

## **Rodney King v. City of Los Angeles. A Word is Worth a Thousand Pictures**

*It is said that a picture is worth a thousand words, but there are times when a word can be worth an entire video when it comes to revealing what is in the mind of the speaker.*

*That was the case when it came to revealing what was in the minds of the Los Angeles Police officers who were shown beating Rodney King in the notorious video taken by George Holliday from his second story terrace across the street from the beating. The sensational video was shown on local, national and international television. It went viral before going viral was trendy.*

*Along with almost everyone else in the United States and most of the Western world, I saw the video and I wondered what the police were saying to King as they were beating him. Revealing what is being said, often under the most difficult or extraordinary circumstances, is a vital part of my expertise. Hence, I was asked to analyze the sounds on the Rodney King video.*

*I played the results to the jury in the civil trial Rodney King v. the City of Los Angeles.*

*In my studies of the case, I came to understand King's Odyssey, the convoluted sequence of legal cases that culminated in the trial, and the historic riots that surrounded the case.*

On the evening of Saturday March 2, 1991, Rodney King and a couple of his friends were at another friend's house in Altadena, California watching a basketball game and drinking malt liquor. At about midnight, King and his buddies Bryant Allen and Freddie Helms piled into King's 1988 Hyundai Excel and drove westward on the Foothill Freeway as it skirts the San Gabriel Mountains at the northern edge of Los Angeles.

In spite of overpasses that enshroud it and interchanges that entangle it, the Foothill Freeway is the most attractive freeway ride in Los Angeles, particularly as it traverses the Verdugo Mountain Pass and swoops by the highest hills in the Los Angeles area. However, given that it was dark at that hour, we may assume that King and his friends were not sightseeing. To this day they say they don't know where they were going. They were just driving. Because it generally has less traffic than other freeways in the Los Angeles area, the Foothill Freeway seems to encourage, or at least allow for, higher speed travel than other freeways.

### **The Chase**

At about 12:30 A.M. on Sunday, King's vehicle was spotted in the rear view mirror of a California Highway Patrol car driven by Officer Melanie Singer. Because it was approaching at high speed, Singer exited at the next off-ramp, waited moments for it to pass, and then returned to the freeway behind it. She turned on her red emergency

lights and her siren to signal them to pull over. King did not pull over. Instead, he led Singer on a chase of up to 110 miles per hour on the freeway and then from 50 to 80 miles per hour on city streets, nearly causing numerous accidents along the way. Singer called for help. With sirens blaring, other police cars, and then a helicopter, joined the chase.

After nearly eight miles of city streets, King's car was cornered. All three men were ordered to get out of the car and lie face down on the ground. Passengers Bryant Allen and Freddie Helms complied and were taken into custody without further incident.

King, however, initially refused to leave the car. When he first attempted to leave, he had not unhooked his seat belt so he got half way out and then lurched back in. He then unhooked his seatbelt and managed to leave. When he emerged, he seemed to be giggling. He slapped the ground and waved to the helicopter overhead. He leaned against the hood of the car as instructed, and then he grabbed his buttocks. Why? Only Rodney King knew.

Officer Singer, who thought King was reaching for a gun, drew her weapon and pointed it at him. She ordered him to lie down on the ground, which he did. Then, with her weapon still drawn, she approached King, intending to make the arrest.

By this time several more police cars, with additional personnel, had arrived at the scene. The highest ranking officer among them, Sergeant Stacy Koon, took charge. He ordered Singer to holster her weapon and back off. It is LAPD doctrine, and in general standard police procedure, not to approach a suspect with a drawn gun because the suspect might gain control of it. Koon wanted to avoid the possibility of a dead suspect, let alone a dead police officer or a dead bystander.

## **The Video**

The sounds of the helicopter and police sirens awakened George Holliday, who lived across the street from the incident. He stepped out onto the terrace of his second story apartment and saw policemen beating a black man with batons. He got out his Sony camcorder, which he had purchased a couple of weeks earlier as a Valentine's Day present for his wife, and made a video of the beating.

As the video begins, it shows King lying on the ground. He then rises and lunges in the direction of Officer Laurence Powell. Was King attacking Powell (as Powell later claimed) or was he simply trying to escape? It appears that he may have been resisting arrest, but possibly he was just confused, as he later claimed at trial.

[To see the video, click here.](#)

<https://www.youtube.com/watch?v=icZV1w5uLcE>

Powell strikes King with his side-handled metal baton, using what the police call “power strokes,” knocking him to the ground. He falls on his face. Whether Powell struck King on the side of the face or on the shoulder is not clear from the video. Officer Powell continues to violently strike King with his baton while he lying is on the ground.

Powell pauses for about three seconds and raises his baton again. Someone (presumably Sergeant Koon, but that is uncertain), shouts “That’s enough.” Officer Briseno raises his hand in front of Powell, apparently intending to ward off further blows. Powell steps back.

King starts to rise. Officer Powell resumes beating him. Officer Wind joins in. King falls. They keep beating him.

Koon then orders four LAPD officers, Powell, Briseno, Solano and Wind, to “swarm” King. In the swarm, the officers are supposed to grab the subject’s arms and legs, and then subdue and handcuff him.

Officer Powell weighed 193 pounds. Officer Briseno weighed 135 pounds. They were assigned to hold King’s arms. Officers Solano and Wind were assigned to his legs. King is 6’ 3” and weighs approximately 220 pounds.

On command, all four officers leap forward and grab the limb each was assigned to. With a powerful flick of his torso, King tosses Powell and Briseno off his back. Then he flings Solano and Wind off his legs. Koon later said he thought to himself “Oh shit! He’s turned into the Hulk!” He thought King was on the hallucinogenic drug PCP, which is reputed to confer superhuman strength to people under its influence.

