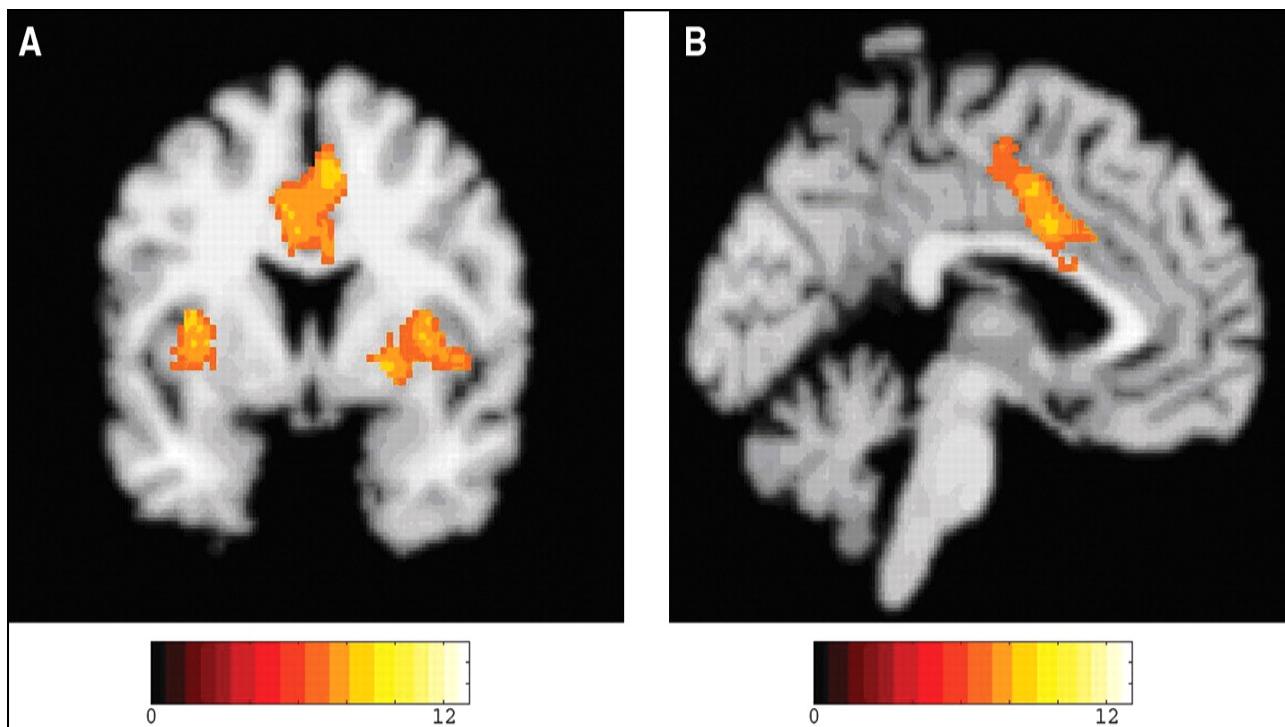
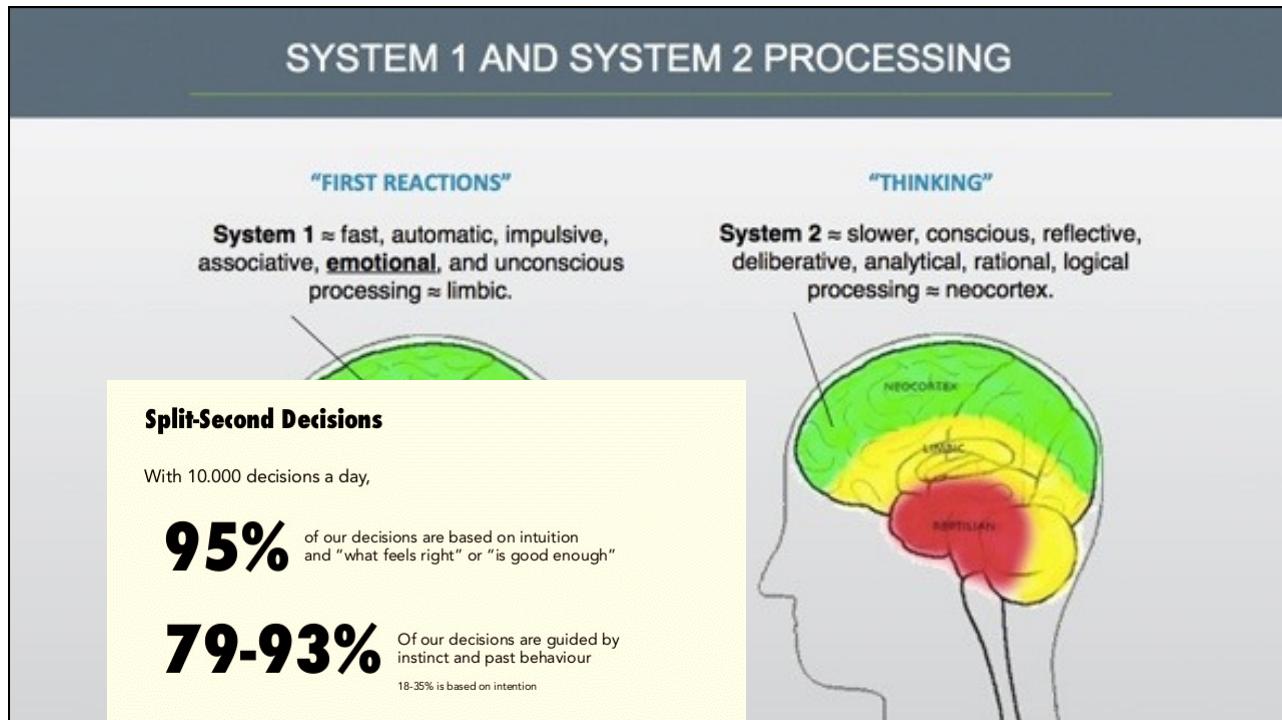


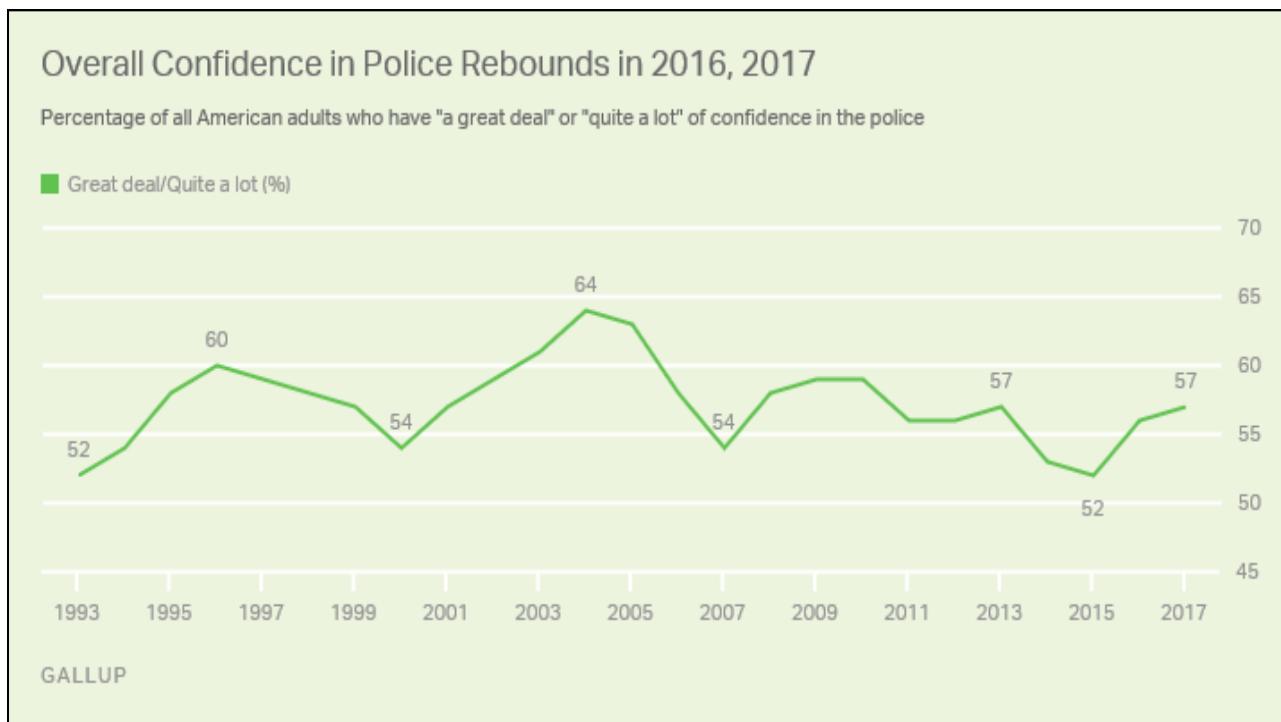
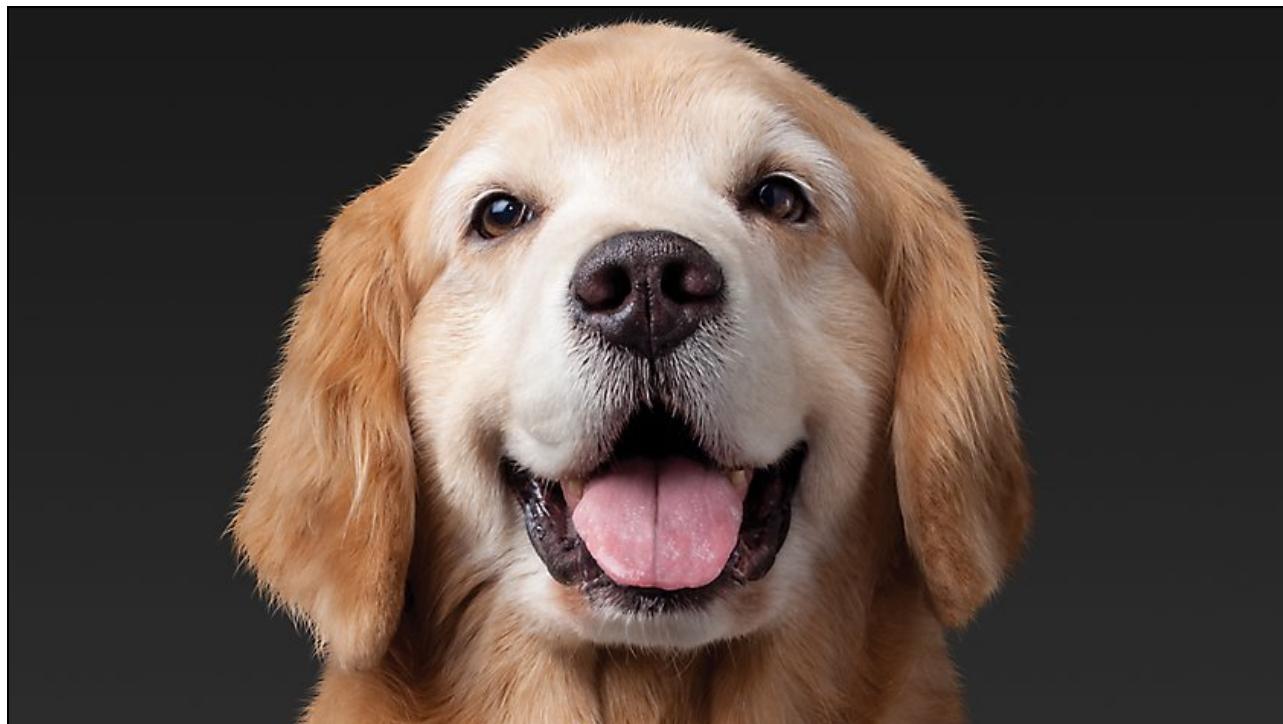


Let's Explore...

