or deceptive, or dishonest. And because of the Menendez case, the likes of Alan Dershowitz have actually gone on television and accused me of fabricating a defense. I cannot tell you how painful that is.

I spent twenty-five years first as a public defender, then taking court appointed cases; of those, fourteen capital cases, and two were privately retained. I've worked on behalf of the poor for most of my career, which has kept me from being rich. And to be told that I am fabricating a defense in the most publicized case of my career is not only to insult my integrity, but my intelligence.

PROFESSOR ROBINSON: Here's my concern. In some way I think it's inevitable in part because defenses like this, mitigations, from murder to manslaughter, disturbance, on a cumulative, imperfect self defense; these are defenses and mitigations that I believe very strongly in. I have a two-volume treatise on criminal defenses that talks about all of these in detail. But these are difficult things to convey in the news, these are things that, unless you are there or unless you are watching the trial, unless you hear the witnesses, and all the factual background, it's really hard to understand the case. So I think it is inevitable that people will misunderstand it.

The news media can't do a very good job in a case like this, but the fact does remain that this case, in its controversy, is not one created by the media's false reporting.

There is a real disagreement, and the proof of that disagreement is in the fact that these jurors among themselves disagree. When that occurs, I don't think you can turn to the public and say why are these—why is there this huge controversy made out of nothing when the jurors themselves simply disagree? And I still stick by my point this

morning that I think the community, a large percentage of the community, perceived this as them "getting off." Well, I mean, that's a point that you can actually debate about. You don't have to have distorted facts to actually still disagree on that issue.

MS. ABRAMSON: That's probably true with respect to the community, but the community is not the jurors. The community is entitled to hate, the community is entitled to be racist, the community is entitled to be biased, sexist, ageist, anything they want. We ask something else of potential jurors. They have to be better than the lowest common denominator of the community. They have to be the unbiased, and that isn't everybody in the community. That's a smaller percentage of the body of the community. Those are the tolerant people, the open-minded people. That's not everybody.

There actually were in Los Angeles where I told you we had representational jury pools for a long time, there were two people who were excused from the O.J. Simpson trial because they openly admitted they were racist. Now, what is shocking to me about that is not that they are racist, or that there have always been racists who show up for jury duty, but they are not ashamed to admit it these days.

MS. BIENEN: That's good. At least—

MS. ABRAMSON: You say that's good, but what that tells me is that there is a new—a new sense of approval in certain segments of our society for racism. Now it's okay to say you are racist because the blacks are racist, aren't they? I mean, what has happened is that there's been a trend of calling blacks racist, and now white people can go along and admit their own racism because there's a lot of shared views in the white community that the blacks are racist. I mean, it's the uglification of America. We can go on about that forever and ever.

But my point is this: we were not allowed to adequately question the jurors in Menendez. He let us ask a few questions on publicity. He did not allow us to do any voir dire on the death penalty. I had to hold back my preemptory challenges for super pro-death jurors in case the worst happened. I left people on that jury—I knew that case was going to hang the minute we picked the jury because I left people on there who I believe were biased in favor of the prosecution, but who wouldn't kill them. Because I had forty-four super pro-death people sitting in the panel that the judge had rehabilitated after they had said in their questionnaire that they would automatically vote death, and I had to hold the twenty preemptions I got by law—he wouldn't give us any extra—for those people. So I knew the die was cast before we even started.

My position is with an unbiased jury those defenses aren't that hard to sell if they're true. I mean, I'm one of those really naive people. I really believe jurors can figure out what is true and what isn't, who's sincere and who isn't, what psychology is real and what psychology is not.

I thought—and now you are all going to gasp—that the Menendez case was the best defense case of that type I had ever seen, and I expected to win. And the fact that I ran into a judge for whom this case pushed all the wrong boy buttons—all of them—and the media now with an enormous thirst for blood, screwed up my game plan. Now I've got to do it again, and I'm not at all convinced that I can win it now.

You pick a jury who will just have an open mind, and you are way ahead of the game. I don't pick juries favorable to my case. I can't hold onto those people. The prosecution boots them off, just like I boot off the ones who I can tell are favorable to their case. Just a level playing field; you know, that's all I want.

MS. THORNTON: I just wanted to respond to the comment that the difference on our jury, a lot of it is attributable to legitimate differences, philosophical differences of opinion on the issues, which is true. I do have evidence from having observed my fellow jurors of what I think to be directly attributable to the media.

I think that some of the problems that we had were directly attributable to pretrial publicity. I think they went into trial biased. I don't think it was men against women. But I do think that at least one of them was getting information from outside sources. For example, he would say things that I found out later came from Lyle's trial, which we did not watch. There were parts of the trial that the jury didn't get to see, and there are a couple of other people that I think came in with such a strong bias. I mean, why would you care about the Menendez brothers if you were unbiased? Why would you be building a case in your notes, a prosecution case, and not be taking notes about the things that the defense said?

PANEL I

PROFESSOR BLANCK: On this panel is Judge LaDoris Cordell, from the California Superior Court. She is a graduate of Stanford Law School. She's been an Assistant Dean at Stanford Law School. She's worked everywhere from Mississippi for the NAACP, to San Francisco. She's also involved with the Sierra Club, and we are very pleased to have her here today.

Judge Judith Yaskin is on the Superior Court of New Jersey, Mer-

cer County. She's been a public defender. She's taught at Rutgers Law School and has been a Deputy Attorney General, and will bring, in addition, some very interesting perspectives.

Paul Robinson, Professor of Law at Northwestern University Law School. Very diverse background, as well. Just briefly, he's been a Commissioner of the United States Sentencing Commission, he's been a federal prosecutor, he's worked in the Department of Justice, he's been legislative counsel to the United States Senate Judiciary Committee, and he also brings a very interesting practical, real world experience to this panel.

Next, Florence Keller brings to us an individual perspective, as a clinical psychologist from California who is a jury consultant. She has worked as an expert in cases to help lawyers analyze communications in the courtroom, fairness in the courtroom, and other issues. Certainly we've seen the heyday of trial consultants in O.J. and other cases recently, and that perspective will be very interesting.

And lastly, Professor Marla Sandys from the Department of Criminal Justice at Indiana University in Bloomington, who has extensively studied research on psychology and the law, on capital punishment in particular, and has been very involved with the important Capital Jury Project.

Judge Cordell, what is your conception of the appearance of justice? How has that changed in recent years, and what's going on in California from your perspective?

JUDGE CORDELL: My comment is addressed to what's going on around the nation, not just in California. The jury system, and I speak specifically of the criminal justice system, in my opinion, to say that we are in a state of crisis is an understatement.

A jury trial really, I think, is no different today than a sporting event. Attorneys are the combatants, judges are inadequate referees. The jurors are passive spectators, and the half time show is filled with hired gun experts and trial consultants.

The Magna Carta talked about the jury trial and said this: "Trial by those of equal rank and condition, when assured that the jury are his equals, possessing a common interest with himself in the laws to which they are to give effect. He is best prepared, he, the defendant, to yield his confidence and to abide by their verdict."

The jury system worked quite well for many, many years because the people involved were a homogeneous, like-minded group of people, white males, nonpoor, all of whom had a stake in the proceedings. When people of color, when woman, when people from different socioeconomic backgrounds entered into the picture, the

system failed to adjust and has continued to fail to adjust. One of the biggest factors, I think, that has rendered the jury system so poorly run now is the fact of race. I think racism has so tainted the system that fair trials are the exception, not the rule. So, in my opinion, everything from the selection of jurors, to the trial itself, to media coverage, has to be revisited. It's got to be revised or entirely reconstructed. Yet I always find when I talk to jurors, when I talk to citizens, they come back to the courts, they trust them—not implicitly, not without reservation.

But I've been sitting civil, in civil law. So my view is somewhat different. I think one of the problems is that we have very little coverage of the civil law. Most of the coverage is going on about criminal cases, the passion, and I would call it the Quiz Show atmosphere. Not whether they are guilty or not guilty, but will they get off? And the circus atmosphere that sometimes is at least carried out by the media, or portrayed by the media. It's not that the circus atmosphere is going on in the courtroom.

But let me comment briefly on the civil law, which gets so little coverage. It is where most citizens end up. It is where I think most jurors serve. And I find that they enjoy their service, they are dedicated to their service, and we don't have quite the problems of racism, the social mores, the problems of the passions over sexual preferences or sexual crimes. There simply is less passion, and there the jury is able to function, I think, very well. It is simply a question of following the law and listening carefully.

And I'm amazed. I have been talking to the jurors at the end of the case, with permission of counsel. They know the issues fairly well. They are fairly sophisticated in terms of who gave a good presentation. They understand the games being played by lawyers, and they really do want to do what's fair and just. Are they hampered sometimes by rules of evidence? Yes. Have they been affected by some of the rhetoric concerning product liability law, tort law? Is there a dislike of lawyers? Yes. But in the end their verdicts, I think, are sound. So that I think in the civil law we've not suffered the same problems that we have in criminal law, and that may be because the criminal law is where the passion lies, where society is in conflict racially, socially, sexually. That's where the conflicts lie. Thank you.

