

Alvarez

DECEMBER 28, 1982. THE TRIGGER ENGAGED THE HAMMER, PUSHING THE FIRING pin into the base of the cartridge. The ensuing explosion blew the 158-grain, pure-lead hollow-point bullet out of the barrel at 950 feet per second, mushrooming as it punched into the bony forehead. I was fifteen miles away enjoying a plate of jumbo stone crabs dipped in mustard, with a side of hash browns, at Joe's in South Beach. The riot broke out as I was digging into one of Joe's celebrated key lime pies.

Fifteen minutes later I drove my elderly Mercedes 190 north on Alton Road, past the Miami Beach marina, and on to MacArthur Causeway. The concrete parkway rises over Biscayne Bay, then slices into the heart of downtown Miami. To my left was the vast port of Miami, a steel-and-glass island city, with sleek white cruise ships docked end to end along a two-mile-long wharf. To my right were the celebrity mansions of Star Island and, next door on Palm Island, the fortified mansion Al Capone lounged in during the St. Valentine's Day massacre.¹

1. On February 14, 1929, Capone's henchmen in Chicago, posing as police officers, gunned down seven members of the Bugs Moran mob. The murders gave Capone control of the Chicago underworld. After serving a prison sentence for tax evasion, Capone returned to Florida. Suffering from syphilis, he could be seen wandering around Palm Island in his bathrobe.

I rode past Watson Island and on to the labyrinth of expressways, raised on tall concrete columns, that bridges drivers safely over crime-infested streets and the crumbling housing projects of Miami's oldest black ghetto, Overtown. The transportation system was an expensive conspiracy to shield our eyes from unsightly poverty and disease in one of the world's richest playgrounds.

I was reminded of what lay below when I saw the Twelfth Avenue exit ramp blocked by police cars, blue-and-red lights flashing. I turned on the radio to WIOD 610, an all-night news station. "A cop just shot a black youth in a video arcade on Third Avenue," a street reporter yelled. "Police cars are rushing to the scene." A mob was bombing passing cars with rocks and bottles. Police cars and garbage dumpsters had been set on fire. Snipers were reported to be shooting at cars on the expressway. The frantic reporter warned drivers to stay out of the central city. I had just passed within a few yards of the arcade. Too close for comfort.

The rioting lasted three days. Two persons died. Another twenty-five, including two police officers, were injured. Property damage was in the millions. The networks showed helmeted riot police with plastic shields and batons battling rock-throwing black youths and looters toting television sets and cases of beer and groceries out of broken storefront windows against a backdrop of bright yellow fires and columns of black smoke.

Civic leaders were particularly disturbed because the shooting occurred three days before the Orange Bowl festival, Miami's premier tourist attraction. Extra security had to be brought in for the Orange Bowl parade and the football game, both sited near the edge of Overtown. Commentators gave breathless, detailed descriptions of the riots before a national television audience. The "Magic City," as the tourism people like to call it, was back in the news.

Most of the city's leaders thought there was only one way to get rid of the problem: Blame Luis Alvarez, the young police officer who had shot the youth. Carrie Meek, then a state legislator, now a congresswoman, insisted that "justice be served" by convicting Alvarez and threatened that if it were not the city would burn. Five official agencies—the Miami Police Department, the Federal Bureau of Investigation, the Dade County State Attorney's Office, the Miami city manager's office and something called the Community Relations Board—held press conferences to announce that they were starting investigations. The elected officials of the Miami City Commission promised

there would be “no whitewash” of its own investigation. An associate U.S. attorney general in Washington said that the federal government wanted to see if there had been “a deprivation of civil rights” of Nevell Johnson Jr., the twenty-year-old who had died twenty-four hours after being shot.

If anyone had doubts about who was victim and who was villain, they could turn to *The Miami Herald*, which featured side-by-side stories of the two main participants. The one about Nevell Johnson was topped by this headline: “Victim had good job record, respect of his co-workers, love of his family.” Alvarez was portrayed less sympathetically: “Record of Officer who shot Johnson includes five departmental probes.”

Johnson’s story described a model citizen who worked as a courier at a county agency. His co-workers adored him. The story claimed he had no police record and was never a bother to anyone. “All our boys,” Nevell Johnson Sr. said, “we raised them right. They’re not bad boys.”

Alvarez was portrayed by the *Herald* as a hot-tempered officer with an internal affairs file packed with citizen complaints. In this and subsequent stories, he was described as a macho cowboy. On the night of the shooting, police officials claimed, he had left his patrol zone without permission to roust the arcade. Eyewitnesses insisted he had stormed into the arcade cocking his gun. TV news shows starred Overtown residents describing Alvarez as throwing down a Saturday night special near Johnson’s hand after the shooting, to make it look as if the youth had lost a shoot-out.

These stories and the opinion pieces that followed made out Alvarez as guilty. I remember thinking that if this cop thought the shoot-out was bad, just wait for the backlash from an establishment desperate to keep racial peace. Several days later Ron Cohen, a former student of mine who had become counsel to the Fraternal Order of Police, called and told me it was only a matter of time before Alvarez was indicted. Did I have the balls to take on his defense?

Without a second thought I said send him over. But as soon as I hung up, I felt a frisson of doubt. The local press smelled blood, and wouldn’t turn its nose up at mine. One miscalculation, gleefully emblazoned on every TV show and in the *Herald*, and my fledgling career was history. Clients didn’t

stand in line to hire the lawyer who blew the biggest case of the year. Still, I had agreed to see him, so I did, late the next morning.

He was a handsome guy, with a sharply clipped Latino-style moustache. He had pale skin, curiously untanned for a cop, framed by black hair. He had sharp, suspicious eyes that perhaps had seen too many nights in a police cruiser. He was slim, too—not one of those macho bodybuilder cops on steroids. He stood still as he scanned my office, which, as usual, was cluttered with shelves stuffed with books, a desk piled with unopened mail and old newspapers. It looked more like a used-book store than the cool minimalist office suites of the grand corporate law firms.

The way his eyes moved I could see he was tightly wound. But there was a dignity in his erect bearing, and I sensed a certain solidity in his demeanor that indicated, even as tense as he was, that he had an inner confidence that might carry him through the even more intense pressure that lay ahead.

I also sensed a wariness. Why should he open up and trust me? I wondered. I had just left the Public Defender's Office, where the street cops saw us as their sworn enemies, the hated opposition who put the scum back on the street.

To break the ice, I asked him how he was holding up. Sinking into a chair, he expressed shock that the police department had succumbed to political pressure. His bosses had yanked him from street patrol and put him behind a desk, doing nothing, making him look more guilty. "How can they abandon me? That man tried to kill me. When a young punk goes for his gun, the last thing I'm thinking about is his color."

Luis thought the media, particularly *The Miami Herald*, was generating all the hatred against him. "These stories are all garbage," he complained. "There isn't anything in them that's true." The newspaper was treating him like a mobster. For several days Al Messerschmidt, a *Herald* reporter, had sat in a car in front of the duplex where Luis lived with his mother. She was terrified. The guy kept insisting that he wouldn't leave until he got an interview.

"Everyone thinks I'm guilty. Only the street cops, the guys on my shift, support me. They keep coming to my house, all night long. You'd think it was a wake. I don't care what reporters say—I don't see any of them walking down Third Avenue at 3 a.m."

Luis thought the whole experience was a bad dream. He expected to wake up one morning and see the problem had vanished. Once the police and State Attorney's Office finished their investigations, he would be vindicated

and that would be the end of it. He thought it would speed up the process if he went to the investigators and explained what happened.

"Listen, you don't quite get it," I said. "They don't want to hear the truth. Everyone else gets off the hook by blaming it all on you."

Luis blinked, then stared down at the floor.

For a long moment he didn't say anything. Then he stood and paced around the room, hands clasped behind his back. "I can't believe it," he said in a low voice, talking to himself. "What do you think they'll charge me with?"

"Manslaughter, I bet."

"But he was trying to kill me!"

He was looking so distraught that I calmed him down by asking him about his background. He told me that he had been born in Cuba and came to the United States with his mother when he was eight. She had worked as a waitress six days a week, twelve hours a day, to keep them going. Luis found a part-time job when he was fifteen as he went through high school and then junior college. He had been a police officer for eighteen months. He was twenty-three years old, earning \$450 a week.

"I've always wanted to be a cop," he said. "But a real cop. Somebody who arrests bad guys. I'm not a paper cop. I'm not one of those guys who just fills out the forms at the donut shop."

Abruptly, he changed the subject. "So you want me to tell you what happened that night?" He said he had been showing a rookie cop, Luis Cruz, the worst spots of Overtown. That's what brought him to the arcade, where he encountered Nevell Johnson. "I shot him in self-defense. What should I have done, let him shoot me? It happened so quickly, so fast, I didn't have time to think."

"Let's slow it down," I suggested. We replayed the shooting many times, first in slow motion, then at full speed. Years of listening to stories in jail cells and courtrooms force you to become a fairly accurate judge of character. I was sure his fear of death that night wasn't faked, but I also knew that wasn't enough to prove self-defense.

"Look," he said, "I know my whole life is on the line. How long would I last in Raiford [the notorious state penitentiary]? Fifteen minutes? I always defended myself, but I can't do it here. I need someone who believes in me, who's not just going through the motions."

He had seen his life transformed in an instant from respected cop to

pariah. He desperately needed help. How could I say no? Like one of my partners said: Good thing you're not a girl, you'd always be pregnant.

William Perry, president of the Miami chapter of Jesse Jackson's group Operation PUSH, and others organized a massive six-mile march from the Overtown game arcade to Miami's City Hall, chanting slogans, singing "We shall overcome" and carrying signs demanding Alvarez's arrest. When the marchers arrived, the mayor and two elected commissioners were waiting to listen to their demands that Alvarez be brought to "justice." Howard Gary, Miami's first black city manager, calmed the crowd by assuring them that Dade State Attorney Janet Reno had all the evidence and Alvarez would soon be brought to "justice." The crowd cheered.

Only Reno stood between Alvarez and an indictment. She was just launching her meteoric rise through the legal firmament and was no stranger to strong-arm politics. At the knee of her father, Henry, who for decades had served as a police reporter for *The Miami Herald*, Reno had learned all about the subtle ways in which prosecutors can manipulate the media. She had learned her lessons well because the media had begun canonizing her into Saint Janet of Miami. Ironically it was her country girl appearance—tall, lanky, ungainly-looking with mousy brown hair shaped like a helmet, thick square glasses, given to frumpy fashions—that made her popular with the average citizen, precisely because she looked so different than the carefully manufactured elegance of most politicians.

Faced with riots and blaring newspaper headlines, Saint Janet did what any savvy politician would do—cut Alvarez up into little pieces and throw him to the mob. What did we expect? *Profiles in Courage*?

She could be so charming that people tended to overlook the little inconsistencies in her ethics, like claiming personally to loathe the death penalty but not hesitating to ask for it in headline-hunting cases. While campaigning, Reno liked to style herself as the policeman's best friend, but with the heat on, she decided that prosecuting cops was more politically advantageous than defending them, and in our case, she forged ahead.

Reno assigned three top prosecutors and two investigators to work full-time on the case. She presented the case to a grand jury that included Fred Graves,

an attorney who was one of her former prosecutors. The grand jurors listened to a parade of alleged eyewitnesses, each of whom gave shocking testimony about how Luis had abused Johnson.

Neither Luis nor I was allowed to be present at the grand jury proceedings.² We couldn't ask questions or put on our own witnesses. The outcome was predictable. Grand jury proceedings are supposed to be secret—in fact, in Florida it's a crime to disclose grand jury testimony—but after the indictment Graves appeared on a half-hour television show and proclaimed Alvarez was guilty beyond any doubt.³

When the indictment came in I was told Luis had to surrender at the Northside Shopping Center police station, right in the heart of Liberty City, a black area a few miles from Overtown. What better way to show the black community that the State Attorney's Office was "solving" blacks' problems? Someone made sure that this backwater police substation was swarming with dozens of journalists.

We had to elbow our way through the crowd to get in the building. For the next half hour I stood beside Luis as he went through the grim ritual of booking—filling out the arrest form, being fingerprinted, being photographed. Luis kept grumbling that he was being treated "like any asshole on the street."

After he was released on a personal recognizance bond, we tried to avoid the journalists by leaving by the rear door, but reporters and cameramen were waiting. They trailed us to my car, shouting questions.

The next day the newspaper headline showed that black leaders weren't going to be satisfied with a mere booking: " 'We Must Have Conviction' of Alvarez, Activists Say." Ray Fauntroy, leader of the black coalition, demanded:

2. Grand juries are decidedly one-sided affairs dominated by prosecutors. By law the defense is prohibited from addressing the grand jurors or presenting witnesses. Thus the grand jury hears from only one side and usually does what the prosecutor wishes, hence the expression "A good prosecutor can indict a ham sandwich."

3. Mr. Graves appeared on a local half-hour television news show and discussed the Alvarez indictment with a panel of local reporters. He commented that the grand jurors were "shocked" by police shootings and opined that the State Attorney's Office would obtain a conviction because "the evidence will show at trial his guilt beyond a reasonable doubt." Another grand juror was quoted in *The Miami Herald* describing grand jury deliberations and concluding that Alvarez was criminally negligent.