- How people make decisions
- How social perceptions impact decision making
- Social perceptions our factfinders have about police
- How to build a counter narrative that contemplates all of the above

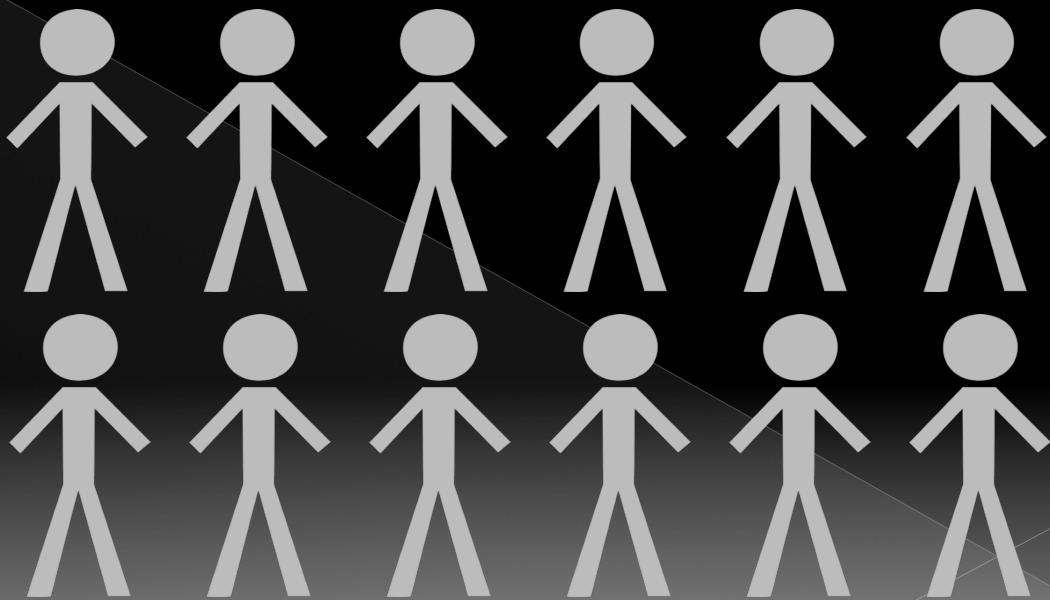


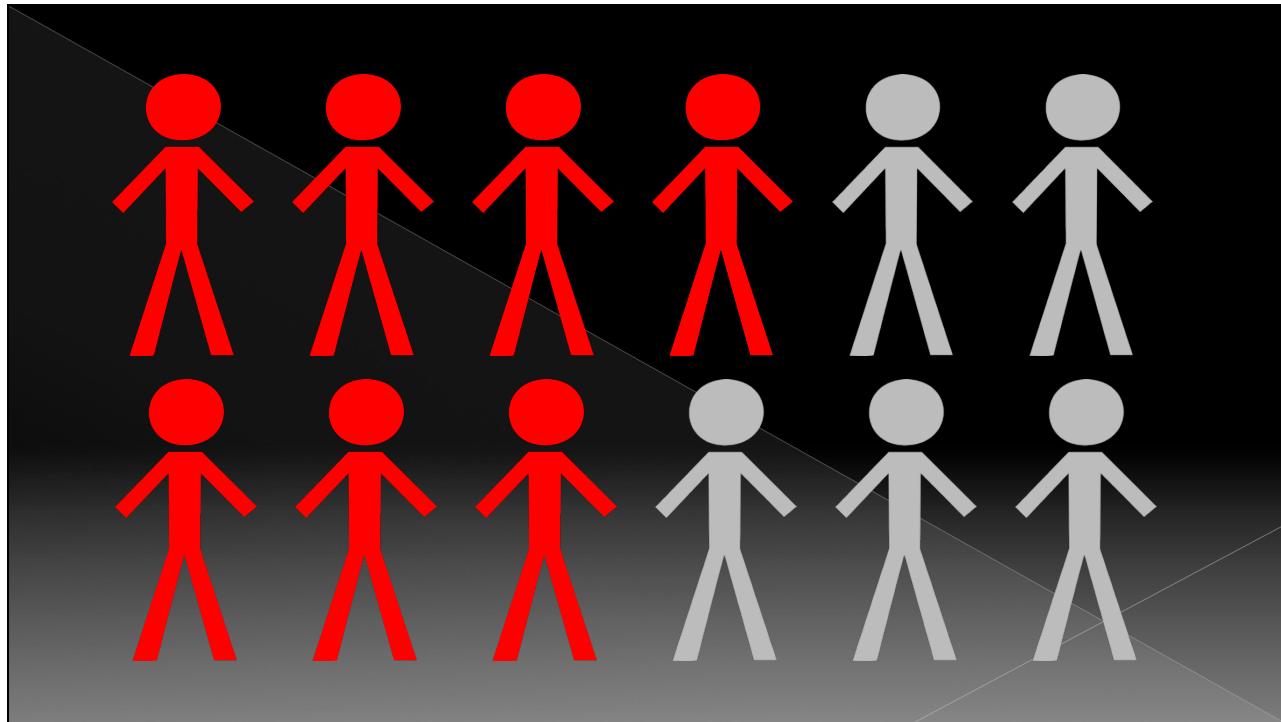




2017 Gallup Poll

- ⦿ Drop in confidence among Hispanics, liberals, and younger adults
- ⦿ African American confidence typically hovers at 35%
- ⦿ Overall rise in white confidence masks drop in those groups



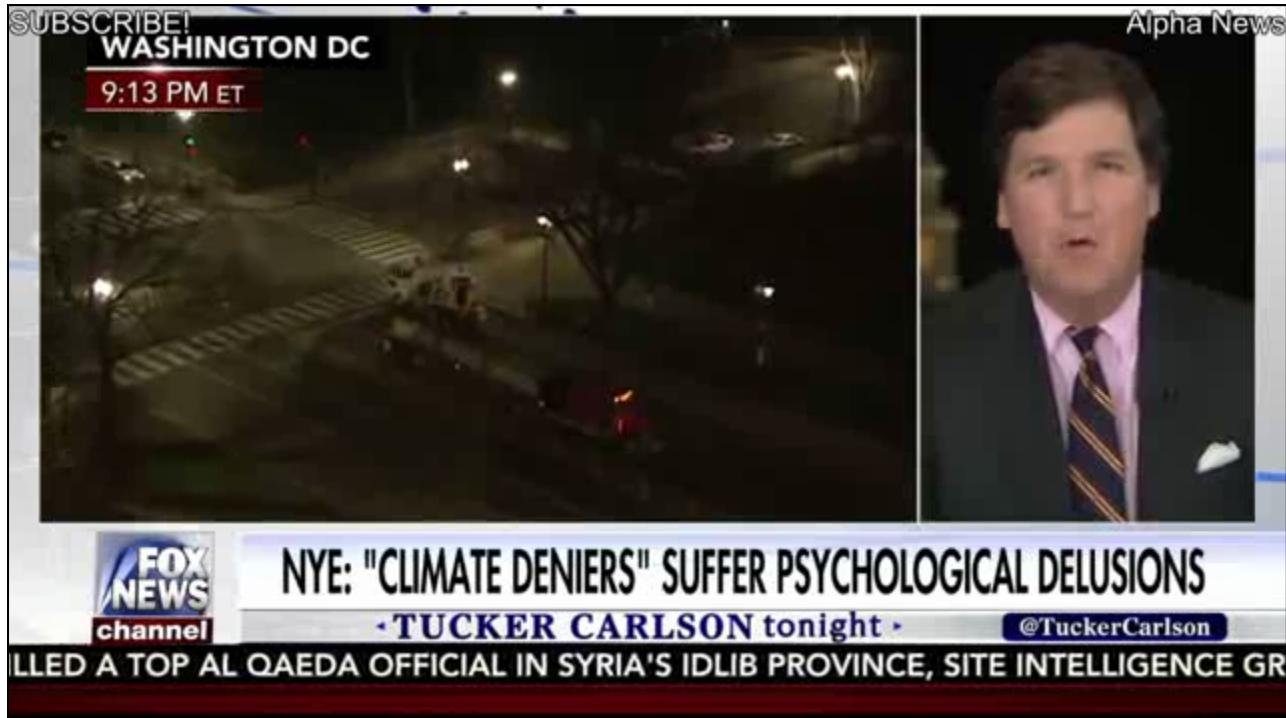


Intuitive Override

- Judges rely on intuition, but sometimes override it with deliberation
- Mild proclivity to override

Blinking on the Bench: How Judges Decide Cases, Chris Guthrie, et. al. Cornell Law Review





