

## PREAMBLE

It has been just over fifteen years since, on October 3, 1995, a Los Angeles jury, after a trial lasting more than eight months, acquitted Orenthal James Simpson of double murder, after very short deliberations. A photo taken at the moment the verdict was announced was published in every country in the world that had media facilities. Depending on one's race, in many instances, cheers or groans erupted. In the days that followed, a backlash against the verdict and Simpson began to swell among the majority, with redneck types shouting the loudest. Never in my experience has a summarily acquitted defendant been the subject of such anger and derision. Never before in my experience has a racist cop been forced to plead guilty to perjury *during* a murder trial, only to have his wrist lightly slapped (you've been a bad boy...) and go on to become a folk hero and sometime author to the redneck community.

A number of books were written after the trial's end, only two of which are worth much when measured against the cold facts of the case. One is Johnny Cochran's autobiography, and the other - heavily pictorial- was written by Linda Deutch of the Associated Press, the only thoroughly experienced and reliable print reporter who attended all of the trial. I was offered a substantial advance to put together a book, but sensed that it wouldn't go anywhere because, as some people put it, "...if Simpson is innocent I don't want to know it, and I will never believe it!" I thought it best to let the world cool a bit before offering anything comprehensive to the public.

In 2007, my literary agent, Frank Weiman of New York, called and said, "I've got a publisher who thinks the public may be ready for someone to tell O.J.'s side of the story. Give me a comprehensive treatment of what you might write."

I spent many hours compiling the document set forth below, and although I did it from memory (and still can) I have - between Chief Investigator Pat McKenna and myself - virtually every bit of the record both in video and in writing, as well as many other pieces of evidence which never got into the trial.

I am releasing the document now because O.J.'s involvement in the "If I Did **It**" project caused my agent, publisher and me to put the matter back on the shelf. I have given it to some friends and some strangers, and invited any rebuttal they might care to conjure up. In four years and after more than fifty such offerings, I have never heard word one. Yet lawyers, some judges and the self-styled *intelligentsia* continue to assert that they *know* that Simpson did it, and I got him off by destroying Fuhrman. Indeed, shortly after the verdict I was invited to address my own law school graduating class about the case; the reception I received ranged from cool to surly to rude. No was one was listening. I have seen

no reason to associate with any of those attendees since that time.

Where did this deep-seated and wide-spread prejudice arise? I think from a combination of factors, including some very poor reporting by the media at every level. The factors are, in my view, these:

1. The highly-publicized escort by the LAPD of Al Cowlings, after an aborted suicide attempt by Simpson at Nicole's gravesite, driving Simpson's Bronco with him in it, pistol at his head, back to the residence at Rockingham in Brentwood *for the express purpose of surrendering* was "monikered" by the press as a "Low-Speed Chase", a moronic concept if you think about it.

2. The prosecution heralded a "mountain" of blood evidence, and the press bellowed that this was the case, in most cases without knowing what they were talking about. In fact there was some genuine blood DNA that didn't prove much, many contaminated samples subjected to PCR testing which were worthless as evidence, but accepted by Judge Ito nonetheless, and some blood clearly planted by the police which would have been incriminating had it not been fraudulent.

3. Lastly, and by far the most significant, is the huge and impressive array of evidence which went cold in the defense's arsenal because we had to abort the trial due to juror attrition and two frightened prosecutors. These are the matters principally revealed in this outline.

As to those who simply cannot open their heads to the notion that Simpson couldn't have and didn't murder anyone, some introspection might help. Are you the kind of personality who is often wrong, but never in doubt? Can you think of any reason *anyone* might have had to kill Nicole? (Ron Goldman was simply an unlucky arrival). Please don't say that O. J. acted in a fit of rage, then covered his tracks and hid the evidence. In view of what is set forth below - all of it highly factual- that theory is silly.

Lastly, one might fairly ask "If Simpson did get off wouldn't Bailey know it, since he was in charge of preparing the case? And if he knows Simpson is guilty, why has he stood firm all these years, and taken the abuse described?"

The answer to that is, as a young Marine aviator - one of the most dangerous occupations in the world in those (Korean War) days, I was taught to stand by your beliefs. I still think this is about the most important quality a person can attain and keep. Those beliefs as to Simpson, unflagging for 15 years now, are set forth here.

## **THE SIMPSON VERDICT BY F. LEE BAILEY**

### **PART ONE**

This is intended to be an outline - a deliberately detailed outline - supporting the proposition that the jury reached the correct verdict in the California case of *People v. Orenthal James Simpson*. But the outline - and the book which will someday follow - is planned to go further. When all of the facts in the case are assimilated and viewed in proper perspective, it should be clear that Simpson was not simply the beneficiary of a reasonable doubt, but in fact totally innocent of the murders of Nicole Brown Simpson and Ronald Goldman.

We have no judicial machinery capable of establishing factual innocence, or what forensic investigators might term *ground truth* innocence. More than half a century ago, before the infamous military Courts & Boards were abolished by the much-enlightened Uniform Code of Military Justice in 1951, a court had two optional verdicts in the case of an accused who was not going to be convicted: "Not Guilty", often said to be the equivalent of the famous Scottish Verdict "Not Proven", or "A Complete and Honorable Acquittal", a formal stamp of approval that said in essence, that the accused had done nothing wrong. An officer who was court-martialed, and did *not* receive the latter form of verdict, was pretty much at the end of his career.

But as has ever been, the facts of a case are much, much more important than the law or the lawyers, if showing innocence is the objective. The facts offered here are either largely unchallenged, or much more persuasive than those contrary views which have been argued.

The outline has been divided into categories of proof, or non-proof as the case may be, and then subdivided into the pieces of evidence which seem to fit into that category. All of this is preceded by a Background Section which is intended to aid in understanding the specific facts which follow.

## INTRODUCTION

Just over fifteen years ago, I explored the idea of trying to reduce the many-faceted complexities of the O. J. Simpson trial to a bare-bones analysis of the actual evidence in the case, shorn of its manifold encrustations of hyperbole. Books about the case were sprouting from every quadrant, many of them from lawyers who had been in or near the action. Most were unabashed polemics claiming that the verdicts were wrong. And most simply ignored the key pieces of evidence which did not fit the author's thesis of the case. Many of these books were more about their creators than about *People v. Orenthal James Simpson*.

