Throwing the Books at O.J.

After more than a dozen books on the trial, the verdict still doesn't fit

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by Gerald Posner

When a twenty-four-year-old sociopath armed with a twelve-dollar rifle shot and killed John F. Kennedy in 1963, many refused to believe it. Lee Harvey Oswald was a loser, a semieducated loner who beat his wife and failed at everything he tried, from a defection to an attempted assassination of a retired U.S. Army general. His victim, on the other hand, was imbued with almost magical qualities by a largely adoring media. John Kennedy had style, wit, charm, and the potential for greatness. How could Oswald, a nobody, end Camelot in a fraction of a second?

When Orenthal James Simpson, a National Football League Hall of Famer and one of the most popular athletes of his generation, was arrested in June 1994 for the murders of his ex-wife, Nicole Brown Simpson, and Ronald Goldman, a waiter, many people did not initially believe it. This time, the celebrity factor worked to the benefit of the accused. Was it possible that a sports legend, someone with a remarkably positive public image, could brutally murder two people? Simpson was a major celebrity in a city obsessed with celebrity. Even the detectives who quizzed him the day after the murder handled him gently, sidestepping difficult questions. Simpson's defenders offered wildly speculative theories to suggest that the white establishment had conspired to frame their man. For some, especially in the black community, it did not seem possible that Simpson would risk his charmed life to kill two people whom no one had ever heard of.

The resultant farce, *The People of the State of California v. Orenthal James Simpson*, played out in a Los Angeles courtroom for nearly a year. And now more than a dozen books have been rushed to press since the trial. Many have become best-sellers. The appetite for details, even after the verdict, is surprisingly not sated. Beyond those books already published, another half dozen—including tomes from players like Johnnie Cochran and Marcia Clark and journalists Lawrence Schiller and Joseph Bosco—are in the pipeline.

Though there are some surprising revelations in these books, not one answers what to me has become a key question: What is it that allows seemingly bright people to ignore solid facts and instead to embrace nonevidentiary speculation? It certainly runs deeper than whether the victim or the murderer is a celebrity. A popular-movie-and-television culture that emphasizes image and presentation over reasoned analysis—and considers Oliver Stone to be a historian—has certainly helped create a favorable climate for the kind of cynical defense mounted by the Simpson "dream team." But the long decline toward conspiracy mania really started with Oswald's bullets. The JFK case was rife with examples of police in competence, mishandling of evidence, and wretched work by the autopsy doctors. In my 1993 reinvestigation of the
Kennedy assassination, *Case Closed*, I discovered that conspiracy theorists studied all of those mistakes with such microscopic intensity that innocent errors and omissions were often recast in a nefarious light.

The Simpson case was also filled with police bungling, poor handling of the physical evidence, and a botched autopsy, all of which the defense presented as evidence of efficient conspiracy. Johnnie Cochran's early motto "a rush to judgment" was stolen directly from the first major conspiracy book about the JFK assassination, Mark Lane's 1966 *Rush to Judgment*.

Reading every book on the Simpson case almost qualifies as cruel and unusual punishment and should be undertaken only by certified masochists. They run the gamut from weird conspiracy tomes, like *Blood Oath* (Rainbow Books), to dry legal treatises, like *Lessons from the Trial* (Andrews and MeMeel), by Gerald Uelman, a lawyer for Simpson. Although some are elucidating, most are self-pitying apologias from players in the case: for example, Robert Shapiro's *The Search for Justice* (Warner Books), which works much harder at buffing the author's image than it does at trying to convince anyone of his client's innocence. Johnnie Cochran's book, *Journey to Justice*, which was not available for review is apparently as much about Cochran himself as about the Simpson trial.) Interestingly independent journalists account for the only three books that are really worthwhile. Reading them all, however, including the various defense lawyers' restatements of their case, leads to several unmistakable conclusions:

(1) O. J. Simpson murdered Nicole Brown Simpson and Ron Goldman.

(2) The prosecutors botched a strong case through arrogance, negligence, and ineptitude.

(3) Some defense lawyers believed Simpson to he guilty but played the race card to obtain an acquittal.