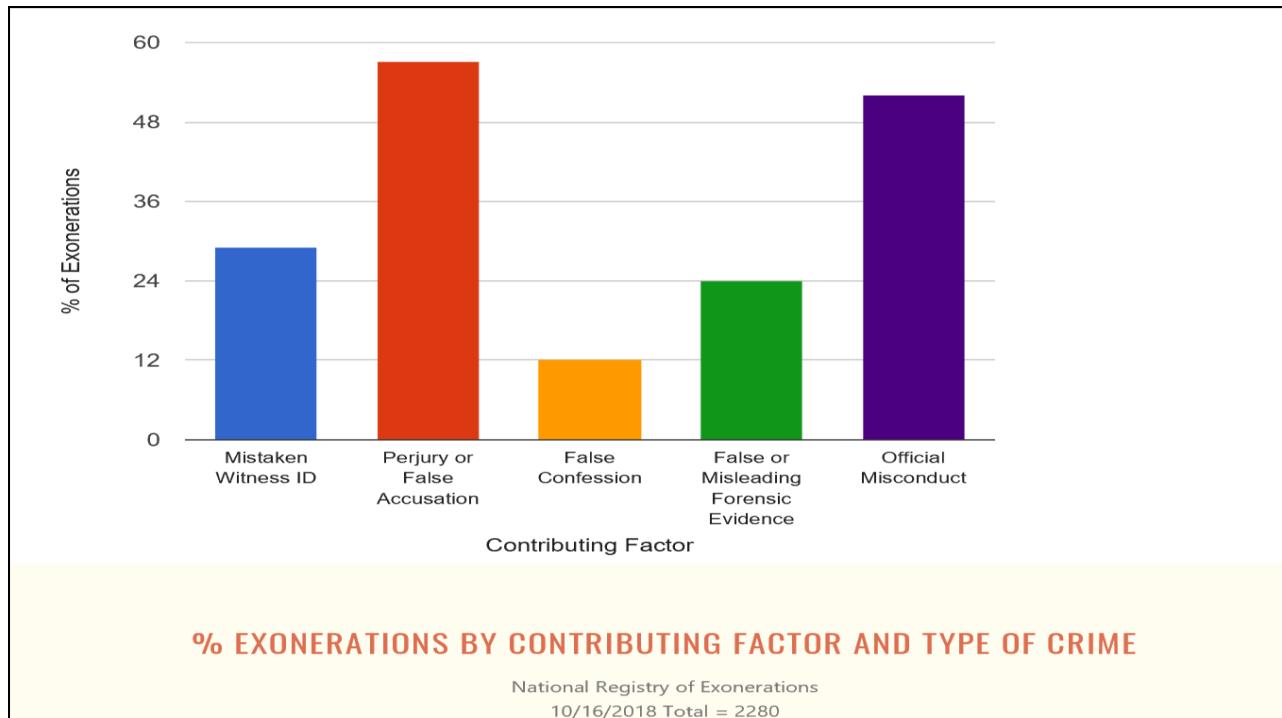
How Does This Begin to Inform Practice?

- Cannot wait until oral argument or closing
- Must center our arguments around the client's story
- Facts won't save us

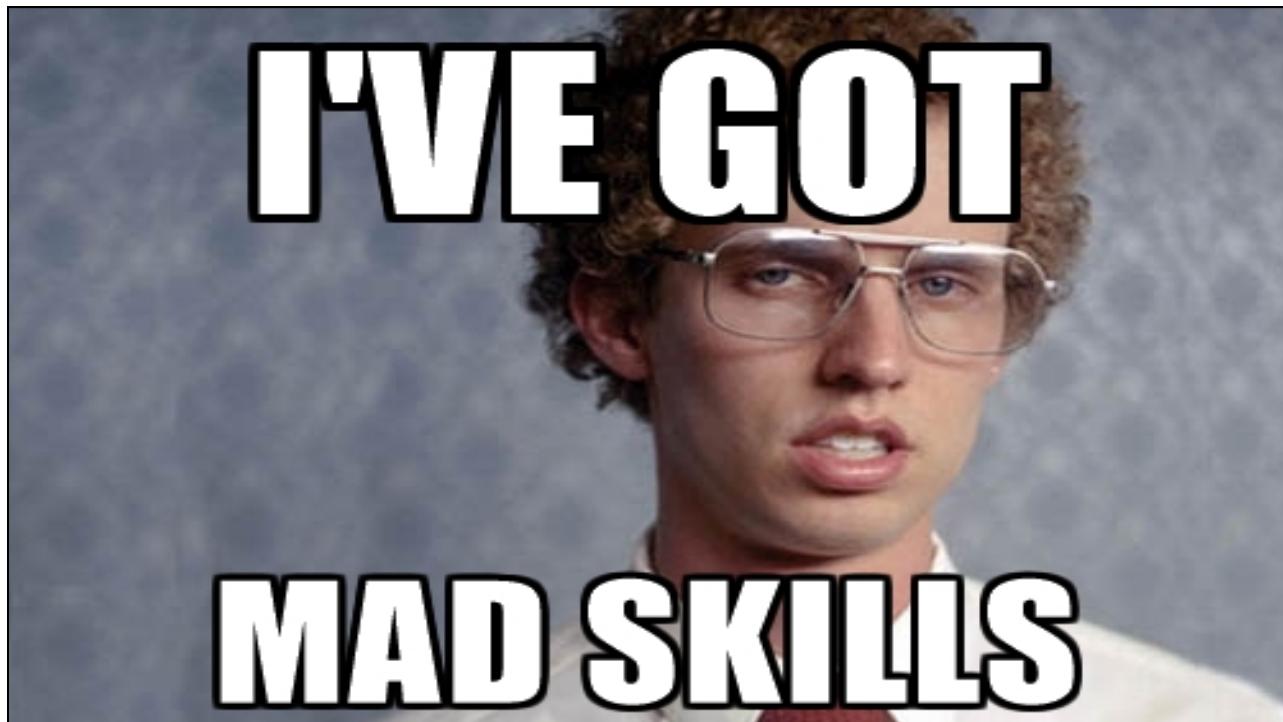
The Law Won't Save Us Either

- ◉ “Facts and circumstances within the officers knowledge and of which they had reasonably trustworthy information to warrant a man of reasonable caution in the belief that an offense has been or is being committed.” Brinegar v. U.S., 338 U.S. 160 (1949).
- ◉ “Flexible”
- ◉ “Common-sense”
- ◉ “Fact-specific”
- ◉ Reasonable doubt – “Doubt based on *common sense* and reason.”