“We want him convicted and sent to jail with the maximum penalty.” Another activist, Georgia Jones Ayers, warned what would happen if he wasn’t convicted: “Take it from me, baby, this city is going to burn.”⁴

Perceptions of the Alvarez riot depended more on race than fact. Either it was a mob of drunks using the shooting as an excuse to rob and loot or a legitimate rebellion against decades of racism and poverty. None of this overheated ideology was news to me. I have the dubious distinction of having firsthand experience in each of Miami’s race riots in the past quarter century as a legal mercenary for one side or the other. But for Miami’s leaders this riot was one too many. They had a dread of black gangs burning down the city. This paranoia even had a name—McDuffie.

This was the name given to the biggest riot, which occurred just two years before Alvarez, in May 1980, sparked by the trial of four police officers charged with beating to death a black insurance man named Arthur McDuffie. The trial was moved to Tampa because of prejudicial pre-trial publicity in Miami. When the cops were acquitted, Miami’s black neighborhoods erupted in violence, producing the worst riot in the city’s history. Eighteen people were killed and 270 were injured. Property damage approached \$100 million.

The McDuffie riot produced the concept of the “Miami Riot Syndrome”: White cop killing black suspect leads to riot. White cop getting acquitted of killing black suspect leads to another riot. After a while, as the people of Los Angeles were later to learn, when someone in a poor black neighborhood was shot by a cop, neighbors felt almost compelled to riot, as if it were a civic duty, and they felt the same way when the cop was acquitted. After verdicts, TV camera crews roamed the areas looking for “action,” and, of course, the residents provided it. Authorities could figure out only one way to break the cycle: Convict the cop.

The McDuffie destruction was a constant theme in the media, and our prospective jurors kept hearing about it nightly. “We’ll never forget McDuffie

4. Once again, Janet Reno’s political instincts proved deadly accurate. Ayers was so appreciative that she later renamed her school the Janet Reno New Chance Alternative School. At present there are no plans to open a branch in Waco, Texas.

here," legislator Carrie Meek told Channel 7. "We want justice, and we want it right now. If we don't get it, there will be a repeat of McDuffie."

My first task was to assemble the right team of lawyers and investigators to fight this war. Reno's office had the full-time help of several police detectives and I was certain it was searching for the best experts on police procedures that money could buy. Reno's team was led by two of her toughest prosecutors, Benton Becker, who was the U.S. Justice Department official who drafted the Nixon pardon for Gerald Ford's signature, and Robert Beatty, the highest-ranking black in Reno's office.

I needed an expert in firearms and police procedure on the trial team. There was only one name on my list—Mark Seiden. Mark was a stubborn, disciplined loner and a dedicated scholar. After eleven years as a cop and years of self-study, he was an encyclopedia on guns. We met when he was a Metro-Dade police arson detective, orchestrating the prosecution of a client whose failing clothing store burned to the ground. I was surprised one day to find him sitting in my law school evidence class and even more impressed when he turned out to be the top student. But a devastating personal tragedy had recently befallen Mark and I hesitated to even approach him. While he was in the middle of the two-day bar exam in Tampa, his wife, Cheryl, a Metro-Dade detective, was ambushed and shot by two thugs in the parking lot of their condo. Her spine severed, she clung to life for two weeks before she died. Mark dropped from sight and I wondered if their dream of his becoming a lawyer died with her.

I had no other way of contacting him, so during a break in the trial of the man accused of killing his wife I approached Mark in the courthouse corridor. "Mark," I said, "I know this is a difficult time, but I'm working on this Alvarez case, and I need some help. Would you give me a call when this is over?"

Several days later he dropped by. He told me he had already been offered a plum job. I shamelessly went for the jugular: "This is a chance to make a statement about the dangers of police work that won't come again. If we lose, think of the consequences to street cops in Miami." He agreed. We shared the sense of mission, but I sensed he needed the challenge to put his life back on track.

Next we needed a writer, someone who thrived on spending long hours in the law library reading cases and drafting motions. We found the perfect candidate, also a former student of mine, Ralph Barreira, who had just graduated fifth in his class. He dressed like a '60s radical and had long hair, but his politics were to the right of Ronald Reagan. Ralph could have had his pick of jobs with the biggest, best-paying law firms in town, but he preferred to join us in defending Alvarez.

Our team's first meeting was in temporary office space in a run-down building grandly named for the defunct Northeast Airlines. The war room was uncomfortably hot due to a malfunctioning air-conditioning system, but we loosened our ties and started to work. I took a yellow legal pad and sketched out a checklist of jobs. I assigned Mark to brief investigators, collect police and lab reports, and start calling possible defense witnesses. Ralph was to do a rough draft on our change-of-venue motion, pick up the discovery documents and assemble our files. My first job was finding friendly cops for intelligence gathering. We were a small team compared to Reno's specialists. We might be outmanned, but we would not be outworked.

For our own investigation, I wanted bodies to walk every block of Northwest Third Avenue, both sides of the street, to knock on every door, go into every tenement, have a drink in every bar, to talk to every single person in the area to find witnesses who saw what happened in the arcade. I knew white faces wouldn't get any useful information, so we hired black investigators, mostly ex-cops. I went through four before giving up. They all came back with the same story: It wasn't healthy asking questions about Nevell Johnson, and no case was worth getting killed over. Any investigation we wanted done, we would have to do ourselves.

My downtown office was less than two miles away from Overtown. The only greenery were tufts of weeds in vacant lots. Youths lounged against lamp-posts on street corners. Elderly men sat on the sidewalk in lawn chairs, watching the world go by.

Decades before, Overtown had been a thriving neighborhood filled with shops and tailors and supermarkets and restaurants. Then the government built a huge expressway system that slashed through the area, destroying many of the area's landmarks and casting huge shadows on what remained, precipitating a downward spiral from which it never recovered. By the time of the

shooting, the population of Overtown had shrunk from 40,000 to 11,000. It had become a vicious battlefield, where razor wire and random gunshots were ordinary. On every block derelict buildings served as drug houses. Gangs of belligerent youths roamed the streets carrying semi-automatic weapons. The mantra of no jobs, no money, no future made a convenient excuse to become a predator. Crime beat the minimum wage at McDonald's. Overtown was a place of burglaries, robberies, rapes. Tourists got mugged in Overtown. They got shot. So did blacks and so did cops.

From my days at the Public Defender's Office I had firsthand experience of Overtown's streets. Without investigators, we had to do our own street work, hunt up witnesses, track down shaky alibis. One spring morning in the early 1970s, I was walking up Northwest Second Avenue, one block east of the arcade, right across from the marquee of the abandoned Lyric Theater, when a black youth jumped out of a doorway behind me, snaked his forearm around my neck, put a knife to my throat and demanded, "Give it all up, motherfucker." I foolishly twisted around and stood face-to-face with Willie Williams, one of my PD clients who was charged with a string of armed robberies. We looked at each other in shock for a moment, before Willie apologized, saying he hadn't known it was I. Then, not wanting to waste our time together he inquired how his case was going. Back at the office I dumped Willie's file on my trial partner, Jack Denaro. I had lost some faith in Willie's presumption of innocence.

Now that I was the attorney of record for Public Enemy No. 1 in Overtown, the place was not exactly at the top of my list of fun spots to visit, but in every case the first job is to carefully examine the crime scene. Pictures are no substitute because they never reveal everything. I needed to know where every game was in the arcade, what the windows looked like, how the place *felt*.

For security reasons, Mark, Ralph and I usually went to the arcade early in the morning, shortly after it opened, when few people were around. It was in a stark concrete building, painted tan and orange. Bullet holes pockmarked the facade. Its glass doors were heavily tinted. Next to it was the Third Avenue Pool Hall. Across the street was a bar. A few yards away was Interstate 395. The roar of the elevated traffic made the street feel as if it were part of a noisy factory. Underneath the roadway, in perpetual shadow, was a colony of cardboard shacks—homes for the homeless. In the distance, I could see the shining glass and steel bank towers of downtown.

Walking into the arcade was like stepping into an electronic fantasy land:

Space Invaders, Robotron, Galaxy, Pac-Man, Frogger, Asteroids, Ms. Pac-Man. Each was a man-sized box with a large electronic eye staring out. The machines lined the walls and surrounded the columns. The walls were orange-yellow, the floor a brown-yellow linoleum. Nevell Johnson had been playing a spaceship game called Eagle, which was against the east wall, near a column. It was a tight spot, at the edge of a corridor only two and a half feet wide. Luis would have been dealing with an armed suspect in cramped conditions—a fact that we had to make clear to the jury.

I spent so much time studying the layout of the arcade that after a while I could close my eyes and tell you where each machine was. When we learned that four teenage girls had been playing Pac-Man, I knew that meant they were close to Johnson. When a witness said he was playing El Dorado or Captain Fantastic, I knew his view would have been blocked by a column, so he couldn't possibly have seen Luis and Nevell Johnson at the Eagle machine.

Outside, as I walked down the cracked concrete of Third Avenue past broken neon signs, I affected a casual air I didn't feel. My stomach tightened as we entered the three-story, U-shaped tenements, climbing on concrete steps that smelled of stale urine so rank I breathed through my mouth. No one wanted to talk. Each time I went, a crowd gathered. Curses, threats and, occasionally, pieces of stale fruit filled the air. Mark, as an ex-cop, could carry a gun. For our trips to Overtown, he packed three. Thankfully, he never had to use them.

Weeks before the trial, I engaged in further research by seeking out Dr. Joe Davis, the Dade County medical examiner. I thought after thirty years of studying bullet wounds, Doc Davis could supply an answer I needed.

I found him behind a large, flat desk loaded with scientific journals, jars with body parts floating in clear solution and some medieval-looking surgical instruments. He cleared a chair piled high with medical books and case folders so that I could sit. I questioned him about the bullet's path through the brain, getting him to sketch out the trajectory on my legal pad.

Davis theorized that Johnson immediately lost all conscious control of his body when he was shot. If so, I asked, how did Johnson's autonomic nervous system react to the blow of the shot? Did Davis have an opinion on how Alvarez and Johnson were positioned? Left unsaid was my question that perhaps

physics could prove that Johnson was going for his gun. Davis swiveled around and pulled a thick, well-fingered book off a shelf. He laid it on the desk, opened to the unforgettable photo of Jack Ruby thrusting the gun into Lee Harvey Oswald's stomach as he squeezes the trigger. Oswald, his face open-mouthed in pain, jerks back. "Perhaps this is how Johnson reacted," Davis said, "but can we ever really know?"

From the beginning, I thought it was important we get the trial moved out of Miami. Disc jockeys at WMBM, a black radio station, were making fiery calls for "justice." Several times, black demonstrators rallied at the Criminal Justice Building, where our trial was to be held. A survey by Metro-Dade police showed that 60 percent of county residents—our potential jurors—agreed with the statement: "Police officers' use of deadly force has been on the increase and cannot be justified." Fifty-eight percent agreed with the statement: "Miami is a potential powder keg, and the threat of violence is imminent."

Every time Luis Alvarez was mentioned on the local television news, videotapes of the post-shooting riot were shown: buildings and cars burning, angry youths throwing rocks and bottles, the injured arriving at the emergency room.

At the hearing about moving the trial, I proved that the case dominated the news by submitting over five hundred newspaper articles, several hundred videotapes of newscasts, numerous affidavits of residents and finally our own public opinion poll. It revealed the undercurrent flowing through Miami: Two-thirds of all those questioned didn't want to sit on the jury. Half were convinced that an acquittal would cause another riot. Another third were unsure. That meant that four out of every five prospective jurors would weigh Luis's guilt or innocence while thinking about a riot. Would some think it worth the price to send one individual to jail for a few years to spare a county of a million and a half residents the turmoil of another riot?

I argued that the constant threats of more riots made the jurors afraid to return a not-guilty verdict. "Judge, it's not the poisonous publicity alone, it's the fear caused by it. The type of fear that pumps through the arteries of this city. Fear of racial violence. Fear of more burning cars and buildings. Fear of more people beaten to death. Fear of finding Alvarez not guilty."

Our judge was David Gersten, a thirty-one-year-old who had served on the

bench less than two years. With a thick beard and wire-rimmed glasses, he had the look of a graduate student. Gersten was not predisposed to the prosecution. He was not swayed by the politics surrounding the trial, and he was not impressed with the intense emotionalism of both sides. In many of his rulings in our case, he would prove astute and impartial, but on this point he was implacable. Judges are human beings and \$50 black robes don't insulate them from outside pressures. The accepted wisdom in Miami was that the hyper-violence of the McDuffie riot was due to moving the trial to Tampa. No judge wanted to be held responsible for eighteen deaths and \$100 million in damages. The trial was staying in Miami.

One last job before the trial began was to design the appearance of our client. Psychological research proves that we have five minutes to be accepted or rejected when we first meet someone. We also gather 87 percent of our information by sight and only 7 percent by hearing. So what the jury sees in the first few minutes is vitally important. No detail is too small if it will provide an edge—including appearance.⁵ Urban-cop fashion has a dark, hard-edged, almost threatening look. It's a survival mechanism. The clothes send out a message—don't fuck with me. Alvarez's moustache added to the rough image. We selected classic tailoring to soften him—single-breasted suits, in muted hues, with non-designer ties—to reflect our serious purpose. We wanted the image of a professional—a man you could trust, a man who wouldn't panic, a man who would do his job in a solid, competent way.