(4) Judge Lance Ito was a starstruck jurist who exercised little control over a trial that often ran amok.

Although many people feel they are familiar with the evidence, it is easy to forget how powerful it was. Beyond the history of physical abuse to his wife, Nicole, the evidence from the murder scene overwhelmingly fingered Simpson. The books that do the best job of covering this are The Bun of *His Life*, by Jeffrey Toobin (Random House), *Outrage*, by Vincent Bugliosi (Norton), and *OJ Unmasked*, by M. L. Rantala (Catfeet Press). Rantala sometimes gets bogged down in minutiae (be prepared for lengthy DNA discourses), and though Toobin and Bugliosi, both former prosecutors, review the evidence in less detail, their presentations are still informative and damning;

At the murder scene, the killer left several bloody size-12 Bruno Magli footprints. That is Simpson's size, worn by slightly more than 9 per cent of the population, and it was established that he favored Bruno Magli shoes. Blood drops to the left of those prints indicated that the murderer had injured his left
hand or arm. Those drops, when subjected to DNA testing, matched Simpson's blood. (For one drop, the odds were 1 in 170 million that it came from anyone but him.) Coincidentally Simpson bad cuts and abrasions on his left hand, including a deep gash on his middle finger, which happened on the night of the murders. There were also blood drops on the rear gate to his ex-wife's condominium on Bundy Drive.

The blood on the back gate is a perfect example of how prosecution errors gave the defense room to argue conspiracy As Rantala writes, "Unless the back-gate blood was planted, it is difficult to see how Simpson could possibly be innocent." Five police witnesses testified that they had seen blood on the gate within hours of the murders. Yet the criminalist Dennis Fung overlooked the gate blood when he initially gathered evidence, and he did not collect it for more than three weeks. There was enough blood there to allow for a much more precise DNA test than the one done for the five drops from the pathway. The chance that the blood on the rear gate belonged to somebody other than Simpson was 1 in 57 billion. (There are approximately 6 billion people on the planet.)

However, the defense lawyers were devilishly clever in raising suspicions. First, they implied that since it was dark, the police might have seen berry stains. (There are berry trees nearby) But there were no berry stains on the fence, and the police testimony was unequivocal that it was blood. The defense then countered that since Fung had not seen the blood on the morning after the murders, it must not have been there. However, the defense had effectively demonstrated that much of Fung's forensic work was riddled with errors- why wasn't this another of his mistakes? Even the assistant prosecutor who prepared Fung for his testimony Hank Goldberg, writes in The Prosecution Responds (Birch Lane Press) that Fung was incompetent.

The defense had another trick to pull. It found an expert who claimed that a blood preservative, EDTA, was present in the gate blood-indicating that it came from a laboratory sample and had therefore been planted. But EDTA can occur for many reasons, and a forensic chemist, the FBI's Roger Martz, was adamant that if there was any EDTA in the gate blood, it was in parts per million, more than a thousand times less than the concentration present in lab-preserved blood.

The defense actually had its two leading forensics experts, Michael Baden and Henry Lee, visit the crime scene shortly after June 12, the night of the murders. Fung finally collected the rear-gate blood on July 3. Since I knew Baden from a forensics panel he had directed as part of a reinvestigation into the JFK assassination in the late 1970s.I decided recently to call and ask him a very simple question: Had he and Lee noticed blood on the rear gate at the crime scene? If they had, it would virtually destroy the planting theory "You're the first person to ask me that besides the defense team, Baden said (which doesn't say much for the prosecution). Then, after a prolonged silence, he added, "No comment. I can't say until after the civil trial."

I'd be willing to wager that under oath, he will say that both he and Lee saw bloodstains on the fence-and the defense team knew it. Moreover, the
prosecution, and especially the jury, never applied common sense to the issue of the rear-gate blood. What about contemporaneous notes that showed it was present right after the murders? Would five police officers decide to perjure themselves and frame Simpson, almost immediately after the murders, even though they had no idea whether the rest of the blood at the scene would finger a different killer-or if Simpson was even in Los Angeles on the night of the crimes? Would the police have planted the gate blood and then not ensured that the criminalist collected it tight away? (What good is planted evidence if you don't make it part of the case against the defendant?)