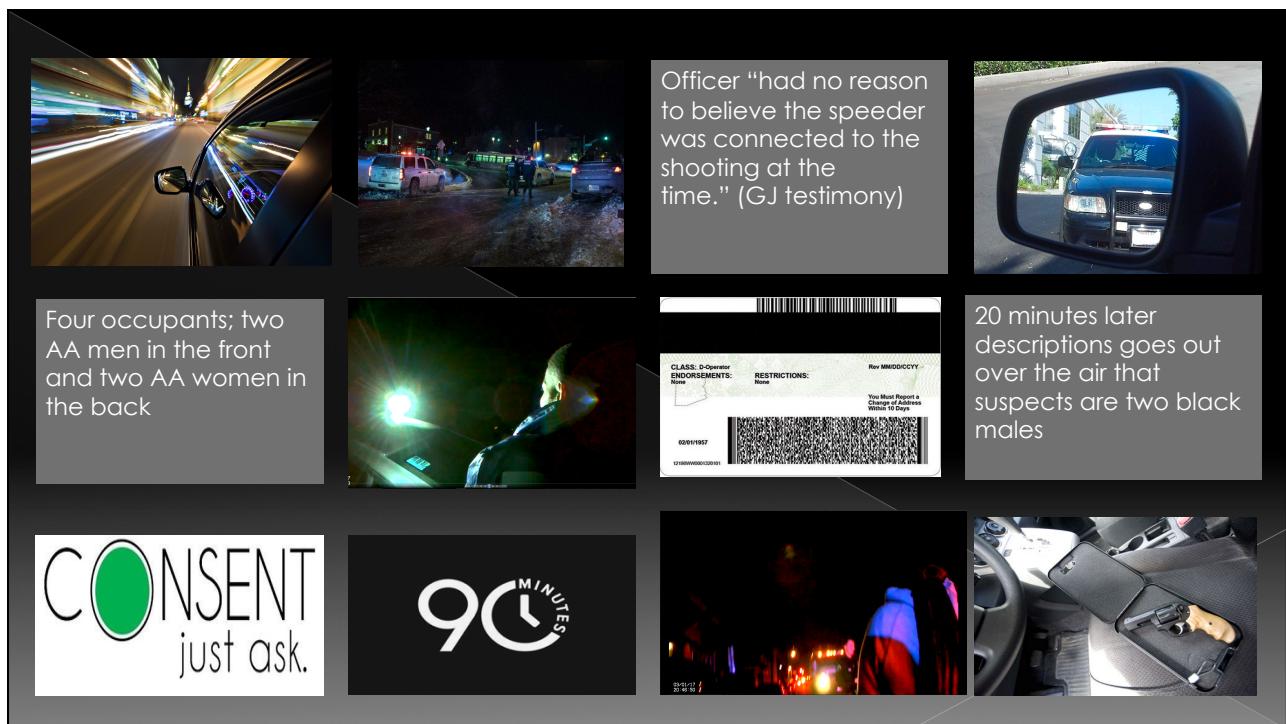


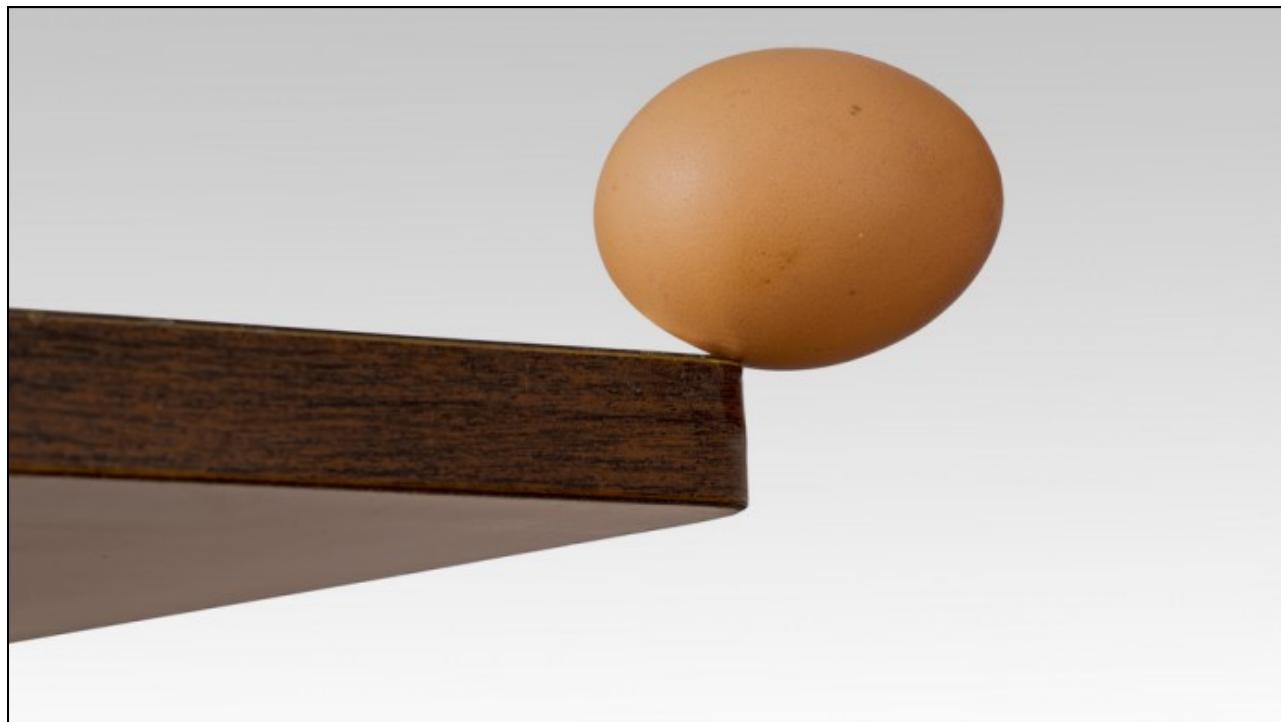




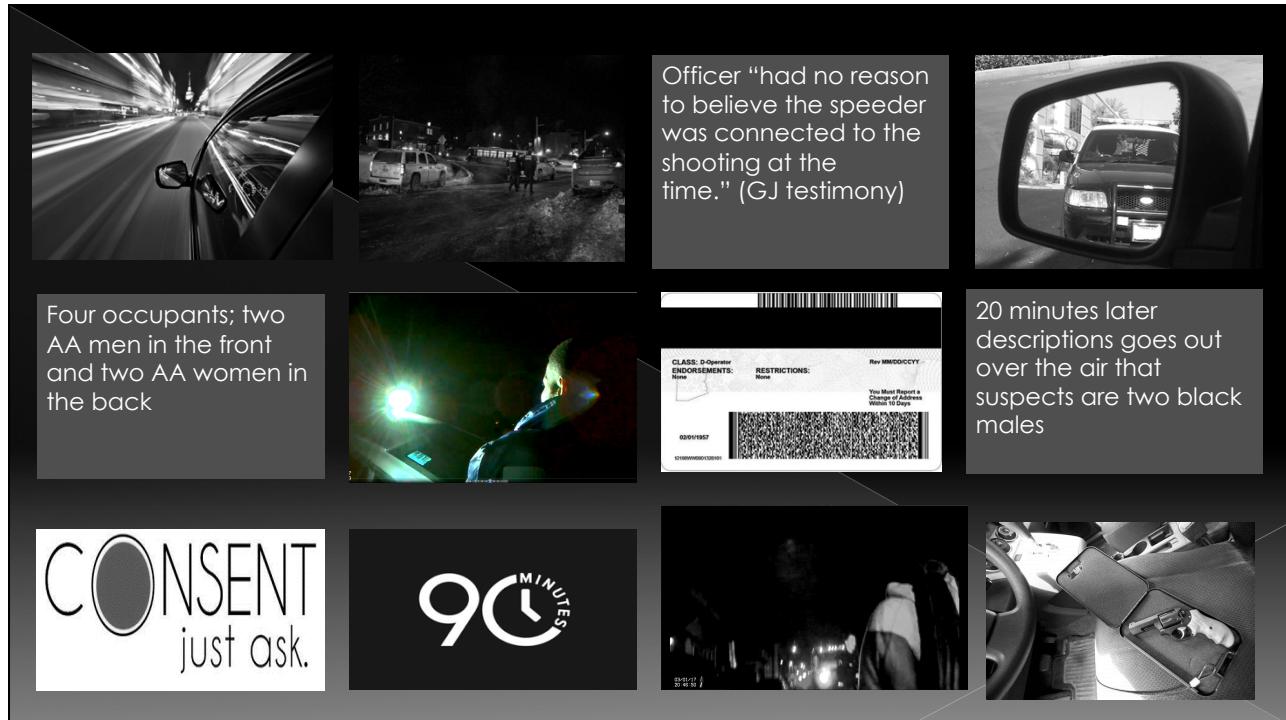
A New Approach to Motion Practice

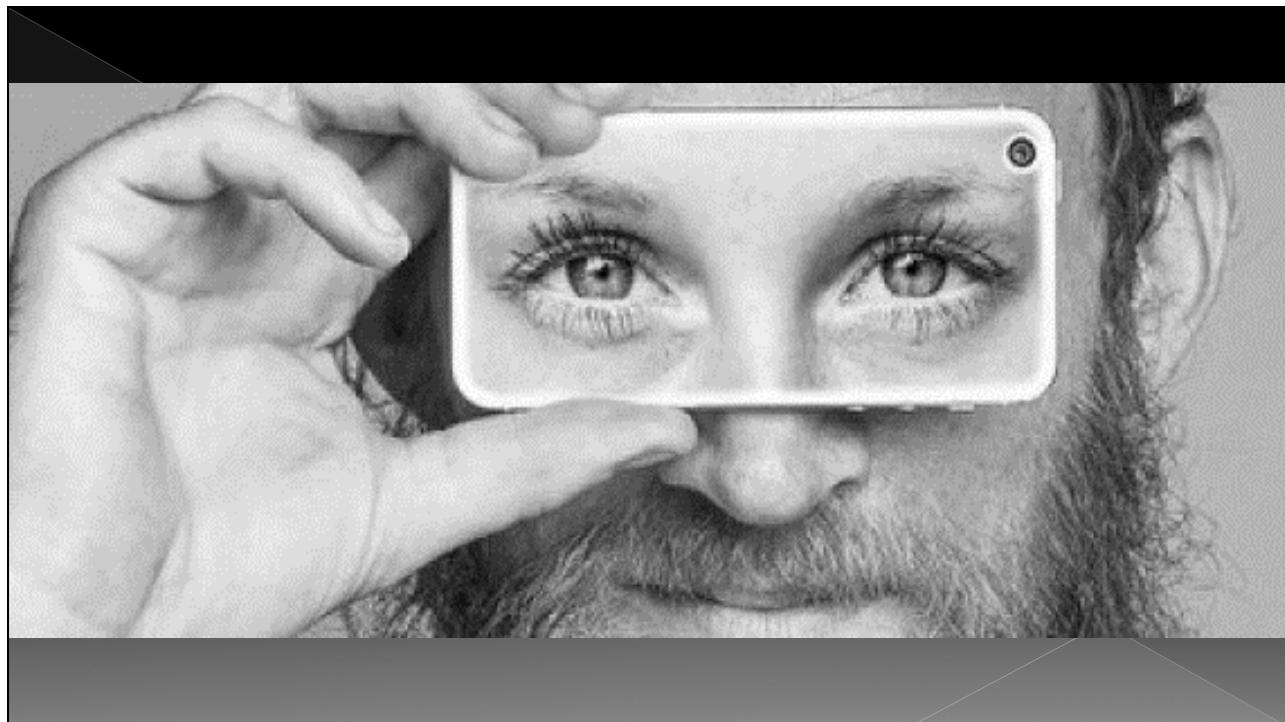
- Sequence of events
- Find the tipping point
- The law that applies
- Think through the social perceptions/emotions implicated
- Build a counter narrative that addresses that perception/emotions





 	<p>Officer "had no reason to believe the speeder was connected to the shooting at the time." (GJ testimony)</p>		
<p>Four occupants; two AA men in the front and two AA women in the back</p>			<p>20 minutes later descriptions goes out over the air that suspects are two black males</p>
			





Build a Counter-Narrative

1. Tell stories
2. Go to the scene
3. Uncover and exploit inconsistencies
4. Explore officer bias
5. Observe, record and comment upon demeanor
6. Apply systemic arguments to individuals
7. Argue non-compliance with established procedures
8. Explore new media



1. Tell Stories



STATEMENT OF FACTS

"Get out."

"Keep your hands up."

"Back here. Come all the way back here," indicating the rear of the Nissan.

"Put your hands up on the..." indicating the hood of the Nissan.

Those are the orders from Officer Cook to Michael King ("King") before the officer asks him a single question about what the State purports to be a motor vehicle stop. By the time the officer does ask, King has already been instructed to assume the position – feet spread apart, back to Officer Cook, Officer Widman's flashlight shining in his eyes, hands on the hood of the Nissan.



Begin with Purpose

- Begin with what is most important to the story
- DO NOT argue chronologically
- When it comes to motions, apply your trial advocacy skills



PSA From Friendly
Appellate Lawyer



**Shoot for strong,
compelling, yet
concise introductions;
a restrained use of case
law; and modern diction.**

Judges Speaking Softly
What They Long for
When They Read
ROSE GUREKIAN

2. Go to the Scene

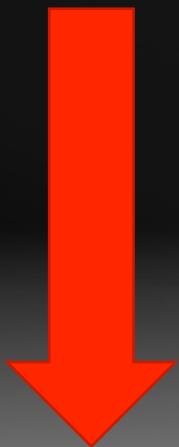
- Go with your client if possible
- Consider what officer did not do/report
- Before springing into action, take a breath

3. Inconsistencies

- Mine the transcripts, line by line
- Make charts
- Group inconsistencies
- Impeach first, ask questions later

Police Report	Grand Jury	Mot. to Suppress	Trial
Driving down 1 st St. (p. 1)	Driving down 1 st St. (1/16)	On foot patrol (2/2)	
Suspect standing on corner (p. 1)	Suspect standing in street (1/20)	Suspect standing in street (2/8)	
Suspect in red hat (p. 2)	Suspect in blue hat (5/5)	Suspect in gray hat (7/8)	
Drugs in right hand (p. 2)	Drugs in left hand (6/7)	Drugs in left hand (8/3)	