When Luis hesitated, I told him an anecdote related by Edward Bennett Williams, the famed Washington attorney, in his book *One Man's Freedom*, about representing Frank Costello, reputed head of the Mafia during the 1950s. Early in the morning of the first day of his trial, Costello came to Williams's hotel room. The lawyer was astounded to see a mafioso wearing an exceptionally expensive suit. "You can't wear that suit," Williams told him. "Go get a cheap

5. The Menendez brothers' fuzzy-sweater look was a brilliant haberdashery gambit, but it won't fly again because prosecutors are tuned in to it and will expose the now transparent ploy to the jury.

suit." Five minutes later the lawyer heard a knock on his door. It was Costello—still wearing the expensive suit. "I'd rather be convicted," he said.

Not Luis Alvarez. He shaved off his moustache and bought several conservative suits.

It took thirteen months for Luis to get his day in court, but finally in January 1984, the State was ready. Just before the trial began, Judge Gersten called us into chambers and handed over a police intelligence report. A black extremist group called the Yahwehs planned to disrupt the trial by an assassination. I was the target. "This isn't a trial," I moaned. "It's hand-to-hand combat." I was joking because none of us had then heard of the Yahweh group, but a few years later I stopped laughing when Yahweh Ben Yahweh and other cult leaders were convicted of killing fourteen whites.

Meanwhile, community leaders were preparing for more riots. The Miami Police Department canceled all vacations until after the trial. Patrol cars were outfitted with bulletproof vests, face shields, riot batons and gas masks. Even plainclothes detectives were given riot gear. A county-wide emergency operations headquarters was put on standby.

The first bomb threat came on the first day of jury selection. The National Liberation Front called at 8:30 a.m., warning that a bomb would go off in the Criminal Justice Building an hour later. All the courts and offices in the nine-floor building were evacuated. Our prospective jurors stood outside on the street, where they heard prisoners chant from the Dade County Jail next door: "Kill Alvarez! Kill Alvarez!" Nearby marched pickets from black organizations carrying placards demanding a conviction. Quite an auspicious start to a trial guaranteed by the Bill of Rights to be calm and dispassionate.

Two hours after the threat, the bomb squad reported the building was clean, and we were allowed into the Criminal Justice Building, which even under usual circumstances is something to behold. A repulsive stench hit us as we passed the southwest corner of the building, nicknamed "chicken central," which doubled as a concrete altar for Santeria, an Afro-Cuban religion. Small chickens with their throats slit and a disemboweled goat, its bloody viscera exposed, cooked in the white-hot Miami sun. The animals were somehow linked to the deities who guided judges and jurors. Some people, more

considerate of our olfactory response, tastefully hid their ritual sacrifices in plastic bags. Others simply deposited the stinking carcasses on the ground.

Inside, as usual, the corridors were a noisy sea—uniformed cops and detectives and lawyers and witnesses mingling with corrections officers and reporters. Dazed grandmothers came to see what their kids were accused of. Wives and lovers of defendants sat on hard wooden benches next to victims waiting to testify. Elderly gents in checked sports coats hopped from courtroom to courtroom, looking for hot testimony to spice up their retirements. It's the kind of place where a Nebraska-born accountant in a business suit, accused of drunk driving, can be found waiting next to an impoverished Puerto Rican woman who's a rape victim.

On this morning you could add to the list one young Cuban-born suspended police officer. With a clean upper lip, wearing one of his new single-breasted dark suits, Alvarez walked with us through the special security precautions that had been set up for the trial, including a metal detector right outside Courtroom 4-1, which was to be our home for the next two months. Inside the courtroom were security officers in plainclothes, carefully watching the spectators for signs of trouble. I knew Judge Gersten himself was so concerned he carried a Smith & Wesson .38 bodyguard revolver under his robe.

At the table to our left, in the choice spot right next to the jury box reserved for them in every courtroom in the land, sat the prosecution team. By this time, Reno had brought in an even tougher group, led by Abe Laeser, her chief assistant prosecutor. He had a chalky complexion, heavy, hooded eyes and a dour, almost funereal expression that masked a subtle and ingenious mind. What Laeser lacked in social skills he more than made up for in legal talent. The lawyers of a score of death row inmates had underestimated Abe. It was my understanding that he had never lost a case. He was flanked by Ed Cowart, a former chief judge of the Miami courts who began his career as a Miami motorcycle cop, and Ira Loewy, the sharp-tongued chief of the law division, to handle legal arguments.

When the judge took the bench, I renewed my plea to move the trial out of Miami. Gersten again said no. He believed that sequestering the jurors for the two or three weeks he thought the trial would take would be sufficient protection against outside influences. The judge then ordered the bailiff to bring in forty-eight prospective jurors. As they entered, they looked furtively around the large room. They didn't talk to each other, but sat nervously, as if they were in a dentist's waiting room.

As we began jury selection that morning, many of the spectators seemed bored. They probably thought the lawyers and jurors were engaged in polite conversations that had no particular point. But what could be more important than picking those who would decide the case? Both sides had invested serious time in thinking out the beginning moves of this subtle, multi-level chess game called voir dire. My team was working on meager donations from Luis's fellow officers, and we didn't have money for jury selection specialists or intricate polling procedures. What funds we did have had been spent on the poll to support our futile change-of-venue motion.

Our poll results showed that 20 percent of all respondents were convinced of Luis's guilt before the first witness had testified. Only 9 percent thought he was innocent. The rest weren't sure. The data revealed what we suspected: Dade County was polarized along racial-ethnic lines. The poll showed that 48 percent of all blacks were firmly convinced of Alvarez's guilt. Only 3 percent thought he was innocent.

It also revealed that I had to be cautious of Hispanics, too. One in five Hispanics thought Luis was innocent, but another one in five assumed he was guilty. I wasn't sure why this was: Perhaps some Hispanics, usually heavily prosecution, assumed that because he was indicted, he *must* be guilty. Many of Miami's Hispanics, especially those from Cuba, come from the upper classes of Latin America and are far more conservative than Hispanics in other parts of the country.

Judging from our poll, our best strategy was to select non-Hispanic whites. Only 9 percent had already decided that Luis was guilty. That was a number I was willing to live with.

Journalists were guessing publicly that we would seek Hispanic jurors, under the intuitive assumption Hispanics, particularly Cubans, would be sympathetic to Luis. I did nothing to disabuse them of that notion. Let the State knock Hispanics off the panel, while we would challenge any other jurors—black, white, or Hispanic—prejudiced against Alvarez. The result would be a white non-Hispanic jury, which the poll projected as our best bet.

Jury voir dire requires an improbable intellectual feat mastered by few lawyers. Imagine the task: Put at ease nervous, anxious recruits; probe through their personal histories; expose their biases and prejudices, while forcing them to sit on uncomfortable chairs in a warehouse-sized room studded with legal symbols designed to intimidate. On top of that most judges frustrate any at-

tempt to ask revealing questions, preferring instead the tried and worthless legal boilerplate which sounds magisterial but accomplishes little. In an effort to overcome these factors I followed a strategy of probing their fears of riots but with a hidden agenda. While seeming to seek riot-related stories I was rating their fear indexes. How would they relate to Alvarez's fear in the shooting?

I asked anyone who had faced his own death to raise his hand. Several did so. I had each describe what had happened to him in detail. What made you feel afraid? Did your heart pound? Did your body feel flushed? Did you start sweating? How did your stomach feel? Did you think of anything other than survival? Did you have time to think, or did you just react?

Each time someone shared an experience, I threw it out as bait, like Phil Donahue, to get the others talking. One juror described how he had narrowly avoided a fatal car crash, then caught everyone's attention by dramatically describing how his heart kept pounding for several minutes afterwards. This man's story—and that of others with similar experiences—educated the rest of the panel. These jury candidates were becoming our witnesses. In my summation I planned to play back to them their same descriptions of emotions and sensations to show how Luis had felt.

What's more, my conversation with each one allowed me to forge a personal bond. I was able slowly to draw most of them out of their shells and turn nervous strangers into something approaching friends. Without their being aware, I studied each one, running him through my own personality tests, with a view to creating the right chemistry in the jury box.

The first black juror I questioned was an elderly widow who had known the dead man, Nevell Johnson, since he was a boy and had been friends with his father for forty years. Several times I asked her if she had already made up her mind about Alvarez's guilt. She insisted she hadn't, but obviously, she was too close to the Johnsons. The judge agreed: She was removed for cause.

Another problem was a black unemployed janitor. "If the officer did it," he said to me, "he's a jive turkey."

"What does that mean, 'jive turkey'?" I asked.

"It mean he is no good," the fellow answered. Then, turning to Luis, he added: "If you're offended by that, I'm sorry, sir."

The janitor said that I must prove that Luis acted in self-defense. "If you don't do it," he warned, "you lost your case."

After considerable argument I persuaded the judge that this juror, too, should be dropped for cause, for requiring us to prove Luis's innocence.

The last black was also a problem. He was a thirty-seven-year-old painter who lived and worked in Liberty City. He said he had never had any problems with the police and claimed he could reach a verdict based only on the evidence.

"But if your verdict is unpopular with your neighbors, could you return home?"

"It will be tough," he admitted.

As I questioned him, Luis stared at him intently. When court was adjourned, he whispered to me that he was sure he had seen this painter before. "And if I recognize him, it ain't because I go out with him."

That night Luis found a buddy on the midnight shift who sifted through records and came up with a police report: The painter had been arrested during a shift that Luis had worked. Luis wasn't listed as the arresting officer, but he was certain that he had been at the scene as backup.

Luis came to court the next morning carrying the guy's arrest record. Always a man of action, he was happy that he was able to do something other than sit passively at the defense table. He felt great until Judge Gersten studied the arrest record and declared it was insufficient evidence to drop the painter for cause. A man's being arrested, the judge declared, didn't automatically mean he was prejudiced against police officers. We used one of our preemptory challenges to excuse him from the panel.

Our one other tough decision concerned a Hispanic male, Guillermo Marrero, who owned two Burger Kings in Liberty City. One of the restaurants had burned down during the McDuffie riots four years before and then been rebuilt. As soon as the questioning began, he made it clear that he didn't want to be on the jury.

"I can be fair," he told us, "but I have reservations, like what would happen to the sixty people I employ." He worried that if he voted for acquittal, his places might be destroyed and his employees would lose their livelihoods. Still, he said no threats could alter the facts: "The truth is always the truth."

One detail persuaded me not to strike Marrero: He carried a gun to work. Obviously he knew how dangerous life could be in Miami's ghettos. We de-

cided to keep him. So did Laeser, who apparently assumed that Marrero would be terrorized into supporting the prosecution.

We ended up with Marrero and five non-Hispanic whites. I ordered each member of the defense team to memorize the jurors' faces, their seat locations and their biographies. The individual jurors would now fade to the background as more dramatic events in the trial took center stage, but we could not afford to forget them. They were:

—Donald Moore, sixty-two, a marine chemist at the University of Miami. We felt he was the perfect juror for this case, a researcher able to penetrate the technical nonsense that the State was going to present about Luis's gun.

—Robert Mendelson, sixty-five, a retired dock foreman. He remembered the Johnson shooting because he was working a part-time job that required him to drive through Liberty City, and his colleagues warned him to be careful. He said people weren't entitled to riot. He knew some people would be unhappy with the verdict, no matter which way it went, and that wouldn't bother him.

—Janice Winn, a forty-three-year-old real estate agent with two children. She didn't believe what she read in the newspapers and thought the shooting was an "absolute tragedy" for both the Johnson and Alvarez families. Like many people, she said the prospect of riots terrified her, but "whatever the verdict, it will be unpopular."

—Mary Ellen Hoodwin, a retired medical secretary who had lived in Miami for thirty-seven years. She said she never read *The Miami Herald*. She didn't socialize much and didn't care what others thought.

—Victor King, fifty-three, the father of eleven children and an Eastern Airlines mechanic for almost three decades. He had read or seen little about the case.

Each side had used only four of its six challenges—a low number in such a high-pressure, high-publicity case. I think the reason was that we and the prosecution were looking for the same kind of jurors—non-Hispanic whites who were strong on law enforcement.

After eight days we had a jury—almost. The court clerk raised her right hand, ready to swear in the panel. Guillermo Marrero, the Burger King man, announced: "I can't do it."

At the defense table we stared at each other. This kind of twist is generally found only in bad trial movies. Judge Gersten quickly ordered the five other jurors and two alternates sent to the jury room. Marrero was left alone in the jury box.

"I have already received threatening phone calls," he stated. "A caller told me that if I was going to be on the jury and the guy was found innocent, I'd be in trouble." The manager of one of his restaurants had received similar calls. Marrero feared his Burger Kings would be burned.

Both Laeser and I wanted Marrero replaced, but we differed in our suggested solutions. Laeser wanted the whole panel dismissed because there were no blacks. I told the judge that the incident was another example of how impossible it was to get a fair trial in Miami, but if he didn't agree to a change of venue it would be best to replace the Burger King man with an alternate and get on with the trial.

At 11 p.m., after hours of reading legal cases, the weary judge emerged from his chambers. "I'll tell you," he said, "you'll never find anything in the law books about this. Clearly we don't have a jury yet." He said he would contemplate the matter overnight and have a solution by morning.

As we drove back to the office, Mark, Ralph and I talked about how crucial this moment was. The young judge must be feeling immense community pressure to impanel black jurors, and I wasn't about to let anyone on the jury who had a preconceived notion of Luis's guilt.

