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BOOK REVIEW: IF I DID IT BY OJ SIMPSON IF HE DID IT, WOULD IT MATTER?

Kimberly Nguyen*

Last month's release of OJ Simpson's previously cancelled book *IF I DID IT* proved to be controversial, raising an abundance of moral and legal issues. The book is a hypothetical tell-all, an account of how OJ Simpson would have murdered his estranged wife, Nicole Brown Simpson, and her acquaintance, Ron Goldman, had he been the true killer, although even post-publication, Simpson still maintains his innocence.

Public outrage initially forced the cancellation of Simpson's book, but the project was revived once the manuscript gained new sponsors. Now, the controversy lies in the new owners of the book's rights – the Goldman family. Why would they want to be involved with such a morally repugnant concept – a self-described hypothetical confession written by the man whom they believe killed their beloved family member? While the Goldmans may seem like unlikely supporters of the book's publication, they argue that buying the rights to Simpson's manuscript serves as restitution for the murders they believe he committed in 1994. Acquiring the rights to Simpson's story was their final resort, their final attempt to seek justice in a legal system that they believe has repeatedly failed them.

The Goldman family had first been robbed of their sense of justice when Simpson was acquitted of the two murders in his 1995 criminal trial. Despite the overwhelming amount of evidence presented by the prosecution at trial, the jury found that there was simply not enough to prove beyond a reasonable doubt that Simpson had committed the murders of Ron Goldman and Nicole Brown Simpson. This standard of proof, which "protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged,"¹ proved to be a hurdle for the ten men and two women sitting on the jury. The handling of evidence, unrealistic timeline, and allegedly racist and dishonest lead police officer were all contributing factors to the jury's decision. Moreover, the blood-stained gloves that were found near the crime scene – a valuable piece of evidence – did not fit comfortably over Simpson's hands; and as his lawyer Johnny Cochran famously dictated to the jury: "If the glove doesn't fit, you must acquit."

Unsatisfied with the verdict, the Goldmans brought Simpson to civil court, where he was found liable for wrongfully causing the deaths of Nicole and Ron under the preponderance of the evidence standard of proof, requiring only a finding that it was more likely than not that Simpson was responsible for the murders. While seemingly a victory for the Goldman family, the \$33.5 million dollars in damages Simpson owed never reached their hands, due to various legal technicalities of which he and his team of lawyers took advantage. As a beneficiary of several pensions, including his NFL pension, Simpson is protected from using the money to pay the civil judgment. He established companies in the name of his two children, the money of which is also shielded from the Goldmans. On the advice of his legal "Dream Team," he moved to Florida, which

has a Homestead Law protecting his house and a right-to-work policy, safeguarding his wages.

Frustrated with Simpson's ability to evade all responsibility related to the civil judgment, the Goldmans reviewed their options, which on the advice of their attorneys included placing a lien on the rights, title, and interest of Simpson's interest in his *IF I DID IT* manuscript – the very same book they had recently fought so hard – and successfully – to prevent from publication. Opponents of the book's publication and the Goldmans' sponsorship accused the Goldman family of being hypocrites who are "commercializing blood money." However, faced with what the Goldman family referred to as a do-nothing-or-fight decision, they decided to fight Simpson "tooth and nail to end up with the book ourselves, knowing we took away his work product . . ."

According to the Goldman family, there was no other choice. Publishing the book was not done to cause pain, to bring Ron back or to profit; rather, it was the only way they could take something away from Simpson and enforce their legal right to the civil judgment.

While the Goldman family is profiting financially from the book – it has reached bestseller status on New York Times and Amazon.com lists – OJ Simpson may still be profiting from the publicity. Once again, the attention is focused on him, even with the additional prologue, afterword, and commentary (all written by OJ Simpson critics) that surround his story. In the end, the book, regardless of who owns the rights, is Simpson's – his story, whether hypothetical or not, in his own words. The question now remains whether the book has served its purpose of forcing Simpson to answer to the murders of Nicole and Ron, or whether the system has failed the Goldmans yet again, as double jeopardy prevents Simpson, despite his "confession," from being tried again in criminal court for the two murders.

The principle of double jeopardy has been recognized for centuries in England. Colonial lawyers Lord Edward Coke and Sir William Blackstone are credited with solidifying its importance in the courts, "no man is to be brought into jeopardy of his life more than once for the same offense."² However, the legal atmosphere in which the concept of double jeopardy developed was vastly different from the contemporary American context with which we have become familiar.

Coke's commitment to double jeopardy was likely rooted in his hope to mitigate the tough English criminal penalties while simultaneously weakening the king's power. Today, double jeopardy serves two primary purposes: 1) protecting against wrongful convictions and 2) preserving the integrity of the criminal justice system. The premise behind the former purpose is that it would be harder for a defendant to argue his case a second time due to a lack of resources necessary to litigate two times and the disadvantage of having the prosecution familiar with the defendant's entire case. The latter rationale is justified by the idea that there must be some finality in the criminal process to protect defendants from additional and unneces-

sary sufferance, both financial and emotional. Furthermore, it encourages consistency in the criminal process and preserves judicial resources.