Order Inconsistencies

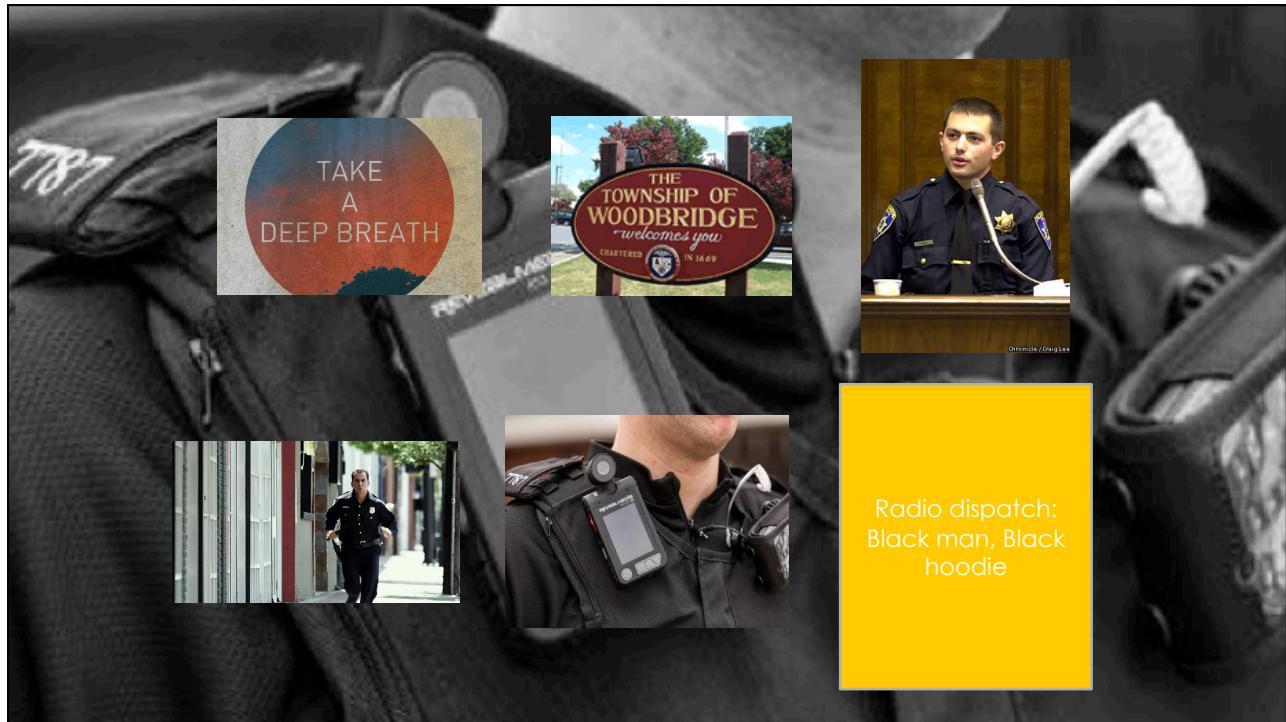


- Most material direct impeachments
- Direct impeachments
- Impeachments by omission
- Statements that are inconsistent with other witnesses who have already testified
- Impeachments that must be completed with other witnesses

4. OFFICER BIAS

- Bias is a story
- Identify specific officer bias





DEMEANOUR

MEANING:

THE WAY SOMEONE BEHAVES,
DRESSES, SPEAKS ETC THAT SHOWS
WHAT THEIR CHARACTER IS LIKE

SYNONYMS:

BEHAVIOUR, CONDUCT, MANNER

EXAMPLE:

"HER DEMEANOUR LATE ON THAT
SUNDAY EVENING WAS DROWSY
AND DETACHED."

5. Recording Demeanor

- "The appearance and manner, the voice, the gestures, . . . **The passions which control – fear, love, hate, envy, or revenge – are all open to observation, noted and weighed.**" -- 5 John Henry Wigmore, Evidence § 1395
- "*Officer Smith crossed his arms and looked down towards his lap every time counsel asked him about the car. That happened at page 1, line 5; page 5, line 7, and page 10, line 17.*"

Demeanor	Cite/Time
Facial Expression:	
Body Language:	
Gesture:	
Tone:	

Demeanor at Trial

- "Demeanor is a **part of the evidence**. The words used are by no means all that we rely on in making up our minds about the truth of a question that arises in our ordinary affairs." -- *Dyer v. MacDougall*, 201 F.2d 265, 268-69 (2d Cir. 1952) (L. Hand, J.)
- What does a liar look like?



March 4, 2015

- African Americans make up 67% of the population and account for 93% of arrests made from 2012-2014
- Revenue rather than public safety
- Use of force stemmed from “unlawful bias”



Following Them

- “Proactive patrol” on the border of Plainfield and South Plainfield
- Followed them down South Clinton for “quite a ways, **probably over a mile.**” (MT1 85/1-5)
- No traffic violations, descriptions, crimes
- *“Well, no, I was behind them the entire way because I was going the same location, but I don’t remember exactly when I took notice of [the Honda Accord]”* (MT1 84/22)

The Softball Bat

- No indication these kids were wanted for anything
- No indication the car was wanted for anything
- Softball bat in car

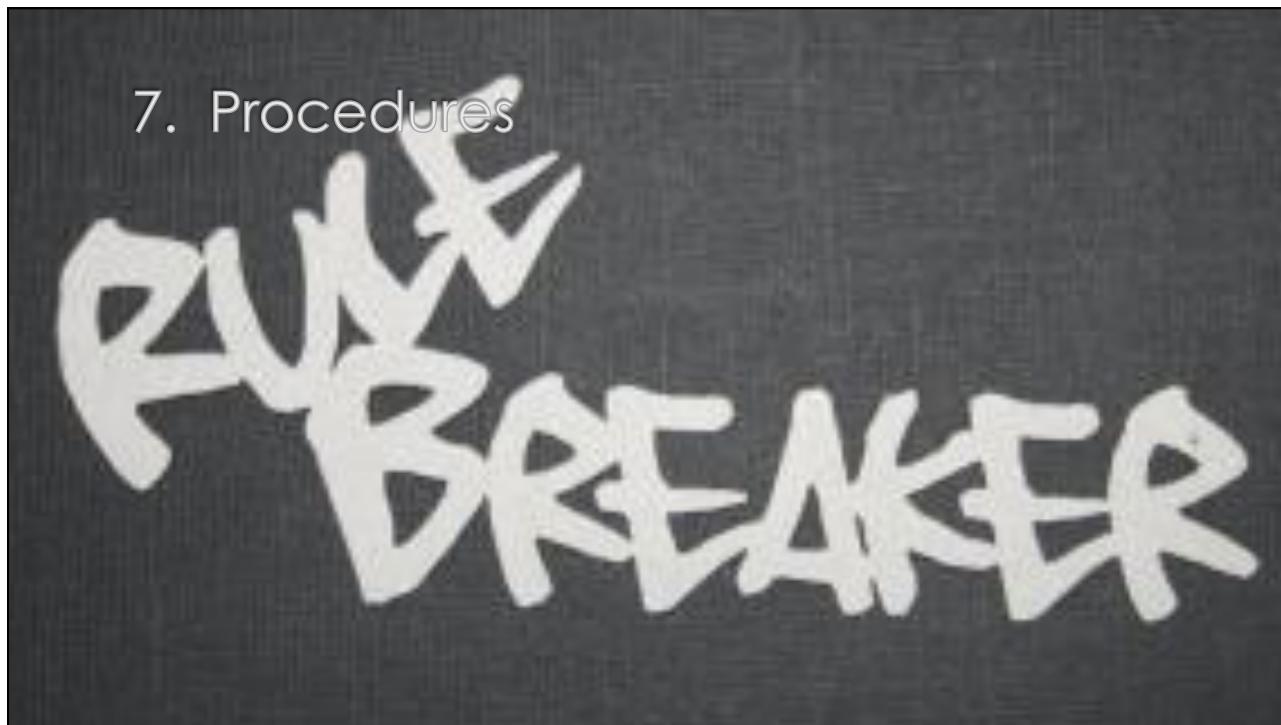
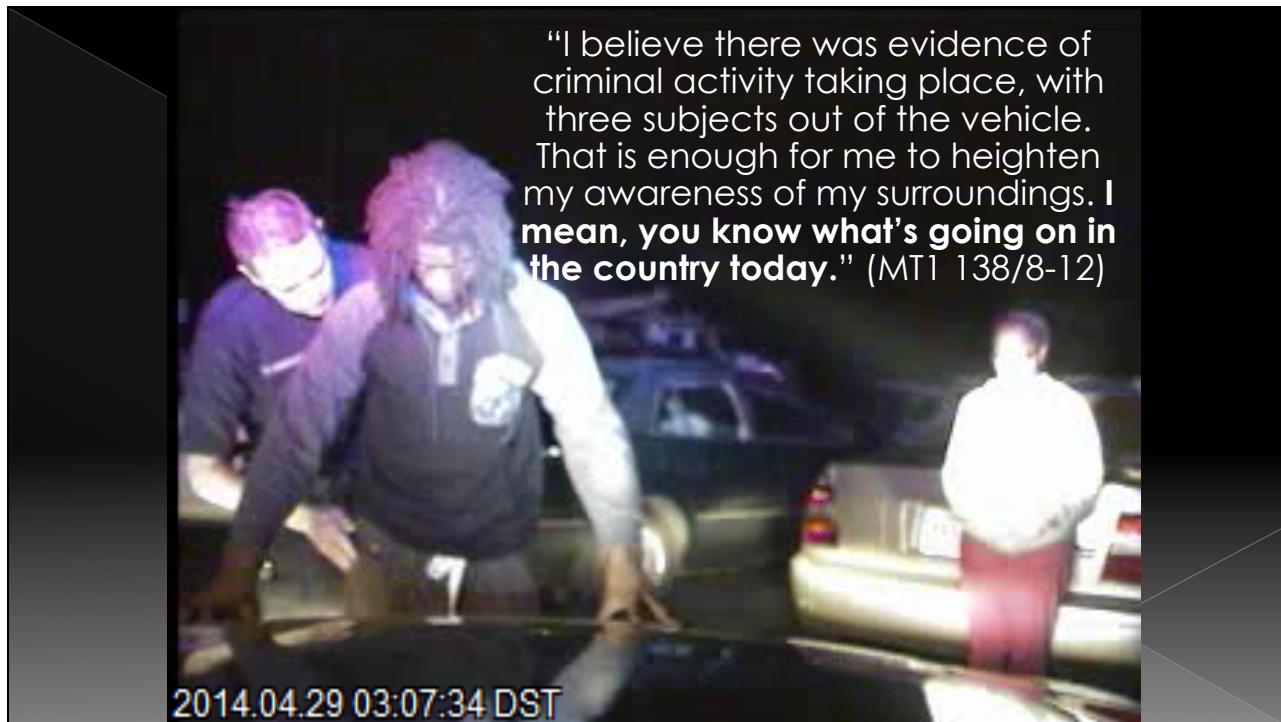
The Softball Bat

