

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

PART THREE

On July 14, 1994, a week or so after the Preliminary Hearing had been concluded, *Newsweek* and *The New Yorker* magazines both broke a story headlining Mark Fuhrman. Eleven years earlier, it seems, Fuhrman had sued the City of Los Angeles, asking in essence that he be retired early with a disability pension. He claimed that he had become so enraged during his dealing with minority youth gangs - mainly African-American - in the course of his duties, that he was no longer fit to continue. His hatred for these young men was so deep-seated, he asserted in an affidavit filed with the suit, that he might be unable to contain himself.

In fact Fuhrman *did* have a very deeply ingrained detestation not only for black people, but for Jews as well. We had information that he had sought a police position in South Africa through that country's Embassy branch in Los Angeles, because he understood that "...you could shoot niggers there, and nothing would happen ...." He also perceived Adolf Hitler as an heroic person, and lamented that his ethnic cleansing project of the Jews was never completed. There was testimony that Fuhrman kept a copy of Hitler's *Mein Kampf!* on his mantel, with the cover - not the spine - facing out. He also supposedly decorated his Christmas tree with small, stainless steel swastikas. Just two weeks following the publication of magazine articles, Fuhrman had his last recorded conversation with Laura McKinny, the writer who had repeatedly interviewed him on tape over a ten-year period. It took place on July 18, 1994. Two statements Fuhrman made during that conversation would seem to be of cardinal import. McKinny had asked whether the exposure of his stance on racism might get him removed from the case. Fuhrman brushed the notion aside:

*"I'm the key witness in the biggest case of the century. If I go down, they lose the case. The glove is everything. Without the glove -- bye, bye "*

Then a few minutes later:

*"The funny thing about it is, just like the attorney said, 'for the rest of your life this is you, "Bloody Glove Fuhrman". If you don't make it payoff, you're going through all this for nothing. So, go for Shapiro, he's an asshole. "*

In view of his acute awareness of "the glove" and it's importance to the prosecution's case, one should note his response when he was asked by me in March, 1995 (Transcript page 18625):

Q. *"Did you believe that you would be an essential witness if you*

*were the first to find an important piece of evidence?*

A. Well, I couldn't make that determination at that time, sir. I didn't even know what the implication of the glove was. "

This was of course the same Detective Fuhrman who described his first perception of a *glovers*) at the murder scene on Bundy by saying "them", during the Preliminary Hearing

It must be noted that chemical tests for the substances on the glove, and attempts to identify possible sources of those substances, were not undertaken until more than two months later, in October, 1994. And yet Fuhrman *already knew* that this glove would be the subject of the principal effort to connect Simpson to the murder scene. How did he know that? How could he be so sure - in July, 1994 - that some other evidence, such as a bloody knife with traces of the blood of both victims on it, wouldn't be found before the trial commenced, and thus attenuate the prosecution's almost total reliance on "the glove" from Rockingham.

Another critical matter concerning the right glove was its condition when "found" by Fuhrman, then by other detectives, and when retrieved and bagged by the Crime lab of the LAPD. The "substance" coating its surface - later clearly identified as human blood - *was still moist!*

If O.J. had dropped the glove, it could have been no later than 10:50 p.m on June *11h*, since he boarded his limousine for the airport five minutes later. That would have left it exposed to the atmosphere until at least 5:30 a.m on June 13th. when it was "discovered" by Mark Fuhrman. Experience, as well as all I could read on the subject, convinced me that under those circumstances the blood would have dried. I decided to conduct an experiment, which we videotaped.

I had Pat McKenna buy a pair of men's leather gloves, black in color, on the afternoon of June *11* 1995. That evening at 10:30 p.m., in Simpson's Rockingham kitchen, we had Dr. Robert Huizenga draw three cubic centimeters of blood from McKenna's arm. The doctor smeared part of the blood on each of the gloves. He then sealed the *right* glove in a plastic "Ziploc" bag, similar to the bags kept in the trunk of detective's vehicles in the LAPD Both the exposed glove and the bagged glove were placed in the exact spot that Fuhrman had identified as where he made his "find" in the pathway a year earlier. Their presence was monitored periodically throughout the night to ensure that there was no tampering.