After eight tough days, I had the jury that gave us our best shot and I intended to fight for it. Anticipating that Gersten might throw out the entire panel, we rushed back to the office to prepare a petition for a writ of prohibition. I pulled law books off the shelves and spent the next several hours reading jury selection opinions until my eyes burned. Our plan was to have the petition waiting in the clerk's office of the Third District Court of Appeal. If Gersten dismissed the panel, we would file our pleading within moments and demand that the jury be retained at the courthouse while the appellate judges considered whether Gersten had the power to throw out the panel. The plan was that a messenger would hold the motion at the appellate court until we instructed him to file it.

The next morning, however, we showed up in court to see the judge looking uneasy. "Mr. Black," he said, "I've just been called by the appellate court. They say you've already filed this motion."

Chagrined, I explained my plan. I hadn't meant to file yet; the messenger

made a mistake. I could see Gersten mulling the effect of this petition. Judges deny ever being influenced by the threat of an appeal, but this time I swear it worked. He announced he was appointing the first alternate, Lourdes Mangas, a twenty-two-year-old travel agent, to take Marrero's place. Our lone Hispanic had been replaced by a Hispanic.

For opening arguments, all 120 spectator seats were filled. Directly behind the defense table sat a row of young off-duty police officers. The hierarchy of the Miami Police Department had decreed that they couldn't wear their uniforms in the courtroom, but the brass couldn't stop them from attending. They were all street cops, and they knew what had happened to Luis Alvarez could happen to any of them. The group had vowed that, no matter how long the trial lasted, officers would be sitting behind Luis each day.

Laeser began with a surprise, setting up an eye-catching, brightly colored schematic on an easel. Drawn to scale by an architect, it displayed in detail the interior of the video-game arcade. Each machine—Omega, Robotron, Harlem Globetrotters, Sinbad—was clearly marked. Round one to Laeser, once again proving that money is the mother milk of law as well as politics.

Pointing to the floor plan, Laeser, in the soft voice of a professional mortician, ran through a list of Luis's alleged errors that night: He deliberately left his assigned patrol zone without his supervisors' permission and without radio clearance. He left his patrol car and entered the game room without notifying the dispatcher. He had no right to confront Johnson, who was peacefully playing a game. He violated accepted police procedure by getting too close to Johnson and by cocking the hammer on his service revolver—a dangerous procedure in which the revolver could go off with just a quarter of the pressure usually required on the trigger. His gun had been illegally modified into a deadly and dangerous weapon unauthorized by the Miami Police Department. The rebound spring had been clipped, creating a hair trigger.

The prosecutor claimed Luis told Johnson, "We are going to walk out of here nice and easy." Johnson simply was obeying that instruction, turning slowly, with hands up, in a gesture of surrender. As Johnson turned, Laeser claimed, Alvarez flinched and the gun accidentally went off. The prosecutor

kept repeating the word “flinch,” and I scribbled it down. The courtroom is a war of words, and this was a word I needed to deal with.

Before the grand jury, witnesses had claimed Luis planted a throw-down gun on Johnson as a cover-up for killing him. This accusation fell apart when witnesses surfaced who had seen Johnson toting the gun before the night of the shooting. So the prosecution had shifted its focus to manslaughter through culpable negligence, a kind of malpractice case, like a surgeon amputating the wrong leg, except you go to jail for thirty years. Laeser's theory was aimed at proving that Luis had accidentally shot Nevell Johnson through a series of unprofessional mistakes. Since cops are supposed to be knowledgeable about weapons and their use, a cop's carelessness with a gun is tantamount to criminal activity. So words like “flinched” spun the argument toward the accidental.

Laeser said he had proof of what happened. A blood spatter expert had studied photographs and noticed “five droplets of blood near the Eagle machine” that substantiated the State's theory. He promised we would hear more about these “droplets.” Then he hammered at Luis, claiming he was a cop out of control, compounding one mistake with another, which ultimately resulted in the unnecessary and tragic death of Nevell Johnson.

As Laeser strode back to his seat, I glanced at the jurors and gathered from their deepening frowns that Laeser had struck a chord with his detailed list of Luis's alleged sins. I decided I had to take them out of the comfortable courtroom and drop them onto the dirty, grim and dangerous streets of Overtown.

Without preamble, I painted a portrait of Overtown, where violence is a daily reality. Fear makes the decent people prisoners in their dingy apartments. The cracks of gunfire and the risk of stray bullets force their children to sleep below window level. Police officers walk down hostile streets, watching their backs like enemy soldiers.

“Overtown has overwhelming problems for police officers,” I told the jury. “Most of the street signs have been stolen or vandalized. Ninety percent of the streetlights don't work. Overtown is only ten blocks wide and twenty-five blocks long, but it gets 50,000 police calls a year.” That's more than a hundred a day.

The jurors sat on the edges of their seats. It was time to set the scene in the arcade. Again, I painted a vivid picture. Alvarez warily walks into the room, leading rookie Luis Cruz. “The jukebox is going full blast. Thirty to fifty people are playing video games so noisy they would drive you crazy.” Alvarez fo-

cuses on details significant only to a street cop. His eyes quickly scan everyone there, searching for anything out of place. "Out of the corner of his eye he sees Nevell Johnson playing the Eagle video game. Over his left kidney, there is a bulge." The cop has no choice but to confront him. The situation quickly falls apart. Johnson's eyes lock on his. This isn't going right. Johnson's hand reaches for his gun. Luis fires his gun. "The key event in this case took one second.

"Ladies and gentlemen," I said, looking straight at the jurors, "this is the first time that we've had an opportunity to make known our side of what happened that night. After enduring thirteen months of biased newspaper articles and inflammatory television shows, we for the first time are given an opportunity to refute these charges."

To examine Laeser's claims of violations of police procedure, I walked over to a corner of the courtroom and pulled out a blackboard. This was a spur-of-the-moment idea. To contrast with the expensive, high-tech visual the State was putting on, I wanted to show that we were a low-budget, low-tech defense, the only kind a street cop could afford. Never underestimate the power of a piece of chalk.

Apologizing for "my very poor penmanship," I roughed out a diagram that showed Luis's path through the arcade, and then I asked about Nevell Johnson. "Crime is a risky business, and the riskiest of all is to carry an illegally concealed firearm and to go out and threaten the people." I told the jurors Johnson was not the benevolent bystander that Laeser described, but rather a more sinister character nicknamed Mr. Snake. "Mr. Snake is dead, but he has to be part of this trial. His actions cannot be ignored or forgotten. We grieve for his family and friends. We, too, wish that he was alive today. We, too, wish that he had not taken the actions that he took on that night and put himself in that position so that he got killed. If it was up to us, ladies and gentlemen, we would spare Nevell Johnson. We would spare Luis Alvarez. We would spare this community the trauma of reliving that night some thirteen months ago, a night in which there were no winners, only losers.

"The State has spent a fortune to second-guess everything Officer Luis Alvarez did. They've hired experts from all over the country, armchair quarterbacks, who will second-guess everything that this police officer did. But did they spend one thin dime to determine what Nevell Johnson was up to that night? Through the testimony you are going to know that Nevell Johnson of

his own free will illegally concealed a stolen firearm on his body the night of December 28.

"In the safety of this courtroom, we'll debate for weeks what happened in that one second, but that was a luxury that Officer Alvarez did not have."

My opening stretched to an hour and a half. After I sat down, I had the sinking feeling I had tried to stuff in too many details, events and people. I had skated perilously close to committing the cardinal sin of overtrying my case.

Laeser's first witness was John Buhrmaster, a young homicide detective who had led the police investigation. A chiseled, clean-cut marine type, with a hard face and sandy brown hair, he had been on the force for a decade, the past five years in homicide. He was a formidable witness who had garnered thirty commendations and was a six-time officer of the month, a runner-up for officer of the year, and officer of the year. He had received two silver medals for valor. It was easy to see why Laeser wanted to lead with him.

Buhrmaster testified that he was at his desk at police headquarters at 6:05 p.m., December 28, when he heard an excited officer shouting over the radio: "238 emergency, 238 emergency. Get me the squad, get me the squad, please. I'm on, ah, Fifteenth Street and Northwest Third Avenue. Somebody just pushed me and a shot went off and there's a, a, um, a black male down."

Luis was 238. The "squad" meant an ambulance. I knew Laeser wanted to get this transcript into evidence immediately because it smelled of an accidental shooting. This was one of his strongest pieces of evidence.

Buhrmaster said that he and Sergeant Bobby Cheatham jumped in a car and drove to the arcade, which was less than two miles from police headquarters. They arrived at 6:15—about ten minutes after the shooting. A crowd of 150 to 300 was blocking the street, and the detectives had to push their way through to get to the game room.

Laeser handed the detective a photo of the game room taken through the front door and asked him to identify it. He did. The prosecutor asked that the photo be introduced into evidence. I scanned the photo and saw the Eagle machine had been moved out from behind the column, making a larger

space for the confrontation than there had been. The Robotron machine which blocked the view of some witnesses had also been conveniently moved. I objected and the judge granted me a voir dire, in which I was allowed to do a mini-cross-examination of the witness on this point. It turned out the photo was taken eight days after the shooting and Buhrmaster sheepishly admitted the machines may have “inadvertently” been moved.

Despite my objections the judge allowed the photo into evidence. First witness, first exhibit and the gamesmanship had begun. When I walked back to the defense table, Luis grabbed my arm and asked in a hoarse whisper, “How can they get away with that?”

“This is just beginning,” I replied.

I had lost a round but scored a point against Laeser, who was a methodical man, accustomed to following a time-testing formula for presenting a case. I had upset his rhythm and it showed.

Steaming from my interruption, Laeser returned to Buhrmaster’s narrative. The detective said that when he arrived paramedics were lifting Johnson onto a stretcher. There was a large pool of blood “back by the Moon Patrol.” Luis was nervously pacing back and forth, speaking under his breath. He told Buhrmaster that he had picked up Johnson’s gun—a .22-caliber RG Model 14, blue steel with a three-inch barrel—and put it in his belt so that some kid didn’t run away with it. The detective took that gun, then asked for Luis’s service revolver. He inspected it and made a note: “stainless steel service revolver, Smith & Wesson model with brown wooden grips.” *Wooden* grips. I made a note of that. Another technical violation.

Buhrmaster said that at 6:35 p.m. he talked with Luis, who told him how he and his partner, Luis Cruz, had walked through the arcade and were about to leave when Luis spotted the bulge under Nevell Johnson’s sweater. He felt the bulge. It was a hard object. He asked Johnson what it was. Johnson told him it was a gun.

Buhrmaster: “He said he told the guy that they were going to leave the game room and he wanted no problems from him. At that time he withdrew his service revolver and lifted the sweater to show his partner the gun, and he took his hand off the gun and put it on the left shoulder of Nevell Johnson. He said at that time while he had his hand on the shoulder and his partner was in the process of reaching for the gun, the individual turned toward him suddenly and

he jerked back away from the individual. And his gun discharged." Buhrmaster testified that Luis had not told him that he had shot in self-defense.

The detective claimed that Luis had given him a demonstration of how Johnson had turned toward him. He showed the jury a motion of swiveling slowly, with his hands raised up by his head. By this time our defense table was roiling with anger. This was not in Buhrmaster's police report. Someone had gotten him to add this detail. I was trying to take notes while pushing Luis back in his seat.

Now it was my turn. I started cautiously. Cross-examining a smart witness with an agenda is like a razor fight. You don't know you've been cut until you are bleeding to death.

I opened by describing the unpleasant atmosphere that night at the arcade. Supervising officers, crime scene technicians and other detectives had to push their way through screaming crowds to get into the arcade. Soon, the angry mob was pushing against the doors, trying to get inside. Buhrmaster and the other officers felt trapped. I was sure they were more worried about firebombing and snipers than carefully collecting evidence.

The jurors were watching me. I think most jurors understand intuitively that direct examination is always carefully rehearsed; it's on cross-examination that they lean forward in their seats, waiting for the clash that is about to come. As John Wigmore, dean of the Northwestern University School of Law, wrote in his famous multi-volume treatise on evidence: "Cross-examination is the greatest engine for determining the truth. A lawyer can do anything with cross-examination." It's such a powerful tool that more clients end up in prison cells from inept cross than from any other blunder.

The formula for successful cross-examination is simply stated: Use plain declarative sentences, add only one new fact per question, and lock in an answer before administering the coup de grâce. Think of cross-examination as a series of statements by the lawyer, only occasionally interrupted by a yes from the witness.

"And your interview with Officer Alvarez took place at 6:35?"

"Yes sir."

"By then the crowd was even larger?"

"Yes."

"Still a steady stream of rocks and bottles?"

“Yes.”

“Did people begin pounding on the windows of the arcade?”

“Yes.”

“Were the officers handling the crowd outside forced back inside the arcade?”

“Yes sir.”

“Things were too hot for them standing outside the front doors?”

“Yes sir.”

“You could hear gunshots ricocheting off the walls of the building?”

“Yes.”

“It was like the last stand at the Alamo?”

“Very close.”

“You know, Davy Crockett,” the judge interjected, getting in the mood. Things were going well.

Through a series of questions Buhmaster described how the crime scene technician, Rafael García, ordinarily a meticulous collector of evidence, was allowed only thirty minutes to work in the arcade. Usually he needed at least six hours to inspect even a simple homicide scene. Under my questioning, the detective acknowledged that the rush caused García to make ten errors in his diagram.