- ◉ No indication these kids were wanted for anything
- ◉ No indication the car was wanted for anything
- ◉ Softball bat in car
- ◉ Q: The reason you say you retrieved it was in case it had been involved in a robbery? (MT1 81/25-82/2)
- ◉ A: Yes.
- ◉ But you had no information that the people in this vehicle had been involved in any robberies, right?
- ◉ Yes. (MT1 81/18-82/15)

- ◉ “Look what we have here.” – Officer Williams

- ◉ “Yeah, like any of these people play softball.” – Officer Magnani MVR
3:32:48





**D. RECORDING OF INCIDENTS - REQUIRED VS. OPTIONAL****1. MANDATORY & CONTINUOUS RECORDING REQUIRED**

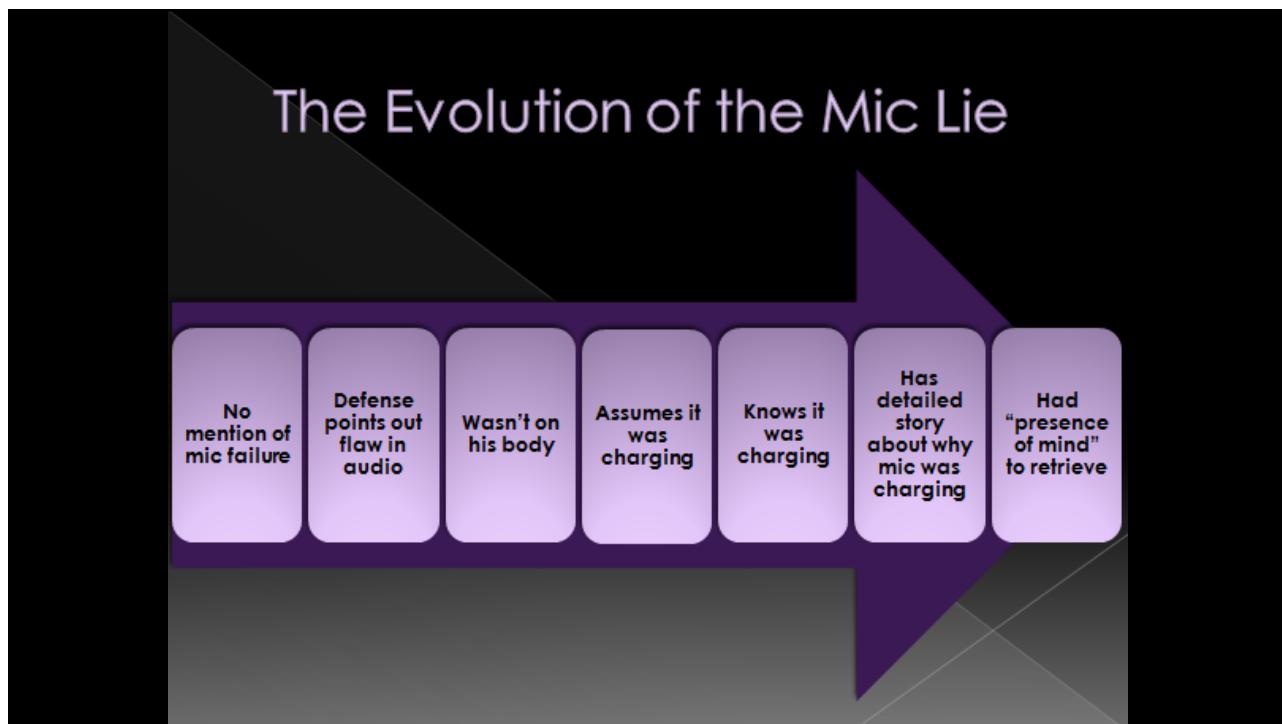
- a. Any emergency response;
 - b. All traffic/criminal enforcement stops in its entirety;
 - c. In-progress vehicle or criminal code violations which are observable via the MVR;
 - d. Police pursuits in its entirety;
 - e. All motor vehicle consent searches (all aspects of the incident, including but not limited to reading of consent form) if consent is given;
 - f. All dexterity tests which will be conducted as part of the investigation, which are not limited to the dexterity tests.
 - g. Situations which arise wherein the operator by reason of their training and experience, determines that the incident should be documented on video tape;
 - h. A supervisor directs an incident to be recorded.
- i. Note: ALL OFFICERS AT M.V.STOPS WILL KEEP THE M.V.R. ON FOR THE DURATION OF THE STOP WHETHER THEY ARE PRIMARY, SECONDARY OR ANY OTHER SUPPORT.

