

**LAW ENFORCEMENT  
LIABILITY IN  
CURRENT TIMES**

Presented by:  
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**PERCEPTION VIDEO  
FATHER/DAUGHTER**



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- Increased Exposure?
- Impact of Reforms?
- New Claims?
- Mental Health Calls?
- De-Escalation?
- Racial Equity?

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- Trust/Credibility Of Police?
- Hiring Crisis?
- Morale and Support?
- Video, Video, Video!
- Qualified Immunity

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RODNEY KING



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NYC - 9/11



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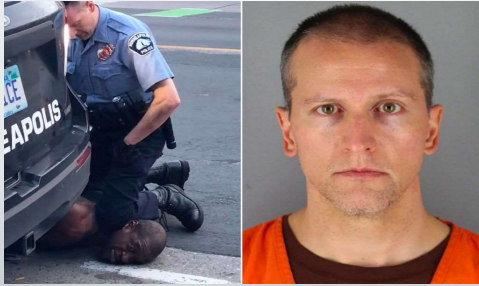
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CHAUVIN/FLOYD



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CAPITAL RIOTS



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Crisis in Police Hiring

Morale Low

Profession Battered

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Violent attacks against officers are on the rise across this nation with "a police officer shot nearly every day (in 2022) as a growing wave of shootings and other attacks across this country claimed the lives of four officers in less than a month," which follows 2021, which "was the deadliest on record for police officers, according to data from the National Law Enforcement Officer Memorial Fund." See <https://www.washingtontimes.com/news/2022/jan/24/violent-attacks-against-police-officers-rise-2022/>.

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**INCREASED EXPOSURE?**

- Smaller cases eliminated
- Video- perception is in the eye of the beholder
- George Floyd- \$27 Million
- Breonna Taylor- \$12 Million
- "Vietnam" Effect
- New Plaintiff's Firms

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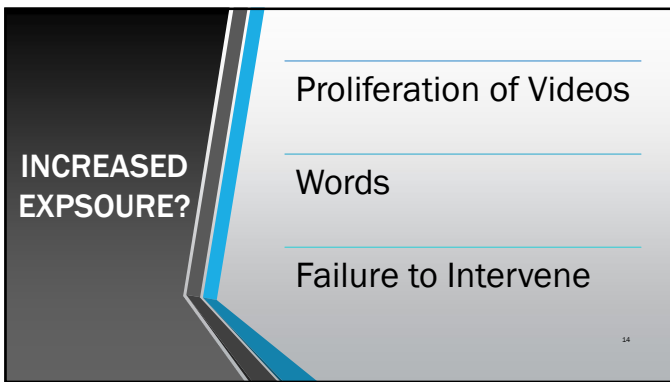
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### LIABILITY IN CONNECTION WITH THE ACTIONS OF ANOTHER-FAILURE TO INTERVENE

- [Plaintiff] contends that [third person] violated [plaintiff's] [specify right] and that [defendant] should be liable for that violation because [defendant] failed to intervene to stop the violation.
- [Defendant] is liable for that violation if plaintiff has proven all of the following four things by a preponderance of the evidence:
- First: [Third person] violated [plaintiff's] [specify right].
- Second: [Defendant] had a duty to intervene. [I instruct you that [police officers] [corrections officers] have a duty to intervene to prevent the use of excessive force by a fellow officer.] [I instruct you that prison guards have a duty to intervene during an attack by an inmate in the prison in which they work.]
- Third: [Defendant] had a reasonable opportunity to intervene.
- Fourth: [Defendant] failed to intervene

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**3<sup>rd</sup> Cir Model Instruction 4.6.2**

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### PRISON VIDEO



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### TASER VIDEO



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**INCREASED EXPSOURE?**

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**FEDERAL**  
v  
**STATE**

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Recovery?

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Cap?

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Fee - Shifting?

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Venue?

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**REFORMS?**

De- Escalation

No-Knock Warrants

Choke Holds

Mental Health- Arrestee

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**REFORMS?**

Mental Health- Officer

Cultural Awareness

Racial Equity

De-Fund v. Increased Funding

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**IN DETERMINING THE REASONABLENESS OF FORCE, THE FACT FINDER CONSIDERS:**

- the severity of the crime at issue;
- whether [plaintiff] posed an immediate threat to the safety of [defendant] or others;
- the possibility that [plaintiff] was armed;
- the possibility that other persons subject to the police action were violent or dangerous;
- whether [plaintiff] was actively resisting arrest or attempting to evade arrest by flight;
- the duration of [defendant's] action;
- the number of persons with whom [defendant] had to contend; and
- whether the physical force applied was of such an extent as to lead to unnecessary injury.