PROFESSOR ROBINSON: I think there are two ways, at least, in which media coverage does have an effect on the system's effectiveness in preventing crime.

When the system uses incapacitation strategy, whether it's three strikes and you are out, or something less dramatic, the media cover-

age probably doesn't matter. You identify people that you think are dangerous as the offenders, and you put them away, and it really doesn't matter what message the public gets. You're depending on your control of that person in prison.

But that's obviously a fairly small part of the preventive strategy of the system in general, in part because there's not a lot of people that you do that with, and in part because it's very expensive. And also, of course, it's a strategy that only works after you have had a series of serious offenses.

If the system is going to prevent offenses beforehand, it obviously has to use other strategies, and here's where the media, I think, becomes fairly poor. In the last few decades, I suppose the most important strategy has been one of deterrence. The system makes a threat, if you engage in certain kinds of conduct, you will get sanctions and you will serve time in prison. But, of course, the system can't send that message except through the media. And to the extent that the message comes through, whether it's TV, or newspaper, or something else, overall the system benefits, and the threat is taken seriously, and people don't commit crimes.

Now, in fact, I think the system has gotten much better than it deserved from the media on that score. I think the tendency of media to focus on cases where people are caught, the focus on the adjudication process, the trial process, tends to give a very useful misimpression that, you know, there's lots of punishment going on out there. Even if there are cases where people get off, like the Menendez case, and you might argue about whether that's a good result or not.

MS. ABRAMSON: You might argue about whether they got off or not.

PROFESSOR ROBINSON: Yeah, but the point is that in some ways that's a very useful debate because that would suggest to people that it's around the edges there that we're having these controversies, but the reality, of course, is very difficult. If you decide whether to go out and commit a burglary tonight, the chances that, if you go commit that burglary you will, in fact, be caught, convicted of burglary, and sent to prison for it, are about 100 to 1.

The media does not focus on all the cases that are never reported or never caught. That's not news. News is people, news is offenders, news is that twenty second picture of seeing the person let out of jail for the arraignment in handcuffs or something, and that creates a picture which is usefully misleading.

Here's the downside, we're starting to see, that the deterrence strategy is overrated. It really is not the primary reason that people

obey the law because they fear that they will be caught and punished, even if we really could punish them as much as they think. We are starting to learn primarily from behavioral science work, that that's not what the powerful force for compliance is in this society.

I think we are starting to see that it's something different, what you might call the need for the moral authority. The vast majority of people, I think we are starting to see, obey the law not because they are afraid of the government putting them in prison, but they're afraid of what their social circle will think of them if they violate the law, and they have their own internal compass. Now, it may not—there may be some differences in the compasses that people are using, but I think that data suggests that there is just a tremendous incentive by most people to want to do what they think is the right thing.

Well, if that's the real power of compliance in society rather than the threat of real punishment, the ability of the system to get compliance is directly proportional to the system's own moral authority. If it can speak authoritatively to say this is a bad thing to do, and be persuasive, then more people will be inclined not to do it. But think about the media's effect and the media's coverage here. If the issue is the law's moral authority, as the media focuses on the high profile cases, which tend to be cases where the system does not tend to work well; when it focuses on the unusual, bizarre cases, the cases gone wrong, the distortion effect that comes with the media coverage is the one that hurts the law because it represents the system as really being much worse, much more perverted than it really is.

They don't see the ninety-nine burglary cases that come to trial and the person gets what they deserve. Instead, they see John Hinckley get off on insanity, and everybody gets outraged. The effect of that kind of coverage, at least in my own mind, seems inevitable. I mean, that's news, that's what's interesting: the system gone wrong. The effect of that, I think, in the long run is to hurt the law's moral authority and it hurts people's willingness to comply.

JUDGE CORDELL: Just an observation, and you may have the data to support your thesis that it is the moral authority, and it's within the group, and people just don't want to be stigmatized within their group, that is why they comply with the law. And I beg to differ on that.

I think that truly people are motivated to abide by the law because they have a stake in the system. If they have a stake in the system, they want to maintain the status quo. If you don't have a stake in the system, you have no incentive to comply with the laws.

I think that therein lies a part of the breakdown. When we talk

about media coverage it is, I think, essential. My view from the bench is that the public has a right to know, and must always have access to proceedings in the courtroom. And the media is the best way for that to happen. It is the check on judicial malfeasance. It is a real check to make sure that the system behaves as best it can by having public accountability.

The concern I have is that in theory again—and I will go back to the Magna Carta—I love it. I mean, they talk about public access, and there's a quote from it that says: "Trial by jury is necessarily a public proceeding, and that publicity is the strongest guarantee against judicial favoritism and corruption." Now, that's fine. But adjustments do have to be made because now we've got a media where you've got a television camera focusing right in on O.J.'s every move, looking at every facial expression, and that's very different from what was contemplated years ago about giving access. And I do think that there needs to have some sort of controls put on when we have that kind of media access. Not that the media access should be stopped, but I think we have to take a very different approach as to how we relay what's going on in the court system. And we can do that by tempering access and then still providing court accountability for judges and those who participate in the system.

JUDGE YASKIN: I just wanted to talk about whether or not I accept that deterrence is really ever accomplished by punishment. The studies we have on capital punishment seem to indicate now, except for the dead who have died as a result of execution, that the society of criminals, that certainly I have encountered as a public defender and a judge, do not respond to deterrence, since tomorrow has very little value for them. And deterrence involves understanding that tomorrow is important. If it isn't, you are not deterred very much by the fact you are punished.

Further, I look at the juveniles who I have worked with, and where within their peer group it is an honor and a privilege to have at least served some time in jail. So the mores and the standards of the community from which they emerge tell them that what they do is okay; in fact, acceptable.

I can't help but think that we keep looking to the criminal justice system as a way to deter crime, or that somehow it's courts and lawyers and judges that are responsible to make crime stop, or to reduce crime in our communities. It's never worked. I hear about the building of new prisons. I continually hear more reasons for the death penalty. I see longer sentences, and mandatory sentences being urged.

Look at New Jersey. We have had mandatory sentences of extraordinary length for possession of guns during the commission of crimes for twenty-five years. We don't have one less gun in New Jersey than we did twenty-five years ago, and all of us know we have lots more. And we have crime continually performed with guns, and it hasn't helped one iota in reducing the impact of guns and violent crime in our community.

We have had for ten years mandatory sentences with regard to drug sales, distribution and possession. They are extraordinarily long sentences, and they require imposition, and the failure and the disallowing of parole. They have not affected the fact that drugs are pervasive in our society and part of our communities.

I keep hearing that longer sentences, more sentences, mandatory sentences are the answer to the problems of crime in America. It ain't so. And I think the media, and we, and politicians, and judges have to speak to it. We're helpless. We have a problem with crime. But the longest sentence in the world, or more death penalties, are not going to change the impetus of crime, the root of crime, and the fact of crime in our society is an incredible and pervasive problem.

The public is right. It's a major and tremendous issue in our society. It's rips at the fabric of our society. But we keep looking to the judicial system, to judges, to lawyers and prosecutors, to get to the answer to crime. It isn't there. Someone has got to stand up and stop looking for the answers by simply saying more sentences and more jail cells. We have more jail cells now than South Africa. We have more jail cells than Russia. Where are we, and where are we going?

MR. BLANCK: Dr. Keller. You work in this area, with kids in the criminal justice system. What's your take on this problem we are seeing here, both from a clinical psychological point of view, and as a consultant to the system?

DR. KELLER: We jury consultants have a pretty disreputable reputation, so I come here hat in hand.

Judge Cordell probably made the best apology for us that I can come up with, which is that increasingly juries represent an enormously diverse population. The way things are currently structured, from jury instructions which are written in such an arcane language that no one understands them, but even down to attempts to talk in English. Juries simply understand differently. These are no longer twelve good men, and true, and white. These are now, God help us, the scum of the earth: white, black, brown, women, men, transsexuals, everything. We are all sitting on the juries now, and we all respond to evidence in very, very different ways.

So to think that we can simply put on a trial in the old tried and true way, and that the defendant will get a fair hearing from people whose cultures are so different, whose symbols are so opposite, to think that we can give any defendant a fair hearing without knowing more about the cultures, more about our juries, and more about how to relate to these juries, is to do a disservice to our system of justice and to the defendant.

DR. SANDYS: With regard to the comment about "getting off" on insanity, I work on the Capital Jury Project. One of the questions that we ask, in dealing with jurors is their perceptions of insanity, and it troubles me that so many jurors perceive insanity as a way to get off. I actually did some work at St. Elizabeth's, and I don't think that where John Hinckley, is, is getting off. You know, going through all the bars and all the rest of it. Because I worked primarily with capital cases and in our locations they are the most high profile. I think the media has a real responsibility in those cases to present information accurately. I think that having public access to the entire procedure would be wonderful.