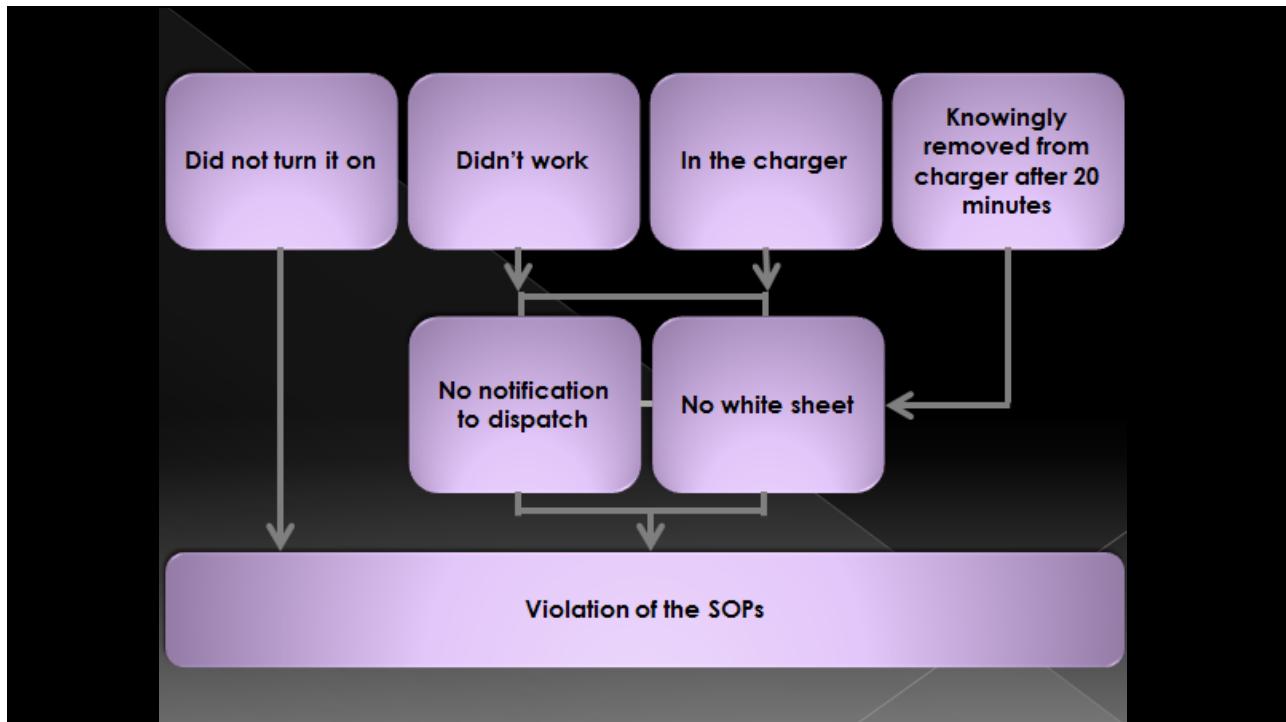
SOPs: Mandatory to Record

B. OPERATIONAL PROCEDURES

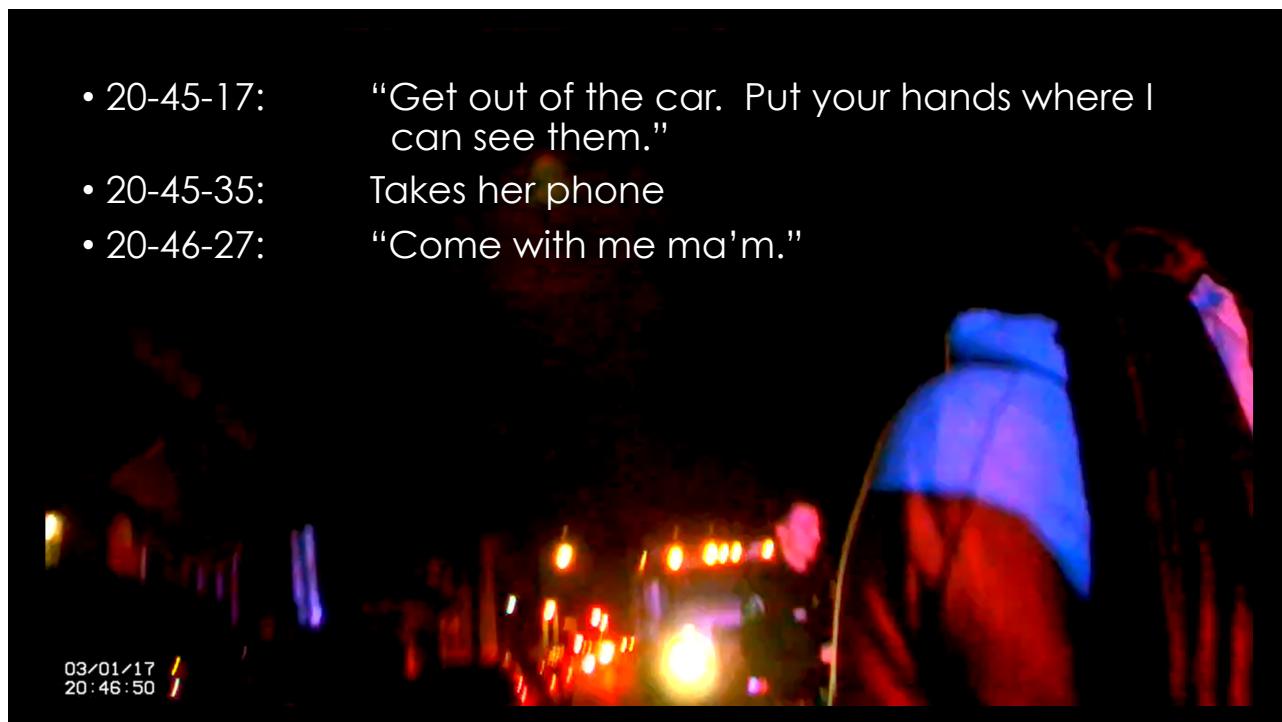
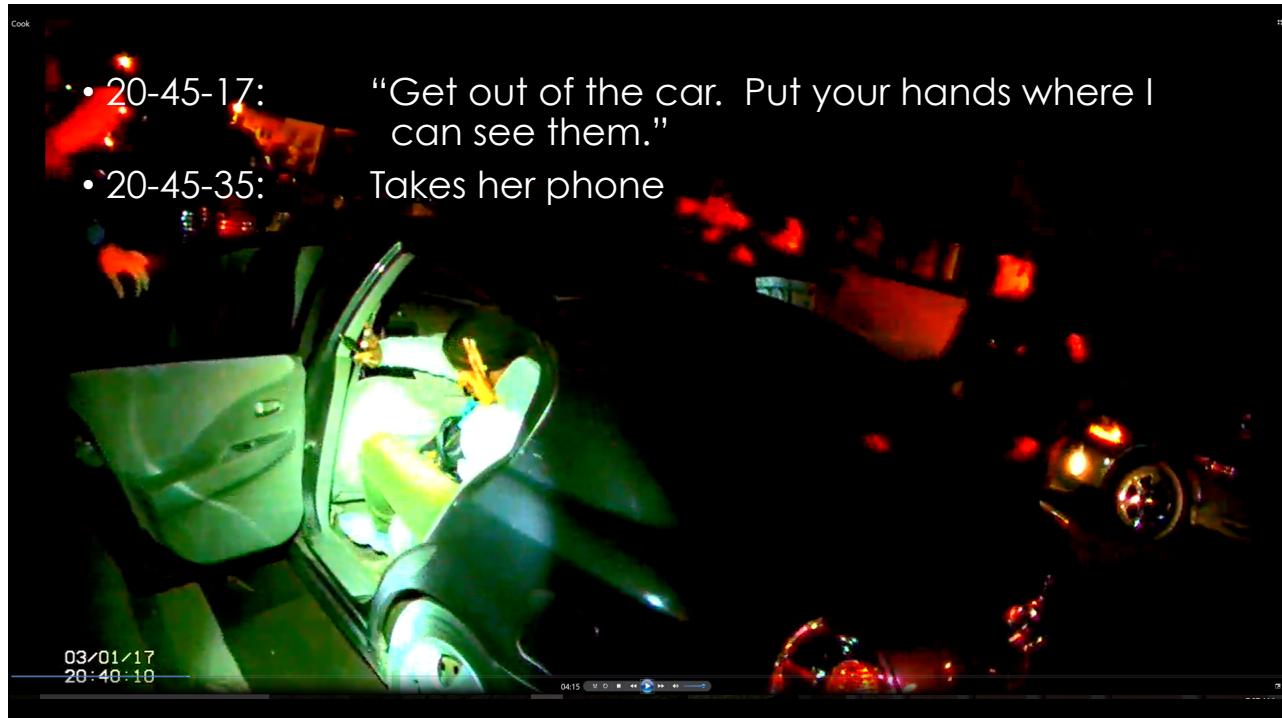
1. Utilization of the MVR equipment is the responsibility of the officer assigned to that vehicle and shall be operated according to the manufacturer's recommendations, training and ~~any other system or the system~~
2. ~~Officer operating a vehicle equipped with a functional MVR system or the system~~ ~~shall change to another vehicle with a functional system. Vehicles with non-functional MVR's may be utilized only when no other vehicles with functioning MVR's are available.~~
3. Whenever an officer operating a MVR equipped vehicle takes action in which the MVR was supposed to be utilized but, during the event, realizes the system did not operate properly (video, audio or video/audio), and the event was not recorded, the officer shall immediately notify their supervisor via police radio. The officer shall also document the occurrence on a white sheet, which is to be forwarded to the Commander of Staff Services.

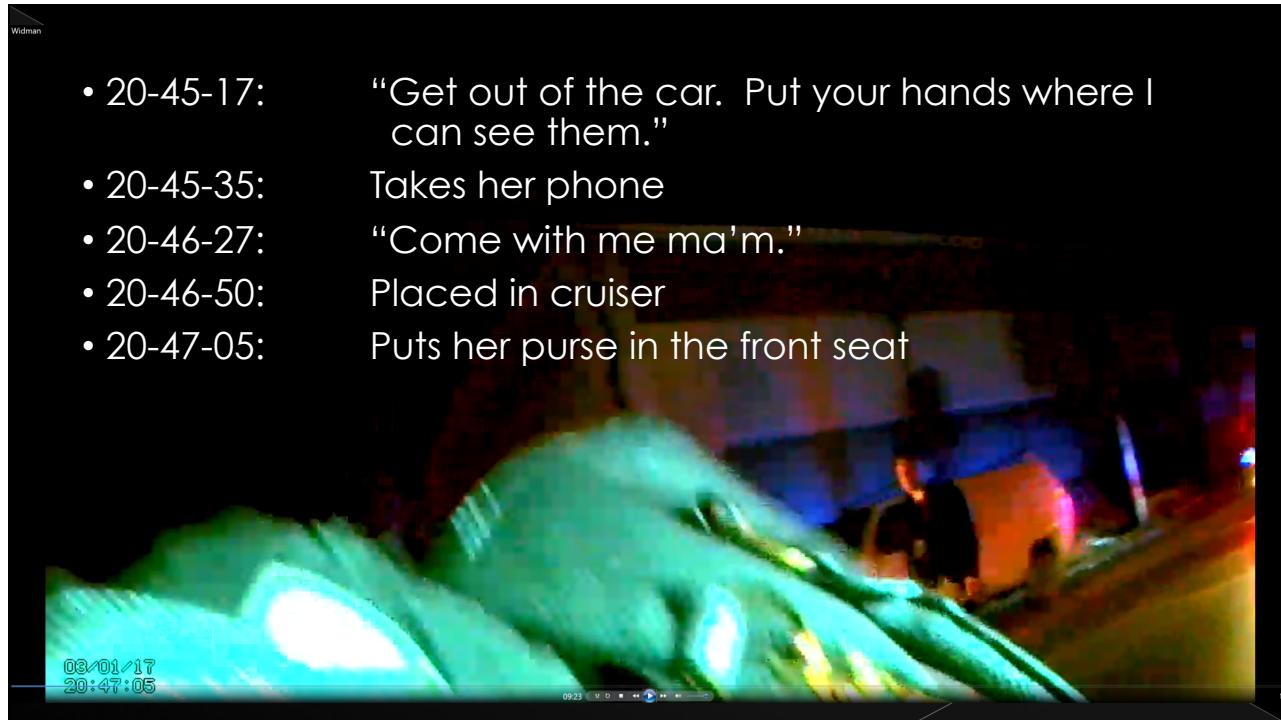
Procedures to follow if you don't



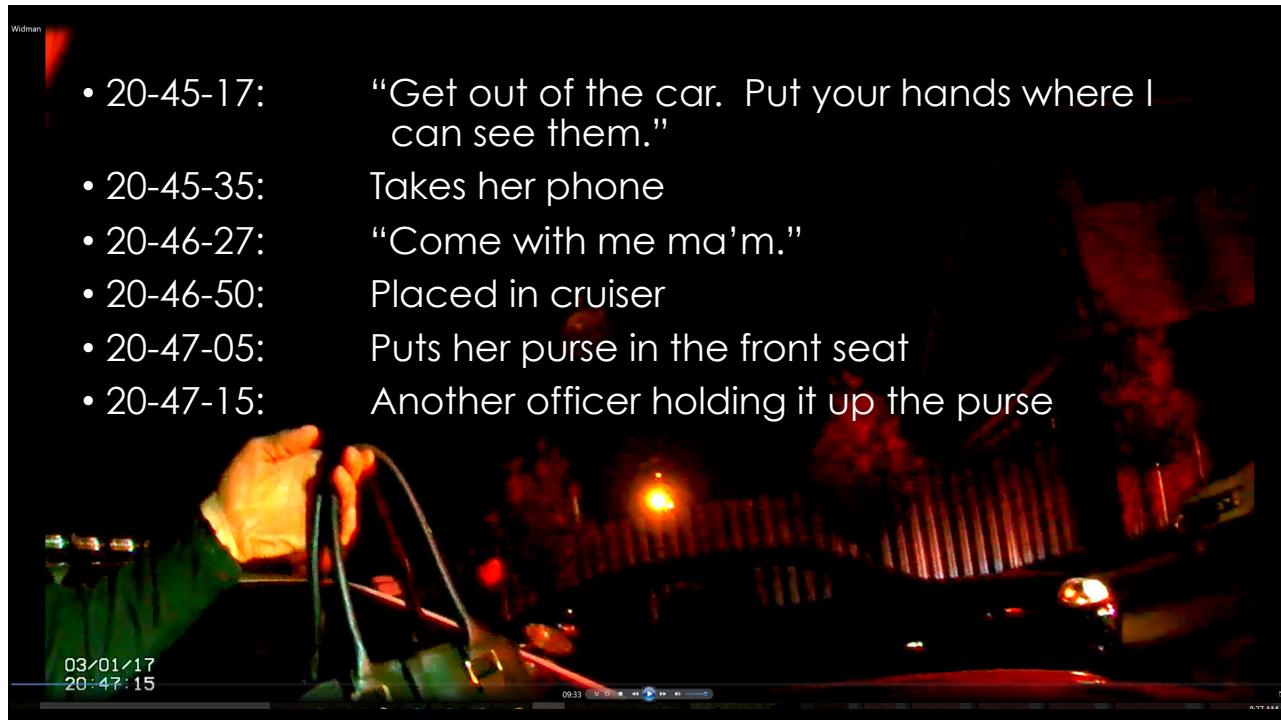


<u>STATEMENT OF FACTS</u>	◎ Pictures ◎ Audio files ◎ Timelines ◎ Tables ◎ Flow charts
<p>"Get out."</p> <p>"Keep your hands up."</p> <p>"Back here. Come all the way back here," indicating the rear of the Nissan.</p> <p>"Put your hands up on the..." indicating the hood of the Nissan.</p> <p>Those are the orders from Officer Cook to Michael King ("King") before the officer asks him a single question about what the State purports to be a motor vehicle stop. By the time the officer does ask, King has already been instructed to assume the position – feet spread apart, back to Officer Cook, Officer Widman's flashlight shining in his eyes, hands on the hood of the Nissan.</p>  <p>03-01-17 20:36:53</p>	<ul style="list-style-type: none"> ◎ Pictures ◎ Audio files ◎ Timelines ◎ Tables ◎ Flow charts