After considerable research, and lengthy conversations with trusted friends, I concluded that anything I might offer at that time in support of the verdicts would be knee-jerk rejected by many, and perhaps most, of the prospective readership. I

decided to let time go by, to see whether the dust would settle. I believe that if a decade and a half is insufficient "settling" time, my chronicle might never emerge. I am seventy-seven, and in excellent health; nonetheless, the passage of additional years will do little to change what I can contribute to this segment of our courtroom history, and thus this undertaking.

Perhaps it is best at the outset to state categorically what this book is intended to be, and what it is *not* intended to be. As the person initially in charge of the preparation of the defense case, I watched the facts evolve as my team and I dug them out, catalogued them, and tried to fit them to the puzzle. Some of what we learned emerged as evidence, and was heard by the jury that decided the case. Some of these facts were presented to the trial judge and rejected, which meant that the public got a look at them, but the jury did not. Some of the most compelling facts never emerged at all, because the defense presentation was aborted far in advance of its intended length and breadth by the risk of a mistrial caused by an ever-shrinking jury panel, and a prosecution team which was on the run. I will attempt to set forth here the most important facts in the case, as I see them after fifty-five years in the courts of the United States and other countries. Each of these would - before most experienced and even-handed judges - be accepted as evidence and submitted to the jury. I shall present these facts as objectively as my training and experience will allow.

This book, however, is *not* about the petty infighting and name-calling on both sides of the courtroom which dogged the proceedings. History will eventually forget the personal sniping and gutter rhetoric which sullied the trial day after day as it lumbered along. A clear recital of the facts is too important to be frayed at the edges by such trimmings. Hopefully, those who read what I have set forth here will at least understand why I have never, ever wavered in my assertions that O. J. Simpson did not harm or kill anyone the night his former wife and her friend were butchered in Brentwood, California, at about 10:35 p.m., Pacific Daylight time, on June 12, 1994. And perhaps some number of those readers may revisit their original perceptions of the case, based on these facts.

Before beginning my recitation and analysis, however, some discussion of what "evidence" really means, is appropriate. Simply put, *evidence* is any information which a presiding trial judge will permit his jury to hear. The information may be true, or it may be false, It may be direct, or circumstantial. It may be first-hand, as from an eyewitness or an original document, or it may be second or third hand, as is hearsay or a copy. It may be factual evidence, or the opinion of an expert. All of this is information.

The Rules of Evidence, now more and more uniform in all courts in the United States, are basically rules of exclusion. Some have said that all information

that is *relevant* to the litigation is admissible before a jury unless it is *excluded* by one of the rules of evidence. Hearsay - one person reciting what another claims he or she saw, as an example - is initially inadmissible. However, there are so many exceptions to the Hearsay Rule that lots of law students remember *Evidence* as one of the most difficult courses in the curriculum, much as medical students have unpleasant memories of Organic Chemistry.

In general terms, the Rules of Evidence are predicated on the notion that only the most *reliable* kinds of information should reach a jury. An exception to this principle involves privileges and policies, even though the information excluded by rules of this type may be very reliable. Examples of privilege include conversations between husband and wife, attorney and client, doctor and patient, and priest and penitent. If one charged with murder confesses the deed to one of the above, that confession may be barred from the trial. Policy exclusions include the much-abused claims of "National Security" often invoked by public officials. Since neither privilege nor policy had any serious impact on the information which the jury was allowed to hear in the Simpson case, my discussions of what was credible evidence and what was not will focus on reliability.

That being said, the reader should bear in mind in that in most homicide cases, ninety-five percent of the contested evidence is the testimony of witnesses. This is true whether the witness is claiming to describe something that he or she saw, heard, felt, tasted, or smelled (the classic five human senses), or describing a procedure which was used to yield scientific evidence. The myriad popular programs currently featuring "Crime Scene Investigation" provide many examples of just how important these procedures are to the integrity of the test results which follow. Although witnesses who lied and those who told the truth as best they could are the nucleus of the Simpson case, the procedural mistakes made by the "CSI" types are nonetheless a most important factor.

In saying that "reliability" is the aim of the "Rules of Evidence", let me hasten to point out that in almost all respects the Rules surrender to the jury two most important powers: determining which witnesses to believe (*direct evidence*) and deciding what *inferences* to draw from facts the jurors believe to have been established (*circumstantial evidence*). Upon the application of these powers by a jury, lives may be condemned. Since no witness in the Simpson case claimed to have seen the accused stab anyone, or even possess a weapon, it was at the end of the day a case of purely circumstantial evidence. Thus the jury was required to find a set of facts, from the evidence it chose to *believe*, from which logical inferences could be drawn. To convict, the jury-drawn inferences would have to support a hypothesis - or theory - of guilt of the two murders. But there is more.

Where a jury's verdict of guilty will rest ultimately on circumstantial

evidence, then the facts which the jury is convinced are true must not only support a logical hypothesis of guilt, but must at the same time *exclude every reasonable hypothesis other than guilt!* More simply put, whatever facts are proved true to the jury's satisfaction must be incapable of explanation other than that the accused - and no one else - committed the crime(s). But if the facts - or any of them - do not support a compelling theory of guilt, the jury's function is at an end. It must acquit.

To those whose job it is to expose weaknesses in human testimony through a process called cross-examination, it is usually critically important to determine *when* the witness *first* told his or her story. The earlier the witness committed to the facts testified to at a trial, which usually occurs more than six months to a year after the observation was made, the more likely it is that the witness is telling the truth. This is a reliability factor well-recognized by the Rules of Evidence. The early recitation of one's story is called a Prior Consistent Statement.

Prior Consistent Statements by a witness are initially *not* admissible, and will not reach a jury, unlike Prior *Inconsistent* Statements by the witness, which are almost always received to impeach, or undermine, the witness' believability. *However*, should the cross-examiner attack by claiming that the witness has made up, or even embellished, his account of what he originally observed, this attack will be categorized as accusing the witness of having concocted a Recent Fabrication. Now the cross-examiner has opened a dangerous door by virtue of the attack: the Prior *Consistent* Statement becomes admissible to contradict the claim that the witness' story was recently concocted.

