It became clear during the first O.J. Simpson trial that Americans—depending on their color—viewed the criminal justice system through different lenses. One indication of that was the differing reactions to the information about Mark Fuhrman’s language and his characterization of blacks. Whites expressed shock. Blacks, in the main, merely shrugged and asked, “so what else is new?” There were also differing reactions to the verdict itself.

Again, the Nation has become fixated, to a lesser extent, with an O.J. Simpson trial. I fear that just as societal issues on the Nation’s agenda and the larger legal questions of the first trial were obscured by theatrics and hype associated with it, the same may occur with respect to the impetus being given to legislative proposals to change the jury system. I shall not speak to the societal issues that directly impact lives of minorities and poor people, particularly children. They are for another day. Today, I will discuss the implications of the reactions to the jury verdict.

There are serious issues lurking beneath the surface of the dramas of the two trials that need serious thought by lawyers, members of the academy and the public. For that reason, I have chosen to speak about them in this forum in the hope that a historical context for the intersecting of race and juries will help to forestall reforms in jury selection that could result in countless numbers of poor, black and other minorities facing juries—non-inclusive—which were thought to have become a relic of bygone days.

The differing perspectives that have surfaced with respect to the criminal justice system from within the minority and majority communities make the time ripe for a sober and thoughtful examination. Demands continue to be made for a change in the jury system. Before laws are changed, however, caution is necessary. In this regard a heavy responsibility rests upon law schools and lawyers to shape and guide the debate for a very simple reason: they are, in the first instance, the guardians of the Constitution. Public policy decisions are made by citizens through their elected lawmakers. The basic principle

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of a republican form of government is that the representatives act with the consent conferred by the governed. An underlying assumption, however, is that the consent will be an informed consent. With that in mind, and the reactions to the jury verdict in the Simpson case that is leading to calls for drastic reforms in the jury system, I think it would be prudent to have a “time out” until passions of the moment subside, and reason can come into play. I suggest that we begin an examination of jury selection, verdicts, and the slow historical movement that has gone on to remove the barriers so that they could become more racially diverse and fair.

In recent years, I visited several African countries in connection with efforts to assist them with their legal systems. A persistent question that met me wherever I went dealt with America’s jury system. Juries are not part of the legal system of a large number of foreign countries and, thus, their role is not understood.

Sparking those inquiries was the Simpson trial that was underway during my 1995 visit to Africa, and which was widely reported abroad. I found it fascinating that not only was the jury system not understood in those countries, but the post-Simpson trial reaction suggested the degree to which it is also not fully understood here at home.

We all know what the first Simpson jury did. Some have said the verdict was the result of “jury nullification,” rather than from a careful weighing of the evidence and deliberation by the jury. Since race became a matter of some debate in the trial, numerous articles and polls have been published about the extent to which racial considerations affected the outcome of that and other trials. Bob Herbert, syndicated columnist, wrote about the verdict as follows:

On Tuesday we saw the degrading spectacle of men, women and children, most of them black, some in churches and schools, celebrating the Simpson verdict. It was a collective dance on the graves of two innocent people, and a stunningly inappropriate response to the acquittal of a wife-beating world-class athlete who spent at least some of his time running with the demons of the night.

We also listened to the explosion of race hatred, most of it from whites, that lit up the lines of talk radio. The babbling and ranting had the scent of manure about it and could have been scripted by Mark Fuhrman.

* * *

There is talk now among whites of yet another backlash against blacks. There is talk now among blacks that the freeing of O.J. Simpson was payback for centuries of humiliation at the hands of whites. Both discussions are destructive and
absurd. Nevertheless you can feel the hardening of racial attitudes on all fronts.

* * *

Given our penchant for denial, we are likely to underestimate the gravity of these problems. A society rent along racial lines, in an overheated atmosphere in which both sides lack confidence in the justice system, is a society headed for catastrophe.¹

The Wall Street Journal, on October 4, 1995, did an extended piece on “race and jury nullification.” Let me share some of its discussion:

The evidence against Davon Neverdon seemed overwhelming.

Four eyewitnesses testified that they saw him kill a man in a robbery attempt. Two others said he told them he committed the crime. Even Mr. Neverdon was expecting to be convicted: he had offered to plead guilty in exchange for a 40-year sentence, a deal the prosecutor had rejected at the request of the victim’s family.