Koon orders the officers to “stand clear.” In an effort to subdue King he uses a Taser. The zap sound of the Taser is heard on the recording.

A Taser is an electric stun gun that shoots two dart-like electrodes that are barbed like fishhooks so they stick into the skin of the target. The electrodes are connected to the stun gun by wires that conduct 50,000 volts into the target individual. The high voltage is designed to disable the subject by causing violent muscle spasms.

Tasers were originally marketed as non-lethal weapons, but in view of deaths that have occurred with their use, they are now marketed as “more effective and safer than other use-of-force options.”

When he is Tasered, King groans and falls to his knees and then rises and turns toward Koon and howls, whereupon Koon Tasers King again. The zap sound is heard again. Once again King groans and collapses, and once again he struggles to his feet.

Again he is beaten with batons. Koon orders the officers to "hit his joints, hit the wrists, hit his elbows, hit his knees, hit his ankles," which is in accordance with LAPD authorized procedures for power strokes.

King falls on his face.

He raises his torso. Briseno stomps on his shoulder, pushing him down. Wind kicks his shoulder and his back.

King submits. He puts his hands behind his neck.

Officers swarm him. Briseno handcuffs him and ties his hands and feet together behind his back into a "hogtie" position.

King is dragged on his stomach to the side of the road.

An ambulance arrives.

When Officer Susan Clemmer arrived at the scene she observed that Powell was out of breath. She heard him say "I was scared. The guy threw me off his back. I thought I was going to have to shoot him," though she was later uncertain who the remark was addressed to. She rode to the hospital in the ambulance with King.

From the computer in his squad car, Koon sent a message to the police station that said "U[nit] just had a big time use of force.... Tased and beat the suspect of CHP pursuit big time."

Powell sent a message "I haven't beaten anyone this bad in a long time."

To Officer Corina Smith, Powell had previously sent a message that compared this situation to a domestic violence case he had just dealt with. "Sounds almost as exciting as our last call. It was right out of Gorillas in the Mist." She replied "HaHaHaHa...let me guess who be the parties."

An ambulance arrived and took King to Pacifica hospital in nearby Sun Valley. They found he had broken bones in his face and a fractured right leg, not to mention numerous cuts and bruises.

King was tested for alcohol, marijuana, PCP and other drugs. Five hours after he was stopped, his blood alcohol level was 0.094. Extrapolating backward, the blood alcohol level at the time of his arrest must have been about 0.19 – about two and a half times

the 0.08 legal limit for driving in California. Trace amounts of marijuana (26 ng/ml) were found. No PCP or other drugs were found.

Nurses at Pacifica reported that the officers joked and bragged about the number of times they hit King. The video is grainy and dark so it is difficult to count the number of baton blows. I count about 50, but others' estimates range from 30 to 56.

Koon later contended that he and his officers acted appropriately. He stated that they followed official LAPD doctrine, which recognizes and approves six levels of control.

1. Physical presence
2. Verbalization – commands
3. Physical contact – the swarm
4. TASER
5. Physical force – batons or kicking
6. Deadly force – chokehold or shooting

Koon claimed that they properly escalated through the first five levels of control authorized by official LAPD doctrine, thereby avoiding the sixth. Brutal though they may have seemed, he claims that they were preferable to deadly force, and were necessary to bring King under control.

King spent three days in jail and was released without charges. Even for speeding.

[Click here to read the complete story of the Rodney King trials, as well as his Odyssey and my testimony, click here.](#)

Had King not resisted so diligently there would have been no sensational video and no riots, which raises the question of how and why he resisted. The answers to those questions requires an understanding of who Rodney King was, an issue to which we will return.

### **The Video Goes Viral**

On Monday morning, Holliday called the police and asked what the black man had done. Quite properly, the police did not tell him anything.

Later that morning he called KTLA-TV, a local television news station that features stories such as (taking a typical sample on the day I am writing this) “Strip Club Fight Ends with 2 Men Losing Legs” and “Man Fatally Stabbed at Santa Ana Restaurant” and

“Intense Fire Engulfs House in Willowbrook.” It may just be a normal day in Los Angeles.

He told them he had a video of the police beating someone and he offered to bring the tape to them that afternoon. He was told to leave the tape at the front desk, which he did. They told him that someone would call him later. Naively unaware that his video was worth a lot of money, vastly more than he made as a plumber, he asked for nothing and left it as he was told to do.

Before airing the video, the newsroom editors at KTLA deleted the first ten seconds, which showed King rising and charging in the direction of Officer Powell. As viewers saw the video, it began with King just lying on the ground being beaten. The editors claimed that they deleted the beginning of the tape because it was unclear.

Without the first few seconds, the message of the video was simple, clear and emotionally compelling. It showed a man being savagely beaten by the officers of the Los Angeles Police Department.

Sergeant Koon later complained that the media had an agenda. That may or may not be the case, but all we really need to know is that the edited video dramatically engaged viewers' attention.

If ever the pen was mightier than the sword, electronic media, and now the Internet, have taken over. Electronic media, especially when digitized, can be used to alter reality and create it in ways that pen and paper never could have. The result can then be broadcast immediately around the world. With software that can be downloaded from the Internet, speech and video can be deleted or modified. Professionally, I am often occupied in detecting such alterations.

Los Angeles station KTLA-TV aired the tape on its evening news show. From there it was shown relentlessly worldwide and became the public image of the LAPD. In words later used by the prosecution, “horror and outrage” were evoked by the video “from Paris to Tokyo.” The Appeals Court later ruled that this comment was inappropriate, but not sufficient to overturn the subsequent convictions of Sergeant Koon and Officer Powell.