As an example related to everyday life, people will often try to buttress the truthfulness of what they are saying by asserting that "...I told this to Sarah two weeks ago..." In court that is not allowed, *unless and until* someone says "...you just made that up!" Now the judge will permit you to describe what you told Sarah (and allow Sarah to testify that indeed you did tell her those facts two weeks ago) simply to prove that this story was not "just made up".

The threat of inviting into evidence a Prior Consistent Statement is enough to cost experienced cross-examiners many winks of sleep. It is a shackle, in a sense. If one *doesn't* attack an important witness for the other side, the jury may conclude that the cross-examiner is conceding that testimony to be true. On the other hand, if the cross-examiner does suggest that the witness is not being truthful, there is a strong likelihood that his or her Prior Consistent Statement will come in, making it all the more probable that the jury will believe the witness. This is a Hobson's choice that is likely to confront a cross-examiner repeatedly throughout a trial.

Prior Consistent Statements are very, very important to any responsible

analysis of the Simpson case. I therefore invite the reader to pay close attention - as to each of the witnesses whose testimony or expected testimony is described in this book - to the *time* at which the witness first committed to his or her version of what he or she observed. This timing factor offers a "tipping point" in assessing the case. I have taken to the notion of calling the time when one can prove having first made a statement consistent with the one being testified to the *establishing point* of that statement. If the statement is immediate - that is made even while or directly after an event takes place - that statement, if it meets the time-honored criteria, is *not* hearsay, or is an *exception* to the hearsay rule. In either case, such statements (variously called "Excited Utterances", "Spontaneous Exclamations", or "Spontaneous Declarations") are thought to be reliable because the observer who makes the statement is reacting - perhaps involuntarily - to whatever he is observing, and because it is thought that he has had insufficient time to fabricate an untruth. But there were none of these in the Simpson case, because no one witnessed the crime.

I therefore re-emphasize: keep a watchful eye for the *establishment point* of the statements of the witnesses herein described.

## BACKGROUND

I can recall first being distinctly aware of O. J. Simpson in December, 1973, while I was in the fourth month of trial as a *defendant* in the U.S. District Court in Jacksonville, Florida. He had just broken the National Football League Record for rushing yardage in a single season - two thousand yards - and the grin on his happy face, like the grins on the faces of hundreds of thousands of fans of the Buffalo Bills team, ran from ear to ear. I remember thinking, in my misery, that it was good to see someone succeed so well. I later met Simpson personally in some television "green room" or other, where the guests wait their turn to go on stage. He impressed me as a friendly, easy-going if somewhat garrulous guy; he was not, as some celebrities of his dimension become, so full of himself that he talked down to the common folk.

Three days after my sixty-first birthday I heard on the news that Simpson's ex-wife, Nicole, had been murdered, the victim of a slice wound to her neck almost completely front to back, in a manner that is known in the drug trade as a "Colombian Necklace". This kind of brutal attack was usually reserved for those who owed a substantial balance for cocaine or heroin to the local "Mr. Big", and

The case against me was severed from the other defendants the following month, and eventually dismissed because the government refused to go to trial again.

had been untidy about keeping to an agreed payment schedule. The drug lords, like the Mafia, had no access to the courts to collect their debts. As an alternative, both groups were wont to use dramatic methods of murder on the hapless debtor, to send a message to other delinquents that they had best rob a bank or steal from their loved ones, if necessary, to avoid being tardy on their payments.

I next heard that Simpson, who had returned to Los Angeles from Chicago very suddenly when he learned of Nicole's fate, had elected to speak with the high-powered detectives assigned to the case *without* the presence of his very able lawyer, Howard Weitzman. This impressed me as unusual, but was a strong indication that Simpson had no involvement whatever in Nicole's murder, or that of the unfortunate Ronald Goldman, who was present with her for reasons that were initially unclear. Although it is fairly common for sociopaths - who consider themselves to be clever - to chat with detectives even though they are guilty as sin, Simpson was by no means sociopathic. Indeed, he had hauled himself out of the "hood" with pure grit, inspired by legends such as Willie Mays and Gale Sayers. He was by all accounts an intelligent man, and probably felt a duty to help the cops find the culprit. Further, if he had thought his client to be inculpated in some way, a lawyer of Howard Weitzman's experience would have found a way to torpedo the interview.

On the evening of June fourteenth, 1994, I received a call from my friend and colleague of many years, Bob Shapiro. He had been hired to replace Howard Weitzman, who had outraged Simpson business lawyer Leroy "Skip" Taft and long-time friend and former lawyer Robert Kardashian, both of whom thought that Simpson should not have been allowed to talk to two grizzled detectives from the LAPD's Robbery-Homicide Division without the protection of counsel. Unsophisticated in criminal matters as they were, the two had little appreciation for the fact that Simpson's talk with the police would become a piece of solid gold for O.J.'s defense. They had heard that Bob Shapiro was a fellow who could "head off" trouble, such as unwarranted arrests. And indeed he did have a reputation for "working out" criminal cases. But Bob had never tried a murder case.

Nonetheless, by the time he called me he had already made a number of eminently commendable moves on Simpson's behalf. He had retained pathologist Dr. Michael Baden and Criminologist Dr. Henry Lee, both crackerjacks in forensic science and evidence. Additionally, he had caused to Simpson to be photographed and examined by a local medical doctor, to preserve the fact that O.J. had none of the cuts and bruises which would inevitably have been suffered by whoever killed Ronald Goldman; Goldman's seventeen defensive wounds made it clear that he had put up a vigorous fight.

But now Shapiro was deeply troubled. He had attempted to have Simpson



tested on the polygraph, hoping to use the results to persuade the cops to back off and take another look. I had been deeply involved in polygraph testing since 1954, when as Investigating Officer in my Marine Fighter Squadron in Cherry Point, North Carolina, I had learned to rely heavily on results obtained by two excellent examiners. In 1983 I hosted a program called "Lie Detector" - a misnomer, but a name that has stuck to polygraphy like glue - where people were tested under public scrutiny on a variety of issues, including murder. My co-host was Dr. Ed Gelb, Ph.D., formerly a Lieutenant in the Los Angeles Police Department. With Simpson's arrest loudly rumored to be imminent, Shapiro correctly thought that the LAPD senior detectives would be given pause if someone of the towering status in the field of polygraphy such as their own Ed Gelb declared Simpson's denials of involvement to be truthful. Unfortunately, Gelb was in Madrid at the time. His top assistant, Dennis Nellany, who had worked with me as an examiner on the "Lie Detector" TV show, attempted to test Simpson despite the enormous pressures facing counsel, the client, and the examiner. It didn't work. Simpson's reactions were severe, in Dennis' view

In the opinion of virtually all experienced polygraph examiners, it is not feasible to test someone accused of killing a loved one within a short time after the death has been discovered.. Indeed, Dennis said as much, when Simpson insisted he wanted to continue, despite the fact that every time Nicole's name was mentioned he felt as though ajolt of lightning had coursed through his body.