García was still working when a police major ordered everyone out of the arcade. Luis and Cruz were rushed to waiting patrol cars. García and other officers managed to escape. But then the crowd surged, trapping Buhmaster and Sergeant Cheatham. They hid in a back room for forty minutes, until a SWAT team rushed up in a phalanx of squad cars. Officers in body armor jumped out, threatened the crowd with rifles and fired tear gas. The homicide investigators slid into a squad car and got away.

When the detective was finished describing his harrowing escape, I pulled out a videocassette, shot by TV news crews, showing the street scene outside the arcade immediately after the shooting. Laeser hurriedly objected, and the judge sent the jurors out. I popped the cassette into the VCR. The judge watched as angry young men shouted obscenities and threw rocks at the arcade. Squad cars were on fire. Police officers dashed about in riot gear—bulletproof vests and helmets with plastic visors protecting their faces—as they formed a defensive line against the rioters.

"Focus on the police officers," I told the judge. "They're all watching their backs. It's a bad case of nerves. What better proof why mistakes were made?"

Laeser objected to the tape. It was an ugly display. Gersten decided the jurors would be overwhelmed by the impact of the video. They would not see it.

When the sidebar was over it was 6 p.m., time for adjournment. We went back to our office and huddled in the library around the conference table, trying to figure out what to do. Not being allowed to show the video was a blow to our defense. The antiseptic atmosphere of the courtroom diminishes the reality of chaotic events, and I was certain the visual impact of the flames and rocks would have been more powerful than the detective's dry description. I wanted *something* because the next day I had to cross-examine Buhmaster on the statement he had allegedly taken from Luis. If we could show jurors how chaotic the situation was at that moment, we'd go a long way to explaining why the detective might have gotten his facts wrong.

As we talked, I noticed a box in the corner. It contained hundreds of hours of audiotapes of all the police radio channels from the night of the shooting. We had listened carefully to Luis's transmissions, but there were many other channels, used by other police groups, that we had never bothered to listen to. Could an audiotape give the same mood as a videotape? Maybe if the sounds were real enough.

Deep into the night, we listened to the tapes. Much of the stuff was indecipherable codes, with officers shouting at each other. But on some tapes we found unnerving sounds in the background: breaking glass, occasional pops of sniper fire, rioters shouting obscenities at the police. Suddenly, we heard the number 1941. Someone checked a code list we had. The number belonged to Detective Buhmaster.

We played the rest of the tape. Buhmaster had forgotten one small detail.

For day two of Detective John Buhmaster's testimony, I focused on the toughest subject he had raised on direct: Luis's statement to him in the arcade. In the detective's version, Luis had made several incriminating statements, and I needed to get across two points. First, Luis was under extreme stress at that moment. Second, Buhmaster's recollection was flawed because of the

chaotic conditions in the arcade and perhaps because of political pressure later.

I elicited from him that Alvarez seemed dazed and was entering post-traumatic shock, not uncommon in police shootings. Yet Buhrmaster sought no help or comfort for him. He didn't take him back to the station for questioning, but left him unarmed in the midst of a riot while attempting to interrogate him.

I asked about the alleged interview at 6:35 p.m. Buhrmaster said he and Luis were both standing up. The detective took notes with his pad on top of a video machine. The whole interview lasted less than five minutes.

I pointed out that he had made numerous mistakes in his notes. He had noted that Luis's revolver had wooden grips, when in fact they were plastic—a minor point that we knew the State was going to make into a big deal.

"You said Officer Alvarez told you he *jerked* back."

"Yes."

I wheeled over our blackboard so that the jury and Buhrmaster could see it. "And you used the word 'jerked,' did you not?"

"Yes."

I spelled out the word on the blackboard in huge letters, enunciating each letter as I printed it: "J-E-R-K-E-D. Is that accurate?"

"I don't understand your question."

"Well, let me see if I can perhaps make it a little more understandable. You know that you can change the meaning of a sentence by a small change in the words of the sentence, don't you?"

"Yes."

I showed him his fifty-page, single-spaced police report and pointed out he used the word "pulled" the trigger without any mention of "jerked." "Now, one of the things that might happen—I am not saying this *did* happen, but one of the things that might happen is that people might try to influence you to change words. It's possible that could happen?"

"I don't understand what you mean," Buhrmaster replied cautiously.

"For example, perhaps an unscrupulous person might want you to perhaps change one or two words in what was said to you. Could that be possible?"

"I can't answer that," he said with a defensive tone I was sure the jurors caught.

"How many times since December 28 have you had conferences in the State Attorney's Office?"

"I couldn't tell you."

"A large number?"

"I really don't know."

"And you know what their theory in this case is, don't you? I mean, they certainly discussed that with you, didn't they?"

"Somewhat, yes."

If this were *Perry Mason*, I would have asked him if the prosecutors had told him to use the word 'jerked' and he would have admitted I was right. But in real life it would have been an example of the lawyer committing the error of one question too many. Buhrmaster would deny that Laeser suggested he use the word. He'd claim the change had been unintentional. I left it to the jury to decide why the word was changed.

He had testified that Luis said Johnson's hands were up in the air in an obvious surrender position, and he had demonstrated with Laeser by raising his own hands up by his head. Now, I showed him, and the jury, a transcript in which he had clearly stated that Johnson's hands were at chest level.

"Has anything happened since that perhaps caused you to lift up your hands?"

"No."

"Has the intense political pressure caused your hands to go higher?"

"No."

His denial was spoken in a low, hesitant voice, and I saw disbelief in the eyes of a couple of jurors.

Buhrmaster's recounting of Luis's statement right after the shooting had crumbled a bit, but not enough. Now it was time for the sound show. We brought Ralph's stereo into the courtroom. When Laeser realized we were about to play a police tape, he knew we were going to upstage him. He sensed that the tape wasn't going to be good for him, so he complained to the judge. He said our cassettes of the radio broadcasts were "a copy of a copy." He planned to play the originals later in the trial.

Gersten overruled the objection. Audio, without the powerful images of the video, was more acceptable to the judge. Laeser was annoyed at this further disruption of his plans.

Mark punched the play button. After a moment of static Luis's panicked call at 6:05 blasted out of the speakers. "238 emergency, 238 emergency. Get me the squad, get me the squad." The words rushed out, frantically. Hearing Luis shout, hearing the tremor and horror in his tone was far more powerful than Buhmaster's dispassionate reading of the transcript of the day before.

Next we played the tape of a secondary channel. This one was new to Buhmaster, as it had been new to us the night before. I led the detective along slowly, not telegraphing what was coming. He was smiling, thinking he was simply our expert, guiding us through the confusing jumble of numbers and letters.

I knew I was taking a risk. Cross-examining a hostile witness is a zero-sum game. For one side to win the other must lose. If Buhmaster survived unscathed, we wouldn't.

First, I firmly established that Buhmaster had taken notes of his interview with Alvarez, and at the top of the page he had carefully noted the time the interview began as 18:35, using military notation, meaning 6:35 p.m. After making certain that he was locked into 18:35, I led him through the chronology of the tape.

Every few seconds, I noted, the dispatcher announced the time. "This is so you professionals in the police department have a record of the time things happen?"

"Correct."

We heard squad cars from 30 sector and 40 sector reporting they were on the way to the scene. An officer requested a lieutenant and an internal affairs investigator. The dispatcher announced it was 18:14.

"That's 6:14 p.m.?"

"Correct."

Next we listened to a report that the internal affairs sergeant and a lieutenant were racing to the scene. Officer 447 was setting up a roadblock south of the arcade, to keep cars away from the mob. Then a report came that 27 Alpha, a major, was going to the arcade.

I led Buhmaster through an explanation of how police use codes to communicate a lot of information quickly without tying up the frequency. "You don't simply say, 'This is Detective Buhmaster of the homicide unit.' You give a code number."

"We have a call number."

"What's your call number?"

"1941."

I signaled Mark, and he played more tape. We listened as the harried dispatcher ordered squad cars from the northern zone of Miami—the Liberty City area—to go to the arcade. A lieutenant asked for canine units. All downtown units were ordered to the arcade. Then all south-end units. The riot accelerated with astounding speed. Within twenty minutes of the shooting, every squad car in the city had been ordered to the scene.

At 18:30 the SWAT team was ordered. In the background we could hear the noise of the riots—obscenities and broken glass and gunshots. Then 1941 yelled that the crime scene technician still wasn't there.

"Your number is 1941?" I asked.

"Yes."

Mark played more. In the hushed courtroom everyone could hear the clamor in the background as Buhrmaster frantically called for support. The tension in his voice showed how chaotic the situation was. The dispatcher announced the time: 18:35. The precise time Buhrmaster claimed he was interviewing Luis.

"That's 6:35 p.m.?" I asked.

"Yes sir." Buhrmaster swallowed hard.

"You testified that your conversation with Officer Alvarez began at 6:35 and lasted three to five minutes?"

"Yes." Suspicion dawned in his eyes.

"It is now 6:35 p.m.?"

"Yes."

"Play the tape."

Again, we heard 1941—Buhrmaster—screaming for support. The dispatcher announced the time: 18:36.

"We just heard 18:36," I said to the detective.

He shook his head. "I didn't hear 18:36."

"Well, let's play it again."

We played it again, and he acknowledged that he was on the radio at 18:36, or 6:36 p.m. That was supposedly a minute into his interview with Luis. The blood suddenly drained from his face.

"It said 1941?"

"Right."

"That's you?"

"Yes."

"You were talking to the dispatcher?"

"Correct."

"The operator reports back 1941?"

"Correct."

"So you had to be listening on your radio?"

"Correct."

"That's between 18:35 and 18:36?"

"Right."

"You're talking to Officer Alvarez at the same time?"

"Correct."

"But you have one ear on the radio?"

"I'm sorry?"

"One ear on the radio?"

"I don't know if I can answer that."

"But you're talking on the radio."

"Yes."

"Things are getting hot. The crowd is getting boisterous?"

"I tell you, you could hear the crowd the whole time."

"Things are chaotic?"

"I would say yes."

"You are rushing García to collect evidence before it gets worse?"

"Yes."

"The major is telling you that you must leave before it gets any worse?"

"Yes, he did."

Buhrmaster was on the air, intermittently, for the next three to four minutes. Left unsaid was the one question too many: How could you take an accurate statement of Alvarez while you're talking on the radio? I turned to the judge and announced, "Your Honor, we're finished with all this equipment. Perhaps if you want to take a very short recess, we can move all this and disconnect it." I wanted to give the jurors a few minutes to let the significance of the tape sink in.



I had already spent far more time with the prosecution's lead witness than Laeser had, and I was just getting started. Laeser's methodical approach was right out of Homicide Prosecution 101 and easy to read. I banked on unpredictability to force Laeser on the defensive.

When the afternoon session began, I introduced into evidence the bullets that had been taken from Johnson's gun. They were CCI stingers, high-velocity bullets intended to bounce around inside a human body until they slammed into vital organs. Then I picked up Johnson's gun, the RG-14, which had a nasty little two-inch muzzle. "This is what's commonly called a Saturday night special?"

Buhrmaster admitted it was the gun of choice in muggings and 7-Eleven robberies, and had no legitimate sporting use. He also conceded Alvarez had no choice but to make an arrest on a charge that carried a five-year prison sentence. Next, I used him to introduce Johnson's sweater into evidence.

In order to establish Alvarez's state of mind, I spent time establishing Miami's place as number one in the FBI national crime statistics for the past few years. Then we moved on to an interesting footnote to the riots. The first night of the riot, a team of prosecutors appeared at Miami police headquarters, which towers like a fortress on the edge of Overtown, to launch the Alvarez prosecution.

"At eight-thirty in the evening, assistant state attorneys came to the police station?"

"That's correct."

"Now, did they come to begin the prosecution of the people who were burning the cars?"

"No sir."

"Did they come to the police department to begin making cases against the people who were throwing rocks and bottles at the arcade building?"

"I don't believe so, no sir."

"Did they come to begin the prosecution of the people who were shooting at the police officers?"

"No sir."

"Burning police cars is still a crime?"

"I would say, yes."

"Is shooting guns a crime?"

"Yes sir."

"A serious crime, to shoot at police officers?"

"Yes sir."

"Who was appointed to track down these people who were shooting at the police officers?"

"To my knowledge, nobody was instructed to do that."

I had started Buhrmaster's cross-examination with the limited goal of disputing the detective's version of what Luis had told him in the arcade, but as I went along I kept finding other lodes to mine. As the prosecutor gritted his teeth, I asked a series of questions about a witness at the arcade who was beaten and threatened by Overtown thugs after saying that he had seen Johnson with a gun. Then I probed the detective about how one of Laeser's alleged eyewitnesses hadn't even been able to identify Luis in a photo lineup.

Under direct examination Laeser had asked Buhrmaster if he had been subjected to any political pressure from Dade State Attorney Janet Reno or anyone else. The detective had responded no. Laeser had opened that can of worms, and I wanted them to crawl all over the courtroom. "Let me explore that," I said. "Have you in the last year seen Janet Reno on television regarding this case?"

"Objection," Laeser shouted. "It would call for hearsay." Laeser was in a trap, trying to keep out the statements of his own boss, the lead prosecutor of the county. But he had invited this line of questioning, and the judge let me proceed. It was easy to prove Reno's personal involvement since she eschewed PR flacks, spin doctors and anonymous leaks in favor of doing it all herself.

On day three of my cross-examination of Buhrmaster, I explored the personal background of Nevell Johnson Jr. and his Mr. Snake street name. Judge Gersten had never ruled whether Johnson's criminal past could be admitted or whether we could mention that he was carrying a stolen gun. Both these issues bore on Johnson's behavior. Jurors were going to wonder why Johnson would go for his gun when he had an armed officer standing behind him. To answer that, we had to get into Johnson's past.

