

Reviewed by Angela J. Davis

A Trial by Jury

An Ivy League scholar provides an uncompromising look at the inside of a jury room

A Trial by Jury

by D. Graham Burnett
Knopf, 2001
\$21, 192 pages

On August 2, 1998, two law enforcement officers took turns kicking in the door to a low-rent apartment near Manhattan's Christopher Street. When at last they succeeded, the door stopped against a low coffee table to reveal a blood-splattered futon couch and the lifeless body of a young African American male. The body was naked. Rigor mortis preserved the victim's final gesture: his right arm reaching to a street-level window in a desperate effort to pull himself up and call for help. The officers did not check for vital signs. More than twenty stab wounds persuaded them of what a medical examiner would later confirm: Randolph Cuffee, "Antigua," a sometime cross-dresser and habitué of the Watutsi Lounge and other gay bars of the West Village, was dead. Also revealed when the body was moved: two braided leather whips and two unrolled condoms, one inside the other.

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The police followed a standard procedure when investigating a stabbing death. They canvassed New York-area hospitals for patients admitted with cuts on their hands or arms, anticipating that the perpetrator would have at least once slipped and stabbed himself. Monte Milcray had been admitted to St. Vincent's Hospital in the West Village around 2:00 A.M. on the same day, his right pinky almost completely severed, his clothing and personal effects covered with blood. Milcray first told investigators that he was attacked by a posse of "five white males." His story was suspicious. Later, after investigators—unexpectedly and somewhat amazingly—succeeded in finding Milcray's discarded clothes in a trash container, forensic analysis found the blood splatters to be a mixture of the victim's and Milcray's own.

When Milcray emerged from the surgery that reconnected his finger, police invited him to make a statement. Tired and in pain, Milcray at last told police the story that, with only a few variations, he would stick with through his resulting criminal prosecution. According to Milcray, he was taking a break from work when a long-haired black woman came up to him on the street, told him he was sexy, and asked if he modeled. The woman introduced herself as "Veronique" and invited Milcray to her West Village apartment around midnight when he got off work. At 11:55 that night, Milcray punched

out of work and, according to his statement, made his way across town to a neighborhood that he did not know well.

Veronique, wearing a short robe, greeted him at the door. The only light in the room came from a television that she had turned to an erotic channel. Milcray reclined and undressed. Moments later, Veronique opened her robe and revealed she was a he. Milcray scrambled for his clothes, whereupon Veronique pushed him to the floor and attempted to rape him. Milcray, by this time, had managed to partially pull up his overalls. Veronique continued to bear down on him, face-to-face, repeating, "Once it gets in, it doesn't hurt." At this point, Milcray reached for his knife, and, he asserted, stabbed Veronique once in the chest. When she did not relent but bore down more forcefully, Milcray reached around Veronique's back in order to "hit him a few more times," eventually slipping out of the weakening grasp and escaping to the street, where he discovered his own injury.

After Milcray communicated his *Crying Game* story to detectives, they arranged for him to write it down and then arranged for an assistant DA to videotape the statement. By the end of the tape, Milcray is seen holding his bandaged right arm, asking, "What's going to happen next?" and, "Can I go home tonight?"

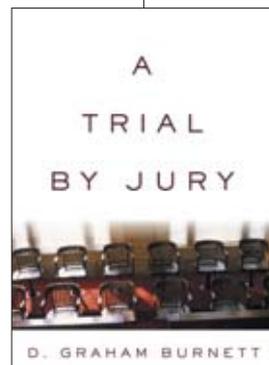
A year and one-half later, a jury

was impaneled to determine Milcray's fate. Enter D. Graham Burnett—historian of science, fellow at the Center for Scholars and Writers at the New York Public Library, former lecturer at Yale and Columbia, longtime

admirer of Wallace Stevens—and recent recipient of a New York jury summons. With his Ivy League credentials, legal-scholar wife who had worked for the public defender's office, and a copy of the *New York Review of Books* in plain view,

Burnett expected to be excused: "I promised to give any healthy prosecutor hives." When, during voir dire, the judge informed the members of the venire that they would be expected to follow and apply the law, "whether you agree with it or not, whether you think it is a good law or a bad one," and then inquired if any potential juror had "a problem with that," Burnett volunteered that if he thought the defendant might face the death penalty, "I would be inclined to acquit, even if I thought him guilty." The judge responded that the death penalty was not relevant to the case at bar and expressed no further interest in Burnett's comment.

Despite his expectation—one that many trial lawyers might have shared—Burnett was not excused. Instead, he became the jury's foreperson and later wrote about his experience in a *New York Times Magazine* article and in the memoir, *A Trial by Jury*.



The 11 other citizens selected along with Burnett included 2 ad-copy writers, a software developer, a vacuum cleaner repairman, an interior decorator, a self-described "independent marketing executive," a part-time security guard, an actress/bartender, 2 others of "less clear occupation," and, improbably enough, another professor of the history of science.