When Shapiro told me over the phone what was happening, I instructed him unequivocally to discontinue the test, and finish it later. It *might* have been possible to test Simpson on whether he killed Goldman, where the emotional factor would presumably have been attenuated, but I thought it not worth the risk. Shapiro did me one better; he terminated the testing *and* walked out of Nella ny's office with the polygrams, or test charts. Examiners never, never permit this to happen. Dennis should not have. To my knowledge, I am the only other person capable of making sense of a polygram that ever saw the Simpson charts which were created that night. I studied them in Bob's office one day the following month. To me they showed rather dramatically that the rule against testing suspects who have recently lost a loved one is well-justified. The tracings painted a picture of a human subject whose emotions were roiling like the oceans in a typhoon. Since Shapiro has since reported that these charts are "missing", no other qualified examiner will likely ever get to see them. They certainly did not, in my view show "guilt". I don't believe they even showed deception.

This polygraph experience - certainly bewildering to one who expected to be thumpingly cleared of any complicity - no doubt contributed to the deep depression which ultimately led Simpson to have his friend Al Cowlings take him to Nicole's

grave, where - with the pistol he had brought with him - he planned to join her. When it became clear after a few minutes that there would be no suicide, Cowlings took him home, in what has always been called a "low-speed chase - a classic oxymoron if ever there was one - and was in reality a high-tension escort. This one scenario has no doubt contributed heavily to the views of those that suspect O.J. to have been guilty as charged.

When I entered the case a few days later, to take charge of the defense investigation and all dealings with the news media, I was still in favor of giving Simpson a polygraph. Shapiro wanted none of it, and there are many legitimate reasons not to test a client while he is in jail. But the issue is far from dead, as I will explain at the end of this outline.

I asked Shapiro to hire John McNally of New York as Chief Investigator. McNally came aboard promptly, and recruited Pat McKenna of West-Palm Beach to join him. I assigned Howard Harris, my firm's in-house computer expert and a veteran of numerous important trials, to take over the task of collecting, organizing, and preparing trial information for use as evidence. All three were soon headquartered in Los Angeles, working out of Shapiro's tiny office.

They did their jobs well, and by late December, I was able to summarize the defense evidence and strategy in a memorandum to all counsel and staff. Because this memo was created before we had had any meaningful disclosure of the dimensions of the prosecution's case, it may be useful to take a look at it in its original form, for it is in a sense an *establishing point* of the defense which emerged:

FILE NAME: *CUT ONE*  
**SIMPSON SUMMARY**  
*TRIAL OVERVIEW*  
December 21, 1994

From: FLB  
To: Defense Trial Team

**Introduction:** This will be a preliminary effort - i.e., a "first cut" - to bring the preferred trial strategies and tactics in the forthcoming trial into focus as I see them now, at this stage of the case. It will attempt an "overview" of sorts, offering

fodder for alternative or contrary suggestions.<sup>2</sup> While there is more than one way to try this case, there is probably only one "perfect" way; I think that no lesser standard is demanded if victory at the end is to be assured. I believe that through the prudent use of the wisdom and experience of the defense trial counsel and staff, such a standard is attainable. It will, however, require a good bit of work by all concerned, including O.J. himself.

**I. The Charge:** It has been established beyond the pale of doubt that at some time in darkness between 9:40 and 11:30 p.m. on Sunday, June 12, 1994, Nicole Simpson and Ronald Goldman were murdered through the use of knives or knife-like weapons, in the proximity of Nicole's town house at 875 South Bundy Drive in Brentwood, California. From the position of the bodies and the blood-track evidence discovered, it would appear that Nicole was lured to a position on her steps nearest the Bundy sidewalk. Her wounds and the blood-flow from them strongly suggest that a right-handed killer thrust at her several times, causing minor wounds, and then grabbed her hair from behind and inflicted a deep wound from left to right across the front part of her neck, severing both carotid arteries and both jugular veins in the process. The massive loss of blood pressure from these severance wounds would have caused instant loss of consciousness followed almost immediately by death, causing her to slump to the stairs where she was found.

Further, it seems almost certain that Ronald Goldman came upon the scene - quite innocently - to return Judy Brown's glasses, which had been left at the *Mezzaluna* restaurant earlier in the evening when Nicole and the family ate dinner. It would appear that Goldman arrived during the assault on Nicole, for two reasons:

1. The blood on Nicole's back is very probably his, since he put up a protracted defensive fight while he was being repeatedly wounded; therefore, she must have been slumped on the ground before his wounds were inflicted, and he began to spray blood.
2. The most significant defense witness (Robert Heidstra) we have discovered - in my opinion - was walking his dog in an alley parallel to Bundy and roughly opposite - at a distance of 200-300 feet - the entrance to #875. He had no view of the murder scene, but was within earshot of any voices which were raised. He heard a male voice cry out, "Hey! Hey! Hey!" followed by a scuffle of some sort. This occurred sometime between 10:35-

<sup>2</sup> This is being written on British Airways #215 from LHR to BOS, strictly from recollection. Forgiveness is asked for errors in detail, since I have no reference materials available.

10:45 p.m., and was likely Goldman. Significantly, the voice did not identify anyone by name. Goldman knew O.J.

Both murders should have left the killer(s) with a significant quantity of blood spatter on both clothing and exposed skin. Goldman appears to have been cut with two different knives.<sup>3</sup> It further appears that one of those who stabbed him was holding a weapon in his left hand.<sup>4</sup>

Based upon the undisputed and virtually unassailable evidence, all of the elements of two first-degree murders are present. The only issue to be challenged at trial is that of the identity of the perpetrator(s).