I started by asking the detective about the business cards, gold necklaces and bracelets all with the Mr. Snake logo. This was a prologue to where I wanted to go—the checkered history of Johnson's German-made, RG-14 blue steel revolver. The Bureau of Alcohol, Tobacco and Firearms had traced its pedigree from manufacturer to distributor, through all its owners, right up to its theft on a Miami Beach street.

Laeser raised an objection that I was asking for hearsay. The judge overruled him. Buhrmaster said he had indeed called ATF, but before he said what ATF told him, Laeser again complained of hearsay. The judge sustained this objection, though Laeser should have known better than to object. Sooner or later the jury was going to hear that Johnson was carrying a stolen gun. We had the weapon's rightful owner scheduled to testify. Laeser knew that, so his objections only served to show the jury that he was trying to keep evidence out.

I tried a new tack: "Did you ever find in your examination of the public records of the city of Miami that Nevell Johnson Jr. —"

"Objection! Counsel knows it's going to call for hearsay."

"Well, before we get to the objection, let's hear the whole question," the judge replied.

Laeser: "Your Honor, the question is as damaging as the response." Laeser's vehement statement caused the jurors to lean forward in their seats.

"Well," the judge said, rocking back and forth in his chair, "I believe that counsel would be entitled to ask a question."

For the next few minutes we battled over this terrain, with Laeser shouting objections. This was intense psychological warfare. Finally, the judge allowed me to establish that Buhrmaster had obtained Johnson's photo from the criminal identification unit. I was pushing the issue as hard as I could to send the jury a message that Johnson was not the model citizen *The Miami Herald* portrayed him. Gersten stopped me at that point. When I sat down, Luis said Laeser was so incensed when his last objection was overruled that he gave the judge the finger under the table.

Over the lunch break Laeser made an unexpected decision. When court resumed, he surprised us by venturing back to the subject of Johnson's photo: "What types of photographs are kept in that grouping?"

"Persons who were arrested."

Under Laeser's questioning, the detective testified that Johnson had never been arrested as an adult, but was arrested once as a juvenile. He hadn't been convicted of the charge.

One of my aims in crossing Buhrmaster for three days was to frustrate Laeser and impair his judgment so he would make mistakes. I could not have predicted his response. He had become so concerned over my questions about Johnson's mug shot that he had decided to enter the quicksand of Johnson's criminal past. It was a bad decision. Tactics are the same in trials and chess. You better be sure before you make your move because the rules don't let you take it back.

I pulled out a file with all the papers on Johnson's criminal history.

The 1980 arrest occurred after an officer spotted Johnson and several accomplices wheeling a safe containing \$11,000 down the street, away from a broken window at Friendly Finance. The records showed that he had been charged with two counts concerning this crime; he was found guilty on one count.

There was more. The file contained Johnson's juvenile record that we had obtained during discovery from the state attorney's own investigator. It showed two additional arrests. Was it possible Buhrmaster and Laeser were unaware of them? Or were they hoping we wouldn't know about them? Either way, we had caught them. Now was the time for a knockout punch.

On re-cross-examination I brought the document up to the witness stand. "Are you aware," I asked the detective, "that on December 7, 1976, Mr. Johnson was arrested for burglary?"

"Not to my knowledge, no."

"Are you aware that on August 18, 1977, he was arrested for dealing in stolen property?"

"Your Honor," Laeser shouted, "most respectfully, I just—I heard two lies."

"I have the paper right here," I said, waving the documents in my hand.

"There are no papers."

"I'll introduce them into evidence," I offered.

"Was that typed by Mr. Seiden or your secretary?" It was an astonishing accusation.

Judge Gersten tried to calm things down: "Let's not have any arguments in front of the jury," he warned.

By this time, Mark was on his feet: "I would take exception to being accused of falsifying evidence. I mean, by someone with Mr. Laeser's reputation."

When we reached the bench, Laeser hissed at Mark: "My reputation was good enough for the people who killed your wife."

Mark glared back. If there was one subject that might make my colleague lose control, it was his murdered wife.

I stepped between them. "Why don't we take a recess," I whispered to the judge. "If he's going to say something like that, I would prefer that he stop it before it goes any farther."

"Yes, I agree," said the judge, turning to the jury: "Ladies and gentlemen, we're going to take a recess."

We ended up adjourning for the day. On the drive back to the office, Mark turned to me and said, "When Laeser dies I'm going to pour a bottle of my best Scotch over his grave." When I looked shocked, Mark quipped, "Oh, I forgot one detail. I'm going to process it first through my kidneys."

It was clear to me that Laeser's blunders had been caused by the mounting frustrations he had felt over the past several days. In this pressure-packed trial, his meticulous plans had gone out the window during the testimony of his first witness. When his careful preparations were destroyed, his control slipped away. Finally, the anger and pressure had become too much, and he had blown up in a way that seriously hurt his case.

After Buhrmaster, Laeser called Antonio Bell. A high school junior, Bell claimed he was standing on the street corner outside the arcade at the time of the shooting. As the officer approached Nevell Johnson, Bell said, he looked through the arcade's glass doors and saw Luis pull his revolver and cock it. Bell demonstrated with Luis's service revolver, pulling back the hammer with his thumb. He claimed the muzzle had been pointed directly at the head of Johnson, who kept staring at the Eagle video game, his hands on the controls. The way Bell described it, Johnson was executed in cold blood.

I stayed in my seat for a long moment and forced myself to think methodically. Just keep in mind, I told myself, several basic facts that had to be true if

Bell was even there: He was over thirty feet from Johnson, looking through a tinted glass door, and his view must have been blocked by Luis's partner that night, Luis Cruz, and a video machine.

I decided to begin the cross-examination abruptly, exposing Bell's hatred of the Miami Police Department: "You are not exactly friendly with police, are you?"

"What do you mean?" I could not have wished for a better response. Gratefully I took up his invitation by detailing his numerous run-ins with the cops. For all of them he had a response: police harassment. He just hung out with his buddies on the street corner in front of the arcade and the cops would roust them for no reason. I had interviewed the cops on the street narcotics unit who said they made a lot of undercover buys at that corner but, like Louis, the police inspector in the movie *Casablanca*, Bell expressed surprise that any illegal activity was going on there.

"Those doors are tinted, aren't they?"

"No sir, not as I know them."

"Well, let me show you." I handed him a photo showing darkly tinted windows. Still, he insisted the windows weren't tinted.

I handed the photo to a juror, and he passed it down the row to the others. The glass doors were black. Out of the corner of my eye I watched one of the jurors hold it out at arm's length to get a good look, then smile.

Next, I inquired into Bell's experience with guns, hoping to leave the impression he was more than a little dangerous. I struck a richer vein than I anticipated. "Prior to the night of December 28, 1982, had you ever fired a gun?"

"No sir."

"Has anybody ever showed you how a gun worked?"

"Yes sir."

"Who showed you?"

"The sir right there, Mr. Laeser."

"He was showing you how to cock a gun?" I allowed surprise to creep into my voice.

"No. You trying to get me confused. I said he showed me a gun."

"Mr. Laeser was trying to show you how a gun operated?"

"No. He ain't trying to show me. He had the gun and he say, he hold the gun back. He say, 'Is this how the gun work or is this?'"

"You had no idea how to cock a gun, did you?"

"No sir."

"The first time, I take it, according to your testimony, you ever heard about a cocked gun or ever saw a cocked gun was the night of December 28?" Yes. "Despite having no experience with guns, you saw a hammer move back half an inch from a distance of thirty feet?"

"Yes sir."

Not only did we score with that improbability, but Bell then admitted it was Laeser who had taught him how a gun was cocked.

"Mr. Laeser very helpfully pulled the hammer back like that?"

"Yes sir."

"With his own little thumb?"

"Yes sir."

When court resumed the next morning, Laeser called Jeffrey Hoskins, a hulking youth with massive biceps. He had obviously borrowed someone's suit: The sleeves stopped four inches short of his wrists and his pants ended several inches above his ankles. Hoskins's voice surprised me; it was an octave higher than his body mass suggested.

A friend of Nevell Johnson's since childhood, Hoskins told Laeser that he usually went to the game room twice a day. When the police officers approached Johnson, Hoskins said, he was a few feet away, playing *Galaxy*.

"I had just completed, you know, shooting of a fleet and like there is a ten-to fifteen-second break for the new fleet to appear on the board. And out of the corner of my left eye I saw the police officers' dark uniforms as they walked up."

"At some point did you ever see Nevell turn to or look at the officer?"

"No, I didn't—until the officer turned him. He spinned him, Nevell. And when he turned, his hand was at a low, and he backed up in between two machines. And the officer raised his gun, and that's when the shot went off, when he was close to his head." He said Johnson never moved toward the police officer or reached toward his waist. He didn't know Johnson had a gun.

Once Hoskins was turned over to me, I threw him a couple of hard body

blows. In his sworn statement he claimed to have seen a gun beside Johnson's body, accusing Alvarez of planting a throw-down. He quickly denied it now, with the excuse that all the other guys said there was a throw-down so he just picked up on it.

"As I understand it, you gave those lies under oath?"

"Well, whatever," he said diffidently.

I showed him his signed, sworn statement and asked if it helped refresh his recollection. It did.

"You lied under oath."

"Yes," he said, giving up.

I felt sure Hoskins hadn't been anywhere near the arcade, and his testimony was a mixture of neighborhood gossip and media stories. That's where he picked up the now discredited story of a throw-down. Wielding his police statement, I read the answer in which he identified the officer's gun as black, while handing him Alvarez's stainless steel police revolver. Then I asked about his original statement that the gun was in the officer's left hand. This was an obvious problem since Alvarez is right-handed. He proudly answered that he corrected this minor error.

I quickly rejoined it was only after the prosecutors told him it was the wrong hand.

I went over other areas lightly. He said Johnson's hands had been at waist level—another nail in Buhrmaster's version. Then the clincher: Only two days after the shooting, he hadn't been able to identify Luis from a group of photos. Instead, he had identified another officer.

"And you told them that you were positive, didn't you?"

"Yes."

"And then sometime later somebody told you that you picked out the wrong officer?"

"Well," he said, "they should have put on hats." I quickly interjected that Alvarez wasn't wearing a hat that night. Then he came up with excuse no. 2: He was too tired to make an accurate identification. I was tempted to suggest three days of rioting had sapped his strength, but I didn't want to test Judge Gersten's sense of humor.

Hoskins stepped down on the eighth day of the trial. Combined with the eight days of jury selection, we were now in the midst of our fourth week in Courtroom 4-1. It was tough going. At the end of every trial day we devoted hours to dissecting the day's testimony, calculating gains and losses. We previewed upcoming witnesses, mapping out lines of cross-examination, then drafted legal arguments for the next day. A decent night's sleep was one commodity in short supply.

Each morning the four of us gathered at my law office. Luis usually began by reading out loud the *Herald's* story of the previous day's testimony. He was constantly astounded by how the articles emphasized the State's points and virtually ignored our own. "Was that reporter really there?" Luis yelled morning after morning. "Are they seeing the same trial?" There were two trials, the one we faced daily in the courtroom and the other, an unrecognizable version we read about in *The Miami Herald*.

The electronic media weren't much better—and were far more visible. Each morning, to get to the courthouse, we had to navigate through a forest of TV vans sprouting satellite dishes, and trucks packed with space-age electronic equipment. Thick multi-colored cables snaked across the sidewalks. As we walked up the front steps of the courthouse each morning, we were assaulted by an army of reporters, video camera crews, sound technicians with boom mikes and still photographers with whirling motor drives.

I worried that somehow, through leaks, the sequestered jurors would be infected by these news stories. My fears were confirmed when the jurors' guards reported that the radios in some of the jurors' hotel rooms, disconnected so they wouldn't be influenced by outside news, had been mysteriously reconnected. When that discovery was made, the radios had been removed, but I continued to be concerned about what outside information the jurors might secretly be hearing.

The next witness was Officer Luis Cruz, Alvarez's partner the night of the shooting. I tensed when I heard his name called. This twenty-three-year-old rookie could do us a huge amount of good—or cause us big trouble.

Since he was a rookie, he could be fired without reason, meaning he was

susceptible to pressure from the prosecutors and police hierarchy. Ordinarily the dangerous world of patrolling inner-city streets forges a close bond between partners as a survival mechanism, but Cruz had been assigned to Luis only that day. On the other hand, Cruz knew all the street cops supported Luis. That meant he was trapped between warring sides, and as he settled down in the witness chair he was clearly nervous, crossing and uncrossing his legs.

Ed Cowart, Laeser's trial partner, was handling Cruz. As he approached the podium, I was sitting on the edge of my seat, nervously doodling on a legal pad.

Slowly, Cowart worked Cruz through what happened that evening. Cruz described how Luis, his field training officer, showed him the danger spots of Overtown, including the alley where Officer Nathaniel Broom had been killed the year before.

Cowart didn't dwell on Broom, for obvious reasons, but this was a powerful story, and I made a note to ask about it later: Broom had chased a suspect into an alley behind a church. The suspect was waiting for him. He shot Broom before the officer could react. As Broom lay badly wounded on the filthy pavement, the suspect shot him again. This had happened six blocks from the video arcade, and I could imagine how Luis's recounting of the story would have been a powerful reminder to both officers how one mistake could get a cop killed.