At 5:30 a.m. on June 13<sup>th</sup> 1995, McKenna and I returned to Rockingham. We photographed the gloves before disturbing them, then opened the bag containing the right glove, and photographed it again. The blood on its surface was still wet. The blood on the left glove was completely dry.

The results of this experiment never were heard by the jury.

Finally, during the June 15<sup>th</sup> testimony of one of the prosecutions' glove witnesses - Richard Rubin, president of the company that had manufactured the "Aris Lite" men's glove such as the ones found at Bundy and Rockingham, Judge Ito took a recess. I took advantage of the moment to try on the "Rockingham" right glove which had been marked in evidence. I have a perfectly average size nine hand, which is regular in every way. I found the glove to be a very tight fit.

O. J. Simpson is a very handsome man, who has a large head and *very* large hands. He could wrap either hand around a football the way "Sweetwater" Clifton of the old Harlem Globetrotters basketball team could envelop a basketball, pretending to dribble vigorously while never letting go of the ball. Those whose adulation for the National Football League goes back to the Simpson era will recall that he rarely fumbled. His hands were just too big to allow the ball to be pried away. I was convinced that if they were tight on me, they would look ridiculous on Simpson. A demonstration of that fact would be far more telling if it were staged by the prosecution, rather than the defense.

Rubin's was Chris Darden's witness, and I had learned long before that if one wanted to cause Darden to do something silly, a press of his hot button would do the trick. While the recess was still in progress, I walked up to Darden and said:

"Chris, you're a good shit, but you've got the balls of a stud field mouse." Predictably, he was infuriated. "What the hell do you mean by that?" he demanded.

"What I mean," I replied, "is that you don't have the balls to make O. J. try on that glove. If you don't, I think I will."

Darden immediately assumed that Rubin would be my witness on cross-examination, which was not the case. As Judge Ito made his way back to the bench, Darden charged and caught him half-way up his little stairs.

"Judge," he spluttered. "Mr. Bailey just told me something, and I want the defendant to try on that glove." Like so many who act impulsively when goaded, Darden got his wish. Simpson was brought before the jury, and plainly showed that the glove could not be his. This result was seen repeatedly all over the world. That night the press was chanting that the defense may have turned the case around in its favor.

There would seem to be but three possible explanations for the presence of the glove at Rockingham in the early morning hours of June 13<sup>th</sup>, 1994:

1. O. J. Simpson *put* it there deliberately, for some unfathomable reason. Due to its small size, as the world saw, it is doubtful that Simpson could ever have worn it for any purpose.

2. Whoever killed Nicole and Ron Goodman took it from the scene and put in this unlikely spot, hoping to draw suspicion away from himself and toward Simpson.

3. Mark Fuhrman, upon discovering that his moment of glory was to be denied him by the "old pros" from Parker Center, decided to embed himself in the case. Grabbing a plastic baggie from the trunk of the police car, he scooped the right glove from the scene, and tucked it in his pocket or perhaps his sock, as Marines often did with their cigarettes. Fuhrman suggested the trip to Rockingham, and led the way. Fuhrman went alone to the Bronco, then jumped the perimeter wall. Fuhrman went alone to the dark pathway, was gone for fifteen minutes, and then "discovered" the glove after removing it from the baggie, still moist. Fuhrman was both supportive of and experienced in planting evidence to frame people, as he boasted for Laura McKinny during taped interviews. Fuhrman knew that there was incriminating blood residue on the glove at least two months before the police lab ever examined it. And when asked if he had planted evidence in the case, Fuhrman ultimately took the Fifth Amendment, then pleaded guilty to perjury.

**V. THE BLOOD EVIDENCE:** Throughout the trial the press immersed itself in - and endlessly assured the public - the notion that there was some "mountain" of blood-related evidence which conclusively showed Simpson's guilt. In so doing these reporters (with a very few prominent exceptions) ignored other evidence which showed that Simpson must be innocent, much of which is described above.

Although the blood evidence aspect of this case is complex and will require some explanation, see footnote 13 on page 13, above, basically it fell into three categories:

1. It was correctly collected, tested, and identified, but these results did little to help on the question of guilt or innocence, or
2. It was correctly collected, tested and identified, and seemingly incriminated Simpson, *but* the blood had been planted by a policeman, or
3. The blood was incorrectly gathered, handled, and was subjected to PCR testing because of the minute quantities involved. It could not have been correctly identified under those circumstances. On this issue, we were loaded for bear, but never got to pull the trigger.

