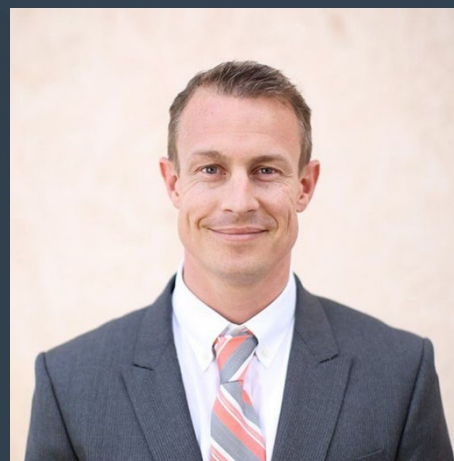




**IT'S EASIER THAN YOU
THINK TO STOP NUCLEAR
VERDICTS®: JUST DO THE
OPPOSITE!**

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OVERVIEW



THE PROBLEM



THE SOLUTION: DO THE OPPOSITE!



TAKEAWAY



THE PROBLEM





FIRST THINGS FIRST...
WHO ARE WE?

**We are the Anti-Nuclear
Verdicts[®] Firm!**



AND STOPPING NUCLEAR VERDICTS[®]? KIND OF OUR THING!

- ▶ Nuclear Verdict[®]:
 - ▶ Greater than \$10M
 - OR
 - ▶ Where noneconomic damages are disproportionate to economic damages, facts, injuries



THIS IS NOT A NEW PROBLEM!

► It's been...

► 47 years **What are we doing to fix it?**

► 30 years since the McDonald's hot coffee case

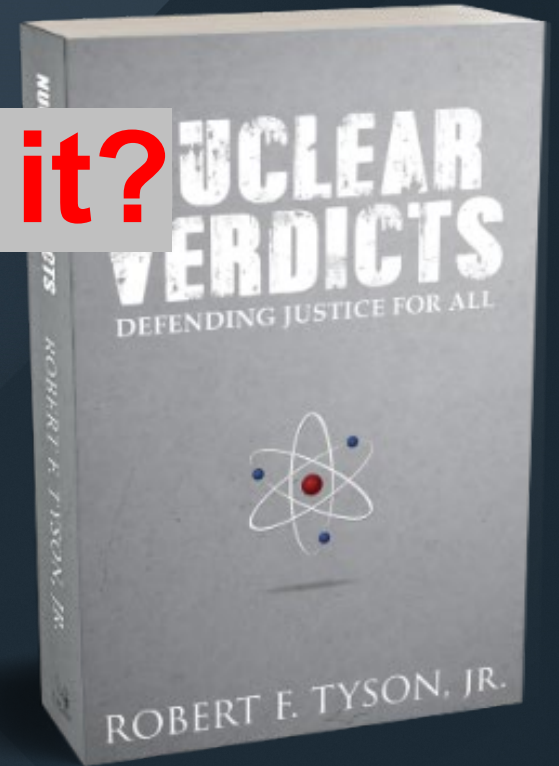
NOTHING NEW!

► 24 years since the first recorded multi-billion dollar verdict was awarded

And we're losing!