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**3<sup>rd</sup> Cir Model Instruction 4.9**

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The reasonableness of [defendant's] acts must be judged from the perspective of a reasonable officer on the scene. The law permits the officer to use only that degree of force necessary to [make the arrest] [conduct the stop]. However, not every push or shove by a police officer, even if it may later seem unnecessary in the peace and quiet of this courtroom, constitutes excessive force. The concept of reasonableness makes allowance for the fact that police officers are often forced to make split-second judgments in circumstances that are sometimes tense, uncertain, and rapidly evolving, about the amount of force that is necessary in a particular situation.

**3<sup>rd</sup> Cir Model Instruction 4.9**

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As I told you earlier, [plaintiff] must prove that [defendant] intended to commit the acts in question; but apart from that requirement, [defendant's] actual motivation is irrelevant. If the force [defendant] used was unreasonable, it does not matter whether [defendant] had good motivations and an officer's improper motive will not establish excessive force if the force used was objectively reasonable.

**3<sup>rd</sup> Cir Model Instruction 4.9**  
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## NEW CLAIMS

- Mental Health v Use of Force
- State-Created Danger
- Wrongful Convictions
- Bad Tactics
- Video "Audits"

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## RACIAL EQUITY/ANTI BIAS

- HIRING PRACTICES
- MONELL CLAIMS

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<h3>INDIVIDUAL</h3> <ul style="list-style-type: none"><li>• 1. Violation</li></ul>	<h3>MONELL</h3> <ul style="list-style-type: none"><li>• 1. Violation</li><li>• 2. Custom, Practice, or Policy</li><li>• 3. Causation</li></ul>
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## DISCOVERY

<b>WHAT WILL PREDOMINATE?</b> <ul style="list-style-type: none"><li>• Incident or Monell?</li><li>• Bifurcated Discovery?</li></ul>	<b>LIMITS ON MONELL</b> <ul style="list-style-type: none"><li>• Time</li><li>• Type of Claim</li><li>• Officer(s)</li><li>• Citizens Complaints</li><li>• Lawsuits</li><li>• Personnel Files</li></ul>
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## MONELL CLAIMS

- Interplay with officers
  - Bifurcation
- “Dirt” or “Problems”?
  - Accreditation

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## PRACTICAL CONSIDERATONS IN ASSESSING CLAIMS

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**CONFLICTS**

- Finger pointing?
- Separate Counsel?
- Multiple defendants?

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**OFFICER(S)**

- Background
  - Baggage
  - Prior suit(s)
- Current or "ex" officer

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**WHAT HAPPENED IN THE CRIMINAL CASE?**

- Conviction, plea, acquittal?
  - Why?
- Evidentiary Rulings?
  - Record

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**PAPERWORK**

- Complete?
- Missing?
- Consistent?

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**PRESERVATION OF EVIDENCE**

- Photographs
- Statements
  - Video
- Radio Transmissions
  - 911 call audio
- Is there a "system", policy, consistency

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**IA/FORCE REVIEW**

- Officer(s) cleared?
- Policy violation?
- Finding of Fault?
  - Discipline?

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## KEY DOCUMENTS

- Reports?
- Videos- Body Cam, iPhones, Security, Dashcam, Holding Cell
  - Policies
- Personnel Files

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## KEY DOCUMENTS (cont.)

- Criminal Record of Plaintiff
  - Criminal Docket
  - Social Media

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## SOCIAL MEDIA



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## PLAINTIFF

- Sympathy
- “Victim” or “Bad Guy”
- Deposition performance?
  - Reasonable or not?

