LITIGATING AN EXCESSIVE FORCE CASE IN TODAY'S POLITICAL ENVIRONMENT:

Tamara Nikki Baines
Attorney at Law

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RESEARCH AND BACKGROUND

- Craft YOUR theory of the case (Do not adopt Plaintiffs' theory of the case)
- Write your closing argument (Don't be afraid to revise) ***
- Visit the scene of the incident
- Conduct Informal Discovery
  - Review evidence in your client's possession
  - Obtain publicly-available information on Plaintiffs and from government agencies
- Establish relationship with co-defendant's counsel while keeping in mind the limits of those relationships
- Identify experts, including a reconstructionist
- Identify and talk to all major and supporting characters

WHILE THE PLAINTIFFS HAVE THE BURDEN OF PROOF...

NEVER

ALLOW THE PLAINTIFFS TO WRITE THE STORY OF WHAT TRANSPIRED WHILE YOU SIT AND RESPOND.

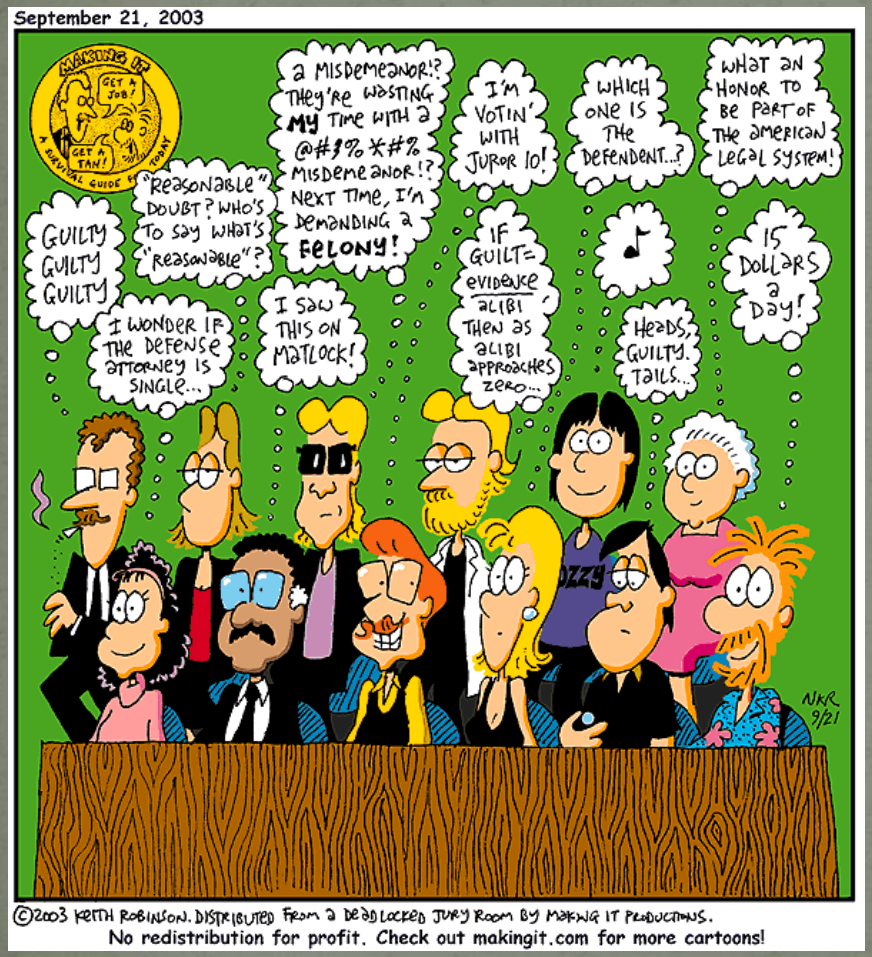
EMBRACE THE VIDEO AND AUDIO EVIDENCE

- Body cameras
- Dash cam videos
- Citizen videos
- Dispatch Tapes
- Radio Recordings

USING VIDEOTAPE EVIDENCE TO ELIMINATE MATERIAL ISSUES OF DISPUTED FACTS

- It must be undisputed that the video is the most accurate account of the events.
- A party may not attempt to create a factual issue by introducing contradictory sworn testimony when a video exists of the events.
- The video will be the most accurate account of what transpired.

Voire Dire: The Process of Elimination



- Myth: Voire Dire is the process of picking who you want on your jury.
- Truth: Voire Dire IS the process of eliminating who you don't want on your jury.