**II. The Defendant:** Anomalously - and the sole reason for the frenzied treatment of this case by the press and others - is that O.J. Simpson, now charged alone with both murders, is and has been a public figure much endeared to the American public since the late 'sixties. Although reports of spousal discord (including some physical abuse) rub some luster from the idealistic Simpson image, it is still antithetical to most members of the public to contemplate the actual commission of this manifestly grotesque series of acts by such an "All-American" icon and role-model for young minorities.<sup>5</sup>

It seems clear that without its evidence of past domestic disharmony and allegations of jealousy, the prosecution is completely bereft of any semblance of a motive, or trigger, for the violence it claims O.J. experienced that evening. It seems equally clear that Judge Ito will let at least the most damaging parts of the "911" situations into evidence, forcing us to confront and deal with them.

On the other hand, we have the following facts to counter this allegation:

1. O.J. - apart from the infliction of injury on Nicole - has no history of resorting to raging violence to solve his emotional problems.
2. After a competent psychiatric evaluation - by Dr. Bernard Yudowitz, and

<sup>3</sup> Per the state's pathologist who performed the autopsies, Dr. Golden.

<sup>4</sup> Two of the wounds on the right side of Goldman's torso are - assuming that Goldman was facing his assailant, as knifing victims inevitably do - consistent with a left-handed forward thrust.

<sup>5</sup> The unlikelihood that a person of O.J.'s character would be capable of such brutality has somehow devolved into a mystical certainty among many that he nonetheless is the perpetrator. Most amazing to me is that many - indeed the majority - of my otherwise intelligent and thoughtful friends have a knee-jerk certainty of O.J.'s guilt. I can only attribute this to a natural tendency to infer guilt from the suicide escapade, despite O.J.'s clear declarations of innocence to the contrary.

possibly others - I anticipate that it will become apparent that O.J. is not and has never been psychotic. If this is the case, he would be incapable of committing murderous acts of the type shown on the one hand, and maintaining his generally affable affect on the other.

3. There had been no domestic physical abuse for many months at the time of the murders.

4. The attendance at Sydney's recital by O.J. and Nicole appears to have been at worst chilly, and at best cordial. Nothing occurred there which should have prompted rage.

5. The jealousy motive seems to be seriously undermined by O.J.'s lack of reaction to the Keith Zlomsowitch<sup>6</sup> - Marcus Allen<sup>7</sup> liaisons; it is further undermined by the obvious fact that he was trying to engineer a tryst with both Paula Barbieri and another lady that very evening, prior to his expected departure for Chicago.<sup>8</sup>

6. O.J.'s conduct from 10:55 p.m. on June 12 until the end of the day on June 13, is completely consistent with his character, and with innocence. More on this point under "Defenses - Demeanor", *supra*.

**III. The People's Case:** Since the fact of two murders is a given, the state's entire case will be devoted to linking the defendant with the crime, including a motive to commit it.<sup>9</sup> I anticipate that the state - which perceives itself to be weak - will

<sup>6</sup> Keith was Nicole's lover for a short time in early 1992 while the divorce machinery was grinding. One night O.J. came to Nicole's town house to visit, and saw Nicole performing oral sex on Zlomsowitch in the living room. O.J. did not fly into a rage, but simply rang the bell. The next day he remonstrated with Nicole and Keith about conducting themselves intimately under circumstances where the children might walk in at any time. He treated Keith cordially, according to Keith's testimony before the grand jury.

<sup>7</sup> Marcus Allen - star halfback for the Los Angeles Raiders - was O.J.'s good friend. At some point, Marcus had sexual intercourse with Nicole, a fact which came to O.J.'s attention. Once again, O.J. did **not** become enraged, but subsequently hosted Marcus' wedding at his home!

<sup>8</sup> I realize that O.J. is not too keen on the notion that he was soliciting "Kathy" that evening, per her answering machine, particularly since he anticipates that Paula may be miffed. I nonetheless think this frolicsome state of mind is a powerful - and perhaps *essential* - counterpoint to any claim of jealous obsession on his part; after all, this a case where all the marbles are at stake, and omitting helpful evidence for the defense is a woefully dangerous undertaking.

<sup>9</sup> I use the word "it" because I believe that both sides will take the position that Nicole was the only target, and that Goldman was tragically incidental.

empty its garbage pit on the evidence table. I also anticipate that the judge will adopt a *laissez faire* attitude with respect to admissibility; hopefully this trend will emerge as a two-way street. In any event, I expect that the state will rely on the following facts:

1. A left glove with the blood of both victims was found at the murder scene. A companion right glove was found on the margin of O.J.'s home. *Ergo* he dropped one at the scene, and the other while sneaking into his house to avoid detection by one whom he then believed to be Dale St. John.<sup>10</sup>
2. A very similar pair of gloves (together with a second pair of some sort) was purchased by Nicole in New York in 1992 on her credit card.<sup>11</sup> We should expect that a representative of the manufacturer (believed to be *Isotoner*) will examine a blow-up of a video frame of O.J. on the sidelines of a late-season NFL game, and declaim that the gloves he is wearing are those purchased by Nicole.<sup>12</sup>
3. There is blood on the Bronco (and in it, see below), as well as on O.J.'s walkway and inside his front door.
4. O.J.'s blood is seen (as established by routine serology at the Preliminary Hearing, and since confirmed through RFLP<sup>13</sup> testing at Cellmark) in four

<sup>10</sup> St. John had been his regular driver for some time, and normally came 15 minutes early to pick up O.J. for a run to the airport. Typically, O.J. was late, and wound up "running through airports" as in the *Hertz* TV advertisement for which he became famous. Because O.J. had ordered the limo for 10:45, he would have expected it to arrive at 10:30. As it happened, St. John was busy that evening and sent a youngster named Alan Park to do the pickup. Park - being unsure of his geography - actually arrived at 10:25. This becomes a significant factor in the *TimeLine*.

<sup>11</sup> In answer to this claim, O.J. asserts that he has *never* been given a pair of gloves by Nicole.

<sup>12</sup> I realize that this may seem a little far-fetched; however, complacency is our worst enemy. We could be unpleasantly surprised by what a much-enlarged, digitized image can show.