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## NON-FISCAL CONSIDERATIONS

- “Gut” feel
- “Just doesn’t look right”
- Using an elephant gun on an ant

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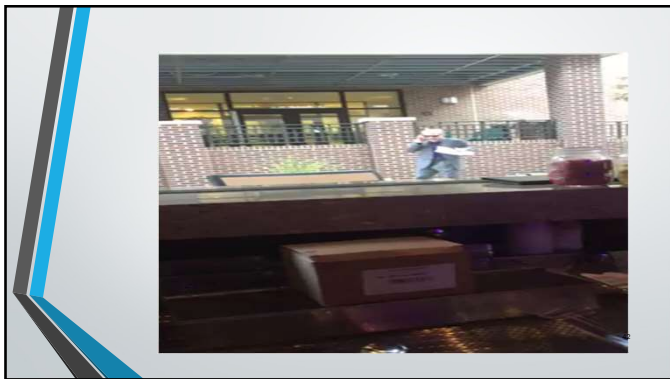
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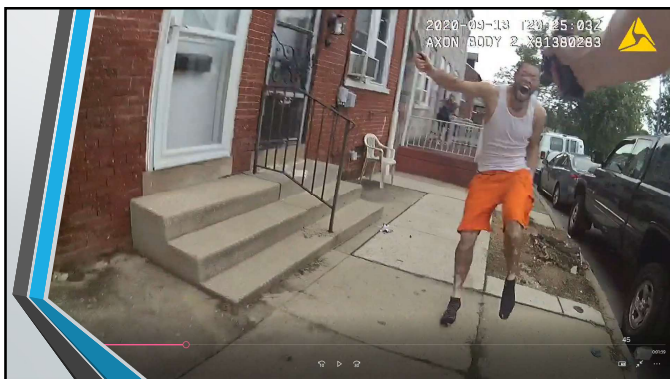
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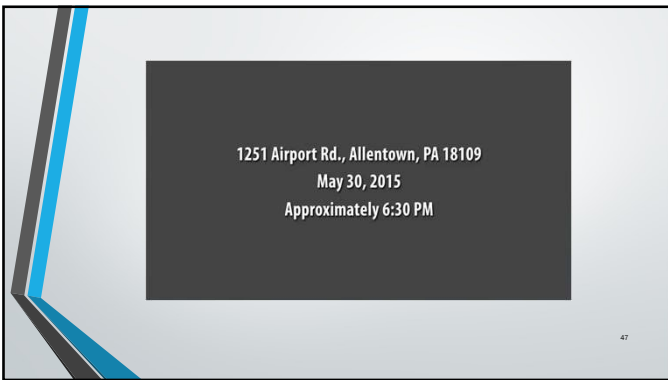
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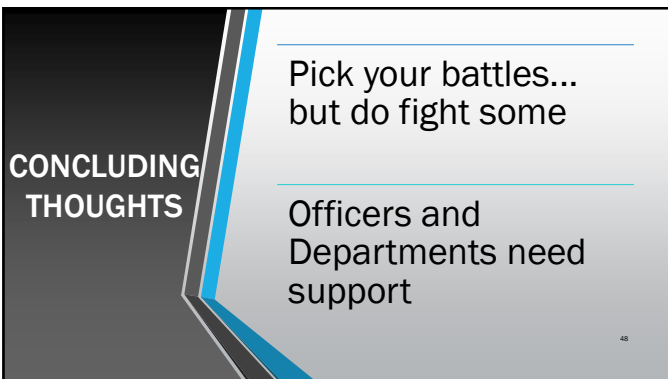
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**CONCLUDING THOUGHTS**  
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**OFFICERS UNDER FIRE**

- \_\_\_\_\_ Viral Videos
- \_\_\_\_\_ Protests v Riots
- \_\_\_\_\_ 1<sup>st</sup> Amendment
- \_\_\_\_\_ COVID
- \_\_\_\_\_ Mental Health
- \_\_\_\_\_ School Police
- \_\_\_\_\_ Sea-Change in Policing
- \_\_\_\_\_ Politicization
- \_\_\_\_\_ De-Fund

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**CONCLUDING THOUGHTS**  
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**OFFICER SUICIDE**

- \_\_\_\_\_ 2018- 190
- \_\_\_\_\_ 2019- 249
- \_\_\_\_\_ 2020- 186
- \_\_\_\_\_ 2021- 175
- \_\_\_\_\_ BLUE H.E.L.P.

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**CONCLUDING THOUGHTS**

- \_\_\_\_\_ Hire Good Defense Counsel
- \_\_\_\_\_ Be Proactive
  - After Incident
  - Training
  - Trends and Bulletins
- \_\_\_\_\_ Public Relations and Credibility

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