### **Who was Rodney King?**

Rodney said that when he was a child “Swimming was by far the thing to do every day of the summer. Whether we were visiting my family up in Sacramento or at home in Altadena, me and my brothers would always end up in the local water hole. I was a pretty good swimmer and could stay in the water forever,” ironically portending his death by drowning in his own backyard swimming pool.

It was one day when he was swimming that he first confronted the word *nigger*. He was five years old. Swimming in a local water hole, he had just discovered that the higher he vaulted up out of the water the deeper he could slice back down into it, eventually sinking so deep that his toes could touch the muck at the bottom. He was joyously exercising his newly discovered talent when a stone flew past his head as he vaulted upward. Then there were more stones on his next buoyant ascent and more on the next. He swam underwater towards the shore and escaped at a dead run. As his white assailants hurled stones at him they chanted “*Run, nigger!*” He ran.

In elementary school Rodney was assigned to the Learning Disabled Group. Other children told him that the initials LDG stood for Little Dumb Guy.

Rodney's father was known as “Kingfish” because he was, in Rodney's eyes at least, the greatest fisherman ever. He always knew where the fish were biting and what bait to use to hook them. He even knew how to drain an irrigation ditch to grab fish when they weren't biting, which enraged farmers whose fields were drained, but no matter; Rodney and his father were always happy because they always came home with fish for dinner.

But living with Kingfish was not always happiness unalloyed.

For infractions or in bad moods in drunken fury, King's father beat him often and viciously. The worst was when his father made him get soaking wet and then beat him with a thin electrical extension cord that raised welts that would make it agonizing to sit down. To prevent them from cracking, his mother smeared them with Vaseline.

Rodney ascribed his continued defiance in the face of the pain of the LAPD beating to the pain he had felt when his father beat him. He said he “actually got used to the extension cord whippings, which were the worst pain. Learned to just shrug it off. Fuck that old drunk anyway.” The beating by the LAPD officers was a “tolerable level of pain that I had felt plenty of times before, that's for sure.” He reported that when one of the officers tauntingly asked him after the beating “How do you feel?” he defiantly replied “I feel fine.” Sergeant Koon and the other officers had no way of knowing the specifics of King's childhood, which accounted for his defiant resistance to their beating.

At the age of 42 Kingfish died from the effects of alcoholism. By that time Rodney was solidly on the way to becoming an alcoholic himself. He had started drinking at age 11 and never quit. He says he liked the taste and “loved the way it put me in a happy mood and seemed to make my troubles shut down for a while.”

One November day in 1989, at age 24, Rodney intended to catch some fish for dinner because otherwise there was no dinner for his family, which at that time consisted of his second wife and two children from her prior marriage. So he went to the breakwater at Marina Del Rey to catch dinner. But it was a bad day for fishing and by late afternoon all he had for his efforts was “a sweaty T-shirt and a soaked butt” and “a pretty miserable

feeling of desperation.” In his autobiography he mentions “forties [of malt liquor] I had drained,” which left him feeling dehydrated.

On the way home he got off the freeway at Monterey Park, an affluent Asian community east of Los Angeles. (The local Chinese-language newspaper, *Asian Week*, affectionately calls Monterey Park “The Chinese Beverly Hills.”)

King parked half a block away from a corner convenience store where he saw one man standing behind the counter. He initially planned to run in, snatch some bread and cold cuts and run out. It didn’t happen that way. Once in the store, King took a piece of gum and asked if he could use food stamps to pay for it. The man at the counter, Tae Suck Baik, refused.

Baik stated that King told him to open the cash drawer, which he did.

On cross-examination, Milton Grimes, who was at that time a fledgling defense attorney, asked Baik how he could have complied with the order to open the cash drawer since he did not speak English. King later grumbled that the questioning was not effective. He claimed that otherwise he might have beaten the rap and the only reason he used Grimes was that “I didn’t have the money to hire a good lawyer.”

King took \$200 in cash from the drawer. When King tried to grab checks, Baik told King that he didn’t need them. King grabbed the checks anyway.

That’s when the altercation started. Baik clutched at King’s coat and nearly took it off him. At that point, Baik grabbed a metal rod from behind the counter and struck King with it. Baik admitted he hit King first: “If I didn’t hit him, he would’ve hit me” he said at the trial. Then King came at Baik with a tire iron but did not hit him with it. Baik claimed that King took the tire iron from his coat pocket, but King said it came, like the metal rod, from behind the counter.

On his way out of the store, King grabbed pies from a nearby rack and hurled them at Baik. He claimed it was in self-defense. Baik followed King in hot pursuit, close enough to jot down King’s license number. When the police came to arrest King ten days later, they found in his car an uncashed check made out to the corner store.

King was sentenced to two years in prison. He sent the following message to the judge (quoted as written):

*“I have seriously been thinking about what happen and I think if it is possible that you can give me another chance, your honor. I have a good job and I have two fine kid who wish me home. Have so much at stake to lose if I don't get that chance. My job and family awaits me. So please reconsider your judgment, your honor. The sky my witness and God knows.”*

In a newspaper interview, Baik said that he thought King didn’t have the heart to hurt him. “I’m not mad,” Baik said. “I held him and he didn’t hit me. I hit him twice. He just



wanted the money." In the view of his parole officer, Tim Fowler, King "was a basically decent guy with borderline intelligence....His problem was alcoholism."

Although the plea to the judge was to no avail, after a year King was released on parole.

It was three months after his release that the California Highway Patrol tried to pull him over on the night of March 3, 1991 for speeding. King was still on parole. Was that the reason he did not stop? King claims that explanation is too straightforward. As he tells it in his autobiography, the truth was that he sped away by reflex, by impulse, without thinking, just hoping that if he drove fast enough he could leave it all behind.

