



Getting Away With Murder: Acquittals in High-Profile Cases

A Review of

Acquittal: An Insider Reveals the Stories and Strategies Behind Today's Most Infamous Verdicts

by Richard Gabriel

New York, NY: Berkley Books, 2014. 326 pp. ISBN

978-0-425-26971-8. \$26.95

<http://dx.doi.org/10.1037/a0038044>

Reviewed by

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Have you ever wondered why our legal system is so inconsistent and baffling? Have you asked why some apparently guilty, high-profile defendants are acquitted but innocent people are convicted or accept a plea agreement? Or why the American criminal justice and penal systems appear so unjust, with the United States having the highest rate of incarceration in the world, a penal population of over two million people, and one third of young African American men involved in the criminal justice system (Alexander, 2010; Ferguson, 2014)? Richard Gabriel's *Acquittal: An Insider Reveals the Stories and Strategies Behind Today's Most Infamous Verdicts* answers some of these questions. Gabriel explains how the U.S. legal system works, provides extensive insider information about the actual trial process, and discusses six well-known criminal cases, many of which resulted in acquittals.

Gabriel is neither a lawyer nor a psychologist. Yet he has lived in the psycholegal world his entire life, having grown up with a mother who was a judge and a father who was a psychologist. He indicates having worked as a trial consultant for almost 30 years and on more than 1,000 cases, many of which were nationally prominent.

In the first chapter of *Acquittal*, Gabriel describes the criminal justice system and the role of each player in it, including defendants, prosecutors, defense lawyers, judges, the media, trial consultants, and juries. He conceptualizes four justice systems, a typology that I find quite helpful. His first justice system is the idealized notion of justice laid out in the U.S. Constitution and Bill of Rights. His second is the process in which justice is implemented; this system is "rife with pervasive bias and moral ambiguity" (p. 9). His third justice system is the entertainment version of justice, as shown in such television programs as *Law and Order* or *CSI*, or as represented by some news outlets such as CNN. His fourth justice system occurs in the jury room as jurors analyze the evidence, consider the jury instructions, and construct a verdict.

This first chapter is particularly useful in describing the baffling nature of juries, trials, and criminal work. Gabriel has a well-informed and nuanced understanding of the legal system. In the remaining chapters, he discusses six cases, most resulting in acquittal, involving famous people or circumstances, namely, O. J. Simpson, Heidi Fleiss (tried for being a “madam”), the Clinton/Whitewater defendants, Enron’s broadband business, Philip Spector, and Casey Anthony. Gabriel apparently finished the book before the acquittal of George Zimmerman, although he refers to that case on occasion.

These chapters provide fascinating glimpses into the cases. For example, he explains the importance of the role of group process with the O. J. Simpson jurors, sequestered for 265 days. For prurient interest, Gabriel describes an incident illuminating in part the failure of the Heidi Fleiss pandering (or prostitution) prosecution. A team of investigators sought to arrest prostitutes working for Fleiss. Sitting in an adjacent hotel room, they would film the negotiations for sexual encounters; the interactions would not constitute a crime until money was exchanged and the woman started disrobing. One time, instead of preparing to arrest the woman, the large team of (male) investigators watched the encounter on film with great enthusiasm, setting off the hotel’s smoke alarm from all their cigarette smoke. Gabriel notes:

In trial, you could see the jurors try to stifle their laughter. . . . They laughed out loud at the absurdity. While not a word was spoken in evidence to explain the smoke alarm incident, . . . [i]t was clear that most of the task force was there, crowded into a Beverly Hills hotel room, smoking and watching Fleiss’s girl strip. They had set off the smoke alarm.

That was the exact effect I had hoped for. In a single moment in the courtroom, jurors captured an image quite outside the evidence that characterized the preposterousness of the trial: a cadre of officers watching a striptease for their own enjoyment while gathering evidence to prosecute the unwitting woman of this folly. (p. 111)

This quotation captures Gabriel’s informal writing style and his use of specific incidents to enliven the legal process. He also uses literary references throughout, including Shakespeare. Gabriel’s engaging style is similar to that of Charles Patrick Ewing (2008, 2011; Ewing & McCann, 2006).

In each case, Gabriel describes his work, such as conducting pretrial research using focus groups and mock juries in order to advise the lawyers on trial strategy. Readers will understand better how a jury may ultimately acquit certain high-profile defendants who seem incontrovertibly guilty on the basis of media reports. Several chapters are mostly historical, such as the one on the Whitewater case and the Clintons. I tend to prefer a more contextualized case analysis, such as Gormley’s (2010) analysis of the Starr prosecution of the Clintons.

These case chapters rarely veer far from Gabriel’s perspective as a trial consultant. He freely criticizes lawyers, judges, and other well-known players in the legal system. He castigates lawyers who use complex language and concepts, preferring instead a folksy, accessible communication style. Readers should consider his judgments with a critical eye because many are partisan, particularly when an attorney or judge did not agree with his analysis.

Gabriel never suggests that these defendants were actually guilty of the crimes for which they were charged. The title of this review is my nod to Gabriel's third justice system, the media, which convicted these defendants. There is insufficient evidence in *Acquittal* to determine culpability, as it is mainly about the process of trial work.

Avoiding Larger Socioeconomic Explanations

Gabriel clearly indicates that his goal is to explain the work of trial consultants and the lawyers, judges, and clients with whom they interact. He explains the day-to-day strategy decisions he recommended in these cases and how they were (usually) successful. His aim is not to explain the causes of a malfunctioning penal system or the racial and socioeconomic divides fueling the high rates of incarceration in the United States.

In recent years, however, sociologists, criminologists, and other social scientists have tackled these questions and offered proposals for improving the American criminal justice system (e.g., Alexander, 2010; Clear & Frost, 2013; Drucker, 2011; Ewing, 2011; Ferguson, 2014; Garrett, 2011; Guenther, 2013; Larson, 2014; Rhodes, 2004; Taibbi & Crabapple, 2014). For example, in *Inferno*, published at about the same time as Gabriel's book, Ferguson (2014) also explained the roles of legislators, lawyers, judges, and jurors, but his description was in service of his point, which was how and why the criminal justice system is flawed and how to fix it.

Summary

Unlike books by Ewing, *Acquittal* is not about forensic psychology. In fact, Gabriel criticizes the work of forensic psychologists, viewing forensic psychological treatment and assessment as lacking any "basis in scientific fact" (p. 43). Ewing's books explain psycholegal standards and practice in more depth, similarly through case examples.

Gabriel's insider story may be of interest to psychologists curious about the legal system or for those embedded in the legal system eager for gossip about famous lawyers, judges, and defendants. It might be appropriate for both undergraduate and graduate courses in criminal justice, forensic psychology, or prelaw, as an introduction to the U.S. legal system. Lessons about both psychology and law are sprinkled throughout, ranging from eyewitness identification (pp. 249–251), to the use of the primacy effect in jury selection (p. 237), to the impact on a criminal defense of the conflict between the First Amendment (freedom of the press) and the Sixth Amendment (right to "due process and an impartial jury"; pp. 280–283).

Readers who are not attorneys may find the book illuminating and even distressing. For those who hold an idealized view of the justice system, learning of its flaws could be disconcerting. For less idealistic readers, Gabriel provides a rich sense of the actual practice of criminal justice. Gabriel's book can be categorized with autobiographies by criminal profilers (e.g., Hazelwood & Michaud, 2002) and other books popularizing the legal system. For deeper analyses and recommendations on how to improve our justice system, I suggest the other books mentioned above.

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