I personally have encountered difficulties from judges and from prosecutors, who don't want that kind of access and want to protect jurors. And I think that the perceptions of justice, the best way that they can be achieved is to provide access and let the system be out there in the open. I think when you close it off, that's when the perceptions and misperceptions are created.

I will say that based on the interviews with the jurors, I find, too, that they are very dedicated, they want to do the right thing, they take their task very seriously but they don't understand what they are supposed to do. Those are all difficulties that I think exist within the system as a whole. When you get sound bites on TV about any aspect of the trial, that's just not fair. Whether it is useful or not, I have a problem with that. I think the jurors themselves are trying to do the best that they can, and they shouldn't be used to create perceptions in society.

PROFESSOR ROBINSON: I agree with quite a bit of what Judge Yaskin said. Her view seems to be that deterrence doesn't work at all. I think I would be a bit more modest in the claims. I might say it certainly doesn't work as well as we thought it did ten or twenty years ago, but it has an effect. It has much more of an effect than the system deserves it to have. My point was the media tends to exaggerate, and to some extent, hide just how poor, how low the threat of really being punished is. Which is why, as I said, I think we are moving toward a recognition that deterrence doesn't work, looking for other strategies that do work. And I guess I do disagree, I think, with Judge

Cordell's comment, that the moral authority of the law is not important. I fear for the media's detrimental effect on that. Five, ten years from now, I will predict that we will be thinking less in terms of deterrence, and more in terms of trying to get people to appreciate that they have personal responsibilities to the rest of the community, and that's why they shouldn't be breaking the law.

Now, the implications of that—if I'm right about that—the implications of that are, as I said, one, we need to have a criminal justice system which speaks with moral authority, which means it has to have the appearance of fairness; two, its liability rules have to be fair, it has to criminalize conduct only that's serious, and stay away from the margins where there are controversies. That's one part of making the law more powerful: by increasing its appearance of doing justice.

The other part of it, though, and—I'm just guessing it's a strategy that a lot of people here would agree with—is directing our efforts and our money, perhaps not to building more prisons, but to doing the sorts of things that make people see better what their moral obligations to the community are. And those are things like, you know, a lot of the Republican themes about family values, keeping families together. That's the way values are transmitted. But it's also things like midnight basketball that has taken a real rap. Any sense of community, any organization where social norms are transferred from one group to the new generation, I think these are going to be valuable efforts.

JUDGE CORDELL: You see, Paul, I think that when you talk about the social norms, you are talking about one group of people. And we've got to talk about a diverse group of people here, who have very different kinds of norms. African American males will keep us judges in business forever. Okay? African American males are coming into the system in disproportionate numbers. And when you talk about social norms, I'm out in the hallway one day taking a little break, and a young black male comes walking down the hall getting ready to go to court in another courtroom, and his pants are down way low. Okay? You can see his underwear. And I go up and I say, brother—he doesn't know who I am—I said, you need to pull your pants up. If you're going into this courtroom, you know, get yourself together here because this judge is going to decide what happens to you. He looks at me a little strange, and pulls his pants up, not happy about it.

Do you know where this whole notion of wearing the pants down comes from? It comes from an imitation that black males are now doing of black men in prison, because in prison they take your belts away from you so your pants fall down. So this is now being imitated and

being glorified in communities throughout the country, saying this is really something good to be, to look like somebody who has served time in prison.

When we talk about the social norms and then about the appearance of justice, we have got young men—and this is also true of Latino males, as well—coming into a system that doesn't appear fair to them. Okay. So I don't think you can talk about one set of norms and say, well, we need to just push this moral authority. It's not going to work. There's got to be different approaches taken.

PROFESSOR ROBINSON: Let me talk about cultural diversity. I guess I want to make a distinction between trying to move as a community, to where we all have the same cultural norms. Who wants that, really. I mean, we all benefit from that kind of diversity. But I think what we've probably lost in the last thirty years is an appreciation that we can't have diversity across all norms. There are some norms which we all have to agree on, like norms against violence, against dishonesty. The problem once everything is up for grabs, and everybody is free to make their own judgments, we get the flowering of many different cultures, which is wonderful, but there's also the danger, and I think we are seeing part of it now, that we've now blurred the lines about what's acceptable, and what isn't acceptable.

I don't want to say that, back in the 1950s it was a wonderful time, partly because I think we really didn't have cultural diversity then, which we wanted. But also I want to say that there was, I think, some hypocrisy even then. Sure, on the surface everybody was committed to norms against violence, and that is something I'd like to get back to. But I think it is also true that under the surface there was, for example, there was domestic violence, there was hypocrisy about what those norms really included.

But how can we deny that there would be social value in trying to at least get some consensus on that particular norm against violence, whether its public violence or private violence, or anything else. Shouldn't we press for that?

PROFESSOR BLANCK: Judge Yaskin, moral values, jurors, community? What's your take?

JUDGE YASKIN: Sure, social values and moral values are codified in our laws. And certainly in our criminal laws they are necessary and important boundaries for all of us to follow. And there has to be value in following them, in addition to the moral reasons. I think that punishment is an appropriate goal. While I don't think deterrence is effective, I think punishment is a very important goal within the criminal justice system.

If there is justice, if you do something, you pay for it. So punishment is a very valid goal. And, of course, we have to have social mores or legal boundaries. The problem is that we, in our culture—it's not a thing of cultural diversity.

I think what Ms. Keller and Judge Cordell have said is that the person coming into the courtroom has to understand your words, has to believe that you can provide some justice for them, whatever their color, whatever their race, that they will be heard, they will be understood, whether that's culturally or linguistically; that they will be treated fairly; that because of who they are or what they are, they will not be discriminated against.

Then the final problem is, does that person accept the law you are giving. There is the real moral dilemma, I think, that we confront.

You've talked about being against public or private violence. What is the message to our children in television, in movies, some of you may have seen "Pulp Fiction" recently, in our writings, in the way we raise our children. What is our position with regard to violence? Do we send a mixed message?

And certainly in our ghetto communities, in our inner-city communities, violence is a way of life and a way of survival. It's really hard to say it's the morality of society that we're against violence, when children by the time they are ten and twelve are seeing their classmates cut down with guns. What's the message? What is the morality we hold? And how do we get it out?

PROFESSOR BLANCK: Professor Sandys, you have been studying the most serious cases, capital offenses. What is your take on this?

PROFESSOR SANDYS: Well, in interviewing the jurors on these cases, they take it very seriously. There's a real misconception with capital cases. What ends up happening is people view the capital cases and say, if the defendants are not found guilty then they are not punished. What the research that I have done is showing, is that jurors tend to make their decisions at the same time in terms of guilt and punishment, when by law it's supposed to be separate. The perception is, if the person is not sentenced to death, they are going to be out on the streets in five years. Some people say as few as three years, seven years on average, ten years. They think that death is the only legitimate way of keeping someone in prison; it is the only punishment appropriate for some of these people. That creates a very troubling message, and I think that is what is portrayed in the media. All of these crimes are horrific. They are all heinous crimes, and if guilty, these people deserve to be punished.

But what happens is that the media portrays them in such a way

that you have these monsters who show up in court. So to create this scenario where death is the only kind of appropriate punishment, because that's what people deserve, I think that's dangerous. It adds pressure to jurors. I personally have had more difficulty obtaining interviews from jurors who recommended or fixed the sentence at life, than I have with death. The only way that I can interpret that is that death, I think when they talked to us, is cathartic for them, and I think they see it as "legitimate." I'm not saying that they find it easy. It's an exceptionally difficult decision for them. But people who recommend or fix the sentence at life are much more reluctant to talk to us. Why is that? Do they feel as though we don't think that that's appropriate—

JUDGE YASKIN: It's shame.

PROFESSOR SANDYS: That's exactly it. It's shame. There's a presumption of death. There's been a horrific crime. They found this person guilty, and yet they voted that this person should live. Now it's almost as if they are embarrassed to talk to us about it, and I find that very troubling.

PROFESSOR BLANCK: What have you specifically been doing to help your jurors reach fair decisions, to work in the community to address some of these deep systemic issues that we've been talking about?

JUDGE CORDELL: Well, one of the things that I've done, and you've assisted me in it, was to do a study—and this was in '85—on the nonverbal behavior of judges in jury trials. That's a study that was done in the *Stanford Law Review*. The results of the study were just the tip of the iceberg which shows that we do—we judges do all kinds of things when we are presiding over trials that are not really good. And that could lead toward this tendency of depriving individuals of fair trials because of our body language and what we are communicating to jurors.

So one of the things is to do studies and to get the word out there that we judges need some education, we need to better understand what we are doing when we preside over trials. You know, the system is so rigid and so resistant to change, and if anybody can change the system and make it do better, it's judges. We have the authority. We decide what goes on in our courtroom. Unfortunately, so many judges are motivated to do what they do because of appellate review.