### **Three Trials Followed the Rodney King Beating**

The Rodney King incident resulted in three trials. I was an expert witness in the third and final trial.

#### **Trial #1. State Criminal Trial. California v Koon, Powell, Briseno and Wind (April, 1992)**

Officers Powell, Briseno and Wind were indicted by the State of California for assault with a deadly weapon and excessive use of force by a police officer. Sergeant Koon was indicted for failure to prevent their actions.

A Los Angeles Times poll showed that eighty six percent of Los Angeles residents recalled having seen the Holiday video. Of those, 92 percent believed it showed that the officers had used excessive force. Consequently, the California Court of Appeals granted a change of venue.

The Defense wanted the trial moved to Orange County (Home to John Wayne Airport). The Prosecution wanted it moved to Alameda County, (The largest city of which is Oakland, per capita murder rate twice that of New York City; nonetheless ranked by the New York Times as the 5<sup>th</sup> most desirable place in the world to visit in 2012, just behind London and ahead of Tokyo. Go figure.)

They settled on Simi Valley in Ventura County, California. As sleepy as Southern California gets, Simi Valley boasts of its outstanding senior citizens services. The home of the Ronald Reagan Presidential Library, it is ranked among the ten safest cities in America for its size.

The jury included ten whites, one Filipino and one Hispanic. Two jurors were N.R.A. members. Two others were retired military veterans. Jo-Ann Dimitrius, jury consultant for the defense, called it “a gem of a jury.”

Chief prosecutor Terry White, an African-American, was concerned about facing that jury. He later recalled that he thought from the beginning that he was going to lose.

Judge Stanley Weisberg presided.

Koon’s attorney Darryl Mounger argued that King was actually in control. “All King had to do,” Mounger claimed, “was comply with instructions and the beating would have stopped.”

Detective Susan Clemmer testified that while King was on the ground handcuffed and hogtied, he was laughing and saying “Fuck you” to the officers. She said that when she rode with King to the hospital he spit blood on her uniform and continued to laugh and curse. At the hospital, he laughed while saying “I love you” to Koon.

On the witness stand, Koon reiterated his opinion that the officers used appropriate force. He claimed that their correct actions prevented Rodney King's death. Koon maintained that his actions and those of his officers were proper and appropriate. "Take it up and take it down. Watch what the suspect does. If he moves, control him. If he doesn't, cuff him" he reiterated.

Rodney King did not appear as a witness.

The jury did not reach a verdict on Powell. They acquitted officers Koon, Wind, and Briseno.

## The Social Context and the Riots

The story of Rodney King's beating would not be complete without an account of the riots that followed this decision, and the social context it was rooted in.

At the start of World War II, black Americans had migrated to the West Coast for employment and liberation from conditions in the South. The black population in Los Angeles surged from approximately 63,700 in 1940 to about 350,000 in 1965, the year of the Watts riots.

As the war ended, blue collar employment in the defense industry disappeared. The McDonnell Douglas aircraft plant in Santa Monica closed. As Southern California real estate became more valuable, industrial production moved elsewhere. The General Motors plant in Southgate closed. The black migrants were left without the blue collar jobs they had depended on.

### The Watts Riots

On the evening of Wednesday, August 11, 1965, 21-year-old Marquette Frye and his brother were driving through Watts in their mother's 1955 Buick. They were pulled over for reckless driving by white California Highway Patrol motorcycle officer Lee Minikus. After administering a field sobriety test, Minikus placed Frye under arrest. Meanwhile, Marquette's brother had walked to their house nearby, bringing their mother back with him.

When she arrived, she began by scolding Frye about drinking and driving. But then she argued with the police about arresting him. Growing crowds began yelling and throwing objects at the police. Frye's mother and brother fought with the officers and were eventually arrested along with him.

Thus began the Watts riots, which until that time were the most destructive civil unrest the United States had seen. By the time they ended six days later, they caused over \$40 million in property damage and left 34 people dead.

Legendary Police Chief William Parker, for whom the Los Angeles police center is named, said that the people he saw participating in the Watts riots were acting like "monkeys in the zoo."

Freddie Jelks, 28 years old, father of four, ex-convict who had never held a job in his life, saw it differently: "It's like we're animals left in a cage, and you're feeding us nothing but poison. Hunger is going to make me eat it."

Black linguist and social critic John McWhorter saw it still differently. He attributed the origins of the Watts riots to the milieu of white youth.

"Only in the 1960s did a significant number of blacks start treating rebellion for its own sake -- rebellion as performance, with no plan of action behind it -- as political activism.

"This did not come from nowhere, to be sure -- and where it came from was whites. In the '60s, it became a hallmark of moral sophistication among whites to reject establishment mores, culminating in the counterculture movement."

Darryl Gates, who was an LAPD field commander during the Watts riots, stated that the LAPD would be ready if it happened again and "would stop it the first night."

## **The South Central Riots**

In the words of journalist Lou Cannon, “In the years between the Watts riots and the beating of Rodney King, the lives of black citizens of Los Angeles had only become worse.”

In desirable areas near the ocean, upscale beach communities like Marina Del Rey became increasingly gentrified. Hughes Aircraft and other companies developed research and design headquarters, with jobs for which black community members were generally not qualified.

To make matters worse, a new wave of Latin immigrants flooded into Los Angeles and worked cheaper.

On April 29, 1992, when the not guilty verdicts were announced for Koon, Wind and Briseno, roving mobs chanting “Black Justice!” and “No Justice, no Peace!” started looting and attacking businesses and vehicles in South Central Los Angeles. Liquor stores owned by Koreans were targeted first, but as the riot gained momentum the entire area went up in flames.