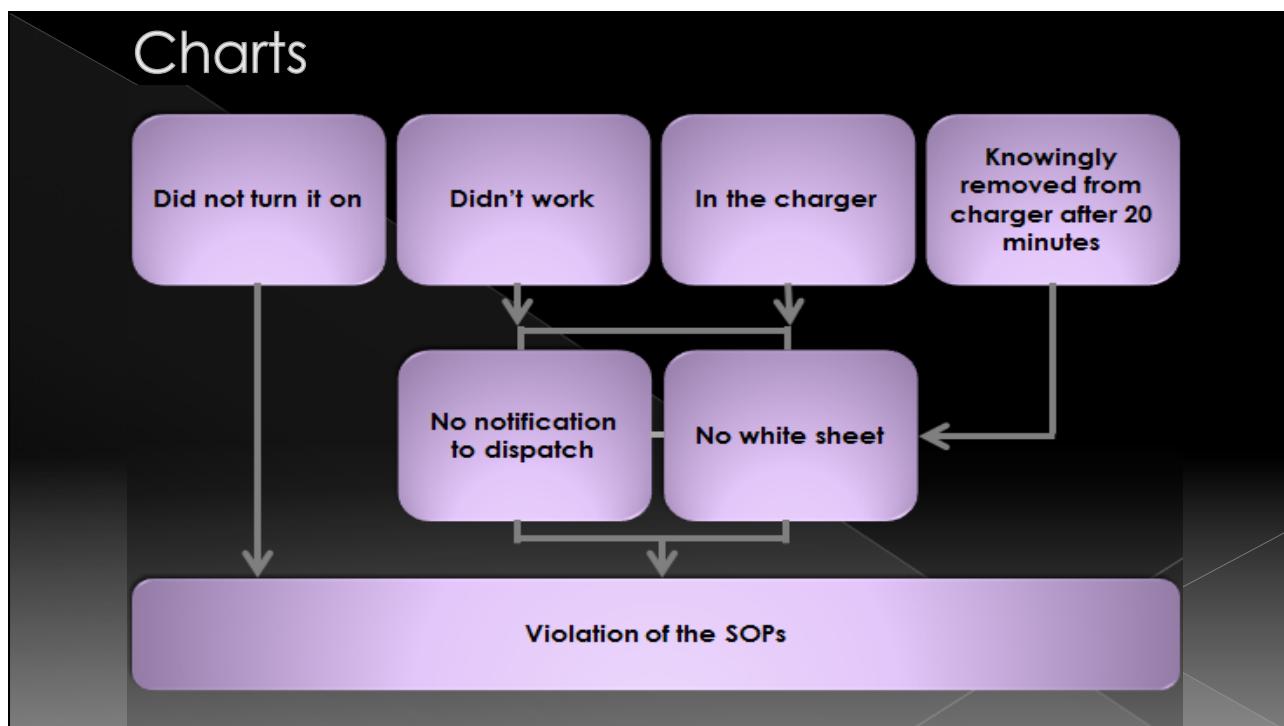
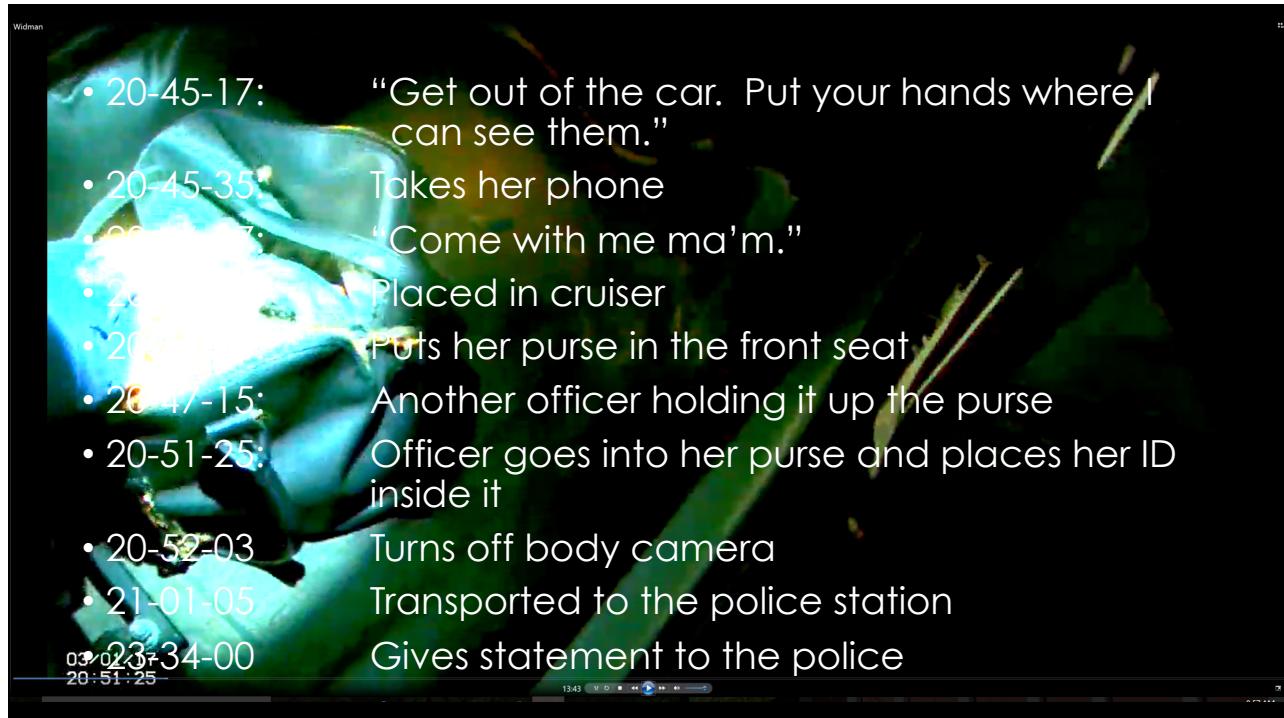




- 20-45-17: "Get out of the car. Put your hands where I can see them."
- 20-45-35: Takes her phone
- 20-46-27: "Come with me ma'm."
- 20-46-50: Placed in cruiser
- 20-47-05: Puts her purse in the front seat

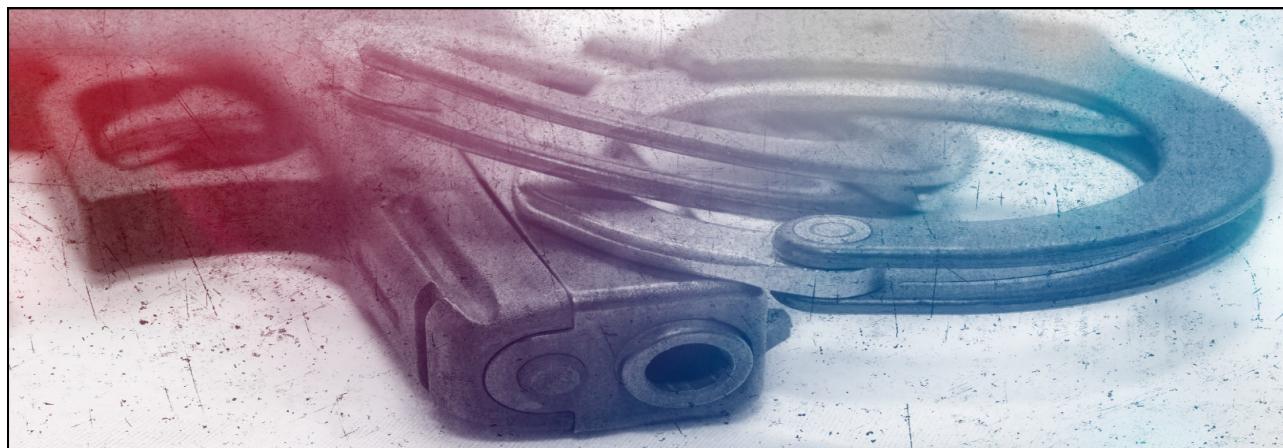


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- 20-47-05: Puts her purse in the front seat
- 20-47-15: Another officer holding it up the purse



JEREZ	LUCARELLI
Two deputies arrive at a hotel room.	Two officers arrive at a hotel room.
Deputies knock and receive no response.	Officers knock and receive no response.
Deputies see movement and shine their flashlights into the room and see a person.	Officers hear movement inside the room.
Defendant peeks out through the drapes to find a deputy standing there in his law enforcement windbreaker.	Lucarelli peers out through the curtains to find two officers in police uniforms.
Defendant opens the door. Yes, he is in his underwear, but at least he opens the door.	Lucarelli walks away from the window. He doesn't come to the door. He doesn't open the door for the police in any state of dress. He doesn't choose to engage with the officer.
	Abrams, knowing that someone is inside, knowing that someone has seen them, knowing that the person who has seen them is not coming to the door, <i>knocks again</i> .
	A voice says, "The fucking cops are outside."
	Abrams says, "Police presence."
The deputies ask if they can come in and defendant says, "yes."	Fils-Aime comes to the door and Abrams subjects him to questions about who is in the room with him.
	Abrams calls for anyone else to come out.
	Abrams tells Lucarelli and Fils-Aime to come outside their hotel room into the hallway.
Held: Defendant was unlawfully seized because he was not free to refuse the deputies.	Held: Lucarelli was unlawfully seized because Fils-Aime was not free to refuse Abrams.





**Search the list of more than
30,000 police officers banned
by 44 states.**

A USA TODAY Network investigation uncovered records of thousands of police officers investigated for serious misconduct.

John Kelly and Mark Nichols, USA TODAY

Possible Solutions

1. Aggressive discovery practice



Dallas police march in formal attire at the memorial event in 2017. / Brian Maschino

Lowlights From Plain View Project's DPD Exposé

Possible Solutions

1. Aggressive discovery practice
2. Police accountability projects



The New York Times

By Joseph Goldstein

March 22, 2018

Police ‘Testilying’ Remains a Problem. Here Is How the Criminal Justice System Could Reduce It.

After investigating police lying, our reporter examines ways to curb the practice.

Possible Solutions

1. Aggressive discovery practice
2. Police accountability projects
3. Legislative/policy change



"We, as criminal defense lawyers, are forced to deal with some of the lowest people on earth, people who have no sense of right and wrong, people who will lie in court to get what they want, people who do not care who gets hurt in the process.

It is our job – it is our sworn duty – to protect our clients from those people."



