

Persuading The Simpson Jury

by Kathy Kellermann

After nearly six months, the prosecution in the O. J. Simpson murder trial rested its case-in-chief this summer. From January to July 1995, the prosecution presented all sorts of evidence — from expert testimony to forensic analyses — to persuade the jury that O. J. Simpson murdered Nicole Brown Simpson and Ronald Goldman.

Evidence of alleged domestic abuse was offered in the form of photographs of a bruised Nicole Brown Simpson, found by prosecutors after drilling open her security deposit box. Evidence of the alleged time of death (10:15 p.m.) was offered in the form of testimony from neighbors and passersby about Ms. Simpson's barking Akita dog. Evidence of the alleged brutality and rapidity of death was offered by the coroner in the form of autopsy photos and in-court demonstrations of "slashings". Evidence of the single killer theory was offered in the form of expert testimony as to the kind of knife wounds on the victims and the rapidity with which such wounds could be inflicted. Evidence of the alleged presence of O. J. Simpson at the crime scene was offered in the form of DNA tests finding both O. J.'s and the victims' blood at the crime scene, in O. J.'s white Ford Bronco, and on the bloody glove found at O. J.'s Rockingham residence. Further evidence of O. J.'s presence at the crime scene was offered in the form of hair matching his on the cap, fibers matching the Bronco on Ron Goldman, and hairs and fibers matching Ron Goldman's in the Bronco.

From the prosecution's point of view, the photographs, barking dog, autopsy findings, DNA results, and the trace comparisons serve as independent pieces of *evidence* that establish *facts* the prosecution wants the jury to believe about the murders. What facts did the prosecution try to establish? Among others, the prosecution used the evidence to try to convince the jury that O. J. Simpson physically abused Nicole Brown Simpson; that Nicole Brown Simpson and Ronald Goldman were murdered around 10:15 p.m.; that their murders were brutal and their deaths quick; that only one person killed them both; and that O. J. Simpson was physically present at the Bundy murder scene.

These facts, however, even if established perfectly, are insufficient by themselves to prove Mr. Simpson's guilt. The facts must be *interpreted* as *showing* he committed the murders. For example, the prosecution must explain how a 10:15 p.m. time of death points to Mr. Simpson being the murderer; how hitting his wife proves him capable of murdering her; how having been present at the Bundy condo in the past is indicative of having been present on the night of the murders. In other words, the persuasiveness of the prosecution's case hinges not only on (a) the jury accepting the presented evidence and (b) agreeing that it supports asserted facts, but also (c) on believing that those facts are *diagnostic* of Simpson's guilt.

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along all three of these paths, attacking the reliability and validity of the evidence, challenging the facts asserted from the evidence, and disputing what those facts demonstrate. They have argued that blood and trace evidence is contaminated and corrupted, making any conclusions drawn from it irrelevant and/or worthless. They have also granted the existence of certain evidence (e.g., the knife wounds on the victims), but argued that the facts the prosecution wants to assert about it (e.g., the wounds are from a single knife, hence a single killer) are inaccurate. Other facts asserted by the prosecution along with accompanying evidence (e.g., the claim that O. J. Simpson physically abused Nicole and the photos of her bruised face) have been ignored by the defense under the theory that such facts, even if true, are not diagnostic of Mr. Simpson's having committed the murders. The defense has attacked all three necessary persuasive elements of the prosecution's case.

While the theme of the prosecution's case has been "the evidence speaks for itself," to be persuasive the prosecution has had to speak for the evidence — trying to prove it reliable and valid, to show its sufficiency to support particular facts and claims about the murders, and to explain why those facts prove Mr. Simpson is guilty of double homicide. The defense has claimed the People have "rushed to judgment," compromising the evidence, misunderstanding what the evidence shows, and misinterpreting the importance of what is known. To avoid a conviction, the defense can raise reasonable doubt by convincing the jury that one or all of these three elements necessary to building a compelling and persuasive case is lacking. To obtain a conviction, the prosecution must convince the jury that all three evidentiary, factually inferential, and diagnostic aspects of their case are compelling.

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