At 6:46 p.m. Reginald Denny, a white truck driver, was driving an 18-wheeler loaded with 27 tons of sand through South Central. At the corner of Florence and Normandie, he was pulled from his truck. Damian Williams smashed a slab of concrete on his head, which fractured his skull in 91 places and pushed it into his brain. Williams then did a victory dance over and around Denny’s body, now lying unconscious and near death, and flashed gang signs, including his tattoos, at the news helicopter circling overhead. That led to his subsequent identification, trial, and conviction.

Williams was convicted of felony mayhem. He was sentenced to ten years in prison but was released early for good behavior. Three years after his release he murdered drug dealer Grover Timmer and was sentenced to 46 years to life.

Overwhelmed by the mob, the police pulled back and failed to protect Denny, who regained consciousness, crawled back into the truck and tried to drive away but could not. Bobby Green Jr., a black truck driver who lived in the neighborhood, was watching the live helicopter coverage on television. He rushed to the scene, took over the wheel and drove Denny to the hospital, thereby saving Denny’s life. Nonetheless, Denny has suffered permanent brain damage. Even after many years of rehab, his speech and his walking ability have not fully recovered. He sued the city for failing to protect him, but lost. They asserted they weren’t able to do so.

Asian and Latino motorists who passed through South Central that night were brutally beaten.

At 8:15 p.m. Louis Fleming was helping two elderly women at a Korean-owned swap meet, when he was hit in the head by a bullet. He was the first of 53 deaths, some intentional, others inadvertent.

Darryl Gates, who was the Chief of Police by the time of the South Central riots, was unable to fulfill the promise he made during the Watts riots: that next time he would be prepared and the riots would stop on the first night.

Six days later the U.S. Army, the Marines and the National Guard restored order, after 53 deaths, more than 7,000 fires, and nearly \$1 billion in financial losses.

On television station KNBC Bill Cosby asked people to stop rioting and watch the final episode of The Cosby Show instead. They didn't.

Rodney King was asked to say something to quell the riot. He was provided a speech written by his attorneys, but was marginally literate and could not read it so instead he uttered those never-to-be-forgotten words:

*"People, I want to say, can we all get along? Can we get along?"*

## **Trial #2. Federal Civil Rights Trial. U.S. v Koon, Powell, Briseno & Wind (February, 1993)**

Following the acquittal of the officers in the previous California criminal trial for assault and excessive use of force, they were indicted by the U.S. Department of Justice for violating King's civil rights.

At the outset, this case raised contentious legal issues about double jeopardy that were ultimately settled in favor of proceeding. In short, it was decided that it is possible to separately offend two different government entities by a single act and therefore be prosecuted twice for that act. [For further discussion, see **Appendix: Civil Rights Trial Legal Issues.**]

Judge John G. Davies presided.

For this trial, the Department of Justice enlisted two of their star prosecutors. Barry Kowalski had spent the last decade prosecuting and winning civil rights cases nationwide. (I had previously conferred with Kowalski in Washington regarding techniques for revealing sounds on recordings.) Steve Clymer was chief of the major crimes section of the Los Angeles U.S. attorney's Office.

"This is the A-Team," said one federal prosecutor. If this case is lost, it was unwinnable."

Sergeant Mark Conta opened the testimony for the prosecution. He testified that the defendants had acted in a lawful manner until the point at which King was lying on the ground. Then they were breaking the law because LAPD policy forbids striking a man who is on the ground. He alleged that Sergeant Koon violated policy because he failed to intervene.

Rodney King was the prosecution's star witness. "I was just trying to stay alive, sir," he said. He evoked a sense of child-like naiveté, far from an image of a drunken, drug-crazed monster. King said he intended to obey officers' orders but he was confused by conflicting commands by several officers shouting at him at once.

He claimed that the reason he leapt to his feet and ran in the direction of Officer Powell at the outset of the incident shown on the video was that an officer said to him "We're going to kill you, nigger. Run."

In a sing-song voice, he imitated the taunts of the officers while he was beaten. "What's up, killer, how you feel, killer? What's up, nigger? How you feel, killer?" "They were just chanting it," he claimed. Prosecutor Kowalski asked whether the officers said "nigger" or "killer." King responded "I'm not actually sure which word it was."

Mindful of the threat of further riots, Briseno's attorney Harland Braun, with whom I have worked in other cases, addressed the jury. "No man should be condemned in this country because there is a threat of riot. So in a sense, my client is on trial, but you are also on trial; it is your courage that's on trial." He related the story of the trial of Jesus:

*When the prisoner was brought by the authorities before the judge, Pontius Pilate asked a simple question, "What evil has this man done?"...And the authorities really had no answer. But when you read Mathew you find in it an eerie echo of this case, that the man was condemned, the prisoner was condemned, because there were riots in the city.*

Briseno and Wind were acquitted. Powell and Koon were found guilty.

Prosecutors argued that the Federal Sentencing Guidelines recommended prison terms of 6 to 7 years for Powell and Koon. Taking into account what he termed Powell and Koons' "distinguished records of public service," as well as the extraordinary nature of the case, Davies sentenced them each to the lesser sentences of 2 ½ years in prison followed by two years of supervised probation.

In order to minimize the likelihood of riots, Davies delayed announcing the verdicts until 7 A.M. on the morning following the decision. There were no riots.

### **Trial #3. Civil Lawsuit. Rodney King v. City of Los Angeles (April, 1994)**

In the wake of the previous trial, King sued the City of Los Angeles for \$9.5 million in compensation for physical and emotional injuries.

By the luck of the draw, Judge Davies was assigned to preside over this trial as well as the preceding trial. Given his sympathetic comments about Koon and Powell in the sentencing phase of the previous case, objections were raised about his appointment in this case. Objections were overruled; he presided in this one as well.