The worst thing that can happen to a judge is to get reversed, and to have that decision published. So a lot of what we do is, well, we've got to be careful because, you know, what they might do upstairs. And that's unfortunate. So one of the things that I'm trying to do, that I

do in my courtroom, is to do what's not traditionally done; to give jury instructions in plain English, not the legalese. To allow instructions to be given at the beginning of a trial and not at the end; to have jury instructions that are given at the end, given before closing arguments of counsel, so the jurors know what's going on; allowing jurors to take notes. After the jurors have finished, sending out questionnaires and asking them to talk about deliberations and what was wrong, what their perceptions were of the trial, and then using that information as a report card for me for what goes on in the courtroom.

I've done a questionnaire where I just asked about the foreperson, how the foreperson is chosen, and what goes on, and the perception the foreperson has of his or her influence on the deliberations versus the perception of the other jurors. Very interesting what I've been able to determine from looking at those questionnaires.

So my view is that judges have to speak out about jury reform and do something about it. The education of judges is very hard. There was a rule proposed in California that all judges have mandatory education. Do you think it passed? No. It's like once I put on that black robe, don't tell me what it is I need to do because I know. And it's really sad.

So I'm an advocate of judges speaking out, and also the public having as much information of what we do. Because once they find out, I think there will be sufficient outrage to put pressure on judges to change their behaviors, and that's how we work within the system to improve it.

PROFESSOR BLANCK: Judge Yaskin, what specifically have you done?

JUDGE YASKIN: I've had the privilege of serving with Judge Sapp-Peterson, who I think is here, on the Supreme Court Committee on Minority Concerns, and we are developing issues, looking at jurors, for example, who can serve.

Right now jurors come in from all over the state and they get paid \$5 a day. Well, that doesn't even cover their lunch, won't cover their parking. Can we do something with the pay? Particularly, if you look at minorities and women who may be hourly workers, to come in, to give up that day's pay, whether it's cleaning bed pans or whatever it is they get paid for on an hourly basis, that's income. They can not sacrifice for a three day trial or one day trial the income that they are dependent on. What do we do about that? How do we get those people who would like to serve? I think every trial I have had in the last year I can think of hourly workers who I had to excuse.

We need to find a way that they can be compensated or somehow

that they don't have to serve at such a financial sacrifice. So many people who are salaried employees get paid for jury service for as many weeks or months as necessary, but that is a person who is employed and usually not in the kind of industries such as working at fast food chains, or nursing care that would be diverse on the jury.

We now have motor vehicle licenses. Is that enough? There was an examination of whether we can use Social Security numbers. No, that's federal privacy. Welfare laws. There again, federal privacy. But should we have a checkoff for those on welfare who perhaps don't vote, don't have a car, don't have a license, but would like to serve on the jury? How do we broaden the jury pool? How do we make people available for juries? These are two of the things we are examining.

Judges in New Jersey are trained, and we do go to judicial college at least once a year. We do have that opportunity, we are fortunate. We don't get to talk out. We do not get to speak to the community, and we do not get to speak out on issues. We speak to the Supreme Court and its committees. We are much more controlled in that way.

On the other hand, I think our Supreme Court has committees on women's concerns, minority concerns. It understands, with a diverse population in New Jersey, we better start addressing these problems. We have to speak in English. We do have charge committees, not that I'm satisfied with the charges I give.

I would like to talk to jurors more. I think we need, as judges in New Jersey, to talk about, can we talk to jurors? Can we use a questionnaire? The first thing I'm going to do is ask Judge Cordell for her questionnaires.

JUDGE SAPP-PETERSON: I'm Judge Sapp-Peterson. In New Jersey, as part of our training, new judges are evaluated, and part of the evaluating process involves distributing questionnaires to attorneys and judges who sit on the Appellate Division to review your performance, and it's done approximately three to four years into your first seven-year appointment. I just went through my evaluation.

One of the questions that you are asked is: Do you have any suggestions? One of the suggestions that I wanted to recommend is that it would be nice to know what jurors think of us as judges. That questionnaire that's given to the attorneys and given to the Appellate Division judges, if something could be done so that we could assess the juror's impression of how we are managing the court, our demeanor, how are our reasons and how are we at explaining things to them.

JUDGE CORDELL: When I got some of these questionnaires back, one juror wrote you handled the trial fine, but if you just didn't roll your eyes so much. I didn't realize that I was doing this, and it was

a particularly difficult trial. It's really hard when the criticisms come back in, but it's so helpful.

I encourage you to do that. It's a very simple process. Jurors love it. They want to give the feedback—that's my impression—to tell judges what's good and what's bad.

JUDGE CARCHMAN: I'm Philip Carchman. I sit in Mercer County with Judge Yaskin and Judge Sapp-Peterson.

New Jersey recognizes the dynamic process of being a judge, and recognizes that when we put the robe on, we have certain obligations, not the least of which is to insure a fair trial. And in New Jersey we take it very seriously, and we are constantly being subjected, as judges, to review, to analysis, there is an institution of programs to attempt to make us a little bit better, to let us know that we really don't know everything.

Just to give you some information about some of the things we do, we now have a program of videotaping judges. And, Judge Cordell, you are 100 percent correct. The judges do find out that we do roll our eyes, and shrug our shoulders, and imperceptibly nod our heads, no or yes, and jurors pick that up. And I agree that there is more to be done, and the questionnaire—when Judge Yaskin gets your questionnaire, she's going to pass it on to me.

There is much more to be done, and we don't know all the answers yet, but we are sensitive to these problems. And I don't think that we should leave this Conference today with the view that the judiciary, as an institution, is stagnant and just sits there and says we do have answers. We recognize full well that we have not even touched the surface yet in terms of responding to some of the criticisms and some of the issues that have been presented.

JUDGE HOFFMAN: My name is Barnett Hoffman. I sit in Middlesex County.

First of all, what Judge Cordell said I think is very important. I don't think that our system encourages creativity. To sit as a judge, you have so many restrictions, and I think the most frustrating part, as far as courtroom communications is concerned, is the restrictions that are put on you. And you have these charges that are prepared by some fancy committee, and you find yourself, in part, talking to the Appellate Courts rather than to the jury.

I have been a judge thirteen years, and I'm a tenured judge. I really don't care if I get reversed. You have to care in a certain sense because you don't want to put a whole long trial in then do something and take unnecessary risks, that you know are stupid. So that's a problem.

But what I have done is that I have taken the charges and put them on slides and have used an overhead projector during my charge. I have been doing this now for five or six years. I taught at certain colleges and judicial colleges in New Jersey, and tried to proselytize to these groups, although I think I'm probably the only one still who does it.

I think it's very helpful because I put the elements of the charges on an overhead, and also defenses and things like that. I think the juries have a better understanding of what I'm saying if they are seeing it. I read what I'm supposed to read for the Appellate Division, and then I tell them this is what it really means.

I also want to mention that I talk to the juries, whether the attorneys want me to or don't want me to. I go in afterwards. After they reach their verdict, I go back into the jury room without the lawyers—this is probably very risky, and I don't necessarily suggest it, but I learn a lot from these juries. I go in and take my sheriff's officer, and the first thing I tell them is I don't want to know what went on in here, but I'm going to answer any questions.

I think they're entitled, at five dollars a day, to know why they had to wait around in the morning, why they weren't brought up at nine o'clock, why we have all these sidebars, what the defendant may be sentenced to if it is a conviction, and they have a whole bunch of other questions, and some very valid criticisms that I think we should start to listen to.

JUDGE CORDELL: Just an observation on the reversal. I think a mark of a good judge is to be reversed occasionally. It shows you are making courageous decisions. I think it's a feather in the cap.

PROFESSOR ROBINSON: It makes me a little nervous, obviously, to hear these judges talking about how they don't care about being reversed, but on this particular issue I think there might be some good grounds for it. In fact, I'm really thrilled to hear Judge Cordell talk about plain language instructions, giving them beforehand. She's doing all the things that the data on the jury comprehension says she ought to do, and I'm really thrilled to hear that.

This is a case where judges really do risk reversal. But they really are trying to make a good faith effort to communicate that a little better.

Here is the curious side of having better juror comprehension; that is, making those instructions more understandable. I think we all assume that that's a good thing, but it might be that it's a bad thing because if in the past juror comprehension of instructions is really as low as the social scientists are telling us, one of the things that we did

was give them some freedom, in a sense, because they had very little direction, to use their own collective intuitions about how the case should come out, although there was this sort of structure, this formal structure under which they were operating.

To the extent that the instructions become clearer, of course, and they are actually getting the law, they are understanding it, they are being bound by it. That's fine if the law is doing what it's supposed to, and I suppose this is sort of a segue into one of the projects that John Darley and I are working on.

One of the things we are doing is a series of studies using social science techniques, trying to see what liability rules people intuitively use when they assign blame and punishment in a case. That is, don't ask them for the rules. Give them a bunch of cases, deduct from their pattern of reaction to those cases, the rules they must be using. Then we've compared those rules to the rules that are stated in the criminal code, and the results are fairly interesting.

There are many rules where the criminal code did a very good job of bearing the community views, but there are many other instances where the code's rules really don't match. I'm just guessing instances where jurors get to the right result, in part, by ignoring these rules that don't do justice as they see it.