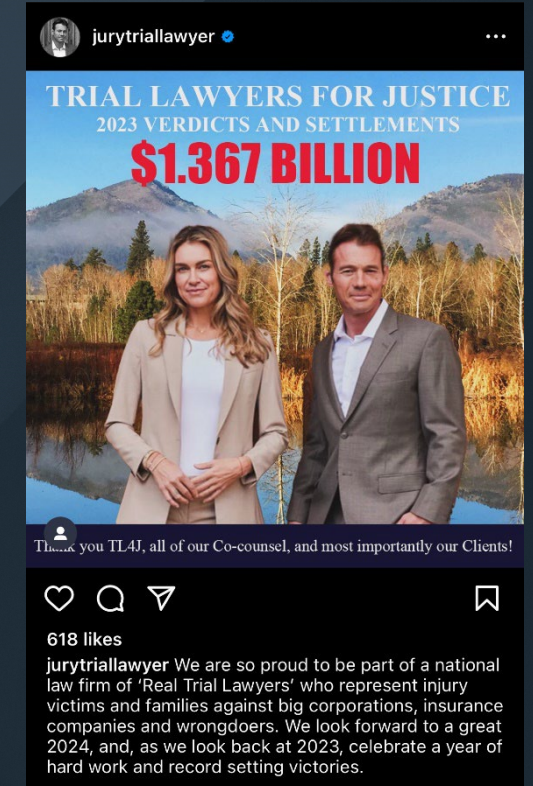
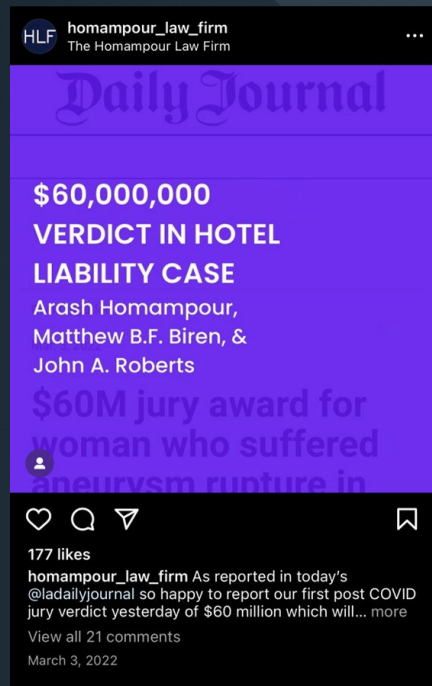
► 15 years since the Reptile Theory book

► 4 years since *Nuclear Verdicts: Defending Justice for All*





AND GUESS WHO LIKES IT WHEN WE LOSE?



► We are doing exactly what plaintiffs' counsel WANTS us to do!

NUCLEAR VERDICTS® ARE ON THE RISE!

- **\$44.6M** for SC Motorcyclist Struck by Delivery Driver
- **\$16M** for WA Officers on Discrimination Claims
- **\$16.6M** for GA Plaintiff after Tractor-Trailer Collision
- **\$14M** for IL Family of 19-Year-Old Who Died After Improper Medical Care
- **\$120M** for NY Man with Brain Damage
- **\$31.5M** for AZ Mother and Son After Birth Injury

And Nuclear Verdicts® lead to nuclear fallout!



**IT IS TIME TO
DO THE OPPOSITE!!**



**THE SOLUTION: DO THE
OPPOSITE!**





WHAT IS THE NUMBER ONE CAUSE OF NUCLEAR VERDICTS®?

- Bad judge
- Judicial hellhole
- Sneaky plaintiffs' lawyers
- Lazy defense lawyers
- Anger



WHAT IS THE NUMBER ONE CAUSE
OF NUCLEAR VERDICTS®?

Anger



PLAINTIFFS' COUNSEL HAS CHANGED THE GAME

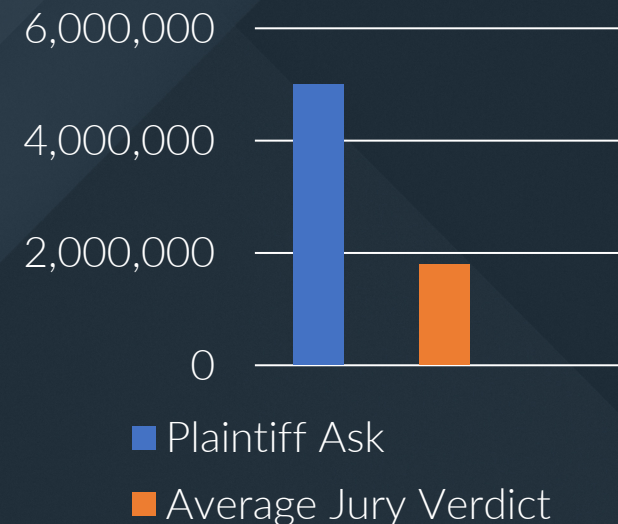
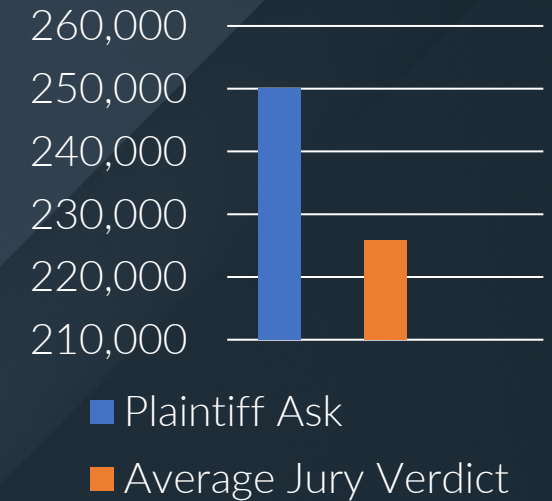
- 2 major changes over the past 15 years:

- Go for **ANGER**

- Best motivator!