King had used Milton Grimes as his defense attorney in the 1989 case in which he had robbed Tae Suck Baik's convenience store. When he was convicted in that case, King complained that he only used Grimes because "I didn't have the money to hire a good lawyer."

But by the time of this case, Grimes was a very successful trial attorney who had gained notoriety by winning sensational cases. In one, the so-called 'baby blues' trial, Grimes successfully used postpartum psychosis as a defense for a mother who had run over her newborn son in the family Volvo.

The day before my testimony I met with Grimes in his office in Santa Ana, California. On the second floor of a nondescript building, no one appeared to greet me. I wandered about around calling "Hello, hello, anybody" until a woman emerged from a hallway and said she would get Mr. Grimes.

I met with Grimes in a side office, where we were joined by John Burris, an eminent civil rights lawyer from Oakland, California. We went over my background and my credentials, how I had analyzed the recording, and my findings. I played for them the filtered recording so they could hear for themselves the phrase "*Nigger, hands behind your back.*"

That evening, prior to my testimony, Grimes released the enhanced recording to the news media. It was played on local television stations together with a chyron beneath the screen that read "*Nigger, hands behind your back*" synchronized with the audio.

Although the jury had been instructed not to watch news shows about the trial, Grimes mused "Don't you think that some of them might watch anyway?" But even if they did not watch, he pondered "Might some of them talk to friends or relatives who did watch?"

We stayed up into morning hours rehearsing and reiterating the presentation and talking about matters far beyond the particulars of the case. Grimes and Burris were running on caffeine and adrenaline.

As we talked, it became clear to me that they were interested in winning for reasons beyond the monetary reward. At very least, their pride was involved. And they were concerned with the history of black people in America. "I was a computer programmer



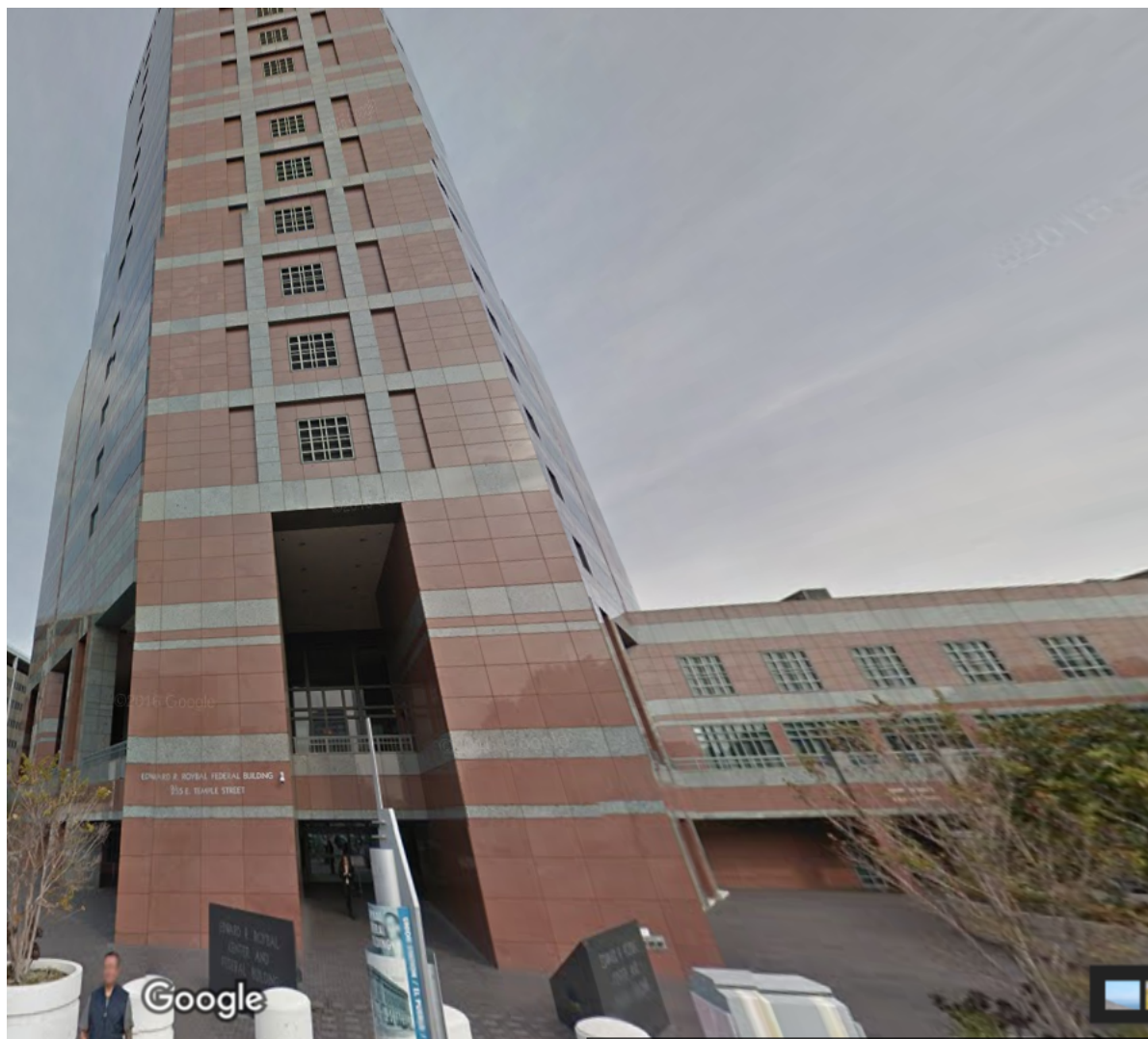
and good at it,” Grimes told me. “But then I decided that I could do better and do some good for Black people as a lawyer.”

