Murder One

A three-week trial suggests the jury process is a forgotten model for American democracy

By Michael H. Levin

Illustration by David Hollenbach

At 1 p.m. on January 18, 2018, a white Mercedes screeched to a halt by a garden-apartment complex in far southeast Washington DC. That week President Trump tweeted Fake News Awards again implying the press was "an enemy of the people," his administration slashed work visas for immigrants from what he'd called "shithole countries," and a bitterly divided Congress unsuccessfully scrambled to avert what became a short government shutdown.

The car's occupants had another agenda in their own bitter world. Several armed young Black men jumped out, shooting. Their target was another young Black man watching a noisy encounter between tenants of a second-floor balcony unit and shouters on the ground below. Hit multiple times, he fled to the next apartment block, pounded on a door, and died. The shooters sped away. Some 40 shell casings from three semi-automatic handguns were recovered at the scene.

Despite this five-minute drama, the murder trial whose jury I'm selected for almost four years later looks to be long and disputed.

We the jury also seem unusual: mostly young and highly educated, all (it turns out) analytical. Nine of us are white, one is Asian, and two are Black; seven men, five women. A young Chinese American international-transactions attorney is one of our three lawyers. Our Black members are a Big Law paralegal and an amiable mechanic who repairs trash-disposal equipment. The rest of us are a Methodist minister, a statistician, a UN staffer, three management consultants, and a retiree who ran an NIH lab. We elect her our foreperson.

Trial lawyers often strike potential jurors like us. But both the prosecution and the defense apparently want a jury that can work its way through complicated evidence. In COVID time—when masked witnesses testify behind plexiglass, exhibits are flashed on jumbo screens, and jurors review them by thumb drive—they also may want a group that's tech-savvy.

Government prosecutors begin with several days' testimony from sullen balcony-shouters who have criminal records and seem to be covering up something that's never revealed. They "just can't remember" details because they were drunk or high or "it was all so long ago." They try to claim Fifth Amendment rights to silence. "I didn't see nothin' but a white car," one says. "When you hear shots you run—it's the Wild West out there."

The government has to read their 2018 grand jury testimony into the record, line by painful line, just to confirm the main event. Eventually its theory emerges: The main balcony-shouter has been fighting her lifelong female enemy, who recently threw rocks through the balcony window, attacked her at a dance club, and is shouting "come out and fight" from below. A mutual acquaintance, using the victim's cell phone, messages her to urge that hostilities cease. She thinks the victim is the messenger and texts her allies to get rid of him. They arrive during the balcony scene. The defendant is the prime shooter.

This theory requires prosecutors first to show that the defendant was at the murder, and then that he fired a shot. They unleash an avalanche of technical evidence: maps, charts, timelines, PowerPoint presentations about fingerprinting vehicles and matching DNA samples. But their pile of lab results from the Mercedes contains no prints belonging to the defendant.

His DNA is only on a water bottle—which could have been in the car for months. Though cigarette butts and a ski jacket were also found in the car, the government didn't test those. Its cell-tower evidence is inconclusive. Its forensic testimony shows the victim suffered eight gunshot wounds—most peripheral, only one fatal. It does not call eight other apartment occupants who were present that day, one of whom (testimony indicates) suddenly exited right before the murder. Nothing links the shell casings to any shooter or weapon. No "fact" is as certain as the prosecution's opening statements assumed.

To plug these gaps, prosecutors call two witnesses who say the defendant admitted to the murder.

Witness One is a "good friend" of both the victim and the accused. She asserts that the defendant "bragged to me" after the shooting that he "emptied a clip" into the victim to "finish him off." She says others in the room heard this. But cross-examination shows that the only listener Good Friend identifies was actually in jail at the time. Good Friend also has a fraud record. She only contacted police months after the shooting, when she faced eviction and knew a $25,000 reward could be claimed.

Witness Two appears in an orange jumpsuit; he recently pleaded guilty to machine-gunning a rival. His sentence will be reduced if he testifies successfully for the prosecution. He's a fraud entrepreneur who ran a seven-year check-kiting operation. He says that just after the shooting, the defendant and an accomplice returned to his drug house joking about "who shot him first" and "who finished him," with the defendant the apparent winner. But a 2018 police video, recorded when Witness Two first outlined this scenario, suggests that he'll say whatever may help him avoid other charges. It also shows he was unsure at that time exactly who was in the drug house.

We must unanimously acquit, or unanimously convict "beyond a reasonable doubt." When we convene in the jury room after two weeks of testimony, nine of us signal acquittal; and tensions rise. Dissenting jurors believe the government would not have proceeded without conclusive evidence of guilt. They think Witnesses One and Two believable where it matters. Plus, these witnesses don't know each other; why do their accounts mesh, if not broadly true?

The tentative majority for acquittal includes me. We wonder: If the defendant also told Good Friend he was worried about others "snitching on me," why would he admit to the murder before listeners? Why would he confess *to a friend of the victim*? We note that Witness One admittedly told police months of elaborate lies to shield a boyfriend. We add that Witness Two, depending on when he was telling his story, said the defendant returned to his crack house both before and after other alleged shooters, at widely varying intervals. We repeat that the defendant's supposed boast about "empt[ying] a clip into him" matches neither the victim's wounds nor his ability to run more than a hundred yards seeking shelter.

By our second day of deliberation these points are enough to sway two dissenters. They do not move the third, who is convinced by the water bottle DNA and believes prosecutors proved enough of their case. "Reasonable doubt" does not mean "no doubt," she insists. If the government can't call witnesses with criminal records, she says, it never could prosecute such cases.

"Reasonable doubt means *a reason to doubt*," we respond. The mechanic observes that "everyone in that 'hood" would immediately know the murder details to embroider upon if, like Witnesses One and Two, they might benefit from such embroidery.

The dissenter hints at deadlock "if you keep challenging my values and beliefs."

For two more days debate grinds on. Converts to acquittal explain again why they converted. We dispute what we can infer from prosecutors' failure to call obvious witnesses; draw "credibility charts" comparing what each witness said. The paralegal confesses that she's "allergic" to abrasive female defense counsel but feels bound to follow the evidence—or lack of it. Everyone acknowledges the "terrible weight" of possibly sending an innocent man to prison for most of his life because the government focuses its overwhelming criminal justice machinery on him.

Finally, the dissenter announces that while she still doubts the defendant's innocence, she's reluctant to "waste more of everyone's time"; to her, the case now seems a toss-up. Good-faith debate plus peer pressure (in a locked jury room) apparently prevail.

The accused never takes the stand. The defense calls no witnesses. After 22 days of jury selection, trial, and deliberation, our foreperson signs the verdict sheet. Though some of us are sure the defendant has not been shown guilty and some remain doubtful, we agree there's no absolute "truth"—outside the evidence, we can't know "what really happened." We acquit on all charges.

In an agrarian nation, Thomas Jefferson saw the "yeoman farmer"—mythically practical, independent, and self-reliant—as guarantor of an untried democracy meant to check domestic tyranny. We're far from that age, and tyranny's face wears new guises. But our basic jury process remains the one Jefferson knew. Slowly improved over centuries, it aims to minimize bias, partly by giving each juror an equal voice. It forces engagement with difficult facts and entrenched views in ways that discourage avoidance or denial, demand discussion not shouting, and impel uncomfortable concessions. Like *Twelve Angry Men* during the height of the Cold War, it bears messages—and challenges—for our paranoid, self-divided, counterfactual times.

Michael H. Levin C'64 (michaellevinpoetry.com) is an environmental lawyer and solar energy developer in Washington, DC.