<sup>13</sup> Restriction Fragment Length Polymorphism, a *genre* of DNA identification testing; of the two (the other is PCR [Polymerase Chain Reaction]), RFLP is the more senior, and generally the more unassailable. PCR has three sub-methodologies of identification. *DQa* (DQ Alpha) is the most senior, and the most difficult to attack. DIS80 and Polymarkers are of more recent vintage, and have more slender databases from which to draw statistical inferences. PCR testing is mandated when the minimum sample (50-150 nanograms) of DNA material is unsuitable for RFLP testing. PCR testing can - allegedly - be performed with only .5 nanogram (50 picograms) of specimen available, because of the ability through PCR to clone - and thus multiply - the actual sample. Dr. Kary Mullis, who received the Nobel Prize for discovering PCR, will testify for us that he would not trust the results of PCR testing in this case, because of the crude way the samples were gathered.

separate droplets at the scene.

5. Nicole's blood is seen on a spot on one of O.J.'s dark blue socks<sup>14</sup> - found in his bedroom at the foot of the bed. Confirmed by **RFLP** testing at **Cel-Imark**. Almost surely this was planted, since the droplet goes completely through the sock at both ankles; ergo, there was no foot in the sock when the blood drop was applied.

6. Nicole's blood is found in the carpet of the Bronco, as confirmed by **DQa** testing at the **DOJ** laboratories. Also present is a faint alleged shoeprint; the state hopes to show that the imprinting sole is consistent with shoes that O.J. purchased.

7. Goldman's and O.J.'s blood - in a mix - are found on the right side of the center console between the driver's and passenger's seats. This claim results from **DQa**<sup>15</sup> testing, is from a faint trace, and must be challenged as either (1) inaccurate, or (2) planted by *someone*.

8. Nicole's, Goldman's and O.J.'s blood (a trace<sup>16</sup>) are found on the right leather glove that Fuhrman claims<sup>17</sup> to have discovered at O.J.'s home on the morning of the 13th. The decision as to how to handle Fuhrman on cross at the trial is critical, and one that is worthy of exhaustive discussion by all trial counsel, the investigators, and O.J. A mistake in this area could be very costly. So far, the press has opined that our implication of Fuhrman is "without substantiation".<sup>18</sup> Despicable as Fuhrman may be, I would hate for

<sup>14</sup> It is ever to be borne in mind that this spot was most belatedly discovered, perhaps symptomatic of deliberate evidence corruption by *someone*; in any event, a single droplet is wholly inconsistent with an exposed sock a *killer* would have worn. That sock should have evinced many droplets, and primarily those of Goldman.

<sup>15</sup> For purposes of **DQa**: testing, Nicole is a homozygote (1.1,1.1); both 0.1.(1.1,1.2) and Goldman (1.3,4) are heterozygotes

<sup>16</sup> This is a product of **DIS80** testing by the **DOJ** in Berkley. For **DIS80** purposes, Nicole is a 18,18; Goldman is a 24,24; and 0.1. is a 24,25.

<sup>17</sup> In the present state of the evidence, I think we ought to restrict our speculation as to how the glove arrived at O.J.'s place to the conclusion that Lt. Vanatter voiced during Shapiro's cross during the PH: "*Somebody* carried it there." Since it *wouldn't* and *couldn't* have been 0.1., it was placed on his property by either (a) Mark Fuhrman or (b) the murderers. At least until closing argument, we ought not to choose.

<sup>18</sup> This is not to say that I agree with the press. The case against Fuhrman is not insubstantial. He was drawn into a monstrous and obviously soon-to-be-front-page homicide. He knew the Simpsons, having been involved with them in some fashion in 1985. He learned that the *eminence grise* of LAPD homicide (Vanatter and Lange) were being brought into the case, which

the jury to come to the same conclusion.

9. We anticipate that various pieces of hair and fiber evidence will be introduced as "consistent" with O.J., or the carpet in his Bronco, etc. From what I have seen so far, if the blood barriers can be successfully hurdled, this evidence will not carry the prosecution's day. While it is not to be ignored, it is less than critical at the moment.

10. We anticipate a plethora of "declarant" evidence from profiteers such as Faye Resnick. These are people who will claim that O.J. announced to them an intent to kill Nicole, and will *attempt* to testify that Nicole told them that O.J. had threatened to kill her. Judge Ito's ruling on the admissibility of this hearsay will be most important; I think that in an abundance of caution we ought to assume that it will all come in, and will have to be confronted. This is dangerous ground, and a lot of work. Putting the wrong question to one of these witnesses could invoke disaster. I would suggest that each of these "opportunist" witnesses be assigned **now** to one of the cross-examiners who will participate in the trial, and to one of the investigators as well; from now until such witness takes the stand, the investigation and compilation of every scrap of arguably relevant information needs to be relentlessly pursued, and catalogued in the computer. Witnesses such as these normally have rich lodes of scruffy details in their mines: We must mine exhaustively ourselves to discover what may be out there.

11. There will probably be a *potpourri* of miscellaneous evidence offered to link O.J. with the crime, and this can be sorted out and dealt with as it appears. If the prosecution doesn't make its case with the blood evidence and/or the "opportunist" evidence, it will fail.

**IV. The Defense Case:** The defense case consists of two distinct elements, to wit:

A. The defense evidence negating guilt.

B. The denigration of the People's evidence.

The affirmative defense case is formidable, and is calculated to leave the jury in this frame of mind: "Since the defense has shown that O.J. *couldn't* have

meant that Fuhrman and Phillips (his partner) would soon be out, or relegated to a minor role. Fuhrman suggested going to Rockingham (the recently revealed statement of the photographer - Roarta? - is of interest here), and it was he - Fuhrman - who decided to climb the wall. **It** was Fuhrman who "discovered" the bloody glove in the alley. He has - for better or for worse - inexorably cemented himself into this case. If that was his purpose in acting as he did, one wonders if he had completely forgotten the court papers wherein he tried to cadge a pension by claiming that he had become a psychotically dangerous racist as a result of his police duties. Dr. Yudowitz should have a look at this file.



committed these crimes, evidence suggesting that he did so is either (1) illusory, (2) misleading, or (3) deliberately concocted. Our evidence can be described as follows, in descending order of probative value:

Defense #1: *Demeanor Evidence*: From the time he is first seen by limousine driver Park and Kato Kaelin, his tenant, at about 10:55pm, until he is checked in at his Airport Hilton Hotel at Chicago's O'Hare, virtually *all* of the witnesses who see him at the LAX airport, on the American Airlines flight to ORD, at the ORD airport (including another limo driver) and at the hotel observe a relaxed, happy, affable O.J.; no one sees a distraught or unnerved person who might have just experienced an unconscionable trauma. *However*, after O.J. receives a phone call in his hotel room from Detective Phillips informing him that Nicole has been murdered,<sup>19</sup> his affect reverses.