We talked about the significance of my testimony – just a few words, only one that really mattered. The jury had seen the beating and heard testimony from both sides about King’s injuries. What they still needed, as the lawyers saw it, was something that would expose the state of mind of the officers. Sometimes words speak louder than actions.

Grimes took an expansive view. He thought that the individual word, as well as the trial overall, spoke to racism in the LAPD and in society as a whole. He wanted to expose the malaise for the world to see.

In the early morning hours, after we had reiterated, ruminated and rehearsed, we had breakfast in a local coffee shop. More coffee.

As the hazy California dawn arrived, we hit the Santa Ana Freeway north to the Roybal Federal Courthouse in downtown Los Angeles. Traffic was heavy as always on the Santa Ana, but it was moving, as frequently it is not.



Roybal Federal Courthouse, 255 E. Temple Street, Los Angeles, CA

Security was tight. As we passed through the lobby, we were patted down, perhaps more thoroughly than usual, and wanded. The 8<sup>th</sup> floor courtroom of Judge John Davies was filled with spectators and press by the time we arrived.

As the trial commenced, Timmy Fowler, who was King's parole officer, took the stand. He testified that he had visited King shortly after the beating.

Grimes asked Fowler if King said the officers had used any racial slurs. Fowler testified that King told him that the officers said, "Run, nigger, we're going to kill you." Asked why he did not report this to his supervisors, Fowler claimed he wanted to remain neutral on the issue.

David Love, the only black officer at the scene, said he did not hear anyone there use the word *nigger*. When Burris questioned him, Love conceded that he did not hear everything that was said because of noise from a hovering police helicopter.

A German sound expert had previously testified that she could not make out any racial slur. Burris had asked her if she could hear a racial slur made by one of the officers before he ordered King to put his hands behind his back. "There is something before that," she said, "but I cannot make it out."

During a break, I set up my computer and speakers. I was called to the stand. Duly sworn, I went through my qualifications with Grimes.

I explained that I had listened to the recording and had filtered out background sounds.

"The phrase, 'Nigger, hands behind your back' appears on that tape recording," I testified.

According to the Los Angeles Times, "Papcun played a filtered tape for the jurors and many in the courtroom said they heard the epithet."

More importantly, when I played the enhanced recording, I saw the jurors nodding in agreement with my interpretation of what was on the recording. Judge Davies told them they could ignore my interpretation of what was said. That was fine by me. By their reactions, I knew that they heard what I heard.

The jury awarded King \$3.8 million in damages. Thus we see the worth of a word.

## Aftermath

Milton Grimes moved his offices from Santa Ana to Los Angeles, still in a relatively unimposing building near South Central Los Angeles. He went on to try over 300 cases, many of them widely celebrated, and become, as the Los Angeles Times described him, "a man of means."

Steven Lerman, King's previous lawyer on the civil case, filed an action with the State Bar of California. He claimed that Grimes was a "shyster that ripped off this case from my office."

The LAPD officers involved were fired. Rookie officer Timothy Wind was subsequently hired as a community service officer by the Culver City Police Department, a position in which he did not carry a gun. The other officers resigned from police work, moved away from Los Angeles and have made their living by other means.

Koon said he felt he had been tossed under the bus, notably by LAPD Chief of Police Daryl Gates who said "I sat there watching [the video], terribly shocked. Feeling sick to my stomach, sick at heart." As Chief of Police, Gates had been the principal architect of the LAPD get tough policy then in effect.

King promptly lost a substantial part of his 3.8 million dollar settlement, which he invested in **Straight Alta-Pazz Records** (a nod to King's Altadena-Pasadena neighborhood), a hip-hop record label that went broke.

Tim Fowler, King's parole officer, held a charitable view of King. By his estimate, King "was a basically decent guy with borderline intelligence....His problem was alcoholism."

Maybe so, but King's subsequent record of spousal abuse and domestic violence does not portray him in a favorable light. In 1992 King's wife reported to police that King had hit her and she feared for her life. King was handcuffed and taken to a police station, but she decided against pressing charges.

In 1995 King got into an argument with his wife while he was driving. He pulled off the freeway and ordered her out of the car. When she started to get out, King knocked her down with the car and left the scene. King was charged with assault with a deadly weapon (the car), reckless driving, spousal abuse, and hit-and-run driving. King was found guilty of hit-and-run driving and served 90 days in jail.

In 1999 King was arrested for allegedly beating a sixteen-year-old girl he had fathered out of wedlock when he was seventeen, and Carmen Simpson, her mother, as well as for vandalizing property. When he was released from custody, King claimed "Basically, it was just a family misunderstanding, and it's been way out of proportion."

King was arrested in Hollywood when vice squad officers observed him in a car with a transvestite prostitute. When the prostitute spotted the police, King sped off, nearly

hitting one of the officers. Shortly afterward, King hailed two other officers in a squad car and explained "Those guys have guns. I'm paranoid. I thought it was the big chance for the police to kill me. I thought that's what they were going to do. I get paranoid. You know how they are." King was not charged.

Regarding the incident, King's sometime lawyer, Steven Lerman, said he believed that the police had been following Mr. King since the 1991 beating in an effort to entrap him. LAPD Commander Robert Gill responded "The department's position is, if we never ever come into contact with Mr. King again we will be happy."

As far as alcoholism was concerned, Fowler's assessment was unquestionably valid. In 1992 King was arrested at 1:40 A.M. for driving while intoxicated. No charges were filed.

In 1993 King crashed into a wall near a downtown Los Angeles nightclub. He had a blood alcohol level of 0.19, over twice the legal limit. King was charged with violating his parole and sent for sixty days to an alcohol treatment center. He was convicted of driving under the influence of alcohol and ordered to perform twenty days of community service.

