

TECHNOLOGY ON TRIAL

Not Beyond a Reasonable Doubt

Did TV — *CSI* and *20/20* — affect jury expectations?

By John Bringardner

THE four-month trial of Robert Blake, accused of murdering his wife Bonny Lee Bakley, was a Hollywood scandal with a surprise ending. To the disbelief of armchair jurors around the country, the troubled star of *In Cold Blood* and *Baretta* was acquitted on March 17, 2005.

Speculation surrounding the jury's decision is split among several theories. Was it a result of the so-called "CSI Effect," named after the popular television show in which forensic investigators never fail to discover an irrefutable piece of evidence in their murder cases? Los Angeles County district attorney Steve Cooley didn't think so. He just dismissed the jury as "incredibly stupid."

Deputy district attorney Shellie

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Schwartzbach, Blake and Brooks exit the courthouse after acquittal.

Samuels made a case based on circumstantial evidence in *People of the State of California v. Robert Blake* (2002CR04037-7LA), heard by Judge Darlene Schempp. But Blake's defense team cast just enough doubt in jurors' minds to set the 71-year-old actor free.

Bakley's murder took place on May 4, 2001, a block and a half from Vitello's Italian Restaurant in Studio City, Calif. Blake had a tough time getting his case off the ground. Three successive attorneys quit between

the date of the murder and the beginning of his trial.

Mill Valley, Calif. defense attorney M. Gerald "Gerry" Schwartzbach came aboard in June 2004 and quickly recognized he would need technical assistance. Schwartzbach said he had never used courtroom technology in the past, and needed to put the difficult case, with thousands of documents from police and private investigations, together in a hurry.

Lois Heaney, of the National Jury Project in Oakland, recommended Ted Brooks, of San Francisco-based consulting firm Litigation-Tech. Brooks, co-winner of the 2004 LTN Award for trial technology, was hired. (See *LTN* March 2004).

PREPARATION

Brooks began by sending Reggie Pool, his expert in Summation software, to Los Angeles to examine the two Summation databases (from Summation Legal Technologies Inc.) created by Blake's previous

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attorneys. They hadn't even used one of the databases, which was full of photos from the investigation, Brooks said.

Pool created a TrialDirector (from inData Corp.) database including both Summation databases composed of documents and photos from police investigations. This gave the defense team instant access to everything throughout the course of the trial.

"One of the things I took on was those photos, not knowing what I might find," says Brooks. This came in handy when detective Steve Eguchi was on the stand discussing the Dumpster in which the murder weapon was found. The defense projected a photo of a Dumpster onto an eight-foot screen and Schwartzbach asked the detective if that was the one he had searched to find the gun. When he said no, Brooks quickly zoomed in to show a close-up of Eguchi climbing into the Dumpster, striking a blow to his credibility.

OPENING STATEMENTS

The case began with a 90-minute opening statement by prosecutor Samuels, who argued that Blake had solicited two ex-stuntmen to kill his wife, but eventually took the job into his own hands. She relied on Microsoft Corp.'s PowerPoint for the first time in her career, says DA paralegal Sudi Sahab, who created

the slides. During the trial Samuels also used hardcopy documents and photos displayed on a Visual Presenter from ELMO.

Schwartzbach's opening statement took nearly five hours, and he relied heavily on TrialDirector and PowerPoint. (Also used for the closing.)

"I'm a believer of technology as an aid to a lawyer," Schwartzbach says. But, he cautioned, "technology doesn't try the case. I had to make contact with the jurors, so I didn't want them looking constantly at the screen."

His ambivalence was apparent to Brooks. "At first [Schwartzbach] was uncomfortable with the process of rehearsing," Brooks recalls. There were several tries at getting a smooth opening, which included many visuals that also became exhibits, he said.

TRIAL TACTICS

Sahab cited the defense team's use of TrialDirector's zoom function as a particularly effective tool. Brooks could highlight portions of the police department's policy manual, emphasizing breaches of code during the investigation.

A pivot point of the trial, says Brooks, was when both teams offered Barbara Walters' 20/20 television interview with Blake, one of several TV interviews where Blake

proclaimed his innocence. It was allowed into evidence, even though Blake did not testify.

The prosecution used the footage to argue that it impeached statements Blake had made to people who had visited him in jail, Schwartzbach says.

The defense team took the video footage and treated it like a video deposition, digitizing it with a transcript provided by ABC. It was played three different times in court, during opening and closing statements, and in the middle of the trial. "[Blake] was essentially able to testify by responding to Barbara's questions," says Brooks.

Ultimately, the prosecution couldn't put the gun in Blake's hands, jury foreman Thomas Nicholson told reporters.

Blake was acquitted of charges of murdering Bakley, conspiracy to commit murder and solicitation. The defense team used technology to showcase the faults in the investigation, the long paper trail damaging Bakley's character, and Barbara Walters. A lack of forensic evidence, and doubt sown by the defense, made Blake a free man again. **LTN**

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