Although the civil jury found enough evidence to satisfy the preponderance of the evidence standard, the jury in Simpson's criminal case could not find enough compelling evidence to satisfy the reasonable doubt standard. With the debut of *If I Did It*, however, Simpson erases any reasonable doubt that would have been left in the jury's mind with the portrayal of his marriage to Nicole and the description of the events the night of the murder.

In the famously controversial narrative, Simpson details the evolution of his relationship with Nicole Brown Simpson, his second wife. He describes their marriage as strong, initially, but which slowly spiraled to its nadir with Nicole's secret trysts and worsening drug problems. Simpson downplays the incidents of abuse recorded by the Los Angeles Police Department, swearing he never touched Nicole, and emphasizes Nicole's spontaneous and irrational bursts of rage, often justified by her frustration with being known as "OJ's wife." After their separation, Simpson, who was hopeful to reconcile, was repeatedly advised by his friends of Nicole's new friends and wild behavior. Nicole would even confide in him when she started dating men, who, much to Simpson's chagrin, were often invited back to her condo while their children were inside sleeping. Simpson's aggravation began to increase with each passing day, until finally it culminated on the night of the murders.

"The Night in Question," as it is referred to by a chapter heading of the book, began with their daughter's recital, where Simpson was already frustrated because he had been in an argument with his girlfriend Paula over his refusal to invite her to the recital, for fear of any unpleasant interaction with Nicole. After arriving to the venue, Simpson was further disturbed by Nicole's revealing outfit, and his anger peaked when a friend, Ron Fishman, relayed to him the scandals in which Nicole and her friends were involved. Fishman's words "We don't know the half of it" resonated in Simpson's mind and haunted him the rest of the night. Still fuming once he was home and after reflecting on his own parents' relationship with each other and their children, Simpson was greeted by an unexpected visitor, his friend Charlie, whom he convinced to accompany him to Nicole's condo to "scare her," which justifies his wearing a hat and the now infamous gloves, as well as why he had the murder weapon with him: "I reached into the back seat for my blue wool cap and my gloves. I kept them there for those mornings when it was nippy on the golf course. I slipped into them. . . . I reached under the seat for my knife . . . I kept [on] hand for the crazies." While the circumstances of the events leading up to the murders were described at length – Ron returning glasses that Nicole's mom had left at his family's restaurant, the dog Kato wagging his tail at the sight of Ron, and Simpson's suspicions when he observed dim lighting, mood music, and candles inside the house – the details of the actual murders were hazy (introduced with the caveat "Keep in mind, this is hypothetical"), although he did manage to blame Charlie for facilitating them:

I noticed the knife in Charlie's hand, and in one deft move I removed my right glove and snatched it up. . .

Then something went horribly wrong, and I know what happened, but I can't tell you exactly how. . . . The whole front of me was covered in blood, but it didn't compute. . . . Both [Ron] and Nicole were lying in giant pools of blood. I had never seen so much blood in my life. It didn't seem real, and none of it computed.

Had a jury heard this version of the story, complete with motives for killing his drug-addicted wife and her supposed lover, Simpson would undoubtedly have been found guilty beyond a reasonable doubt. The Fifth Amendment, however, which protects a criminal suspect against self-incrimination, saved Simpson from having to testify at his criminal trial. Now, the Fifth Amendment comes to his aid once more, this time in the form of double jeopardy, which prevents a retrial of the murder charges despite his publicized "hypothetical" confession.

When considering the aforementioned motivations for double jeopardy in the circumstances of the Goldman family, it appears that neither purpose would be fulfilled by shielding Simpson from a second criminal trial. First, it seems that it would go against preserving the integrity of the criminal justice system if a man is acquitted of two murder charges, then, in effect, confesses to the murders, yet cannot be tried again on those same criminal charges. Second, double jeopardy would not seem to protect Simpson from a wrongful conviction, but rather would help him to maintain a wrongful acquittal.

Where does this leave the Goldman family? They first lose Ron, but now may not even have the opportunity to hold who they believe to be Ron's killer accountable, because the justice system that is supposed to be helping them could actually be failing them. While the Goldmans are acquiring part of their civil judgment through the profits of Simpson's book, Simpson has still managed to evade criminal conviction and continues to live comfortably off of his NFL pension, barely affected by the civil judgment. Ironically, because of the Fifth Amendment, the Goldmans may never see the true killer brought to justice over the murders of Ron and Nicole.

¹ *In re Winship*, 397 U.S. 358, 364 (1970).

² Jay A. Sigler, *A History of Double Jeopardy*, 7 AM. J. LEGAL HIST. 285, 295 (1963) (citing 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 335 (1790)).

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