MR. FRIEDMAN: My name is Mark Friedman. I'm with the Appeals Section of the New Jersey State Public Defender's Office. I have been there for twenty years. I'm intrigued by Judge Cordell's comments about the amount of effect that the possibility of reversals has on trial judges. Speaking from the point of view of someone who attempts to get judges reversed on a fairly regular basis, and since this is a program about the appearance of justice to the community, I tend to think a few words should be said about what insanity means to most people, about getting off, about the amount of damage done to the appearance of justice and to actual justice by the phrase "getting off on a technicality."

Now, when things like the Exclusionary Rule, the Miranda Rule, various and assorted Sixth Amendment exclusionary rules were adopted, they were adopted from the point of view that the criminal justice system, besides having a mission to control crime or deter crime, should nonetheless do it with an eye towards certain values that not only should be recognized, but enforced. The message that the media does transmit, and always has transmitted, and probably will transmit, is incorporated in the phrase "getting off on a technicality," as though all of those values are simply an impediment.

I think that does reflect back on the perceptions of judges. Re-

versals are affected by the fact that eventually it will get into the papers and you will have to explain why, as one judge asked me at an oral argument, why should we suppress the smoking gun, for example. A fairly popular metaphor.

The media has a lot to answer for in cheapening the constitution in the eyes of the vast majority of people who are not in this hall. Criminal justice has been so cheapened in the minds of the general public that the phrase "getting off on a technicality," which includes the insanity defense, which includes diminished capacity, has basically disappeared as an item of civilized discourse.

MR. ZULLO: Emil Zullo, instructor of law at Marist College, and a member of New York's Jury Project. Some of the research that we did, at least pointed out to me as an individual, that the kind of role that jurors seem to play in the process are different possibly than what I had anticipated was the role, and the theory that indicated it should play: a role with a fair amount of sanctity, and a rôle with a fair amount of importance and power.

I think the system has deteriorated, and I think a prime example of it is that we think it's rather revolutionary that a judge should start talking to the jury as a major change in the system.

I'm just wondering how any members of the panel feel about what needs to be done to rekindle the notion that a jury may, in order for the system to rehabilitate itself, become an equal power with the practitioners.

JUDGE YASKIN: I love to have them ask questions. I've had them say, but judge, can we ask a question? Usually lawyers will say, objection. In the English system, of course, jurors are allowed to present questions, and I think it's an interesting dialogue. It's something that takes two people, and we are always talking at jurors, whether it's lawyers or whether it's us as judges.

I would love to see a pilot project that would permit it, at least a screening by the judge of whether the question is proper and whether it can be placed to the juror. I see them, and when I talk to them after the case, they are frequently frustrated why didn't we cover that issue. It may be because a rule of evidence, or it may be because of the strategy of lawyers.

Do we allow lawyers then to strategize where we then say to the jury your job is to find the truth, except there's a poignant area you would like to explore, but we know the lawyers don't want to go there and that's a truth we are not going to explore? It's a procedure I would like to see.

JUDGE THOMPSON: My name is Anne Thompson, and I sit as a

U.S. District Court judge in Trenton, New Jersey, and I have been permitting jurors to take notes in every case, civil and criminal, as well as asking questions for some time now. I just never asked anybody if I should do it. I just started doing it, and I don't ask the lawyers if they like it. Some of them are a little surprised by it, but I guess it hadn't occurred to them to object.

So the jurors write their questions out and pass them to the courtroom deputy, or to the court reporter. We pause a minute; get the question; I look at it; show it to the lawyers; they decide whether they want to pursue another question with the witness who is on the stand. Sometimes I may tell the jury the answer. It may be something that simply doesn't require testimony from a witness. It may be just a clarification. Or I may say to the jury upon discussing it with them, further witnesses will respond to this particular question. I don't necessarily read the question at that time.

MS. BIENEN: What if it's an improper question?

JUDGE THOMPSON: Well, I talk to the lawyers about the question. Sure, there's always a certain tension I feel in a criminal case when I open up the paper to see what the question was, but I must say we've managed to talk it out. The lawyers talk with me at sidebar. We decide how we are going to respond, and quite frankly, in the couple of years that I've been doing it, no real problem has surfaced. And the jurors love it.

I mean, I will say once a witness has concluded, ladies and gentlemen, do you have any questions you'd like asked of that witness?

JUDGE CORDELL: Judge, have you ever declined to give a question in a criminal case?

JUDGE THOMPSON: After talking to the lawyers, we usually decided some way to respond, one way or the other. It may be that we will say another witness will respond to that. It well may be that that question can't be answered. I've had no problem thus far.

MR. BOSWELL: My name is Gerald Boswell, and I'm a senior trial attorney with the Public Defender's office.

I like the idea that judges enjoy talking to jurors. I would love to be able to talk to jurors after cases are over. We're not permitted to. I cannot initiate a conversation with a juror, but I have had cases in which upon the completion of the case, the jurors have been excused, and have literally waited outside the courtroom to talk to me.

In terms of nonverbal communication of judges, I agree that the judges do it. Judge Cordell clearly comes from the defense bar and tries to correct inappropriate conduct. I did a trial before a judge who was a former prosecutor, and he is fully aware of every time he

rolls his eyes, turns his back, nods his head, and he plays it right to the jury. That occurs, and it's almost impossible to put on the record, it's impossible to stop a judge during the course of a jury charge and say, "Judge, I would like to note for the record you are nodding your head or shaking your head in disbelief and commenting upon the defense."

JUDGE CORDELL: Why can't you do that?

MR. BOSWELL: Well, the problem is the judge will deny that it occurred, and there's no way to document it unless the case is being videotaped.

But as to the media, it appears that some, if not all of the panels, are using the term "media" as synonymous with news. When I have my jurors voir dired in New Jersey, I cannot ask questions, I can submit questions. I ask them what kind of television shows they watch. Not because I care about the news. I don't care if it's Dan Rather or Peter Jennings. I want to know if they watched *Hard Copy*, or *Cops*. The number of jurors who are now watching "real television"—it's got some bizarre name; not tabloid television, but the cop shows—those jurors come with an attitude and an experience that is different from any other juror.

I also ask what radio shows they listen to. I could care less if they listened to NPR because the prosecutor will throw them off for having a brain. I am concerned when they stand with great pride, and especially for those in New Jersey, and say I listen to Bob Grant, stick it in your face. Or those that say I listen to Rush Limbaugh, and then nod that they are proud of this. I then know that they are coming with a preconception as to what juries do. I don't care particularly what papers they read. In all honesty, as a defense attorney, the last problem I ever worry about is the judge's instructions. The jurors just sit there and their eyes glaze.

JUDGE BAMBERGER: I'm Phylis Bamberger, and I sit in the Supreme Court, which is our trial court in Bronx County, and I hear felony cases.

One point was made concerning the power of jurors. Jurors misunderstand their powers, and they don't know how powerful they actually are. So I try to cover both issues with my instructions to jurors. In my first preliminary instruction to the full panel, I tell jurors first that they are indispensable, because they are indispensable, more so than judges and court officers and all the other people who appear there. But second, that they are actually judges because they judge the evidence and determine the facts. And I equate their role with the role of a judge, telling them to think about what they expect of me as a judge and asking them to expect the same of themselves as jurors

in terms of fairness and impartiality. Jurors understand that when it is put in those terms, and they are very honest with their responses about their ability to be fair when they come into the jury room and into the robing room to give their excuses.

As to the question of jurors not knowing the law or not understanding the law, I do rewrite all of my charges, at some risk, but it's important enough to do that. And I do care about being reversed. So I work hard to rewrite my charges so that they are correct.

But I also tell jurors that if they are going to consider a principle of law, or a principle of ethics or morals, or a question of factual inference which they haven't heard me or the lawyers discuss, that they should come and ask me whether that is an appropriate principle. This request of them by me arose because a court officer told me that he heard the jurors saying in a case that it didn't really matter what they did, the judge could do whatever the judge wanted after they had rendered their decision. I have no idea where they got that principle from, but it's certainly not one that I told them about.

So I ask them now to discuss with me any principle that they have not heard about during the course of the trial, and they are doing it. Jurors are really thirsty for knowledge, and I think by asking them to ask us questions, and encouraging that, it will help to clarify.

I wanted to ask Professor Robinson a question because I was really concerned about your theory of intuitive rules for assigning responsibility in civil and criminal cases. What immediately comes to my mind, and engenders some real concern, is the intuitive responsibility of jurors, both men and women, to believe that a woman who wears a short skirt is inviting a problem. That is an intuitive rule that many members of our public believe in. Another is the intuitive rule on the part of many people that young men, no matter what their race, who gather in crowds are up to no good; that police officers, particularly those who work in the 30th Precinct in New York City, are all liars; and defense lawyers have actually argued that in New York cases in the last several months.

But my question to you is: How can we let these intuitive rules, which I would assume are not in accord with the laws in most jurisdictions, to prevail when we could help to dispel those errors with a clear instruction?