In 1995 King was arrested for driving under the influence while driving to Pennsylvania to participate in a Celebrity Boxing Match with Simon "The Renegade" Aouad, a former Philadelphia policeman. King failed field sobriety tests, but refused to submit to a blood test. He was tried for DUI and acquitted. He won the boxing match, after which he said "This is a new chapter in my life, I am sober, fit and now a winner."

The beating, the video, the trials and the riots were King's ticket to celebrity. In 2008 he became a cast member on the television show *Celebrity Rehab with Dr. Drew*. In an interview with Dr. Drew, King said "I've learned a lot over the years about the effects of alcohol. I'm really comfortable with myself these days. I don't drink like I used to." Dr. Drew said King was basically a "misunderstood" sweet man.

Rialto, California police received a 911 call from King's fiancée Cynthia Kelly on June 17, 2012, at 5:45 am. Kelly said she found King lying at the bottom of his swimming pool. King had died of accidental drowning, with alcohol, cocaine, marijuana, and PCP in his system.

As he explained in his autobiography, Rodney King had been beaten severely and often by an abusive father who died at the age of 42 from alcoholism. Thus he learned the game of defiance that he played in his childhood and later when he was beaten by officers of the LAPD.

Officer Powell got it partly right in his taunting dialogue with King in the hospital, in which he concluded "Yes, we played a little ball and you lost and we won."

Who won? Powell and Koon spent prison time. Rodney King won 3.8 million dollars, though little good did it do him. Society lost as riots ensued, people died and Los Angeles went up in flames.

It would not have happened, at least not then, but that both sides were playing a game, each by his own rules. Lest this seem trivial, it is worth asking how those rules arose, what their consequences are and how they can be changed.

Asked on the 20th anniversary of the riots if he thought race relations have improved in L.A., King said, "As far as coming a long ways, I think we have come a little ways."



## APPENDIX: Civil Rights Trial Legal Issues

### A. Civil Rights Violations

The reasoning supporting the federal indictments for civil rights violations is as follows. Excessive force by the police is an unreasonable seizure (*i.e., of the person of Rodney King*) under the 4<sup>th</sup> Amendment. The 4<sup>th</sup> Amendment is applied to the states by the Due Process clause of the 14<sup>th</sup> Amendment. By this reasoning, the police violated King's 4<sup>th</sup> and 14<sup>th</sup> Amendment rights.

US Code 18 USC Section 242 makes it a crime for anybody under color of law to willfully deprive an individual of his Constitutional rights because of his race. Because the officers were acting as representative of the LAPD, they were acting under color of law. That was the basis for sentencing.

The 4th Amendment to the Constitution:

*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

14<sup>th</sup> Amendment to the Constitution, Due Process clause:

*All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

18 USC Section 242:

*Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains or penalties, on account of such person being an alien, or by of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of the section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated Sexual Abuse, or an attempt to commit aggravated sexual abuse, or an attempt*



*to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.*

## **B. Double Jeopardy**

All four officers, Koon, Powell, Briseno and Wind, had been tried in California State Court for using excessive force against Rodney King. Three of the officers were found not guilty. The jury did not reach a finding regarding Powell. Legal scholars have debated whether the US Federal criminal indictments against the officers constituted double jeopardy. For extensive discussion of the issues, see the article by Yale law professors Akhil Reed Amar and Jonathan L. Marcus, *Double Jeopardy Law After Rodney King*, Columbia Law Review, vol. 95, January 1995, No. 1, pp. 1-59.

In the Federal proceeding, the issue was resolved by the United States Court of Appeals, Ninth Circuit, under the doctrine of “dual sovereignty,” according to which California and the United States are two different political entities. Therefore, it is possible to offend them both separately with a single action in a single place. It is as though California and the United States are two separate countries.

This issue is addressed directly in the appeals court decision reported in 34 F3d 1416, which is the final and dispositive word as it applies to this case. In Section 91 they state:

*The Double Jeopardy Clause of the Fifth Amendment provides “nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb.” Nevertheless, under the doctrine of dual sovereignty, successive prosecutions based on the same underlying conduct do not violate the Fifth Amendment’s Double Jeopardy Clause if the prosecutions are brought by separate sovereigns.*

## APPENDIX: Public Figures Commented on the Acquittal Verdicts in the First Trial

In this case and others since I have often been troubled that public figures and celebrities fail to respect the jury system and its outcomes. Their comments can adversely affect the rights of the litigants and undermine fundamentals of the legal system.

Tom Bradley, then Mayor of Los Angeles, who was also a former LAPD officer, said "Today the system has failed us...The jury's verdict will never blind us to what we saw on that videotape. The men who beat Rodney King do not deserve to wear the uniform of the LAPD." Did Bradley not realize that his incendiary comment would stoke the flames of the riot and cause more of the city of which he was the mayor to go up in flames?

Daryl Gates, then LAPD Chief of Police, said "I sat there watching, terribly shocked. Feeling sick to my stomach, sick at heart." As Chief of Police, Gates had been the principal architect of the LAPD get tough policy then in effect. Why, then, was he so shocked?

President George H. W. Bush said "Viewed from the outside, it was hard to understand how the verdict could possibly square with the video." Should Bush, as President of the United States, not have demonstrated respect for the jury system?

Bill Clinton, then Governor of Arkansas and Presidential candidate, said "Like most of America, I saw the beating several times, and it certainly looks excessive to me so I don't understand the verdict." Why did Bill Clinton feel the need to comment?



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[if he drove fast enough RW]

[Take it up and take it down. PG p. 22.]

[culminating in the counterculture movement McWhorter]

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