- Ask for a **BIG NUMBER**

- Only get a big number if they ask!





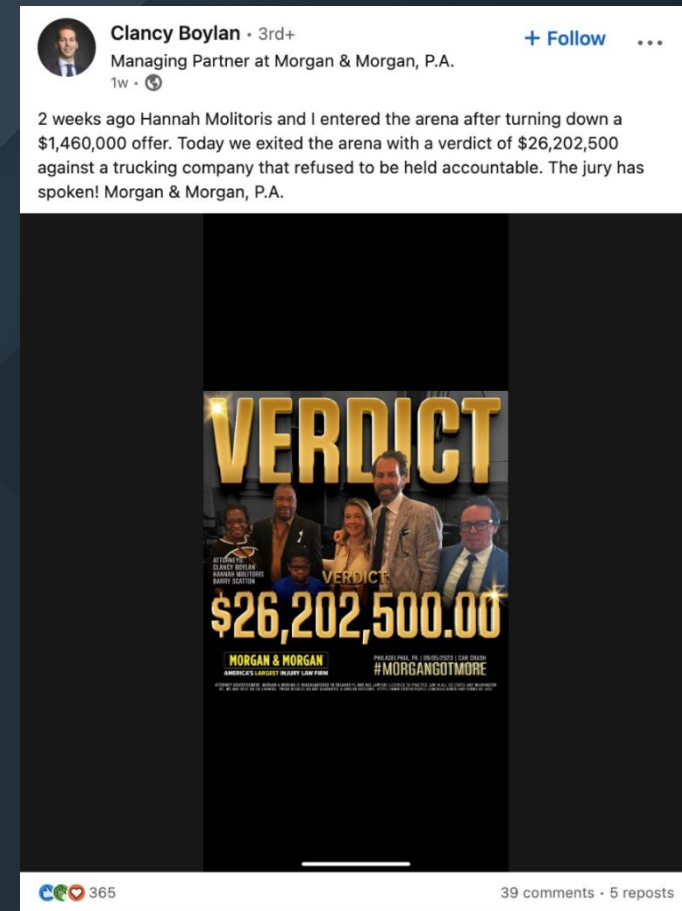
PLAINTIFFS' COUNSEL HAS CHANGED THE GAME

- ▶ **What's the definition of insanity?!**



TRENDING PLAINTIFF TACTIC #1: THROWING IT IN OUR FACE WHEN WE DON'T ACCEPT RESPONSIBILITY!

- Typical defense approach:
DENY, DENY, DENY!
- We die on this hill, refusing to accept any responsibility
- And plaintiffs LOVE it!
- They can easily paint the defendant as a villain







HOW DO THEY DO IT?



"[T]here has to be some accountability and responsibility...and the city fell short."

KJP et al. v. County of San Diego et al., \$85M for wrongful death in police custody



"They're not taking any responsibility for this at all."

Tusant v. City of Hemet, \$25.6M for teen struck by car in crosswalk



SO... DO THE OPPOSITE: ACCEPT RESPONSIBILITY!

- Accept responsibility for something in EVERY CASE



Full Liability



Partial Liability



No Liability

- Responsibility and liability are NOT THE SAME!
- Defuse anger by VALIDATING IT!



TRENDING PLAINTIFF TACTIC #2: CLAIMING THE DEFENSE “WANTS A DISCOUNT”