From early in the game, as my memo of December 21, 1994, shows, the defense considered itself fortunate to have Dr. Kary Mullis in its corner. He had received the Nobel Peace Prize for developing a process called *Polymerase Chain Reaction*, (PCR) which enables small specks of DNA material - blood, saliva, semen, etc. - to be multiplied through a "cloning" application, in order that the sample could be tested. The standard

laboratory test to identify a person's DNA is called *Restriction Fragment Length Polymorphism* (RFLP). But to use this process one must have a substantial sample to work with - say, a droplet of blood - or fifty to one hundred fifty nanograms. PCR, on the other hand, can be performed with as little as half a nanogram - one one-hundredth of the RFLP minimum.

Dr. Mullis had reviewed the laboratory results and pronounced that the police PCR work should *not* be allowed in evidence in court when the samples tested had been gathered from the field. The likelihood of contamination, he said, was too great in *every* case of field sampling. In this particular case, however, he thought the collection methods used by the LAPD were so sloppy and unprofessional that this factor alone would negate the value of any PCR results that might be obtained.

In addition to being a brilliant scientist, Kary Mullis was a bit of a hoot. He had spoken about his adventures with LSD (before using that drug became illegal) and expressed doubt as to whether the HIV virus caused AIDS. Johnnie Cochran was a little curious as to how the good doctor might show on the witness stand, especially since a special prosecutor named Rocky Harmon was telling the world that he was going to skewer Mullis on cross-examination. Cochran was not much moved by Harmon's bluster, but asked if I would visit with Mullis and give him a confidential appraisal of the man. From what I had read and heard, I was more than pleased to accept the assignment.

An appointment was set to meet and chat at Mullis' home, on the ocean in La Jolla. When I arrived, the front door was wide open, and a friendly young man in his twenties greeted me. Dr. Mullis was out surfing, he explained, but should return presently. He pointed to a figure a hundred yards or so out at sea on a surfboard.

I entered the kitchen, and the young man reached into the refrigerator and withdrew a glass of red wine. "Dr. Mullis left this for you to sip on, in case he was a couple minutes late." I mumbled a "thank you", but my attention was much more drawn to several dozen photos, each affixed to the refrigerator door with a magnetic clip. Every photo depicted a different pretty, well-formed and nude lady, ranging in age from the early twenties to late forties. I was studying one after another quite intently when there was a voice behind me:

"See anyone you recognize?" asked a male voice with a pleasant lilt to it. I turned to greet the doctor himself, still dripping in his bathing suit, his wet curly grey hair an attestation to his recent water play.

"If I did I'm not sure I'd dare say," I replied. "How the hell do you get away with showing a display like this? I should think some might object - loudly!"

Mullis shrugged. "If I have a complaint, I can remove that one and put it away. There are some others in the drawer."

We spent a delightful afternoon talking about the case, and a few dozen other things. My assessment was that the jury *and the public* would

love him and believe him, and that if Rocky Harmon went after him in some offensive way, Harmon would sprout horns on the spot. I passed this very positive assessment along to Johnnie. But once again - even for a witness of such importance - there wasn't time. The world never heard what he had to say, which would have gone a long way to show the press-created "Mountain" of blood evidence for what it really was - a Potemkin Village.

**VI. THE DEFENSE SMART BOMB:** Perhaps the most important witness in the Simpson case - who may well have seen the killers or their confederates - was Thomas Lang, who lived about two blocks south of Nicole's condo at 875 S. Bundy Drive in Brentwood. It was a great irony that he shared his name (with a minor spelling variation) with Tom Lange, the Senior Detective in the case. Tom Lang the witness could have trashed the efforts of Tom Lange the detective with a few minutes of testimony, which would have been all but unassailable on cross-examination. Indeed, so critical did I think that the testimony of Tom Lang would be that I had my one and only disagreement with Johnnie Cochran about whether or not we should call a witness. Johnnie was the chief, and he eventually decided that Lang would not be used. Because of the result in the case, his decision cannot be faulted, based as it was on the probability that if we called Lang, the prosecution would stretch the trial out *ad nauseam*, and thus get the mistrial - through jury attrition - they so badly wanted.