Shortly after leaving the alleyway, the two officers drove by the arcade, which Luis wanted to check out. They strolled through the place and were about to leave when Luis suddenly went over to Johnson and patted his waist.

Luis drew his revolver and pointed it upward. "Don't move," he instructed Johnson. "We are going to walk out of here nice and slow, and I don't want any trouble."

At this point, Cruz said, Luis clearly directed his voice to him: "Get the gun."

Cruz crouched a little and reached toward Johnson's gun as Luis raised Johnson's sweater to reveal a revolver in the waistband of his slacks.

From this point on, Cruz testified, he couldn't see what Luis did because he had "tunnel vision" as he concentrated on Johnson's revolver. "As I was reaching for it, I saw Nevell Johnson turn quickly toward Alvarez. I stopped my motion of reaching for the gun. At that time, I heard a bang."

Alvarez looked down at his uniform, Cruz said, as if he thought he might

have been shot, then stared at Johnson's body on the floor. "Oh, my God," Luis mumbled. "Oh God."

Cowart asked if Johnson's hand came near the .22 revolver.

"I don't know," replied Cruz, shaking his head. He seemed confused. "It happened so fast, it was all a blur."

"Did it seem the gun went off by accident?"

"I can't say."

Cowart didn't press Cruz much. Neither did I. I handled his cross-examination with kid gloves, restricting myself to bringing out a few details about how cramped that area of the game room was.

"Could you have Mr. Johnson spread-eagled?" I asked, referring to one of the techniques recommended when a suspect is armed.

"There was no room," Cruz responded.

I carefully left one question unasked. The rookie Cruz had frozen in the midst of sudden combat, but in my eyes he had redeemed himself by telling the truth. Even with his career in jeopardy he didn't shade his testimony to help the prosecution or us.

Next came Sergeant NancyOLON, leader of Luis's patrol group. She testified that she heard his frantic emergency call and arrived at 6:13 p.m., nine minutes after the shooting. She said her conversation with Luis was brief: "All I recall him saying to me at that particular time was 'the gun went off.' He indicated to me there was a jerking type motion by Mr. Johnson." She demonstrated what she said Alvarez had shown her: Johnson spinning counterclockwise, palms outward, hands at waist level—another clear contradiction to Buhrmaster's claim that Luis had shown him Johnson's hands had been raised.

On cross-examination we brought out that she wasn't concerned that Luis had been assigned to 30 sector and the arcade was in 40 sector. Patrolmen crossed sector boundaries all the time, she said, and she had never disciplined anyone for it. Here was Luis's boss saying there was nothing wrong with the sector shift—a fact that the State and the media had made into a violation of epic proportions.

Laeser next shifted the trial's focus to Luis's service revolver, a technical maze that was to be a point of contention on and off for days.

In both the pre-trial newspaper stories and in Laeser's opening statement, the alleged "hair-trigger" action of Luis's gun was one of the main points against him. The prosecutors had looked all over the country to find an expert who would say the gun was dangerous. Harry Sefried was a former gun designer with Ruger, Winchester and Colt (but *not* with Smith & Wesson, the manufacturer of Luis's gun) who wore a string tie with a turquoise stone and a gold-gun pin in his coat lapel.

Under Cowart's questioning, Sefried testified that Luis's gun had been modified. Pieces had been buffed to make them smoother, and the rebound slide spring was cut, reducing it from 15 to 13.5 coils. This change meant that it required slightly less pressure to pull the trigger. The modifications increased the gun's "deadliness." He pointed out that the grips were non-standard plastic, which he claimed were "extremely slippery."

Under Mark's cross-examination, Sefried acknowledged that the revolver was within Smith & Wesson specifications.

The gun testimony had gone well, but just as I had feared, events outside the courtroom threatened to interfere with the trial. Judge Gersten gave us the news: The wife of one of our jurors, Robert Mendelson, the retired foreman, had complained she was being harassed.

This was serious. Over our strenuous objections, *The Miami Herald* had published the names of all the jurors. Had Mendelson's wife told her husband about this harassment during one of the weekly visits allowed by the judge? And what if Mendelson had told the other jurors about his wife's worries?

We had to find out what the jury was thinking. For once, Laeser and I agreed. We both thought it best for the judge to interview the jurors in private. However, we were shocked to hear him say that he would leave in the television camera that was taping the entire trial for the local stations and networks. When the judge ordered the courtroom cleared, we lawyers rushed to the hallway, where we huddled around a TV monitor and listened to every word.

With only the judge and a court reporter left in the building's biggest courtroom, the bailiff sent in the jurors one by one. First was the elderly Mr. Mendelson. He said his wife was agitated because she was getting phone calls from an

anonymous breather at all hours of the night. Strange cars appeared in front of their house, with men sitting inside staring at their windows for up to an hour.

Judge Gersten asked him: "Do you believe you can still be fair and impartial in this case?"

"I would imagine so." Other jurors knew about his wife's complaints. "They feel concerned because I'm concerned."

"Has anything outside the court proceedings affected your ability to remain fair and impartial in this trial?" he asked.

Mendelson replied, "Outside of that, I have no other reason to feel that I couldn't act as a juror."

Outside of that? One's spouse being threatened was a *powerful* influence. When I heard Mendelson's shaky voice describing this, the comfortable feeling I had about the trial vanished. The other jurors had all sworn to Gersten that they weren't going to be affected by this incident. I disagreed, arguing for a mistrial and a change of venue. Once again, Gersten rebuffed us and ordered the trial to resume.

The next day was my thirty-ninth birthday, but there was no time to celebrate, for the witness was an important one: Pamela Smith, a Florida Department of Law Enforcement expert on the interpretation of human bloodstains.

Mrs. Smith, a very pregnant young woman, asserted she could decipher the patterns and geometry of Johnson's bloodstains on the linoleum floor. From studying photos of the arcade, she had noticed that, by the Asteroid machine next to the Eagle, five droplets were smeared slightly before drying. She testified that these droplets were consistent with Johnson leaning against the Asteroid game when he was shot. The implication was that Johnson had been headed *away* from Luis, turning to go out the door, not to attack the officer.

After Cowart's direct examination, we took a short break. She was Mark's witness, and he had prepared a lengthy, complicated cross-examination. I knew he was going to have a tough time because he was woozy from the flu.

When the judge returned to the bench, Mark wasn't in the courtroom. Someone rushed up and told me that Mark had fainted in a private corridor behind the courtroom. He was being rushed to the hospital.

I told the judge that I wasn't prepared to cross-examine Smith in such a complicated specialty without considerable study. Since it was Friday, I asked that court be adjourned until Monday, to give me time to bone up. The judge agreed.

I raced back to the office and gave myself a cram course on blood spatters. It is a forensic field that has always intrigued me. At its core, it's a matter of basic physics—tiny bits of liquid fly through space, ending up as drops, smears or blobs with tails. An expert can study them and see how fast the blood spurted out; how far the blood went; how it pooled near the body; how it dribbled down a wall. Each detail implies an action by the body and the mechanism of death.

That weekend I pored over everything I had on bloodstains, rereading some passages, looking for explanations that might help decipher these “five droplets.” I called up Herbert Leon MacDonell, who has written over one hundred books and articles on the subject, including the classic *Bloodstain Pattern Interpretation*.⁶ We couldn't afford to hire him as a witness, but he generously gave me suggestions about how the droplets might not show as much as the State was claiming.

Meanwhile, Mark was recovering in the hospital. When he was feeling a little better, I went to see him with a former student of mine who had become a forensic technician with the FBI. She had agreed to help us off the record.

We used Mark's bed as a desk, spreading the photos of the blood spatters on the covers. In discovery we received over three hundred photos, but no numbered contact sheets denoting their sequence. We kept rearranging them, shuffling them into different spatial relationships. Only then did I see it. Laeser, you clever bastard, I thought. The photos were a jumble until positioned from the right angle. He was using the floor tiles like spaces on a board game. He would link the five blood drops to specific tiles, then work backwards along the floor to the tiles where he would claim Luis and Johnson stood. But his plan was to set the pieces on the board, then wait until summation when he would argue the five drops would prove Johnson had been

6. MacDonell at the time was well known to criminal lawyers. He later became a public celebrity by jousting with Marcia Clark as a defense expert in the O. J. Simpson case.

standing still, not twisting his body to draw his pistol. It would be too late for me to debunk it.

When court resumed I was ready to take on the blood spatter expert. I began by emphasizing her lack of experience—she had finished her training less than two years before—and the chaos of the crime scene. Paramedics and detectives had smeared the blood all over the place, spoiling what could have been important clues. She acknowledged she wasn't certain of many details.

"You can't tell us where Johnson was when he was shot?" I asked her.

"No, I can't."

"The only thing you can tell us is your estimation of where Mr. Johnson hit the ground?"

"Yes," she said. The bloodstains were too small, and the chance of contamination too large, to support an opinion on whether the shooting was intentional or accidental.

I got her to admit that "one explanation" for the blood spatters was that Johnson had been spinning and reaching for his revolver when he was shot.

By the time I finished I had destroyed whatever the State had hoped to gain from her testimony. Laeser must have thought so, too, because he complained to the judge that I had obviously lied about my lack of knowledge on blood spatters. I took that as a compliment. Ultimately, we decided the cross-examination had been so conclusive that we had no need to call a blood spatter expert to refute Smith's testimony.

With Dr. Joe Davis, the medical examiner, on the stand, Laeser spent a day going over every gruesome detail of the autopsy. He accompanied the testimony with scores of bloody photos, designed to nauseate, even going so far as to introduce the glass slides mounted with pieces of real human tissue removed during autopsy. On cross I sought to detail the body's history with a catalogue of needle marks and old knife wounds, but the judge ruled them irrelevant.

Davis, a matter-of-fact expert who never shaded his testimony, acknowledged to me that it was equally possible, as far as he could tell, that Johnson had his arms up in a motion of surrender when he was shot or was reaching for his gun.



The State's next witness was John Campbell, the instructor of the department's officer survival course. A fourteen-year veteran of the force who had the military bearing of a marine drill instructor, Campbell agreed with Laeser that Luis had apparently done some things that were contrary to Campbell's recommendations. "We told 'em, 'Don't let your gun get close enough to someone you're arresting so he can get a hold of it. . . . Don't ever let go of the suspect's gun until you've got control of that person. Hang on to that gun for dear life, because that's what will kill you. . . .' We told them there is only one time when firing a weapon single action is acceptable." "Single action" was the technical phrase for cocking a gun. "That is at a long distance, preferably when you have something to rest the gun against."

The instructor seemed to be making points for the State, but Mark's cross-examination demolished whatever gains the State had made. Campbell agreed with him that it was proper for an officer to draw his gun when confronting an armed suspect, and an officer is *not* taught that the criminal has the right to shoot first.

That night we sat around the conference table brainstorming ideas for the rest of Campbell's cross. Luis described the officer survival course, held on Virginia Key, an island on the Rickenbacker Causeway which had been Miami's black beach in the not far distant days of segregation. The survival course, set beside a garbage processing plant, was a mock-up of several Miami streets. The world-weary cops who thought they knew it all after a few months on the job typically treated such exercises with disdain, so Campbell would grab their attention with a harsh primer on how the streets killed cops. Why not have him do it in court, shake up the jury just like the cops? The next morning Mark finished his cross by asking Campbell to recite the speech. Laeser made objections. After an hour of legal arguments, Judge Gersten agreed with us: It proved Luis's thinking that night since he had taken the course just prior to the shooting.

Campbell climbed down from the witness stand and stood in front of the jury box. Jamming his hands into his pockets, he launched into his lecture, pacing back and forth in front of the jurors, talking to them as if they were his students.

For the next twenty minutes the jury listened attentively as Campbell de-

scribed, one by one, the eighteen area police officers who had been killed in the past fourteen years. One officer was killed in Overtown by a fleeing suspect. Another officer was shot walking out of a house. A female officer in Hialeah was shot with her own gun by a suicidal woman. "It can happen to anybody," Campbell said.

Some jurors nodded in agreement. Several had tears in their eyes. In virtually every case, the instructor stated, the officer had died because he was caught off guard. The most dangerous situation was arresting an armed suspect. If an officer got into a gunfight, he usually lost, since the suspect knew what he was going to do while the officer waited to respond. Once the suspect draws his gun, Campbell warned, it is too late. "It can happen on every call. I personally have been to too many funerals."

I could imagine—and so could the jurors—that Luis would have this lecture fresh in his mind as he approached the armed suspect: *Once the suspect draws his gun, it is too late.*

Campbell refused to second-guess what Luis had done at the arcade because each situation was unique and called for a different response.

"The one thing you did teach them," Mark asked, "was to go home alive at the end of their shift?"

"Correct," Campbell replied.

The next morning, just as we were leaving for court, we encountered a graphic confirmation of Campbell's warning. Mark rushed into the office. He had just heard on the radio that a Miami Beach police sergeant named Donald Kramer had just been shot and killed by a psychotic vagrant nicknamed El Loco. The vagrant had been carrying a concealed weapon. Kramer was a conscientious cop who had been patrolling the streets even before his shift started with roll call at 7 a.m. He had arrested this same guy several times before, but this time El Loco turned on him because he was "tired of being hassled."

Luis agonized over whether his indictment had somehow caused Kramer's death. He knew cops all over town had become hesitant, fearing that if they shot to protect themselves they might suffer the same fate.