From this juncture forward, O.J.'s demeanor is seen to change dramatically. He slams a glass on the counter-top in the bathroom, and nicks a knuckle sweeping the shards into the sink. Blood from this wound is found by the Chicago Police on the glass fragment, on a pillowcase, and on a sheet. We will run (hopefully) DNA tests of our own<sup>20</sup> to establish that this *is* O.J.'s blood, although there may be little debate on that issue. O.J. then places a series of phone calls to make arrangements to go back to L.A., accepts a coach seat on an American flight to LAX, packs, and goes to the front desk to check out. He pushes to the head of the cashier's line, declaiming that he needs transportation to the airport at once. He requests a bandage from the desk clerk for the bleeding knuckle, which he exhibits. He boards the American flight, and by chance is seated next to a Chicago lawyer, a Harvard guy, whom we have interviewed. The lawyer will say that O.J. was totally distraught, and was making phone calls and asking questions only consistent with ignorance of what had happened to his former wife. Others on the flight will corroborate this impression. Upon landing, O.J. was met by Howard Weitzman (who had represented him during the "spousal abuse" plea of *nolo contendere* in 1989) and Leroy "Skip" Taft, who carried him to his Rockingham home. He was there confronted by Lt. Vanatter, who

<sup>19</sup>According to O.J., Phillips told him little if anything about the manner of Nicole's death, and nothing about Goldman's being killed also. While this may be commendable police procedure, it significantly bolsters - in my view - the integrity of O.J.'s "solo" statement to the police later in the day, wherein he repeatedly complains: "...you guys aren't telling me anything about what happened. "

<sup>20</sup> One wonders why the prosecution has shown little interest in these tests.

wanted to take him "downtown" for questioning. Weitzman, who had a conflicting engagement, advised against submitting to questioning in the absence of counsel. O.J., however, felt a responsibility to assist the police in identifying and apprehending the responsible party, and against his attorney's advice submitted to interrogation by Detectives Vanatter and Lang. This was fortunate in several respects, and unfortunate in others. Defense # 2: *The Statement*: On the good side, O.J.'s initial story to the police is nearly bullet proof. With no chance to have dove-tailed his account with Kaelin and Park, there is a near perfect fit between the three statements. O. J. answers every question, volunteers his blood,<sup>21</sup> and generally agrees to all police requests. In summary, the statement speaks for itself, and the affect reflected on the audio tape is - in my experience - compatible with an innocent man who is in shock, and severely depressed.

Defense #3: *The TimeLine*: We have constructed a series of aerial photos - O.J.'s house and surround on the one hand, and Nicole's on the other - in part to illustrate graphically the recollection of witnesses from that night's episode, as well as to demonstrate that at no time is there a "window" of fifteen or more minutes when O.J. could have snuck off and committed the crime. Showing these photos - side by side on mounting boards, and by computer as well - and using different icons for each of the witnesses, we will display a new set for each five-minute interval between 10:00 p.m. and 10:55 p.m. to show what is in essence an alibi for the crime. In some ways it is a desirable alibi, because it is fragmented, and does not depend on the credibility of a single witness. Further, some of these witnesses are total strangers, who have never talked to O.J.. Properly orchestrated, this can be a powerful garden in which reasonable doubt can grow and flourish.

(To Be Continued)

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Defense #4: *Lack of Motive*: The prosecutors are really reaching in trying to conjure up a motive that would explain why O.J. would suddenly become so enraged at Nicole<sup>22</sup> that he would butcher the mother of the two small

<sup>21</sup>This of course was tragic. We will never know where that blood has traveled since June 13th when it was taken, except for the fact that it walked around in Vanatter's pocket like a rabbit's foot for a number of hours.

<sup>22</sup>He evinced no signs of such a mood whatsoever during the time he spent with Kato prior to

children he adored. They will be at pains to define what in the world she might have done<sup>23</sup> which could have triggered such a white-hot destructive emotion on his part, in light of his manifest equanimity when confronted on two occasions with Nicole's sexual expeditions.

*Defense #5: Lack of Feasibility:* Although I am sure that the prosecution will have to speculate endlessly on this score, O.J. committing this murder in this fashion at this place and time makes no logical sense whatsoever, to wit:

A. Assuming that Kato last saw O.J. at 9:37 p.m. just prior to placing his first phone call since returning from MacDonalds with him in his Bentley, and that O.J. is free to fulminate in some unforeseen mental fire-pit in solitude, rapidly becoming homicidal, he would have to *decide* to go kill Nicole with a knife knowing that Dale St. John could be expected to arrive at 10:30 p.m., and would expect to find O.J. at home to let him in the gate.<sup>24</sup>

B. The notion that O.J. would take his well-known face in his well-known Bronco to 875 S. Bundy, park in the back alley, and walk through the walkway to the Bundy side in order to lure Nicole outside to her death is patently ludicrous. We will show beyond doubt that there were many habitual evening dog-walkers in Nicole's neighborhood, anyone of whom might have come by at any time. Virtually any neighbor could be expected to recognize him at a glance. The chances of pulling off such a murder without detection would seem hopeless to anyone but a madman, and the evidence will clearly show that O.J. is anything but.

*Defense #6: The Testimony of O.J. Simpson:* My first meeting with our client last June was memorable in many respects, but I think the most striking moment was when O.J. said, "Just let me get on that witness stand, and let me tell that jury 'Hey, this ain't no crazy killer, this is just O.J., like you've always known ... " At that moment - had I been a judge sitting without jury - I would have absolved him of any connection with the murders. His tone, his inflection, and his accompanying facial expression and affect were all in perfect harmony as he uttered those words. If we can

9:37 p.m. that evening.

<sup>23</sup> There will be no hard evidence that she even spoke with O.J. between the recital and his departure for ORD, as I understand it.

<sup>24</sup> It seems likely that if O.J. had formulated such a plan, he might well have asked Kato to be alert for St. John's arrival "...in case I am in the shower..."

project that personality to the jury, we will need to concern ourselves with the other evidence in a greatly reduced manner.