But that was not how the Baltimore jury, which included eleven African-Americans, saw it. After eleven hours of deliberation, they acquitted [Mr. Neverdon], who is black. A note from the jury room before the July 28 verdict suggested an explanation for the contrarian result: “race,” the lone Asian-American juror informed the judge, “may be playing some part” in the jury’s decision-making . . .

But, increasingly, jury watchers are concluding that, as in the Neverdon case, race plays a far more significant role in jury verdicts than many people involved in the justice system prefer to acknowledge. And rather than condemn this influence, some legal scholars argue that it fits neatly into a tradition of political activism by U.S. juries. . . .

The phenomenon of race-based verdicts isn’t limited to blacks, of course. In past years, all-white juries, particularly in the South, nearly always convicted blacks accused of crimes against whites, regardless of the evidence — while whites who raped or lynched blacks went free. In death penalty cases, white jurors frequently refused to send whites to death row for murdering blacks. When Los Angeles police officers charged in the videotaped beating of Rodney King were acquitted in Simi Valley, California, in 1992, many observers attributed the verdict to the fact that 10 of the jurors were white and none were black.

At the simplest level, [researchers] say, minority jurors are merely drawing on their own life experiences, as jurors are expected to do, in evaluating evidence. . . .

But some black jurors are quietly taking a further, much more significant step: They are choosing to disregard the evidence, however powerful, because they seek to protest racial injustice and to refrain from adding to the already large number of blacks behind bars. . . .

The race factor seems particularly evident in such urban environments as the New York City Borough of the Bronx, where juries are more than 80% black and Hispanic. There, black defendants are acquitted in felony cases 47.6% of the time - nearly three times the national acquittal rate of 17% for all races. Hispanics are acquitted 37.6% of the time. This is so even though the majority of crime victims in the Bronx are black or Hispanic. . . .

. . . In Washington, D.C., where more than 95% of defendants and 70% of jurors are black, 28.7% of all felony trials ended in acquittals last year, significantly above the national average. In Wayne County, Michigan, which includes mostly black Detroit, 30% of felony defendants were acquitted in 1993, the last year for which statistics were available. . . .

Jury watchers point to a number of high-profile cases in recent years in which urban juries acquitted black defendants, despite what appeared to many observers to be strong evidence for conviction. These include the 1990 case of Washington Mayor Marion Barry, who was acquitted on all but one of 14 counts against him stemming from a sting operation in which the FBI and police videotaped him smoking crack cocaine; . . .

Some black lawyers and scholars argue that any defiance of what blacks perceive as a racist system falls within the tradition of so-called jury nullification - the rejection of the law in favor of the juror's own views of justice. They note that this controversial power, which the U.S. Supreme Court explicitly affirmed 100 years ago, has played an important role at key times in U.S. history - and may be doing so again today.2

I.

So reported The Wall Street Journal the day after the Simpson verdict. With those comments in mind, let me turn to the evolution of the jury system in the United States, the history of race in that sys-

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tem, and some of my thoughts on the future. Let us begin with our Constitution and interpretations by the Supreme Court in several landmark cases.

We begin with two provisions of the United States Constitution. The Sixth Amendment provides, as you know, as follows:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, ... 3

The Fourteenth Amendment holds that no “State shall deprive any person of life, liberty, or property, without due process of law” or “deny to any person . . . the equal protection of the laws.”4

Though the Sixth Amendment is explicit in guaranteeing one’s right to a jury trial, the effort to ensure that right — and that it be impartial — has been ongoing. One of the most celebrated decisions was handed down by the United States Supreme Court in 1879. In Strauder v. West Virginia,5 a person of color was indicted for murder in West Virginia and upon trial in the state court, was convicted.6 On appeal the conviction was affirmed, whereupon Strauder sought removal of his case to federal court, assigning as his grounds the laws of West Virginia that barred members of his race from serving on the grand juries and petit juries.7 The statute in question provided: “all white male persons who are twenty-one years of age and who are citizens of this state shall be liable to serve as jurors . . .”8

The Supreme Court framed the issue before it as “whether, in the composition or selection of jurors by whom he is to be indicted or tried, all persons of his race or color may be excluded by law, solely because of their race or color, so that by no possibility can any colored man sit upon the jury.”9

The Court observed that “[i]f the defendant has a right to have a jury selected for the trial of his case without discrimination against all persons of his race or color, because of their race or color, the rights,” as provided by the constitutional amendments, must be protected.10 The Court thereby upheld the right of Congress to mandate and authorize the removal of such cases into the federal forum.