But the jurors apparently did not ask those logical questions. In Madam Foreman (Dove Books), by Simpson jurors Armanda Cooley Carrie Bess, and Marsha Rubin-Jackson, Cooley says that several jurors questioned why 'EDTA was in the blood at the gate" but not in Fung's other samples. And although the prosecution spent considerable time showing how and why the samples of the pathway blood had degraded because of the way Fung improperly stored them in a sweltering van, Cooley still writes, "It should have deteriorated along with the other samples."

The gate blood was only one piece of evidence that definitively pointed to Simpson. Also at the murder scene, the killer had dropped a leather glove. It was one of only two hundred pairs ever sold in the U.S., and a receipt revealed that Nicole Brown had purchased a pair four years earlier. Photographs of Simpson showed him wearing those gloves. Next to Ron Goldman's feet was a knit cap. It contained hairs that matched Simpson's and fibers like those from his car. On Gold man's shirt, there were also Simpson hairs and fibers that matched the color of clothing - Simpson was seen wearing only an hour before the killings. Those clothes were never found. (Astonishingly Goldberg discloses in his hook that during the search of Simpson's house, an assistant criminalist, Andrea Mazzola, had actually seen clothing, in a hamper, resembling the outfit that others had observed Simpson wearing the night of the murders. She did not collect it, she said, because "no one asked me. That wasn't my job." So much for coldly efficient conspirators out to convict O. J. at any cost.)

Simpson had no alibi for the time around the murder. When a limousine driver arrived to take him to the airport, approximately fifteen minutes after the murders, Simpson was not home.

At his house on Rockingham, the trail of incriminating evidence was just as strong. His car contained his own blood and that of both victims. Here again, the defense suggested it was plant ed. Yet, as Rantala points out, there was only .07 milliliters of blood in the car, a minuscule amount. What kind of frame-up is that? If a group of rogue cops had decided to frame Simpson, they would more likely have wiped blood all over the car, not have used a Q-tip to dab a tiny smear. The defense told the jury to expect much more blood in a car driven by a knife-wielding double murderer who had just fled a bloody crime scene. However, the small amount of blood writes Rantala, is "highly suggestive of someone taking great pains to keep blood off the Bronco surfaces- precisely as a murderer would do." Yet what did the jurors think, without a shred of evidence to suggest that the blood in the car had been
planted? Forewoman Cooley thought it suspicious that the blood was found only "after they had torn the inside of the car completely up," and therefore she "felt it looked planted."

Another piece of evidence that seemed to seal the case against Simpson was the match to the Bundy glove found on his property. Incredibly in their book, the three jurors repeatedly reveal their failure to grasp some of the case's most fundamental facts. Juror Carrie Bess says, "Had the cut [on his hand] been as bad as they say it should have been, some of his blood should have been on the Rockingham glove somewhere, but one on his blood was on it." In fact, three different sections of that glove had Simpson's blood on them, as well as fibers from his car, Nicole's hair and blood, and Goldman's blood and shirt fibers. But that glove was found on a pathway in the rear of the Simpson estate by Detective Mark Fuhrman, who later became a lightning rod for racism in the case. Did Simpson commit the murders, and did some of the police, like Fuhrman, plant evidence to make sure the case was ironclad?

Fuhrman was the seventeenth cop to arrive at the murder scene. More than half a dozen police had scoured the crime scene with high-powered flashlights. Many had noticed a single glove near the victims. Somehow; the defense expected the jury to believe that Fuhrman saw what sixteen other police had missed-a second glove at the murder site. Then, although contemporaneous police reports show that he was never alone, he somehow magically hid the glove without disturbing the microscopic blood and hair evidence or transferring any of his own clothing fibers to it. Of course, at the time Fuhrman would have found the second glove, he had no idea whether Simpson was even in the country that night For all he knew Simpson had an airtight alibi. Moreover, what if the blood on the glove was not Simpson's? Fuhrman had no way of knowing.