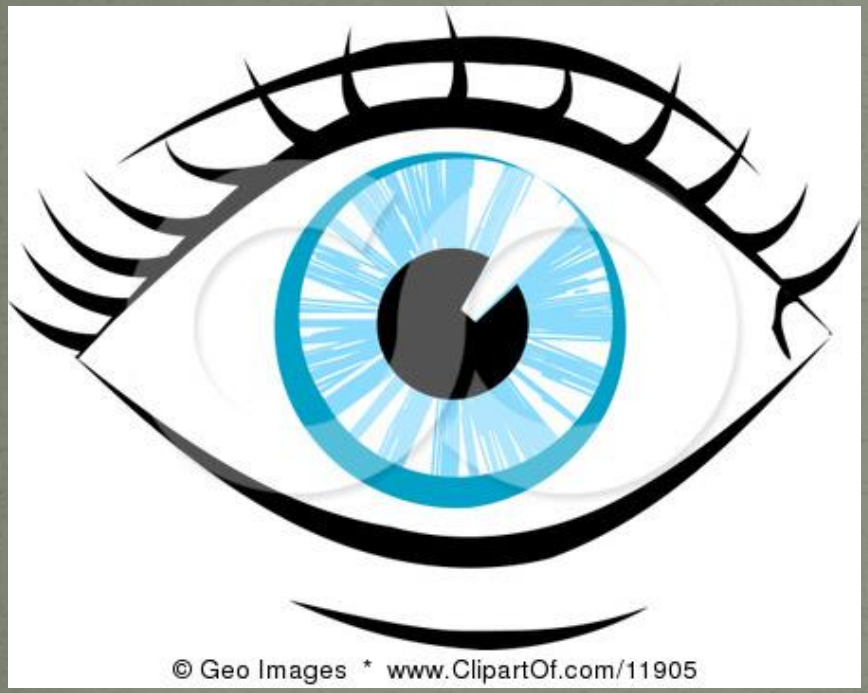
VOIRE DIRE: POTENTIAL INDICATIONS OF BIAS

- Bumper stickers
- Television shows
- News and print media
- Activities/Volunteer organizations
- Newspapers
- Membership in organizations
- Marital status/Children

*** Beware of jurors with drug addicted *** and/or mental illness family members.

REMIND THE JURY OF POSITIVE ENCOUNTERS BETWEEN CITIZENS AND POLICE

VOIRE DIRE: THE KEY TO JURY SELECTION



- Create a juror profile in advance of trial (i.e., conservative family man – Kern, Inyo, San Luis, Fresno).
- Know how many strikes you have and eliminate highly undesirable jurors quickly.
- Watch them when they don't realize you are watching them.
- Be mindful of non-verbal clues. They are more telling than anything.
- Be mindful of how the various personalities will interact during deliberation.

OPENING STATEMENT

- Tell your story (Do not start with "the evidence will show")
- Immediately take the jury to the scene of the incident –
  - Be mindful of immunity issues
- Do not predict Plaintiffs' version
- Put the jury to work early (i.e., tell them how to view the evidence)

DEFENDANT'S OBJECTIVE: TRANSPORT THE JURY TO THE SCENE

COURTROOM



COURTROOM – FLAT SCREENS AND TECHNOLOGY



DEFENDANTS' CROSS EXAMINATION: TURNING A CROSS INTO A DIRECT EXAMINATION



- You must prep your client in the courtroom under adverse conditions before trial
- Defendants must listen to the attorney asking questions, but focus on the jury when answering questions
- Defendant must transport the jury out of the courtroom through testimony

INTERMISSION: DIRECTED VERDICT

This is **NOT** a break; it is a chance to attack the Plaintiffs' case:

1. Focus on Immunity Issues.
2. Prepare to move for a directed verdict at the close of Plaintiffs' case and Defendants' case.
3. Must identify the grounds for the directed verdict sufficient to place the Plaintiffs on notice.
4. Use Plaintiffs' witnesses and arguments to support your directed verdict.

CLOSING ARGUMENTS

- Create a visual of the burden of proof
- Review the jury verdict form with the jury (Don't let the first time they see it be in the jury room)
- Acknowledge varying theories and show how all roads lead to a victory
- Don't ignore the 800lb pink gorilla in the room.
- Turn "Why didn't Broward wait" into "Why SHOULD HE HAVE HAD TO wait for the man, who had threatened everyone he came into contact with, to stab him?"
- Highlight deficiencies in the Plaintiffs' witnesses/ "expert"
- Be the expert and empower the jury to make the difficult decision

POST TRIAL

- Be prepared to move for any post trial motions – Must preserve issues for appeal (Rule 50 or Rule 59)
- Poll the jury
- Remember the case is not over until the appellate courts say it's over

THE JURY: KNOW YOUR AUDIENCE

1. Learn from the jury after a trial concludes.
2. Take what the jury says with a grain of salt (i.e., sometimes you must forget the U-Turn).
3. Make sure the jury can relate to you.

THE END

QUESTIONS?