If given the decision to make, I would have called Lang. He was, I thought, worth whatever risk was involved. People asked me then, and have continued to ask for eleven years, "... well, if Simpson didn't do it, who did?" Tom Lang could have come closer to answering that question than any other person involved in the case. He could not have identified the killers later in a lineup, as he admitted from the outset. He could have said decisively that neither of them was O. J. Simpson.

On the night of June 12th, 1994, Tom Lang and his wife had returned to their home at 975 South Bundy Drive from a trip they had taken together. Tom decided to take his dog for a walk. His wife, who was trying to decide whether to unpack her things or leave the chore 'til morning, noted the time as ten o'clock.

As Tom left his house, he turned left (northwest) on South Bundy drive and walked toward the intersection of Dorothy Street, about six hundred feet away. His dog, a large Rhodesian Ridgeback, was not on a leash. Almost immediately, Lang heard loud voices, as if some people were either partying or arguing. As he drew closer he saw the front of a white Ford truck parked on the west side of South Bundy on the north side of the Dorothy intersection. He had owned no less than eleven Ford trucks himself, and thought this one to be a model F-350.

There was a female on the sidewalk with long, blonde hair, wearing black clothing, talking with a male person standing in the street beside the truck, partially obscured by the open truck door and by a palm tree growing in the space between the sidewalk and the street/ She had an angry look

about her. Northwest of her, on the sidewalk near the entrance to Nicole Simpson's property at 875 South Bundy, was a male person. He was standing in a somewhat crouched position, facing toward the blonde woman, in what Lang thought to be a "menacing" posture.

Lang was concerned that his dog might frighten some of those he was viewing, and for that reason turned left on Dorothy Street, thus avoiding any encounters. He heard no more loud voices, and continued on his way, then returned to his home. He left for work the following day, unaware that anything calamitous had occurred in his neighborhood the previous night. When he learned what had happened via media broadcasts, he realized that he had probably seen Nicole Brown Simpson talking to someone shortly before she died. On the next morning - June 14<sup>th</sup> 1994 at 10:00 a.m., he sat down and wrote out in his own hand a detailed account of what he had seen and heard. He included a sketch which retraced his steps as he had walked past the blonde woman and the two males, and sent a copy to the police. This memo was the *establishing point* of his account of the events we witnessed.

Lang's employer - the owner of the \*\*\* hotel in Santa Monica, was also a lawyer; when Tom told him what had seen, the lawyer suggested that he describe his recollection for a tape recorder while they were still fresh in his mind. This recording was made on Friday, June 17<sup>th</sup> in the lawyer's office, thus creating a second *establishing point*. I have both the handwritten statement and a transcript of the recorded statement.

Officer David Payne of the Robbery-Homicide division of the LAPD interviewed Lang on June 20th, 1994, at 8:30 p.m. Lang offered to retrace his steps of the night of June 12th for officer Payne, who declined the invitation. Payne then filed a one-page written statement allegedly summarizing his interview with Lang (which report I have, with Payne's signature). Some parts of Payne's report were accurate, and other parts were quite inaccurate. These discrepancies may have been just sloppy police work, or they may have been deliberate. On the day of Payne's interview of Lang, his superiors had already arrested Simpson and charged him with murdering Nicole. Lang's evidence, if found to be credible, badly undermined the prosecution's case. In my view, and that of my investigators, there was no *more* credible evidence in the entire case than the account given by Tom Lang ..

Johnnie did not let Lang's testimony go by the wayside easily, not by any means. The final decision was a cliff-hanger of the most classic kind. It occurred at the \*\* hotel in Santa Monica at a Sunday morning brunch on \*\*. Johnny was present with \*\*, Tom Lang's employer-lawyer, myself, Carl Douglas (the case manager from Cochran's firm) and Pat McKenna, who had interviewed Lang on three separate occasions. We reviewed everything that Lang had said, and compared it with all the other testimony relating to the night of the murders. It was, in essence, flawless. McKenna and I argued long and strenuously that Tom Lang should tell the jury and the

world what he had viewed and heard.