I think it inevitable that O.J. will decide to testify, and clearly that is his decision to make alone, no matter what his lawyers say. With that in mind, we should begin planning forthwith some educational sessions wherein O.J. can learn the nuances of being an effective witness, and dealing with questions, both friendly and hostile.<sup>25</sup> Experience has taught that where the defendant testifies:

- A. If the jury *believes* him, acquittal is assured.
- B. If the jury *likes* him, acquittal is probable.
- Y. If the jury *dislikes* him, the case is in trouble.
- Z. If the jury thinks he is *lying*, all is lost.

O.J., like every other honest but inexperienced witness who is new to litigation, will need guidance and advice before being sworn.

V. The Defense Strategy: In my opinion, the defense in this case has been trashed and pummeled in the press like no case in history. I continue to be astonished to see otherwise semi-responsible newshounds throwing ethics, caution, and concern for the truth to the four winds. For all he has been to society prior to these events, O.J. deserved much better. However, that is water over the dam and if we have to swim upstream, we can and will do it.

To couch the plan in terms which will be crystal clear to our client, we need to grab the ball at the outset of opening statement, and run with it just as fast and far as we can, knocking the opposition solidly to the ground at every opportunity. The history of this case, and the evidence we have to show that this indictment and trial is a miscarriage, warrant a demeanor of controlled indignance. This is an important and admirable American sports hero and public figure who has brought great credit to his country, and we need to return him to that status, enshrined in a presumption of innocence, right at the outset of the case. This ought not to be a polite request to the jury, but a formal demand supported by a foundation of appropriate righteousness. It should be made crystal clear that this is O.J.'s very first chance to be heard, to tell his story, a story that will - as it is gradually absorbed - demonstrate that the many in the media, fueled by law enforcement, have misled the public about this case in a manner and to a degree worthy of nothing more than contempt. They have done their reckless best to ruin him before he ever had his day in court. He is a victim of their misconduct, and that of the

<sup>25</sup> As I have indicated before, Dan Leonard of my Boston Office is somewhat of a specialist at this sort of grooming, and is available if selected to undertake this responsibility.

prosecution and police, who rushed headlong into murder charges they had hardly tried to investigate in order to cover a miserable record of community failure in other, prior cases. Their overwhelming political governance has left them with no ethical remains, such that to save face they will try to put an innocent man in jail, and allow two guilty killers to roam free, probably to kill again.<sup>26</sup> The manner in which the investigation in this case was botched from beginning to end - including protection and preservation of the crime scene, intervention of the medical team, letting the Bronco sit about for all to enter, delaying the blood testing unconscionably, and "salting" the blood evidence to incriminate O.J. will be described by historians as a blight on the face of justice. The overwhelming evidence *excluding* O.J. as a suspect (which must be laid out in detail in the opening, I think) was pointedly ignored by the authorities, even though it cried for attention. We will show time and time again where police and prosecutors deliberately avoided bringing to public awareness evidence that they knew would make their case look foolish.<sup>27</sup>

At the end of opening statement we need to have the jurors thinking to themselves: *If these people can prove half of what they've just told us, OJ is outta here*<sup>P8</sup>

VI. Southeast Group - Tasks **in** Progress: In order to avoid duplication of effort, I will attempt to set forth below the things that the "Southeast Crew"<sup>29</sup> are undertaking during the next seven plus days. We have brought with us twelve boxes of documents and a copy of the full hard drive from the master computer in Howard Harris' office in Century City. With these materials we expect to accomplish part or all of the following:

A. The Prosecution's Case: We will try to anticipate the presentation by the

<sup>26</sup>I realize that some of this rhetoric could be termed a trifle argumentative. There seems to be a great variance among trial judges (even in a single jurisdiction) as to what the allowable limits are in opening statement. I have found that if even the most hopped-up verbal shots are preceded by " ... and the evidence will show ... ", most judges will permit one to continue.

<sup>27</sup> Such as: O.1.'s blood on the drinking glass, sheets, and pillowcase in the Chicago hotel room (we should DNA-RFLP this stuff at once); the testaments of the eastbound and westbound American Airlines passengers and crew on the 13th; the numerous statements of witnesses at Rockingham and Bundy whose evidence is plainly inconsistent with O.1.'s guilt.

<sup>28</sup> None of the above will have much value unless and until it is translated into "Downtown" dialect by our able colleague Cochran; given the makeup of the jury, he would probably be very effective at delivering his translation himself.

<sup>29</sup> John McNally, Pat McKenna, Howard Harris and myself.

prosecutors as best we can. We will make up a list of the witnesses they ought to be calling<sup>30</sup> and assemble as to each the documents and other exhibits relating to that witness. We will of course list and organize - both on paper and electronically - all prior known utterances of the witness, both oral and in writing. The statements will be end-noted<sup>31</sup> and cross-indexed for conflicts and/or corroboration, both internally and as against other witnesses and evidence. As to those witnesses deemed to be important (Vanatter, Furhman, Resnick, Golden, etc.) suggested avenues of impeachment will be set forth.

B. The Defense Case: We will attempt to give the same treatment to the defense case, but slightly in reverse; that is to say, we will scrutinize our witnesses to attempt to discern where they may be vulnerable, and what should be done to minimize any cross-examination damage which is inevitable. We will list those exhibits with which the witness ought to be familiar by the time he or she hits the stand, particularly those exhibits which need to be introduced into evidence through that witness.

C. The Computer: While John and Pat are combing the boxes, Howard and I will be organizing the computer programs which we expect to utilize before trial, and while it is in progress. When we return to L.A. in January, Howard will load these programs into all of the individual computers which are to be used at trial, and give a course - estimated to take four hours, with a large-screen projector - to train those who will actually use the programs. We will also fashion and fabricate the colored icons representing the individual witnesses who will place their respective marks on the *TimeLine photos* while testifying.

Please feel free to comment, criticize and add or subtract without limit. If O.J. has one strong force going for him in his quest for liberty, it is the quantity and quality

<sup>30</sup> Many of whom ought to be subjected to little, if any, cross-examination.

<sup>31</sup> While footnoting may seem more convenient and attractive for this purpose, the use of footnotes would disturb the pagination of the existing (and official) transcripts now in existence.

of intellect and experience which has been assembled to serve him, to RLS' everlasting credit. Happy Holidays.