PROFESSOR ROBINSON: Actually, our research, I think, is moving in the direction that you would want; that is, what we are trying to sort out through testing devices to try to strip away those biases; whether it's gender, or racial. When people answer our questions in our cases, they can't tell race, and sometimes the gender, of the differ-

ent characters. They're making judgments apart from that. What we can do then is sort out what the community's shared intuitions are on the rules themselves, biases aside, and have the criminal code then reflect those rules, and ask people to stick with them. I mean, it is, in fact, a mechanism by which you can try to get to the core rule of justice; that is, a rule that somebody would apply that they want, that they themselves want to be judged by. That is the rule that they would apply if they didn't know what gender, race, socioeconomic status, religion, whatever, of the particular participants were.

DR. KELLER: Are we not ignoring the fact that what we know intuitively, what we come up with intuitively, is already heavily influenced by the society in which we have grown up?

PROFESSOR ROBINSON: Well, actually the data that we have suggests that there is actually a surprising amount of consensus among age groups, genders, socioeconomic status as to these basic principles. Now, you have to understand, the sort of principles we are talking about trying to isolate are the principles at the level of what the criminal code provides. For example, under what conditions should somebody be able to use deadly force and self defense.

MR. DeVESA: I'm Fred DeVesa, Assistant Attorney General with the State of New Jersey, and I recently sat on a Supreme Court Committee on jury selection, and two very intriguing questions surfaced during this committee's work, which I would like to have the panel respond to.

The first question or issue was: To what extent we should assume, which we seem to be assuming here, that jurors will be very heavily and perhaps improperly influenced by their race, or their gender, or ethnicity, or religion; and if that is so, if that assumption is correct, then to what extent should the interest of the community, the interest of a victim, the interest of the witnesses be also reflected in the composition of the jury?

Obviously, the Rodney King case, which originally triggered some of our Supreme Court Committee discussions, raised all of these issues, and I'd just like the panel to address those two issues.

JUDGE YASKIN: I just don't know whether you can mention Rodney King without mentioning the other half of the trauma, or the tragedy, which is Reginald Denny. If you ever saw two verdicts that you would instinctively say justice wasn't done, it's probably those two cases. I don't know what else you say about that, except perhaps in the end all we can do as judges is try to fight desperately for the appearance of justice, and understand that whatever we charge and whatever we do, the society has its own rules, its own final laws that it

will impose. And those two cases perhaps exemplify rough justice, rough injustice, of two communities who would not resolve their differences.

There are two videotapes, there are two terribly injured people, and no one was found guilty of a crime. I have no other answer to that. In the end does the society vote its own conscience and does its own mores outweigh what is said and what is urged as the media's goal, or the society's goal of proper conduct?

JUDGE CORDELL: You know, I think there's more, much more that can be done. I don't think you can just, in the system, say, oh well, that's the way it is out there. What didn't happen in each of those cases is an up front acknowledgment by those of us in the system that there's a problem, and one major problem is that of racism. You know, studies have been done that show perceptions of white Americans are very different from the perceptions of African Americans about how the system works. White Americans think it's great, it's fair, it's fine; African Americans think not.

It's like we live in two—in fact, literally, we don't; but figuratively, we live in two different worlds. There is this reluctance to just put it on the table. If we can put it on the table, the next step is to begin the dialogue. What we don't have in the system, among judges, among those of us who are in there, is the dialogue that says we have these tremendous problems, one of which—probably the major one is the racism, and we have to begin to address it.

We are still in heavy denial, and I think, again, judges, if we take the lead and put the word out and then name it, and take the forefront and start the dialogue, yeah, we are going to start bringing about some changes. One major change is having more judges on the bench who look like America. We don't have it. The perception, of course, is very different for those who come in and see a system where no one looks like them. But again, there is this reluctance to even put it on the table. So I suggest, yeah, what can be done? Put it on the table, and get judges to say it. And then get those who have authority to appoint judges to do something about it.

MR. DOPPELT: I'm from the Medill School of Journalism, and I teach legal affairs and the reporting of criminal law, and I'm also a consultant to a bunch of public defenders. Much of the work that I've done has to do with analyzing how the main stream press does cover criminal cases. Much of what you were talking about is absolutely right. They've been rendered marginal in terms of what juries come into a courtroom with. We are talking about the regular press.

It is a terrible misconception to say that the media reports on

technicalities or reports reversals or anything that comes out of the criminal justice system as—what did you call it—getting off on a technicality. They don't do that. In fact, the problem is quite different, but it gets you into somewhat the same place. The media tends to underplay all of the places in the criminal justice system where those technicalities, as you call them, might come out: Suppression hearings, acquittals, and appeal cases, or appeal decisions. They are terribly underplayed, and when they are played, they are played with one sentence.

MS. ABRAMSON: I'm interested in the thoughts of all the assembled judges concerning the dilemma of Judge Lance Ito. Here's a judge who, his frustrations, I think, are obvious; his efforts to control the media are utterly fruitless, but what do you think about that—that's the essential question.

JUDGE CORDELL: I think the answer is easy. When I think about media, I think about two types: one, the television camera. The camera is right there zeroing in on everything. And I've got newspapers. Those are the major ones. I agree with your comments about Judge Ito. He's doing the best he can in an awful situation, and I think that one suggestion that I have is that—and as I said, I'm a strong proponent to the public having access to all proceedings. So I say to the television people, you may film anything you want, but I'm going to order that you're going to delay revealing what's on that film until after a certain point of time. The newspaper can stay in. I don't think that they are having such a tremendous effect as the television cameras would. I would allow them access, but say you are going to wait to show this. I might delay it until even after the trial is completed. Then anybody can watch the trial if they want, and have them there. I think that I have the authority, as judge, to say, you know, the public is going to wait to be able to review the whole thing. Everyone is still under scrutiny, so there's still the accountability. They are just going to have to wait.

MR. BLANCK: That, in fact, is what's done in England, I think. They delay the media coverage until after the trial is over.

JUDGE YASKIN: One of the things I do in my court room, and I've had gavel-to-gavel coverage of an eight-week trial, is there is one camera, and I require all television stations to pull from that one camera. You don't move your camera. With regard to the still photographer, I allow one camera in, and they are using the one camera. I have never said you can't publish now, and I have a strange feeling our Supreme Court would say, really? In a pretrial matter, I might not close it down. But once the trial begins, to say to someone not to publish, I am fairly sure I would be reversed, and very quickly.

MS. ABRAMSON: What would you do about books?

JUDGE YASKIN: Nothing.

JUDGE CORDELL: Nothing.

JUDGE YASKIN: Gag orders, and say, you shall not publish. Really, we don't have the authority. That's not an authority that we have.

PANEL II

MS. BIENEN: This panel is entitled "Modeling Fairness: Interdisciplinary Perspectives," to emphasize the fact that the jury, the subject of the jury, its functions, its symbolic and actual role as a just decision-maker, both within the criminal justice system and the larger society, is no longer the province of one academic discipline.

The essentially moral and deeply personal nature of the structured decisions people make as jurors raise unique and subtle issues for observers of jury decision-making. The media are here to stay in the courtroom. This is not a new phenomenon. The Hauptmann trial in 1935 is probably still the trial of the century in terms of its domination of public consciousness. The Hearst newspapers alone sent over 50 reporters to the trial. Three hundred newspapers, news reporters, and over 100 camera people came to the little town of Flemington, New Jersey, which at the time had a population of 2,500 people.

Forty-five direct lines ran from a room above the court, and a special teletype was connected to news rooms in London, Berlin, Paris, Melbourne, and Buenos Aires. The trial took place in an atmosphere of "mass hysteria in which strong anti-German feelings prevailed." The coverage far exceeded anything in American history, including, I suspect, the Menendez case and the O.J. Simpson trial. Although, there was no television coverage, on one day over 20,000 people tried to get in to the trial, and the courtroom was regularly so overcrowded that people filled the aisles and sat on the window sills.

The jury retired at 11:21 a.m. on February 13th, 1935, the thirty-second and final day of the trial. At 7:45 p.m. that same evening, the judge told them they would not leave the courthouse until they had reached a verdict. At 10:28 p.m. on the same day, the sheriff rang the courthouse bell indicating a verdict had been reached. At 10:40, the verdict of guilty of felony murder was announced with a mandatory sentence of death.

The underlying felony, which was the basis for the felony murder count, was the stealing of the baby's blanket. The verdict was announced as the crowd shouted, "Kill Hauptmann, Kill Hauptmann." On April 3rd, 1936, less than fifteen months later, Bruno Hauptmann

was executed. Over fifty years later, some of those jurors were still granting post-verdict interviews.

The question is not whether or not there's going to be media coverage of sensational trials, but who decides the terms of the media coverage.

PROFESSOR DARLEY: Paul Robinson and I are engaged in a project to find out community views about liability and criminal cases. What we did is use small scenarios of the kind you remember from your Moral Philosophy I: Jones poisons Smith with a slow acting poison, and then Robinson kills whoever it was I said before the poison takes effect; what sort of liability do you think the poisoner incurred? Do you remember that? The sufficient, not necessary; the necessary, but not sufficient.