Yet what did the jurors think? Madam Foreman reveals that Lionel Cryer had a problem with the glove and why it was there. Gina Rosborough also had problems with the glove, particularly regarding why there was no blood near by Cooley says, 'A few jurors truly believed that Detective Fuhrman had planted evidence." Another juror, probably Anise Aschenbach, announced that since "we know he is a liar," it was not necessary to deal with evidence he found. Marsha Rubin-Jackson writes, "I don't put it past Fuhrman picking up all that stuff out there. . . .I don't put it past [lead detective Philip] Vannatter trying to help-him."

The glove was only one part of the physical evidence that turned up at the Simpson estate. Simpson's blood drops led into his house and were in his bathroom. The defense argued, incredibly that Vannatter planted that blood. The defense took this tack because Vannatter did not immediately book a vial containing Simpson's blood but instead gave it to Fung three hours later at Simpson's house. The speculation was temporarily boosted when the nurse who took Simpson's sample initially testified that he had taken 8 cc and the prosecution could account for only 6.5 cc. The nurse later suggested that he had used a smaller syringe and had taken only 6.5 cc. But the damage had been done with the jury "I have a problem when you state you don't know how much [blood] you draw" Cooley writes.
Defense lawyer Alan Dershowitz spends several pages of *Reasonable Doubts* (Simon & Schuster) trying to bolster the argument on this issue of unaccounted-for blood. But Rantala debunks it in a few sentences with elementary logic: Simpson himself admitted, in a statement to Vannatter the day after the murders, that he had cut his hand that night and had walked around his estate, bleeding for some time. *Why would Vannatter plant Simpson's blood around his house when he knew it was already there?*

A similar controversy developed over a pair of dark socks in Simpson's bedroom that contained traces of the same blue-black clothing fibers found on Goldman's shirt, as well as blood from Simpson and his ex-wife. The defense again yelled frame-up. As Rantala succinctly points out, the socks did not contain an unusual amount of EDTA, the preservative that might indicate police foul play. The only reason there was any doubt about the socks was, again, Fung's negligence in failing to notice any blood when he initially inspected them.

Again, it would have been ridiculous to plant Simpson's blood on the socks, since he had already admitted that he had cut himself and bled around his house. Moreover, how did Nicole's blood end up on that sock? Vannatter did not have any of the victims' blood, and none was obtained from their bodies until the autopsy—more than a week later. What about the fibers found on the socks, the same as those found on Goldman's shirt?

Those fibers matched the color of sweat clothes Simpson was seen in less than an hour before the murders. Are we to believe that police detectives found the murderer's clothes but instead of turning them in as evidence used a pair of tweezers merely to remove some microscopic fibers and plant them on Goldman's shirt and the socks?

It was significant that when the supposedly innocent Simpson left hurriedly for the airport, he refused to let anyone touch the small bag that was mysteriously not with him when he returned the next day from Chicago. It has never been accounted for.

People have been executed on far less persuasive evidence. But if the Simpson hooks present the strength of the evidence against him, they also clearly set forth the shabby reasons for his acquittal, highlighting the shortcomings of the police and the judicial system. There is no shortage of people to castigate.

Vincent Bugliosi, the former Los Angeles district attorney famed for having successfully prosecuted Charles Manson, presents the most damning indictment. "The prosecution of O.J. Simpson," he writes, "was the most incompetent criminal prosecution I have ever seen." Toobin's far less strident account imparts the same feeling that the prosecutors were too arrogant and at times incompetent. They thought their evidence was so strong that they could ignore the jury consultant and instead try the case before a racially mixed downtown Los Angeles panel, exactly the type most likely to return an acquittal.

Then, once the trial was under way the prosecutors diminished the impact of
The evidence by presenting it poorly. They also failed to present any evidence on key issues, such as the slow-speed car chase and the aforementioned Simpson statement to the police the day after the murders. In that statement, among other incriminating slips, O. J. claimed he had badly cut the middle finger of his left hand, twice, on the night of the murders and had bled around the estate at almost exactly the same time the murders took place. When asked how he'd cut it, Simpson first replied, "I don't know" and later, when pressed, said, "I have no idea, man." As Bugliosi points out, "That ridiculous statement alone, all by itself shows an obvious consciousness of guilt." Of the entire thirty-two-minute interview Bugliosi writes, "Give me a yellow pad and one hundred hours, and I would have convicted Simpson on that statement alone."