3. U.S. Const. amend. VI.
5. 100 U.S. 303 (1879).
7. Strauder, 100 U.S. at 304.
8. Id. at 305.
9. Id.
10. Id.
One would have thought that a decision interpreting such a basic provision of the Constitution and civil rights statutes would have settled the matter. It has not. The problems surrounding the selection of grand jurors and petit jurors remained a source of litigation since the days of the *Strauder* decision. A technique effectively used to exclude the persons of an undesired racial group from a jury has been the peremptory challenge. Under this procedure, a prosecuting attorney, during the selection phase of prospective jurors called the *voir dire*, excludes persons arbitrarily, without giving a reason. This use of peremptory challenges was upheld by the Supreme Court.

In *Swain v. Alabama*, according to the record, the petitioner, a Negro, was indicted and subsequently convicted of rape in Alabama and sentenced to death. In the county in which the trial occurred, Negroes were twenty-six percent of the population while jury panels since 1953 averaged ten percent to fifteen percent Negroes. In this case there were four or five on the grand jury panel and two actually served. With respect to the petit or trial jury, no Negro had served on a jury since 1950.

Of the eight Negroes on the venire, two were exempt and six were peremptorily struck by the prosecutor. All attempts to quash the indictment and strike the trial jury venire because of the discrimination in the selection of jurors were to no avail. The Supreme Court upheld the denial of relief to the petitioner.

The Court's reasoning is of considerable interest:

1. The Constitution does not entitle the defendant in a criminal case to a proportionate number of his race on the trial jury or the jury panel.
2. Purposeful racial discrimination is not satisfactorily established by showing only that an identifiable group has been under represented by as much as ten percent.
3. There was no evidence in this case that the jury commissioners applied different jury selection standard as between Negroes and whites.

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14. Id.
15. Id.
16. Id.
17. Id. at 203.
18. Id. at 208.
20. Id. at 209.
4. An imperfect system of selection of jury panels is not equivalent to purposeful racial discrimination.\textsuperscript{21}

5. The prosecutor's striking of Negroes from the jury panel in one particular case under the peremptory challenge system, which permits a challenge without a reason stated, does not constitute denial of equal protection.\textsuperscript{22}

6. Even if a state's systematic removal of Negroes in selecting trial juries raises a prima facie case of discrimination under the Fourteenth Amendment, the record was insufficient to establish such systematic striking in the county.\textsuperscript{23}

7. The petitioner has the burden of proof and he failed to meet it.\textsuperscript{24}

8. A total exclusion of Negroes from venires by state officials creates an inference of discrimination, but this rule of proof cannot be applied where it is not shown that the state is responsible for the exclusion of Negroes through peremptory challenges.\textsuperscript{25}

A review of some of the cases that preceded Swain is instructive. In Norris v. Alabama,\textsuperscript{26} another case involving the jury question, the petitioner was convicted of rape in Alabama and sentenced to death.\textsuperscript{27} In an opinion written by Chief Justice Hughes, the Supreme Court summed up the effect of earlier decisions in relation to exclusion from jury service:

\begin{quote}
[w]henever by any action of a State, whether through its legislature, through its courts, or through its executive or administrative officers, all persons of the African race are excluded, solely because of their race or color, from serving as grand jurors in the criminal prosecution of a person of the African race, the equal protection of the laws is denied to him, contrary to the Fourteenth Amendment of the Constitution of the United States. . . .\textsuperscript{28}
\end{quote}