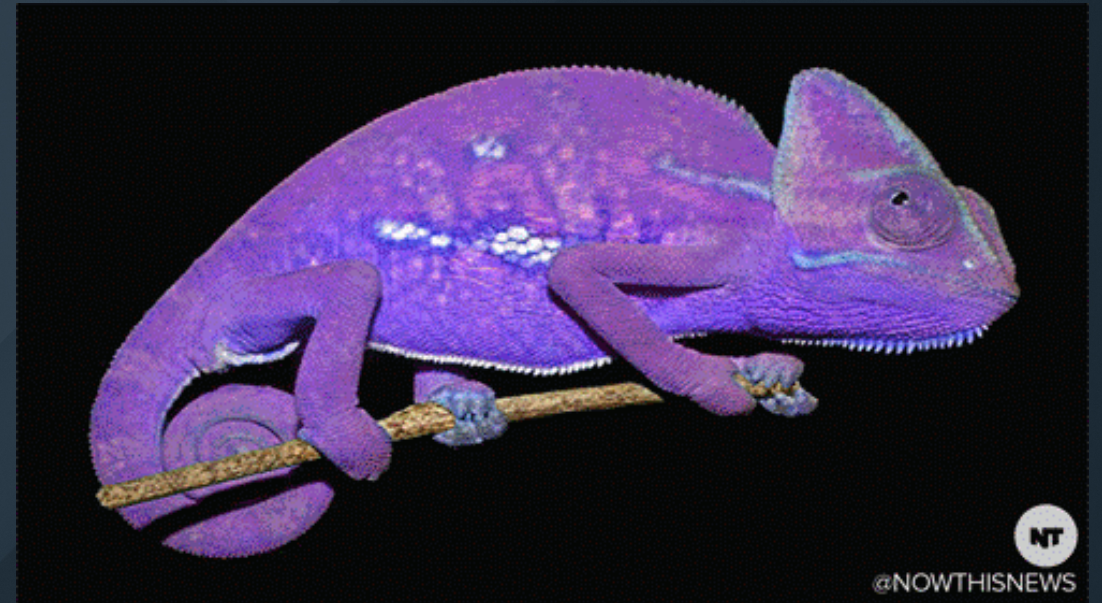
- ▶ Typical defense approach:
DON'T PUT A NUMBER ON IT!
- ▶ We bury our heads in the sand
- ▶ Let plaintiffs tell the jury “what the case is worth”
- ▶ Plaintiffs' number = default valuation!





WHY IS THIS DANGEROUS?

- ▶ Two main reasons:
 - ▶ Plaintiff number = sticker price
 - ▶ Defense is cold, unfeeling, untrustworthy
 - ▶ Don't want to let the defense "get away with it"
 - ▶ Taps into reptile brain





WHAT DOES IT LOOK LIKE?

- ▶ "I think that you all know that much of what you heard is not being magnanimous, you know. Live Nation Worldwide is here for a discount, okay. I mean, that's what it's about."
- ▶ *Perez v. Live Nation*, **\$40.6M** for TBI



HOW DO YOU FIGHT IT? DO THE OPPOSITE!

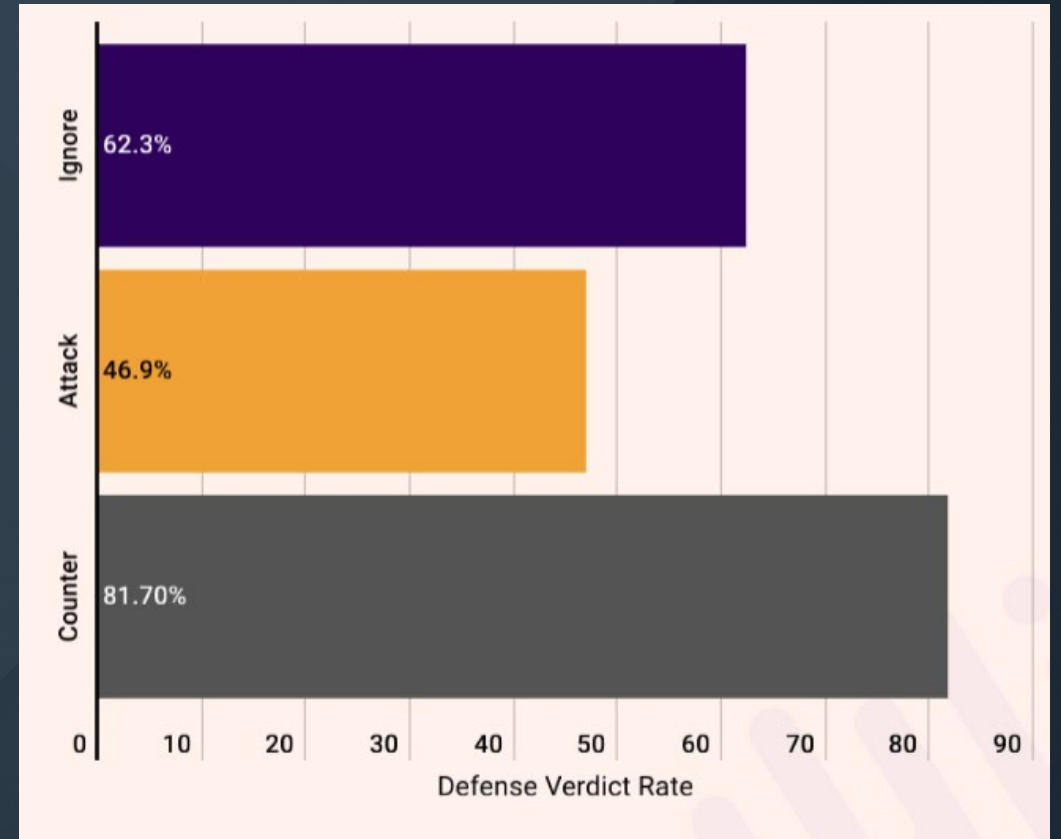
- ATTACK IT HEAD ON
- Talk about it in voir dire, and plant the seeds for...