We tried these sorts of cases on people, and we used different cases where the law instructs us, or the criminal code will treat the two cases differently. And by using these scenarios to interrogate people about how they would criminalize the various actions, how much liability they would assign, I think you can see that we can graph what ordinary people tell us, and rather frequently it turns out there's a consensus. Their views are quite close to one another. Then we can compare that with the liabilities that would be assigned by the criminal code. And we often, although not always, can find that those two things clash. There are broad areas of agreement.

What we then want to do when we find the clash is propose to code drafters that perhaps they might want to think about some sort of alteration to bring the code more in line with community standards. There are sometimes good policy reasons for that clash, but there are sometimes not very good reasons for those clashes.

Now, people, ordinary people, don't know much about these alternate sentences. So that, for instance, in the first case of home detention, various newspapers were showing a wonderfully luxurious home, and, of course, this might convince the public that this doesn't have quite the bite that they had had in mind.

What the court systems ought to do is engage in some persuasion to convince people that indeed these sentences do have an appropriate retributive bite and, therefore, they are fair. If not, then I think this rather promising sentencing alternative program is likely to fail.

PROFESSOR LEVI: The topic of this panel is modeling fairness. So we need to ask, first of all, what does linguistics have to do with modeling fairness. Linguistics doesn't usually concern itself with fairness. Well, I think it has. As the scientific study of language, which is sort of a quick definition of linguistics that I give at cocktail parties,

linguistics is an excellent tool for evaluating comprehensibility of jury instructions; and then, assuming the conditions are right, for trying to improve them. And in the context of fairness, we really have to ask: Is it fair to ask jurors to participate in trials, at considerable personal sacrifice for many of them, and order them to try to apply the law to the facts of the case when the instructions make it often very difficult, if not impossible, to apply the law to the case?

I think we also need to ask: Is it fair to society to pay the cost of trials which have the purpose of instructing jurors to apply the law to the facts of the case? Is it fair to ask society to pay the cost of trials where, in fact, this cannot happen because the language is an insuperable barrier? That's the issue of fairness. It's not one that I evaluate as a linguist because that's not my competence, but it's why the subject of comprehensibility of jury instructions is relevant.

As for jury instructions specifically, there is a lot of research available by linguists, psychologists, and lawyers often working in teams that shows two things very clearly: one is that the level of comprehension by jurors of their judge's instructions is abysmal. One survey of the findings calls it "so low as to be dysfunctional."

But the second thing that is shown by the research is that this could be improved; that is, the quality of the language could be improved in such a way that the comprehensibility rises proportionately and, in fact, it could be done with relative ease and with relatively low cost. So what is needed, of course, is effective rewriting by someone who is not a lawyer and who, therefore, remembers how normal people speak. Once the rewriter has rewritten these things, they should be tested on normal people such as people waiting around to serve on juries. Language is an incredibly complicated and magnificent, if imperfect system, and it has subcomponents. Relevant to this particular case are semantics, the study of meaning. How is the meaning expressed by individual words? What additional complexities of meaning come into play when we combine the words into sentences? Which brings in the question of how does syntax, the grammatical organization of the sentence, contribute to the meaning. Pragmatics focuses on how does context contribute to meaning and understanding. For example, what we don't say, or what we require somebody to infer from our comments. And then discourse organization. How coherently is the material presented to the person who is supposed to understand it?

Now, while lawyers and judges, it turns out, are engaged in analyzing language, trying to understand language, trying to express themselves in language all the time, nevertheless, their primary focus is on the law. What linguists do in their professional life is to keep their eye

on the language at all times, which turns out to give them qualifications and expertise that can be of use to judges and lawyers who are interested in both evaluating comprehensibility of jury instructions and in improving them.

PROFESSOR KING: I would like to address my comments to the judges out there because I think this jury system that we have here is broken, and I think we can do something about it. I agree entirely with Judge Cordell when she said that there is a lack of trust in a system that is verifiably racially based. We've got groups in the society who do not have a stake in our jury system, in our criminal justice system, or don't trust it to the same extent that other groups do. And if we are going to do anything about crime in this country and keep our jury system while we are at it, we need to make an effort through the efforts of courageous judges, like those of you sitting out there, and legislators and attorneys who are willing to go out on a limb and try something different, to make an effort to come up with imaginative ways to address some of these problems that we are talking about today.

Two imaginative ways that I would like to speak to you in particular are race conscious jury selection; that is, quotas on juries—maybe not the juries themselves, but on the jury pools, the venires, the qualified lists from which juries are chosen; quotas based on race so that the racial composition of the juries that judge, especially in criminal cases, mirrors that of the population from which those jurors are drawn. And the other innovative aspect of improving, possibly improving our jury system, that I would like to speak to, is the use of anonymous juries in every single criminal case.

The first topic is the use of race to engineer the composition of jury pools. I agree, as I said before, that it's no longer possible for the courts and our system, anybody that has anything to do with it, to sit back and say race is not a problem with our jury system today. Take a look at some of the high profile cases from the last few years, and that is very clear. Look at the polls. Why do various racial groups and various ethnic groups in this country view the criminal justice system as more or less fair? Part of it, I believe, has to do with the racial composition of the jurors. There are not enough minority people, people of color, on juries today, and we can do something about that.

Why is it that this happens? We are not using the keyman system anymore to select just our buddies from the community to sit on the juries. We've got elaborate computer programs. We've got random generators in our software choosing from voters lists. What can we do about it? Well, you can change some of those things at their source by updating your list more frequently, by using the U.S. Postal Service

change of address forms, for example. But at some point the question becomes: Should we compensate for the selection system's tendency to screen out more people of color and of lower incomes with an affirmative effort to bring those people back into the system in numbers that reflect their presence in the population? The answer to this question has been yes for various jurisdictions around this country in increasing numbers.

In the Eastern District of Michigan, in federal court, the federal judge looks at the qualified pool and determines whether or not the ratio of whites to non-whites reflects that in the population. If it doesn't, the judge selects the appropriate number of white potential jurors to exclude from that qualified list and knocks them off.

Let me read to you from an Order. In June 1993 Judge Cook found that of the nearly 4,000 qualified jurors randomly selected from the source list in the Ann Arbor jury district, that includes parts of southeastern Michigan, contained only 14 per cent African Americans compared to the 23% African Americans in the population. So he ordered the clerk of the court to remove 1,574 whites and other jurors from this list. As a result, the qualified wheel is now composed of 548 black qualified jurors, and 1,792 whites and others, and that reflects the population.

Georgia is picking its jurors using racially separate lists. Arizona came out in favor of a similar system of stratified selection. New York considered, but rejected, the racially based stratified system that I referred to, in favor of a race neutral system that tries to accomplish pretty much the same thing, which is to over sample those zip codes in which people don't return questionnaires at the same rate. They use the zip code boundary as a proxy to bring in those who are excluded by the system, and bring them up to the same numbers that they would be had they been returning their questionnaires.

Finally, some are not content to just engineer the pool from which jurors are down, they are actually working on quota systems for the juries themselves. A proposal in Hennepin County, Minnesota, where the D.A. and the judges have recommended that their grand jury in first-degree murder cases be selected so that the first twenty-one of the twenty-three grand jurors are selected randomly. And if there are not two people of color already on that list, they will skip over whites until they find two non-whites to put on that grand jury. So that every first-degree murder grand jury has on it at least two non-whites, and that's the way they classify them.

They are trying to figure out a way to implement this so they won't lose their convictions when it's challenged on appeal, which is a

trick. The question is: Is this constitutional?

What do I think? I think that some of it is.

One of the solutions that some reformers have considered in bringing the numbers of minority jurors up is to change the boundaries of the district from where the juries have drawn. This comes up mostly in large metropolitan areas where localized jury pools tend to exclude. In the suburbs, localized jury pools exclude the urban population. People who are tried out in suburban areas feel like they don't have their peers if they don't get urban jurors. So the idea is, well, maybe if we make the jury district boundaries bigger, then everybody will have more diverse juries. Well, the problem with that is once you start drawing smaller lines, then somebody else feels excluded. I think it's sort of a no-win situation.

My own view is that we should keep these jury district lines fairly big and not draw them on the basis of racial communities, so that black communities are isolated and they have their own juries; for a Cuban community to have their own juries, or whatever. I think we should try to broaden the pool.

On the subject of anonymous juries. In L.A., there are two judges who are empaneling anonymous juries in every criminal case, and this is to give the jurors an option of remaining secret, their identities to remain closed after the trial. The idea behind the anonymous jury is to make jury service less onerous, to make it more accessible and less scary, and to make it more likely that people will serve. The scary part comes not just from jurors' fear of defendants. The studies show at least some anecdotal evidence that jurors in criminal cases fear the defendant, but also the media. Jurors may not want to have post-verdict interviews by the media. They may not want the rest of their community to know who they are. They don't want hate mail. They don't want thank you notes. They don't want press coverage. Now, so the idea is if we allow them to remain anonymous, they would be more likely to participate. Obviously, the objections from the defense standpoint, is this going to undermine the presumption of innocence? From the media's standpoint, does this run into First Amendment problems?