They acquitted. We learn this in the book's opening chapter, when Burnett describes the 12 index cards, each scrawled with the words "not guilty" that allowed Milcray to walk out the courthouse in February 2000. Burnett left the courthouse only a few minutes before

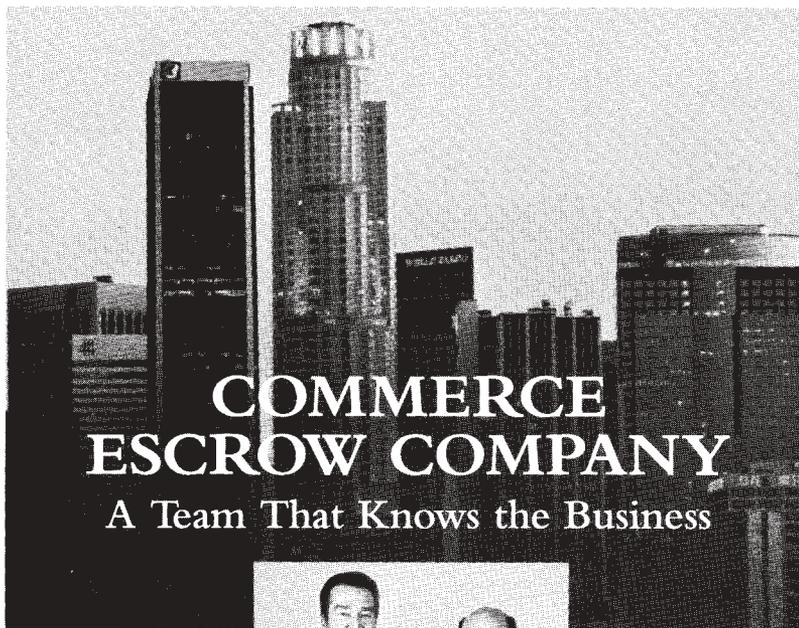
Milcray. He had kept the index cards folded in the breast pocket of his blazer. And, he tells us, he was crying.

It is impossible to say, based solely upon the memoirs of one juror, whether or not the jury reached the right decision, but Burnett's own account contains many suggestions that it did not. Aside from his own weeping upon exiting the courthouse, there are the candid descriptions of how (for Burnett and his fellow jurors) sequestration bred hostility toward "the system," how the jurors openly discussed jury nullification ("we can ignore the law"), and how in the end there was a funereal shared sadness ("we had let him go").

Burnett's personal account of how he and his fellow jurors came to this point is beautifully written and frequently mesmerizing. He writes with the economy and grace of a serious admirer of poetry and brings the lapidary precision of the scientific historian to many of the more subtle evidentiary questions raised by *The People v. Monte Milcray*. Although *A Trial by Jury* is a compact 180 pages, one has the feeling that nothing has been omitted. Witnesses—including more than one drag queen who testified for the prosecution that the victim and the defendant were, contrary to the *Crying Game* defense, seen together previously—come to life in Burnett's filmlike retelling of their testimony. When one of them was cross-examined about the presence of whips in the victim's apartment, she (as the witness preferred to be called) replied, "Honey, we *all* have whips." Burnett's description of the jury's deliberations and the experience of sequestration ("the most intense sixty-six hours of my life") are likewise informed by an uncommon sensitivity and psychological insight.

And yet...for all of Burnett's talent and grace, for all of the sharpening of his critical faculties at the grindstone of academia, there is an unmistakable—and unignorable—elitism that pervades his observations. At times the snobbery is obvious and harmless, as in his descriptions of his fellow jurors. He dubs one of them—the vacuum cleaner repairman, who also "moonlights in car stereo installation" and sports a rodeo tattoo—the Faludiman after feminist author Susan Faludi's tragic tale of the white working-class male: "big chest, big gut, big debt." There are other moments when Burnett's elitism is far more alarming. Perhaps the most disturbing moments in the jury deliberations came when Burnett arrogated to himself a secret agenda to engineer a hung jury. He entrusted his frustrations to a private journal and, to his credit, reproduces a particularly unflattering passage: "There are some jurors here who are such idiots, so thoroughly oblivious to good judgment or so thick (regardless of their intentions) that it seems improper to aid them in depriving a man of his liberty."

In the end, though, Burnett retreated from his secret agenda and lost at least some of his prejudices along with it. Indeed, it is the Faludiman himself who articulated the most breathtaking epiphany in the jury room, shattering stereotypes with a "vow of faithfulness; a repudiation of sophistication that suddenly seemed overwhelmingly sage." Whether or not justice was ultimately done in *The People v. Milcray*, Burnett's account is powerful testimony to the ability of the jury process to strip away prejudices—even ivory tower ones—and reveal more lasting truths. ■



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