

# Podium

## The Key to the Desired Verdict

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EVER SINCE THE verdict of "not guilty" was returned on all but one of the defendants in the Rodney King case, people all over the country have been incredulous, asking how the jurors could have made such a decision. The fact that the venue was changed from the socially and economically diverse city of Los Angeles to Simi Valley, a conservative, mostly white, middle-class community has led many citizens to blame the verdict on racism.

Yes, the attitudes and experiences of white, middle-class jurors in Simi Valley are different from those of jurors in multi-ethnic, economically diverse Los Angeles County and undoubtedly had some effect on the jury's perception of the evidence. Yet it is too simplistic to say that the verdict is due solely to racism or the change in venue. Amidst the street violence and political uproar that followed the verdict, the most important reason that the officers were acquitted has been overlooked: Defense counsel developed a compelling case, bolstered by pretrial research designed to determine how best to present the case to the jury.

Typically, pretrial research tests counsel's case strategy by determining how jurors are likely to perceive the key issues and evidence. This is most often accomplished by randomly recruiting two or more surrogate juries from the venue, 10 to 12 weeks prior to trial. After hearing summaries of the case and the testimony of key witnesses, the jurors are asked to deliberate to a verdict. By observing how surrogate jurors react to the witnesses and the evidence, jury consultants can identify the most salient arguments on both sides of the case, the issues and evidence likely to be distorted or ignored and the personal experiences that significantly influence juror's decision-making. This information is then used to help counsel create and communicate the most persuasive case.

Although the research that was carried out in the King case is privileged information, defense counsel made public the fact that they had hired a jury research consultant to assist them. This fact, combined with what we now know transpired during the trial, makes it possible to surmise what defense counsel knew prior to trial about how the jury would react to the evidence,

### Insufficient Evidence

The most critical information that pretrial research would have uncovered in the King case is now obvious: The videotape of Mr. King's arrest and beating would not be sufficient to convict the officers. Jurors did not accept the tape as de facto evidence that a crime had been committed. Rather, they felt compelled to know why the violence had taken place.

The fact that a jury would demand to go beyond the evidence recorded on videotape could only have been uncovered through pretrial research. Standard legal methods and common sense are not enough. Indeed, common sense points to the opposite conclusion. The crime seemed obvious to most people who viewed the videotape. The officers, accused of assault and excessive use of force in the name of authority, were seen beating Mr. King with their nightsticks some 56 times in less than 90 seconds.

This type of violence produces an immediate emotional revulsion in most people. The scene was brutal, and it is understandable that the prosecution, without the benefit of pretrial research, made the videotape the centerpiece of its case.

Meanwhile, defense counsel, empowered with the knowledge that the videotape, while potentially very damaging, would not eliminate reasonable doubt, sought to place the tape in context. This was done very successfully at trial, as defense lawyers detailed at every possible juncture the high-speed chase that led to Mr. King's arrest. Mr. King's beating was positioned not as the beginning of the story, but as the end of a frantic, high-speed chase by police in the line of duty — a chase that ended with Mr. King emerging from his vehicle and charging menacingly at the officers.

Pretrial research also would have alerted the defense that even within this context the tape still could be very damaging because jurors were likely to react emotionally to the violence. Drawing upon well-known psychological principles, the defense desensitized the jury to the violence by showing the tape again and again. This technique took advantage of the fact that initial negative reactions to filmed scenes of violence tend to subside when the scene is viewed repeatedly.

### Linked Perceptions

In addition to placing Mr. King's arrest in context and desensitizing the jury to the violence, the defense adroitly linked the tape, frame by frame, to the officers' perception of

the danger Mr. King posed to them. During direct testimony, the officers were questioned about almost every frame of the tape. They were asked words to the effect of, "As you look at the tape, tell us, in your mind, did Rodney King present a clear and present danger to you at the time?" — to which the officers answered affirmatively. By going through this process again and again, the defense humanized the officers, emphasizing their state of mind and the second-by-second decisions they were making.

As important, playing the tape frame by frame was also effective in changing jurors' perception of what actually was occurring on the tape. Violence is invariably associated with motion — motion that still pictures can-

## Pretrial testing would have shown the videotape of Rodney King's arrest was not enough to convict.

not convey. This change in the vehicle through which the evidence was presented allowed the defense to move jurors' focus subtly from the violent movement of the nightsticks, so apparent on videotape, to Mr. King's movements which, at the beginning of the tape, are clearly threatening.

Because most jurors were looking for a way to make sense of the violence, to understand why it had occurred, they readily accepted the defense contention that Mr. King's movements illustrated the final scene of the chase and were evidence of his continued attempt to harm the officers or to escape. Ultimately, this change in perception justified the officers' continued use of force in most jurors' minds and ensured their acquittal.

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