PROFESSOR BOWERS: In the Capital Jury Project we are just beginning to get our hands on the data for a systematic analysis. The death penalty is the high stakes, high media, high publicity, high interest crime, outside espionage cases. It's our most politically and media centered event in the criminal world.

My own interest in this dates back at least a couple of decades. I've done research on the issue ever since and even starting a little bit

before the *Furman* decision that declared the death penalty was too arbitrary, discriminatory, as it was then applied. The Court held, in effect, that the death penalty violated our standards of fairness, which, of course, is the topic of this particular panel.

One of the things that Justice Powell said in his *McCleskey* decision was we can't impeach the jurors. In effect, that they are acting without arbitrariness or discrimination, that they are acting in a manner that is consistent with the law. Now, we really think that you must show in a particular case that there was intent to discriminate on the part of the parties; you know, judge, prosecution, or among jurors. Our Capital Jury Project is in a very fundamental way a response to the challenge. Well, in view of what we know about the obscurity of the instructions and so on, it was a challenge we wanted to deal with. Hence the Capital Jury Project.

This is a study now under way in fourteen states, the latest to join the project is New Jersey. It's a study in which we sample cases first. Our target is fifteen recent cases in which a death sentence was handed down, and fifteen cases in which conviction for death eligible for murder was given by the jury, but then the jury decided some way or another, for life or another sentence. We talk to four jurors in each case, so we have samples of 120 jurors. That's our target, although in some states, for various reasons, we haven't met that target. Our strategy at the beginning was to devise an instrument that would cover the process of the jurors' involvement from the very beginning of being selected, right through the stages of the process: jury selection, the presentation of evidence of guilt, the guilt deliberations, and, right on through with instructions, with their responses, their understanding, their evaluations of the prosecution, defense, the judge, their attitudes about the death penalty after this experience, and, of course, background factors that might help us understand a little bit about how differences among people figure in this process.

The objective of having people from a variety of states, and in choosing these cases from different states, is to represent the diversity in the laws that provide for the death penalty. In the different states there are laws that require jurors to weigh aggravating against mitigating circumstances. For instance, in Illinois and North Carolina. In some states the jury's recommendation can be overruled by the judge. So there's a jury override possibility. That's in Indiana and Florida. We have what we call a "threshold" statute where if the jurors find a single aggravating circumstance, that's sufficient. And then after that, essentially there's no more guidance by the jury. We have directed statutes, Texas and Virginia, where the law says the jurors must focus on an issue. In Texas, the future dangerousness of the defendant; in

Virginia, it would be heinousness.

We tape record these interviews. We have 700 interviews with quantitative data, and another 400 transcripts of the interviews with jurors. Jurors remember these cases very vividly. This experience leaves on the jurors quite a strong impression. Sixty-odd percent say that it was emotionally upsetting, and at least 30 to 40 per cent say they had trouble sleeping. They talk about the guilt decision, about the punishment. They talk about it because these cases, unlike most others, the jury will also decide what the punishment will be. And 40 per cent of the jurors say that they discuss and negotiate about what the punishment might be, what it should or would be. When you ask a question about responsibility, who is responsible. We ask them to rank responsibility for the punishment: the defendant because he committed the crime; the law because it says what punishment should be imposed, the judge because he imposes the punishment; the jury because it decides what punishment; and the individual juror because of the decision of a jury must be unanimous.

At the top of the list—and this is very interesting because the concept of guilt and punishment gets fused here in jurors' minds—is to say the defendant is responsible for this punishment. Next they say the law because it required it. Way down at the bottom is the individual juror who makes a decision, or the jury, and the judge is pretty low, too.

MS. HASUIKE: I would like to talk about my business, my industry, which is the trial consultant business, and what kind of an impact trial consultants and the use of trial consultants have on the jury system.

When I first went to work for the Litigation Sciences ten years ago, there weren't many trial consultants. If anything, people used to say what is that? How do you make a living doing something like that? Why would lawyers ever hire you? It's a lawyer's job. Things have changed substantially. After it was announced that our firm was working for the prosecution in the O.J. Simpson case, we were bombarded with people who wanted to work for us, and we became very popular, and in some ways, notorious. And I want to talk about three things that really, I think, have changed since I started working as a trial consultant.

It used to be people would say: Hey, look, please, do something which will help us identify the best juror I can have for my case. Now my clients don't ask for that. What they say is, Okay, look, who are the people who have had experiences, or some educational training, or something that would make it very, very difficult for them to see the

case the way we present it. Then we would like to exercise our strikes on those.

The main difference is people are not just saying tell us about the jurors who are biased, prejudiced, terrible people, who can't be fair. I see my clients accepting the fact that experiences color the way people view things, and that is separate from this kind of a value judgment: people are prejudiced and biased.

There has been lots of discussions here about how African American jurors view the world very differently. Women view the world differently, and any sub-group's experiences make their world view different. The events just don't seem the same. We often stand and say, "How could they?" There was the example of the McDonald's case. When you hear about somebody spilling coffee and recouping millions of dollars, you think that's crazy. How can anybody do that? If you read the *Wall Street Journal* describing the juror interviews about that case, you begin to wonder maybe they were right. It's possible. We don't have the same experience as the jurors who actually sat on that jury, and that's the point. I think it's getting easier for our clients to accept that.

The second thing we've been talking about is the gap between lawyers and judges versus common people. The jury instructions are incomprehensible. People can't understand the language. Lawyers arguments, the same thing. Lawyers stand up, and they were trained in law school to say in the opening statement, "What I'm going to tell you is not evidence." You know what jurors are thinking? Then, why should I listen to them? Right?

They were told to decide on the strength of evidence, and this lawyer is going to talk for two hours, and this is not evidence. Why do we do it? That's the kind of thing that the trial consultants do. Were trying to narrow the gap between the experience of jurors versus what lawyers are trained to do in law school. One of the issues that I would like to raise is that law school education has to change if lawyers are going to be trying cases before jurors. Because lawyers are not trained, including my clients, they are not trained to talk to people. They are not trained to try to persuade people, and they are not trained to understand that people don't come from the same background or value system as they do. So that's one of the issues. I think trial consultants are forcing lawyers to speak to jurors in a way that can be understood.

The third point is a little bit more abstract, but I see this as a major contribution. Most of the cases that the jurors actually sit on are mundane cases. They don't see the significance of the case, un-

like those highly publicized cases that we talk about. They sit there. They don't really understand what the point is. You know, why they are there? Why do they have to do this? And what we try to bring is to say, look, no matter how trivial the case might look, how complex or technical, these are ways to make it meaningful to jurors. There are things about that case. It's not just some of case facts; the case represents something. It represents some values, some principles, something important. And the lawyer's job is to move jurors and touch something beyond just the case facts. You don't just summarize the case facts and say, see, I have the merits. What we try to do, what trial consultants do, is to find ways to move jurors so that when they leave the courtroom, they feel like they have done the right thing.

I would like to address two criticisms of trial consultants. Why do some people think that the use of trial consultants is in any way manipulation? What we do is what lawyers do: trying to present the case in a way that can be understood by the jurors, and then to be more persuasive. To try to think about the audience instead of just thinking about yourself. To try to say the things that can be heard, and to try to eliminate people who will not hear you, for whatever reason. To me, that is not manipulation.

The second issue is a more serious issue for me. There are 300 to 500 entities that call themselves jury consultants or trial consultants. There's no certification process, there's no qualification. It's not like becoming a lawyer. They don't have to pass any test. And all these people are going around doing everything, including us. We do trial simulations. We do opinion research. We do telephone surveys. We do focus groups. We talk to people. You have seen a lot of those trial consultants on TV recently, right, talking about the O.J. Simpson case. Who is the ideal juror, and how people cannot be fair, or can be fair. Now, they are not being questioned in terms of a rigorous sort of methodology. If you have 500 entities doing this work without any kind of a control, of course you are going to get some people who may make irresponsible comments.

How do you regulate this? Is there any necessity for certification if people are going to be involved in this system? Is it necessary to regulate? I tend to think not. It's very simple: if we help you, we get hired and we get a good reputation. If we don't, if our predictions are wrong, and if we don't do a good job, we don't. To me it's sort of a self selection. You know, that comes with time and success. However, there needs to be a movement to try to have some regulation in the industry.

The last thing I would like to address very quickly, is the impact of these highly publicized trials, especially in California, on the way ju-

rors view their jury service. There was a comment earlier that the jurors don't know how powerful they really are. I disagree. I think jurors today, partly because of all the media coverage, have become very aware that they can change the world, they can change their society, even by themselves.

I interview jurors in California. They all tell me that they were astounded by the process. They realized that they can do it. As a group, they can make decisions that cannot be reversed. They say, what they decide goes, and in this age of people feeling impotent and out of control, elections and politicians wouldn't help you, industries wouldn't help you, and this one vote, one decision of six people, twelve people, can change their society. They said they really feel empowered. This is the only area where their voice counts. Nowhere else. And I think that's really one of the things that these highly publicized trials have done for the jurors.