YOUR NUMBER

- ▶ Give a number!
 - ▶ Early
 - ▶ Often
 - ▶ Never goes up
- ▶ Yes, even when going for a defense verdict!
- ▶ CHANCES INCREASE



Source: Campbell, J., Chao, B., Robertson, C., & Yokum, D. (2016). Countering the Plaintiff's Anchor: Jury Simulations to Evaluate Damages Arguments.



BACK IT UP!

- ▶ Tie your number to evidence
- ▶ You are not “getting away” with anything with your number!
 - ▶ You are paying what is fair
- ▶ Talk about “sticker price”





TRENDING PLAINTIFF TACTIC #3: GETTING CREATIVE WITH PAIN AND SUFFERING

- ▶ Typical defense approach: **DON'T TOUCH IT WITH A TEN-FOOT POLE!**
- ▶ Most defense lawyers...
 - ▶ “Defer”
 - ▶ “Fair & reasonable”
- ▶ On the flip side...





PLAINTIFFS ARE USING ALL KINDS OF CRAZY TRICKS!

- ▶ Comparing the value of inanimate objects

Picasso painting!



\$60M, negligence in hotel
delayed medical



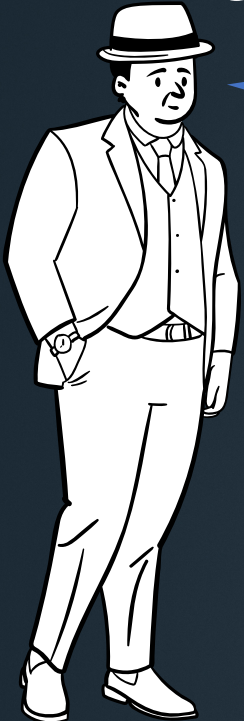
“Valuable diamond”

\$200M, boy killed in
boat propeller



PLAINTIFFS ARE USING ALL KINDS OF CRAZY TRICKS!

- ▶ Talking about minutes, hours, and days of misery ahead



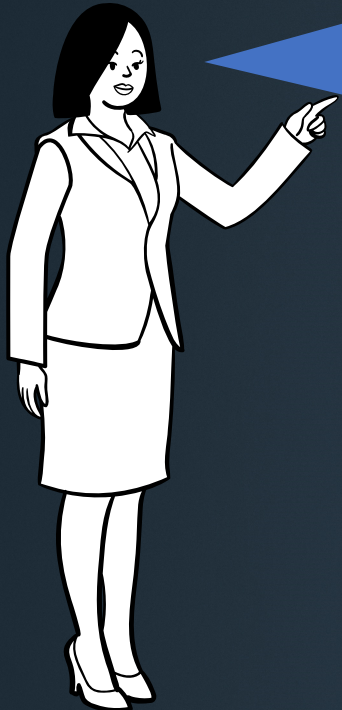
"If I look at \$75 an hour, you multiply by 8,760 hours in a year, that gets you to \$40,000,077. I think that seems too high. I think reasonable is somewhere in between those two numbers. So I put \$50 an hour to live like January has to live and I get to a number of \$26,718,000. So if you - if you were to add those two numbers together, and - and I can't do the math good enough in my head to get it to the penny, it's going to be that plus the economic damages that we saw, um, right there, the \$23,752,566."