The Simpson statement to the police was never introduced into evidence. In *The Prosecution Responds*, Goldberg contends, rather weakly that introducing this statement would have given Simpson a forum for maintaining his innocence without allowing the prosecution to cross-examine him.

Although Christopher Darden (*In Contempt*, HarperCollins) and Goldberg insist that the prosecutors presented the best case possible and were largely hampered by Judge Ito's failure to control the trial, their assertions somehow ring hollow. Darden undercuts his own brief by reveling in his close relationship with fellow prosecutor Marcia Clark. He fondly describes a weekend getaway they managed in San Francisco, "parties where movie stars lined up to meet us, and their evenings together, which started about 10:00 p.m. and consisted of a few drinks and then listening to their music collections. By emphasizing so much socializing, Darden inadvertently adds credibility to Bugliosi's harsh judgment that the prosecution did not work hard enough covering the basics: interviewing witnesses, preparing the police, reviewing the documents.

The trial errors by the prosecutors were compounded by the negligence that permeated the police investigation. In this respect, Toobin and Bugliosi are joined by dreamteamers Dershowitz and Uelman. All are biting in their critiques. The list of police and medical-examiner errors is too long to catalog here. It is upsetting, but not necessarily surprising, that though the police on the Simpson investigation were part of a special squad established for high-profile crimes, they still committed numerous blunders. Of course, this was no ordinary case. Most defendants do not have the money to hire a small army of private investigators to pore over every bit of police paperwork to uncover mistakes. Once mistakes were found, the defense team then did a solid, if cynical, job of using those foul-ups as a pretext to imply frame-up. And Fuhrman made the defense theories palatable to the jury.

The nature of the Simpson trial fundamentally changed once the race card was played. In his book, *The Search for Justice*, Robert Shapiro claims he opposed making race a factor, and he blames his co-counsel, Johnnie Cochran, for that. Yet Toobin, in his comprehensively researched book, methodically puts the lie to Shapiro's claim, showing that he personally developed the race strategy and turned against it only when he was shunted aside on the defense team.

Then there is the jury. Bugliosi writes that although "the jury could hardly have been worse, he clearly believes that if he had had an opportunity to
present the state's case, a hung jury would have been likely, and he might even have garnered a guilty verdict. I am not so convinced. *Madam Foreman,* written by three jurors, also contains a post-verdict forum with several other jurors. Using the JFK assassination theme as its subtitle, 'A Rush to Judgment?' it is a disheartening hook that reveals a jury seemingly hell-bent on acquittal and unmoved by the evidence.

For instance, Toobin is devastating in showing that the prosecution destroyed Simpson's doctor, Robert Huizenga, on cross-examination. "In answer after answer, Huizenga struggled to shade his answers to help the defense," writes Toobin. "It was an astonishing, and appalling, performance." Cooley, however, writes that Huizenga was "very impressive, very knowledgeable, a very successful doctor. I believed him."

When race was made a factor, it clearly galvanized the jury (though they have insisted it played no role in their decision), and they incorrectly emphasized Fuhrman as the heart of the prosecution's case. Cooley says that when she saw him, she knew "he was a snake.... He sort of looked like a Ku Klux Klan or a skinhead with hair.... When I heard those things about the n-word, it was like a hot flash hit me."

'And Fuhrman was the trial," Carrie Bess says, then goes on to list a string of inaccuracies. "Fuhrman found the hat [not true]. Fuhrman found the glove [one of two]. Fuhrman found the blood [only on the Bronco door, nowhere else]. Fuhrman went over the gate [so?]. Fuhrman did everything. When you throw it out, what case do you have?"

If every piece of evidence that Fuhrman found had been excluded, there would still have been overwhelming evidence to convict. Unfortunately for the victims, this jury was set only to return an acquittal. The evidence fell on deaf ears.

0. J. Simpson got away with murder. FD

**THE 0. J. OPUSES**

(In ascending order of Interest)

1) *0. J. A TO Z,* by Clifford Linedecker (St. Martin's Griffin). Part dictionary, part almanac, burdened with arcane but not necessarily interesting entries.