The opinion noted that the above statement had been repeated by the Court in other cases.\textsuperscript{29} This principle was held to also apply to petit juries.\textsuperscript{30} The Court concluded that Norris had established the existence of discrimination which the Constitution forbids.\textsuperscript{31}

\begin{itemize}
\item \textsuperscript{21} Id.
\item \textsuperscript{22} Id. at 221.
\item \textsuperscript{23} Id. at 224.
\item \textsuperscript{24} Id. at 226.
\item \textsuperscript{25} Id. at 226-27.
\item \textsuperscript{26} 294 U.S. 580 (1935).
\item \textsuperscript{27} Norris v. Alabama, 294 U.S. 587, 588 (1935).
\item \textsuperscript{28} Norris, 294 U.S. at 589 (quoting Carter v. Texas, 177 U.S. 442, 447 (1900)).
\item \textsuperscript{29} Id. at 589. Specifically the Court referred to Rogers v. Alabama, 192 U.S. 226, 231 (1904) and Martin v. Texas, 200 U.S. 316, 319 (1906) as reiterating the proposition. Id.
\item \textsuperscript{30} Norris, 294 U.S. at 589.
\item \textsuperscript{31} Id. at 599.
\end{itemize}
Swain did not settle the matter because the jury selection process continued to affront the Sixth Amendment and the Fourteenth Amendment's prohibition's against deprivation of rights by states. A series of post-Swain cases were taken to the Supreme Court that dealt with claims of invidious discrimination in the selection of grand juries and petit juries. These cases may be summarized as follows:

Alexander v. Louisiana.\textsuperscript{32}

The petitioner was convicted of rape in Louisiana.\textsuperscript{33} He argued that the grand jury selection procedures were discriminatory against Negroes.\textsuperscript{34} The venire included a Negro and the grand jury that indicted him had none.\textsuperscript{35}

The Supreme Court held that the procedures utilized for selected jurors, as shown by the petition, constituted a prima facie case of invidious discrimination — and the State did not adequately explain the disproportionately low number of Negroes throughout the selection process.\textsuperscript{36}

Peters v. Kiff.\textsuperscript{37}

The petitioner, a non-Negro, sought a writ of habeas corpus contending that there was a systematic exclusion of Negroes from the jury that convicted him.\textsuperscript{38} He claimed that the tribunals that indicted and convicted him were constituted in a manner that is prohibited under the Constitution and the statutes.\textsuperscript{39}

In an opinion by Justice Thurgood Marshall, the conviction was overturned.\textsuperscript{40} In noting that the Supreme Court had never before considered a challenge to a conviction by a white defendant on grounds of exclusion of Negroes from jury service, Justice Marshall held that "the exclusion of Negroes from jury service, like the arbitrary exclusion of any other well-defined class of citizens, offends a number of related constitutional values."\textsuperscript{41}

Some of these values cited by Justice Marshall were drawn from Strauder, where "the Court observed that the exclusion of Negroes from jury service injures not only defendants, but also other members

\begin{footnotesize}
\begin{enumerate}
\item 405 U.S. 625 (1972).
\item \textit{Alexander v. Louisiana}, 405 U.S. 625, 626 (1972).
\item \textit{Alexander}, 405 U.S. at 626-27.
\item \textit{Id.} at 628.
\item \textit{Id.} at 631-32.
\item 407 U.S. 493 (1972).
\item \textit{Peters}, 407 U.S. at 494, 497-98.
\item \textit{Id.} at 494.
\item \textit{Id.} at 496, 498.
\end{enumerate}
\end{footnotesize}
of the excluded class: it denies the class of potential jurors the 'privi-
lege' of participating equally . . . in the administration of justice."42
That, according to the Supreme Court in Strauder, would be, as to
that group, a denial of the equal protection of the laws in violation of
the Fourteenth Amendment.43

Another principle articulated was "that the exclusion of a discern-
ible class from jury service injures not only those defendants who be-
long to the excluded class, but other defendants as well, in that it
destroys the possibility that the jury will reflect a representative cross
section of the community."44

Thus, the Court held that whatever one's race, a criminal defend-
ant has standing to challenge the system used to select his grand or
petit jury on the ground that it arbitrarily excludes from service the
members of a race, and thereby denies his due process of law.45

Ham v. South Carolina.46

The petitioner was a young Negro who had lived in South Caro-
lina and was known for his civil rights activities.47 With no prior rec-
ord he was arrested and convicted possession of marijuana.48 The
Supreme Court granted limited certiorari for the purpose of determin-
ning whether the trial was rendered unfair because the trial court re-
fused to examine jurors on voir dire on the jurors' possible anti-Negro
prejudice.49

The Supreme Court, in an opinion by Justice Rehnquist, held that
it was error for the trial court to refuse to make any inquiry into the
issue of racial bias and that this denied the petitioner a fair trial in
violation of the Fourteenth Amendment's due process clause.50

The petitioner had requested the court to ask the jurors four
questions:
1. Would you fairly try this case on the basis of the evidence
   and disregarding the defendant's race?
2. You have no prejudice against Negroes? Against black
   people? You would not be influenced
   by the use of the term
   'black'?
3. Would you disregard the fact that this defendant wears a
   beard in deciding this case?