But Johnnie was concerned about the "white truck", despite the fact that Lang was quite sure that it was a Ford F-350, which does not look much like - head-on or otherwise - a Ford Bronco. He had visions of Marcia Clark or Chris Darden bellowing in cross-examination that Lang had in fact seen O.J.'s Bronco, and that O. J. was the man behind the passenger door. He also could see Officer Payne on the witness stand, swearing before God and everyone that Lang had told him on June 20<sup>th</sup> that the Ford *could have been* a passenger vehicle. Johnnie's nightmare was that while all of this melee was in progress we would lose three more jurors, or that we would lose them thereafter, and before the case was over, thereby giving the prosecution the mistrial it so badly wanted.

To my knowledge this is the first time that ninety-nine percent of the world has ever heard of Tom Lang, the witness, and what he knew about the murders of Nicole Simpson and Ronald Goldman.

**VI. THE POLYGRAPH:** Many have let me know in one fashion or another that it seemed anomalous to them that I did not follow up on the aborted polygraph examination initiated by Dennis Nellany on that fateful night of June 14<sup>th</sup> 1994. Because I have had such a close relationship with polygraph testing in so many of my cases - famous and not-so-famous - the assumption has been that I knew Simpson couldn't pass, and was therefore ducking the subject. Since much of what has transpired since the trial in this particular arena has been out of public view, most have little idea as to just how wrong their assumptions are.

After O. J. was released from prison, I kept an eye out for some propitious opportunity to revisit the issue of polygraph testing. I had no doubt that he could pass a properly administered test, easily as to any involvement in Ron Goldman's death, and ultimately as to the death of Nicole. Simpson still had - as he had evinced in private conversations throughout the trial - strong feelings for his dead former wife.

During the civil trial in Santa Monica, in December, 1996, opportunity knocked at the door. Plaintiff lawyer Daniel Petrocelli had brought out that Robert Kardashian was present during Simpson's original test attempt in June, 1994, and got before the jury the notion that Simpson had allegedly "failed". Why in the world presiding judge Fujisaki allowed the evidence to come in is a mystery to this day, but I pounced on the chance to retaliate. I spoke immediately with Simpson, lead defense counsel Bob Baker, and my former partner Dan Leonard who was now working for Baker and trying the case with him. Petrocelli had opened the door. We would march through it.

I contacted Robert Brisentine, one of the most experienced and respected examiners in the world. While working for the Army as Chief Polygraph Examiner - "the other side", in lawyerspeak - he had tested my client, Captain Ernest Medina, who had been charged with over one hundred murders and other offenses in connection with the infamous



"Massacre at My Lai 4", a small village in Viet Nam where infants, women and elders were annihilated by American soldiers. Brisentine had been impressive through the most difficult test I have ever witnessed, which took four days. I wanted an examiner who had never been hired by me, or testified as my chosen expert. Bob agreed to test O.J. at my Boston Office during the two-week Christmas recess in the trial which was about to begin. Because of the intense airline passenger traffic at that time of year, we made immediate arrangements to get both men to Boston. When the defense began its case in January, Simpson's trial team would have a surprise for brother Petrocelli.

But the fickle finger of fate intervened. Bob Brisentine's wife became critically ill a few days prior to the scheduled test, and he called to say that he could not leave her side. The polygraph examination was postponed, with plans to run it when Mrs. Brisentine was better, in Los Angeles.

Apparently, during the recess, Judge Fujisaki had had a mighty change of heart. He ordered the reference to the "lie detector" already in the record to be stricken, ordered the jurors to disregard it, and forbade all lawyers and parties to ever mention the term again in his courtroom. My quest to find another examiner was stalled.

At a later time, I approached the editor of the *National Enquirer* with a proposal. Normally, if I contemplated initiating an arrangement for a client's benefit with a newspaper, it would be one of journalistic prestige such as the *New York Times*, or the *Chicago Tribune*, or the *Washington Post*. But this was a situation, I thought, more suited to the likes of the *Enquirer*. I wanted some money put on the table, a lot of money. But not for Simpson or myself.

When an unsolved crime of these dimensions is "out there", there are normally only two ways that it can be cracked after an unsuccessful prosecution. In the first instance, some loser gets caught red-handed in a serious criminal act, and is invited to "give us some one big" so we can "cut you some slack". This is by far the most common means of solution for unsolved murders, especially notorious ones. But in Simpson's case, the chances of the Nicole Simpson-Ron Goldman murders being solved in this fashion was and is remote, even foreclosed.