3) *BLOOD OATH,* by Steven Worth and Carl Jaspers (Rainbow Books). Offers the preposterous theory that the murders were actually committed by white supremacists, who then framed Simpson in the hope of starting a race war. Calling Oliver Stone.
4) **REASONABLE DOUBTS**, by Alan Dershowitz (Simon & Schuster). More legal text than an examination of the trial. His underlying argument is captured in the statement "Truth, although one important goal of the criminal trial, is not its only goal."


6) **THE SEASON FOR JUSTICE**, by Robert Shapiro (Warner Books). May be the most irritating of the lot. He concentrates on the one issue most critical to him: his own public image. Unless you love Shapiro, pass.

7) **MADAM FOREMAN**, by Armanda Cooley, Carrie Bess, and Marsha Rubin-Jackson (Dove Books). Confirms that the jury consultants were correct: Black women were the most sympathetic to Simpson and least likely to convict. Read only if you want to get angry.

8) **IN CONTEMPT**, by Christopher Darden (HarperCollins). A moving personal story about how the black community ostracized Darden for prosecuting Simpson. It also unwittingly reveals the prosecution's effort as surprisingly disorganized.

9) **THE PROSECUTION RESPONDS**, by Hank Goldberg (Birch Lane Press). Sprinkled with some new information, including the existence of a fingerprint from Al Cowlings, Simpson's buddy, on the doorjamb of Simpson's Bronco, which almost led the prosecution team to charge Cowlings as an accomplice.

10) **O. J. UNMASKED**, by M. L Rantala (Catfeet Press). A surprisingly good read from a small press and an author who is "a writer, chess player, and computer buff." Filled with a wonderful dose of common sense and a methodical presentation that leaves no doubt of Simpson's guilt.

11) **OUTRAGE**, by Vincent Bugliosi (Norton). The book to read if you feel the verdict was wrong. Bugliosi damns all parties in an unrelenting I-could've-done-it-better tone.

12) **THE RUN OF HIS LIFE**, by Jeffrey Toobin (Random House). The best of the group- top-grade journalism that lays out the history of the case, by the *New Yorker* writer who broke the story that the defense intended to attack Fuhrman and raise the race issue.

As for Simpson's own book, **I WANT TO TELL YOU** (Little, Brown), I did read it but decided not to include it, since I limited this review to nonfiction books. Even if read as a novel, however, it is a miserable, narcissistic mess. Avoid at all costs, since he does not deserve to earn money from it. Freedom is more than he is entitled to.
Where people decide to use both words and action by hitting someone with a book really, really hard; because being bonked on the head with a few thousand pages' worth of hard-bound literature hurts something fierce (the fact that watching someone get conked on the head with a book is inherently funny helps too). Also an alternative melee Weapon of Choice for the Squishy Wizard, White Mage, Black Mage, and other magical or scholarly types if the writer decides that a Simple Staff is too fearsome. After Throwing the Books at O.J. After more than a dozen books on the trial, the verdict still doesn't fit. November 1 1996 GERALD POSNER John Seeger Gilman. Throwing the Books at O.J. GERALD POSNER November 1 1996. View Article Pages. AMERICAN SCENE. Throwing the Books at O.J. After more than a dozen books on the trial, the verdict still doesn't fit. November 1 1996 GERALD POSNER John Seeger Gilman. Sign In to read this article. Get instant access to 85+ years of Esquire. Subscribe Now! Exclusive & Unlimited access to Esquire Classic - The Official Esquire Archive. Every issue Esquire throw the book at. To give someone the maximum sentence for a crime or penalize very harshly. Marty really got screwed over that jaywalking charge when the judge threw the book at him and gave him a life sentence in the federal do-me-in-the-ass prison, by Nick D August 26, 2004. 141. 24. Flag. Get the throw the book at neck gaiter and mug. Jan 5 Word of the Day. Coup Clutz Clan. The group of Senators, Representatives, lawyers, and others who have teamed up to attempt to overturn the election of Joe Biden in favor of Donald Trump. I wonder if Marco Rubio is going to join the Coup Clutz Clan? by