42. Id. at 499 (quoting Strauder v. West Virginia, 100 U.S. 303, 308 (1879)).
43. Strauder, 100 U.S. at 305-06.
44. Peters, 407 U.S. at 500.
45. Id. at 501.
49. Id. at 525.
50. Id. at 527.
4. Did you watch the television show about the local drug problem a few days ago when a local policeman appeared for a long time? Have you heard about that show? Have you read or heard about recent newspaper articles to the effect that the local drug problem is bad? Would you try this case solely on the basis of the evidence presented in this courtroom? Would you be influenced by the circumstances that the prosecution's witness, a police officer, has publicly spoken on TV about drugs?51

*Taylor v. Louisiana.*52

In *Swain*, the United States Supreme Court upheld on Fourteenth Amendment equal protection grounds, the exercise of peremptory challenges even though minorities were being excluded.53 In *Taylor*, decided a decade after *Swain*, the Supreme Court, for the first time, interpreted the Sixth Amendment to require that the jury venire be selected from a representative cross-section of the community.54 The Court declared that this kind of representation enhanced the likelihood of achieving an impartial jury.55 Actually, this rationale finds its roots in cases going back thirty-five years.56

*Castaneda v. Partida.*57

The sole issue in this case was whether the State of Texas, successfully rebutted Rodrigo Partida's prima facie showing of discrimination against Mexican-Americans in the state's grand jury selection process.58 It used the "key man" system for selecting grand juries in which jury commissioners are appointed by a state district judge to select prospective jurors from different sections of the community.59 The Supreme Court determined that Texas failed to rebut the petitioner's claim of discrimination and held that Partida's equal protection rights were violated.60

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51. *Id.* at 525 n.2.
52. 419 U.S. 522 (1975).
59. *Castaneda*, 430 U.S. at 484.
60. *Id.* at 501.
Duren v. Missouri. 61

Duren was convicted of murder and other crimes in a Missouri state court. 62 On appeal, Duren asserted that his constitutional right to a jury chosen from a cross section of the community was denied by a Missouri law granting a woman an automatic exemption from jury service upon request. 63

The Missouri Supreme Court determined that the under-representation of women on jury service did not violate the "fair-cross-section requirement" set forth in Taylor. 64 Under Taylor, a defendant, in order to establish a prima facie violation of the fair-cross-section requirement . . . must show (1) that the group alleged to excluded is a "distinctive" group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this under-representation is due to systematic exclusion of the group in the jury-selection process. 65

Nevertheless, the United States Supreme Court reversed, holding that the exemption on women from jury service violated the "fair-cross-section" requirement of the Sixth Amendment. 66 There was proof that women's under-representation was due to women's systematic exclusion in the process of jury selection at both the summons and jury wheel stages. 67

Gilliard v. Mississippi. 68

In Gilliard, Justice Marshall, joined by Justice Brennan, wrote a dissent to the refusal of the Supreme Court "for the third time this year" to grant certiorari in a case in which "an all-white jury has sentenced a Negro defendant to death after the prosecution used peremptory challenges to remove all Negroes from the jury." 69

Justice Marshall called for an end to further Supreme Court delay in directly confronting Swain under which prosecutors were removing negroes from juries through the exercise of peremptory challenges. 70 Justice Marshall stated:

63. Duren, 439 U.S. at 363.
64. Id.
65. Id. at 364.
66. Id. at 370.
67. Id. at 366-67.
I write today to address those of my colleagues who agree with me that the use of peremptory challenges in these cases presents important constitutional questions, but believe that this Court should postpone consideration of the issue until more state supreme courts and federal circuits have experimented with substantive and procedural solutions to the problem. Although I appreciate my colleagues' inclination to delay until a consensus emerges on how best to deal with misuse of peremptory challenges, I believe that for the Court to indulge that inclination on this occasion is inappropriate and ill-advised.71

Justice Marshall continued:

[When] a majority of this Court suspects that such rights are being regularly abridged, the Court shrinks from its constitutional duty by awaiting developments in state or other federal courts... Under the circumstances, I do not understand how in good conscience we can await further developments, regardless of how helpful those developments might be to our own deliberations.72

With respect to Swain, Justice Marshall asserted that irrespective of its interpretation of the Equal Protection Clause, "the use of peremptory challenges to exclude racial minorities violates a criminal defendant's Sixth and Fourteenth Amendment rights to be tried by a jury selected from a fair cross-section of the community."73

The Supreme Court responded to Marshall's challenge and accepted for review two cases dealing with the use of peremptory challenges and reversed their holding in Swain.74 In overturning Swain, the Supreme Court shifted the burden of proof from black defendants to the prosecution. According to the Supreme Court's holding in Batson v. Kentucky,75 if it appears that government is using peremptory challenges in a racial fashion to strike blacks from the jury, the government bears the burden of advancing a non-racial justification for its conduct.76 That shift in the burden represented a giant victory for Justice Marshall.

What The Wall Street Journal article reveals is a degree of scorekeeping. Those who join in raising the jury nullification issue in the Simpson and other cases involving black defendants on racial issues may well be skillfully setting the stage to re-introduce the Swain-type exclusions through the back door. That may constitutionalize once

71. Id. at 869 (Marshall, J., dissenting from denial of certiorari).
72. Id. at 869-70 (Marshall, J., dissenting from denial of certiorari).
73. Id. at 869 (Marshall, J., dissenting from denial of certiorari).
75. 476 U.S. 79 (1986).
again the striking from juries socially concerned persons for “cause” by claiming, for instance, a presumption that African-Americans are more likely than not to acquit blacks on a basis of race, rather than on the evidence. It’s likely now that prosecutors, relying upon the celebrated cases of acquittals in which “nullification” is claimed, will invoke Supreme Court precedent from a case such as *Ham*, after probing, during *voir dire*, for indications of prejudice or bias by black prospective jurors.

With some of the critics of the Simpson and other similar verdicts asserting that jurors of color may be inclined to consider social issues and accord them greater weight than the evidence, prosecutors, in race sensitive cases, rather than use their peremptory challenges which puts a burden on them, may therefore choose to challenge minorities for “cause,” thereby, once again, excluding them from juries.

Even devotees of peremptory challenges, argue that a strong case exists for their use and continue to seek to make the case for their revival. In the October, 1996, issue of *Federal Lawyer*, a distinguished member of the trial bar of Virginia and California, argued for the right of lawyers to use their “intuition” and “common sense” in accepting or rejecting prospective jurors. The author chose to ignore the decades in which the exercise of such discretion for prosecutors and the use of their “intuition” led to all-white juries. Thus, in the face of acquittals in high profile cases where race was an element, “cause” may become a basis for once again removing African-Americans from juries — the way “peremptory challenges once did.

The *Wall Street Journal* story, heavy ladened with citations of acquittals of black defendants, is but one instance of a record being made to convince the public and policy makers that jury nullification on grounds of race is widespread. One unarticulated response that is likely to emerge is the resurrection of the discredited peremptory challenge. Those who thoughtlessly applaud and praise the jury outcome in the Simpson and similar cases need to be careful of their premise. Jury verdicts that acquit can be appropriately applauded, provided the reason is rational. A couple of questions come to mind:

- Are jury trials the appropriate vehicle for settling old scores?
- Who are likely to be the most seriously victimized litigants if African-American prospective jurors are placed at risk because of prosecutors increased use of challenges for “cause”?
- How would African-Americans answer the two questions that were asked in the *Ham* case as to whether they could try the case solely on the evidence?

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78. *Id.*
Lawyers have an on-going duty to know the history of jury exclusion and the long struggle to overcome it. Also they must educate — not just judges and juries about a specific case — but the public as well. Certainly, the intricacies of the jury system must be better understood. Indeed, persons who applauded the verdict in the O.J. case had every right to do so — provided their reason was right. Irrational responses can wreak havoc.

Without question, all Americans must respect the independence of jurors as fact finders — even when one disagrees with the verdict. That duty is inherent in the jury system. However, if the cheering by students and others was because a black man "beat the system," there may be a cost exacted that will inflict pain and inject prejudice into the trials of countless other persons. Moreover, once again, there will be a marginalization of blacks as jurors.