- ▶ **\$30M**, birth injury



PLAINTIFFS ARE USING ALL KINDS OF CRAZY TRICKS!

- Reminding jurors how much pro athletes make



"Trae Young for the Atlanta Hawks makes \$37 million per year. Freddie Freeman was a Brave, but he makes \$12 million a year for the Dodgers."

- **\$30M**, birth injury



WHY ARE THEY GETTING SO CREATIVE?

- This is our Verdicts®!
- But how
- W



Nelly, 2000



TIME TO DO THE OPPOSITE: ARGUE PAIN AND SUFFERING!

- Two prongs:
 - Impact of the **accident** on plaintiff's life
 - Tell the good news!
 - Impact of **money** on plaintiff's life
 - Our number has a meaningful impact!
- Takes some digging and a lot of creativity!





TRENDING PLAINTIFF TACTIC #4: ATTACKING THE DEFENSE!

- Typical defense approach: **ACT DEFENSIVE!**
- We do not share the human story behind the corporate defendant
- Even while the jury learns everything about the plaintiff!
- We point fingers rather than sharing our origin story!
- *Corporate identity effect goes unchecked!*





THEY COME AFTER THE DEFENDANT

- No corporate representative? Red flag!
 - Plaintiff will harp on that **over and over**
- Jurors will see the defendant as a villain





THEY COME AFTER THE DEFENDANT



“[Defendant’s] motto might as well be:
"Just let us do whatever we want even if
it's at the expense of the safety of
children.”

➤ **\$113.4M** verdict

DO THE OPPOSITE: PERSONALIZE THE CORPORATE DEFENDANT!

- ▶ Do not tear plaintiff down; build defendant up
- ▶ Tell the human story!
 - ▶ Relationships with:



Employees



Community

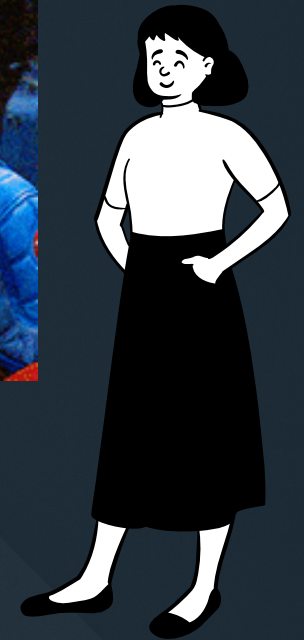


Charities



DO THE OPPOSITE: PERSONALIZE THE CORPORATE DEFENDANT!

- ▶ Do not tear plaintiff down; build defendant up
- ▶ Tell the human story!
 - ▶ Origin story!
- ▶ Corporate representative there EVERY DAY to provide a human face!
 - ▶ Human
 - ▶ Likeable
 - ▶ Relatable





TAKEAWAY





IF WE WERE ROYALTY FOR A DAY...

Your defense counsel will do what YOU tell them to do!

Ask them:



Responsibility

For what are we going to accept responsibility?



Give a number

What is our number?
What is it based on?



Personalize the corporate defendant

How are we going to personalize the insured?



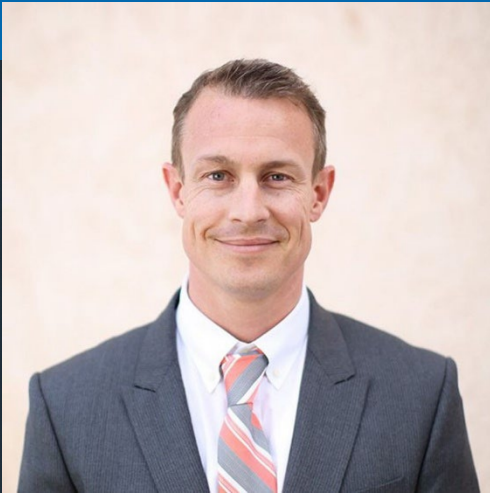
Noneconomic damages

How are we going to argue pain and suffering?

Bonus question: What is going to get a jury **ANGRY** in this case?



WE ARE HERE FOR YOU!



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Feedback



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