The LAPD had arrested Simpson prematurely in what Johnnie Cochran constantly reminded their brass was a "rush to judgment". They had sent the prosecutors to trial with what every true expert saw as a tragically anemic case, with very little substance and a plethora of doubt. Now, let's say that Sergeant Smith of the Malibu Division snares Edward, a cocaine Don" and invites him to "rat out" some of his more high-ranking confederates for some crime of greater significance. Edward has a bomb. He confides to the Sergeant Smith that he knows - and heard him admit it - that Alphonse Garcia killed O. J. Simpson's wife. He even saw the bloody knife and clothing several hours after the killing. Trouble was, Garcia had killed the wrong woman by mistake, and then this other guy came along, and

would have been a witness, so Garcia had to kill him too, although it took some doing ...

Smith probes further. Everything he is told rings a corroborative bell. He has a chance to crack "the case of the (last) century". But then he realizes that this can never be. The LAPD would have little stomach for indicting itself for one of the worst investigative blunders in history, by formally accusing another of the crime for which O. J. had been acquitted. If Smith were to identify Edward and his story, Edward will not be long for this world; perhaps Smith would be helped to depart as well. Edward's story is lost forever to history. So much for the "snitch" option of bringing the real killer(s) to book.

But the second method is viable: the cash reward! Some months ago the tidy sum of twenty-five million U.S. dollars was paid to the person who told the United States where Osama Bin Laden's top lieutenant, Al Zaquiri, could be found and bombed to death. Money almost always talks. The *National Enquirer* frequently had its check book at hand if something exciting and exclusive should present itself.

It happened that at the time this idea occurred to me, I lived in Manalapan, Florida, a stone's throw from the national headquarters of the *Enquirer*. If they were to double-cross us in any way, I could get them into a Florida State Court in a hurry, where they might have trouble finding a sympathetic jury. But of much greater importance, their law firm was Williams & Connolly in Washington, the prestigious group of lawyers that represented *Newsweek*, the *Washington Post*, and other notable clients. Edward Bennett Williams, the firm's founder, had been my hero when I was in law school. I had the honor to have lunch with him the day after I took the Bar Examination in 1960. I had worked with the firm on more than one occasion. I trusted them. With them involved and O.J.'s approval, I cut a deal with the *Enquirer*.

O. J. would take a polygraph examination on the issue as to whether or not he had killed his wife by an examiner of *their* choosing, so long as he or she was experienced, a Full Member for more than ten years of the American Polygraph Association, and of good reputation. The *Enquirer* would have the exclusive right to attend and report on the examination, whatever the result, and to videotape it if they wished.

If Simpson passed, the *Enquirer* would offer a reward of two million dollars cash leading to the identification of the perpetrator or perpetrators of the murders. A notice of this reward, to be paid wherever someone entitled to it might specify, was to be widely published by the *Enquirer*. Very simple. Perhaps reward money would do the trick. Fortuitously, with no prompting or information from me, the *Enquirer* selected Bob Brisentine as the examiner they would like to use. I was of course delighted.

And then, for reasons which to this day I do not begin to understand, a short time before the deal was to be consummated, the *Enquirer* ran one of its famously insulting stories about Simpson's daughter. He was

understandably enraged. Any trust he might have been trying to muster - and trust is not easy to come by when dealing with the "supermarket tabloids" - was shattered. We agreed that the deal was off. Perhaps the *Enquirer* had thought we might see success, and didn't want to lose the money, but I doubt it. Cracking the 0.1. Simpson Murder Case would have been worth many times that modest sum to any newspaper, especially one like the *Enquirer*, which flogs its stories again and again.

A number of experiences, most of them sad, have befallen O.J. Simpson since that aborted effort to allow him to show his innocence to a worldwide audience. I am convinced that he sits in jail today because a jury in Nevada believed it was punishing him because he "beat the rap" for these two murder charges, and a number of Nevada judges who said - astonishingly - that he had been accorded a fair trial. But so long as I am alive, there will be one person - aside from Simpson himself - who "knows" *from the evidence* that he did not kill Nicole Brown Simpson and Ronald Goldman.