

## BLAME POLICE, NOT THE BILL OF RIGHTS

Published in *The Red and Black*, p. 4 (October 6, 1995).

Author: Donald E. Wilkes, Jr., Professor of Law, University of Georgia School of Law.

Curtail the protections the Bill of Rights affords criminal defendants. Increase the power of police and prosecutors. Make it easier to convict persons charged with crime. Transform criminal trials into nothing more than mere administrative techniques in which the only question is: did he do it? Don't allow concern about lawlessness in law enforcement, prosecutorial excesses, or abuse of governmental power to affect what happens at trial. Don't even permit defendants to bring up such concerns. Abolish such technicalities as the presumption of innocence. And make criminal punishment more draconian!

The above suggestions are the foolish, sinister proposals being mouthed by those who think O. J. was guilty, that the acquittal was unjust, and that the lesson of his trial is that the powers of the state need to be enhanced. (You will notice that the most vocal proponents of these dangerous ideas for expanding government power are the very people who usually yap about the threat of big government.)

In truth, the verdict was perfectly correct; and there is no need to meddle with the inestimably precious rights that protect us all against repression. What does need to be changed is the oppressive, heavy-handed way the law enforcement apparatus operates.

A jury sat patiently for nearly a year hearing the evidence, sacrificing their personal lives and performing a civic duty most of us would decline. There is no reason to believe they disregarded the instructions given by the judge, or that they engaged in any misbehavior. The jury thought the prosecution's case so weak they acquitted immediately after beginning deliberations. Any fair-minded person must admit that it would not be unreasonable for the jury to conclude, despite undeniable evidence of guilt, that there was reasonable doubt. Why should we not respect the jury's verdict, just as we would have if it had convicted?

One of the reasons there was reasonable doubt was that the jury knew that some key police investigators had lied under oath in open court. They knew one police investigator hated black persons and had acknowledged framing black persons and interracial couples. They knew some of the investigators had engaged in suspicious activities and that at least some of the evidence probably had been tampered with or planted. They knew of ineptness in the way crucial evidence had been gathered, transported, and stored. They knew that police repeatedly had violated or ignored police department rules and regulations. They knew the L.A.P.D. crime lab was poorly run and a cesspool of contamination. They knew there had to be a code of silence preventing honest police officers from disclosing the corruption of some police.

The overzealousness and bungling of the L.A. district attorney's office, so obvious to the jury, also contributed mightily to the reasonable doubt. The jury saw O. J., at the prosecutors's insistence, put on the gloves that didn't fit. They saw the prosecutors treat scornfully and venomously ordinary citizen witnesses whose only sin was that their testimony didn't confirm the state's version of the crime. The jurors saw the prosecution omit to call to the witness stand

numerous persons who had been near the crime scene around the time of the killings, but whose accounts conflicted with the government's scenario of the murders. They saw the prosecutors were afraid to call to the stand the ditsy crime lab pathologist who botched the autopsies on the victims. They saw prosecutor Marcia Clark call Detective Mark Fuhrman to the stand, vouch for him, treat him like a prince. Then, after the defense had exposed Fuhrman, they saw, incredibly, Clark, who just doesn't get it, continue to argue that the bloody glove found at Simpson's estate was evidence of guilt, even though most of the inhabitants of our cluster of galaxies knew it almost certainly had been planted there by Fuhrman. They saw, on the last day of closing arguments, to their astonishment, Detective Vannatter, who they knew was another police perjurer, sitting in the front row of spectator seats, right next to and in manifest solidarity with, the prosecutors.

There is no need to meddle with the Bill of Rights, the right to a fair trial, the right to trial by jury, or the right to counsel. Any reforms should be directed to the real problems. Let's do something about corrupt cops who lie, who frame suspects, who are racists, who believe the end justifies the means, who have contempt for the rights of Americans, who are unashamed and unrepentant when their misdeeds are revealed. Let's do something about shrill, fanatical yet incompetent prosecutors who lose all sense of fairness and decency in their obsessive desire to convict at any cost.

The Simpson trial was the first in American history where a lead police detective testified for the prosecution in its case in chief and then, when called to the stand by the defense, invoked the fifth amendment when asked if he had lied or tampered with the evidence in the case. If we overlook this or the other indications of official lawlessness in the case, or if we blame the Bill of Rights for the acquittal, we are displaying amazing indifference to human rights--we are, in the words of Herbert Lehman, forgetting that "callousness to the rights of individuals ... leads to barbarism and the destruction of essential values of civilized life."