Practical Aspects of Qualified Immunity

How many places do I have to try this case?

Venue

- The Scene of the Incident
- The Evening News
- The Morning Paper
- Family Press Conference
- Agency Press Conference



What we're doing is continuing to make the arguments in the court of public opinion. The court of law is not very kind to marginalized minorities.

—Benjamin Crump



Stewart Miller Simmons

TRIAL ATTORNEYS

Theory and Theme

- Legal framework
- Emotional hook
- Consistency
- Compassion

Trial Procedure

Critical Incident Response

- Gather and know your facts
- Speculation is the provence of Media and their “experts”
- Show compassion
- “What we know now…..”
- “The law is very clear that we need to understand what the officer(s) knew and when they knew it.”

Windsor, Virginia

- December 2020
- Officer makes a mistake because drive out tag was misapplied
- Driver continues to a well-lit place to stop
- Seasoned officer and trainee
- Town of 27,000 with 6 sworn officers



What should they have known?

- Drive out tag in rear window
- Speed of vehicle
- What is safer: Dark side of the road or well-lit convenience store?
- Opportunity to de-escalate?



What the officers did

- Initiate felony stop with weapons drawn
- “Ride the lightening”
- Asked if he was a corporal (non-commissioned officer)
- OC Spray used on Driver
- Driver taken to ground and hand cuffed



What LT Nazario Did

- Asked questions about why he was stopped
- Did not exit the vehicle
- Kept his hands raised
- Was wearing his Army uniform

The Fallout

- Press Conference on April 14
- Fired senior officer “because video went viral”
- Police Report was filed that night
- No apology for conduct of officers



Atlanta, Georgia

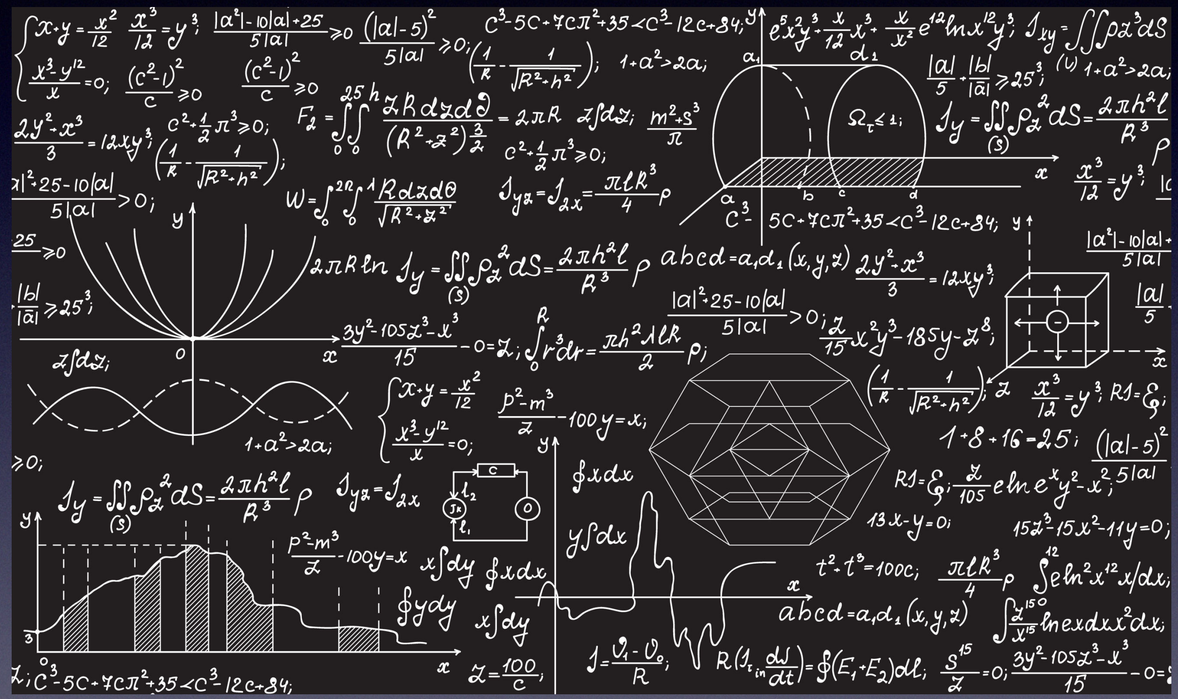
- Protests after George Floyd incident
- Mayor imposes curfew
- Car of students stopped and tased for breaking curfew
- Officers summarily fired by Mayor
- Officers charged with Aggravated Assault for using TASER

3 Months Later

- Officers attempt to stop a vehicle at a Wendy’s
- Driver is non-compliant, fights officers, and takes TASER
- TASER is fired at officers
- Officer returns fire and kills Driver
- Officer is fired and charged with Aggravated Assault and Felony Murder

What do we learn?

- Consistency Matters
- Courage Matters
- “There is always a right time to do the right thing”
- “I’m Sorry” goes a long way—Helmreich in Cornell J. Law & Pub. Pol.



Underpinnings of Qualified Immunity

- Reasonable notice that what the officer or official is doing “in the circumstances” violates the law
- Allow for reasonable mistakes
- Stripped for the corrupt or unreasonable conduct


EQUAL JUSTICE UNDER LAW


TV
NEWS
TV
NEWS
NEWS
VLM

The Scouts aren’t Wrong

- Be prepared
- Be Trustworthy
- Be Kind
- Be Courteous
- Be Brave



Conclusion




thank you
merci
grazie
danke
gracias
arigato
efharisto
spasiba
cheers
hvala
takk
tänan
tanmirt
manana
saha
barkal
akiba
taiku
matondi
dekuji
dankie
shukriyaa
merkzi
tanemirt
bayarlalaa
trugéré
blagodaram
köszönöm
spas
vinaka
gratzias
dziakuju
paldies
misaotra
zikomo
mèsi
dankegon
ngiyabonga
tenki
mahalo
aabar
sulpáy
yekeniele
sobodi
nuhun
menlau
meharbani
multumesc
matondo
shakkran
miigwech
dankewol
skee
blagodaria
stuutiyi
kiitos
manjuthe
obrigada
talofa
ahsante
dakujem
obrigado
murakoze
sađol
dziekuje
grassie
chokrane
waybale
soolong
waita
wado
welalin
modupe
dėkoju
gràcies
aitäh
salamat
madlobt
tashakor
marahaba
omol
supas
shukria
shukran
maururu
nandri
buznyg
rahmat
tack
nkosi
bedankt
danki
kinisou

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