The prosecution's next witness was Robert Hill, a tall, lithe man with a military haircut. He stared at me with cold eyes behind gray-tinted aviator

glasses. Hill was a sergeant in internal security, the unit whose mission is to prosecute other cops.

Cowart attempted to establish Hill as an expert on patrol techniques and procedures. I challenged his credentials, and the judge allowed me to ask him questions to determine if he was an expert. I forced him to admit that very little of his eleven-year police career had been spent on street patrol. His training was in Special Forces, SWAT and hand-to-hand combat. He had never worked in homicide, never done any scientific studies of police shootings or written any articles about them. This was the first time, he confessed, that he had ever been an expert in court.

Through a series of questions I showed that Sergeant Hill was far from an impartial analyst. For the past year he had been the police's liaison with the State Attorney's Office. He had conferred almost daily with Laeser's lead investigator, and he had a desk in Cowart's office. Putting him on the stand was like allowing Laeser himself to become an expert and testify to the jury.

At a sidebar I objected to Hill's being classified as an expert witness. Judge Gersten turned me down, but I figured that my lengthy voir dire had raised questions in jurors' minds as to whether Sergeant Hill was impartial.

With the stage thus set, Cowart was finally allowed to question Hill, who repeated most of Laeser's criticisms of Luis's actions. He claimed Johnson wouldn't have resisted arrest because as a street-wise kid he knew his were minor offenses and that he would be back home before Alvarez finished his report.

Hill said that an officer should not put his gun too close to a suspect, that he should keep his hand on the suspect's gun and not let go, that he should not cock the hammer. "You freeze that subject by saying, 'don't move.' You take the weapon. You don't give conflicting orders. You don't say, 'Don't move,' then say, 'We're going to walk out of here without any trouble,' then say, 'Take the gun.'"

"Officer," Cowart asked, in a question that was about to open doors for us, "do you know in 1982 approximately how many carrying concealed firearm arrests were made by the city of Miami?"

"There were over three hundred carrying concealed firearm arrests made by the city of Miami Police Department."

"And how many of those people were shot?"

"One."

When it was my turn, I asked Hill about another statistic, one that had been on our minds all morning: "In the last twenty-four hours, sir, how many cops have been killed trying to make a concealed firearm arrest?"

Both prosecutors leaped up.

Cowart: "Objection, Your Honor."

Laeser: "It has nothing to do with this case."

The jurors leaned forward. Since they were sequestered, they had not heard the news.

We had a lengthy, heated sidebar that ended with the judge agreeing that Cowart's question had opened the door. I turned back to Sergeant Hill, who told the jury about the officer who had just been shot that morning.

"Isn't it a fact, sir, in the last three months three police officers have been shot and two have been killed with handguns?"

"Yes sir," Hill said.

I decided to try an experiment to show how difficult it is to disarm a suspect. "Stand up for a second," I asked him. "Let's say, for example, you had your gun *here* under your jacket so I couldn't get to it."

Sergeant Hill stood up and carefully removed his glasses. Suddenly, he looked ready for combat, and as soon as I saw that expression I knew I had made a serious mistake. The Special Forces veteran and SWAT team expert was getting ready to make a sedentary lawyer look like a fool. For a moment I stared at the sergeant as he stood poised for a fight. "Oh no," I said, walking away and shaking my head, trying to defuse the situation with humor. "Now you're getting too serious."

The jury laughed, allowing me a dignified retreat. I had almost violated a sacred rule, now known in the legal lexicon as the Darden glove rule: Never, ever, do a demonstration with a hostile witness.⁷

To counter Hill's analysis of what Luis should have done and why Johnson wouldn't have resisted arrest, I asked him hypothetical questions about real

7. California prosecutor Christopher Darden made headlines when he demanded defendant O. J. Simpson try on the bloody gloves found at the murder scenes. While the complex DNA evidence was too abstract for many people to understand, the jurors had no problem seeing that the gloves didn't fit. Defense attorney Johnnie Cochran made the bad fit the theme of his summation: "If it doesn't fit, you must acquit."

cases. "Assume," I said, "that a motorist runs through the toll booth and doesn't put the ten cents in and is stopped by a police officer. Now, hypothetically, would you think that person would shoot and kill the police officer over that ten-cent toll?"

"Logically, no sir, but it *has* occurred."

"It's not hypothetical that a police officer is dead?"

"No sir, it is not."

"I ask you hypothetically, would you think that a fourteen-year-old boy driving his father's car would shoot and kill an officer who pulled him over?"

"Logically, no sir."

"Nevertheless, it happened in this county, didn't it?"

"Yes sir, it did."

I ran through other examples, all from Miami. Three officers walked up to a house to ask about a stolen car parked out front; all three were killed. Another officer was shot ^{after} stopping a car with a broken taillight. Then I asked about the shooting of Nathaniel Broom, the officer killed in the Overtown alley that Luis had shown his partner shortly before going to the arcade.

"When Officer Broom was shot, he stopped three people in a car driving the wrong way down a one-way street, and he got shot and killed over that, didn't he?"

"Yes sir."

When I was finished, it was 10 a.m. on Friday, February 24, the twenty-seventh day of the trial. As we waited for the next witness, Ira Loewy, the no. 3 prosecutor, suddenly stood up and announced: "May it please the court. Ladies and gentlemen, the State rests."

At the defense table we stared at each other. In his opening statement, Laeser had promised to put on two eyewitnesses who claimed they saw Luis cock his gun. They had produced only one. Also missing were several police officials and expert witnesses, notably a \$1,400-a-day expert on criminal procedures. I made a quick note to myself. Before we began our defense we needed a strategy session to decide what Laeser was holding back and why. What surprises did he have in store for us after we showed our hand? A powerful rebuttal could seriously damage us if we didn't anticipate it.

Judge Gersten was as surprised as we were. "Would you say that again, Mr. Loewy?" he asked. "I want to make sure I heard it."

Loewy repeated that the State was resting.

I told the judge that we hadn't been expecting this sudden decision and had no witnesses ready to call. Gersten ordered court adjourned to Monday morning.

The end of the State's case signaled that the trial was nearing its conclusion, and reporters went to Overtown, where they reported threats from angry young men: "If he is not convicted, people will turn Miami upside down."

Almost daily, we had been getting intelligence briefings in the judge's chambers informing us that attacks were being planned against Luis, the judge and the defense team. Black Panthers and Mel Mason, the presidential candidate of the Socialist Workers Party, spent an afternoon in our courtroom and then called a press conference to denounce the racist police. Tensions mounted even more when Jesse Jackson arrived and threatened that the trial was creating a "formula for explosion."

As we entered our seventh week the jurors were exhausted and restless under the strict sequestration that the judge had thought would last only "two or three weeks." I feared the combination of racial tension, intense publicity and bloody photos dumped on them daily would trigger an adverse reaction to us. I worried a juror might cave in to a verdict just to escape the stress. One juror was caught with an unauthorized bottle of wine in his room. Another had to miss her son's eighteenth birthday party. Another missed his sister's wedding. One good sign: The jurors voted to view *48 HRS.*, the Eddie Murphy film depicting the brutal deaths of several cops.

We were running out of resources, physical and financial. Our law firm had to take out a loan to keep going, and we were constantly scrounging for money to pay expert witnesses and other trial expenses. To help us, we put out a flier entitled "Officer Needs Help." Luis went to the police union and spoke on several Spanish-language radio stations, asking the public for donations. We received about \$50,000—which went to pay research expenses, expert witnesses and Ralph's salary. Mark and I didn't take any money. But, as we prepared to begin the defense part of the case, we were flat broke, and we needed to pay several experts whom we were about to put on the witness stand. The Hispanic Officers Association gave us their entire treasury—about \$9,000. With that, we kept going.

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The first day of the defense's case, we ran through a half-dozen witnesses. We wanted to get them on and off fast. We knew the jurors were tired, and we wanted to send them a message that we respected their time. This strategy had a side benefit: It left few openings for the prosecutors, as we had culled out any witness who could backfire.

We started with Edward Neal, a black AFL-CIO union representative from Washington, D.C. He testified about visiting Miami in 1980 and going with a friend to some nightspots in Liberty City. In a briefcase he carried a .22-caliber revolver that his nephew had given him. At one of the stops someone broke into his car and stole the gun.

I held up the RG-14 that Nevell Johnson had been carrying that night. "Is this your nephew's gun?" I asked, knowing the serial numbers matched.

"Yes it is."

Next we called a county police officer who testified that Johnson was not licensed to carry a concealed handgun.

"Is it a felony to carry a stolen gun?" Mark asked.

"Yes sir," he replied. The maximum sentence was five years.

We also called José Seiglie, Miami's officer of the year for 1982. He had once patrolled Overtown on the same shift as Luis, and he reported that he had seen stolen cars and "narcotics activity" in the arcade's parking lot. "I've assisted in making arrests there for purse snatches, street brawls, assaults."

Shortly after Seiglie testified, we discovered alarming news that could disrupt our entire defense. Seiglie had been immediately transferred to a beat guarding the garbage midnights on Virginia Key. We were certain, but couldn't prove, that this reassignment was orchestrated by the prosecutors as a deterrent, so other cops would get the message. I knew this would have a chilling effect on all officers' testimony.

Next came Alfred Johnson, the senior firearms examiner for the Bureau of Alcohol, Tobacco and Firearms. This guy was the no. 1 firearms expert in the country. Johnson said he found Luis's revolver to be "functional, safe and

mechanically sound." Nothing had been done to the weapon to make it unsafe. He said that the minor modifications made to the revolver were an "action cleanup." It was "common for the knowledgeable police officer to have it done." He said it was acceptable to snip the coil to reduce trigger pressure slightly.

Our next witness was William Rogers, a former FBI agent who designed and sold the \$18.95 plastic grips that Luis and other officers had put on their guns. Rogers, a champion target shooter, said that police around the world used his grips and found them superior to the factory grips.

We also called Robert Edmonds, an employee of the Money Tree Enterprises pawnshop near Overtown. He testified that Nevell Johnson had pawned a 12-gauge 500ATP Mosburg shotgun for \$25 on November 15, 1982, and redeemed it on December 14, two weeks before the shooting.

What was Nevell Johnson planning to do with such a shotgun? Certainly it wasn't to go hunting; it was the most effective close-in mankiller on the market. It didn't require any thought or skill. You didn't even need to aim. Just swing it around and shoot. Edmonds had brought along another gun of the same model. Mark picked it up and asked several questions while holding the gun. Edmonds said the purpose of the shotgun was solely "anti-personnel."

Mark racked the shotgun. The sound made a nasty, thunderous clap in the courtroom. Everyone jumped—including the jurors.

Fred Doerner, a University of Miami law professor, retired FBI agent and director of security at the University of Miami, offered a legal opinion that Luis's arrest and search of Johnson was within the bounds of stop and frisk under the Supreme Court case of *Terry v. Ohio*. When pressed on cross as to whether Luis should have used non-lethal force, he quoted Justice Oliver Wendell Holmes Jr.: "Detached reflection cannot be demanded in the presence of an uplifted knife. Therefore in this court, at least, it is not a condition of immunity that one in that situation should pause to consider whether a reasonable man might not think it possible to fly with safety or to disable his assailant rather than to kill him."

After the first day of the defense, we kept the focus on the basic questions we knew jurors were probably asking themselves: Why hadn't Luis waited? Why

hadn't he watched until Johnson drew the gun before firing? Wouldn't it have been prudent to delay a little bit?

We first presented David Churilla, a shooting expert from Orlando, who testified that it could be a fatal mistake to wait too long. Even a novice would be able to draw a gun stuck in his back waistband in a little over half a second. "You are creating a life-threatening situation to yourself and others to let the criminal have a weapon in his hand," he said.

This was good testimony, but I thought we had to personalize it. I tried to call two police officers who had been shot. One had serious brain damage because of his wound and talked with an awful slur. But Laeser objected, and the judge agreed. Fighting back, I called Parke Fitzhugh, a clinical psychologist and board member of the Law Enforcement Stress Foundation, who testified that Luis would have been in severe shock after the shooting and was in a state of denial when he yelled at the dispatcher for help.

Our top cop expert was Robert J. di Grazia, a tall man with glasses who had headed police departments in Boston, St. Louis and suburban Washington. Di Grazia testified that Luis had done nothing wrong in the game room and considered it "definitely" possible that Johnson was reaching for his gun. "In this type of situation," di Grazia testified, "the only thing an officer can do is take aim at a person who is going to come around with a firearm in his hand."

Di Grazia approved of Luis putting his revolver inches from Johnson's head because "it's important for the officer to let the subject know who's in control." It was proper also for Luis to take his hand off Johnson's gun so that Cruz could get it. "If it's a one-on-one situation, hold on to it," he said, but since he had a partner, it was best for Cruz to reach for the gun.

"Would you have shot the man under those circumstances?" I asked him.

"Absolutely," di Grazia replied.

As we started the second week of our defense case, I tried once again to give the jury a graphic presentation of how sudden and deadly a shooting can be. We had failed to get the news video of the riot admitted. We had failed to get the stories of the wounded police officers told. Now, I launched a new bid, with a man named Massad Ayooob.

Ayooob was a onetime holder of three national marksmen records and pres-

ident of the Lethal Force Institute. He traveled nationwide giving seminars to police, the military and civilians about the use of deadly force and self-defense. In his spare time, he had written seven books and more than two thousand magazine articles.

Ayoob had made a seven-minute videotape for us. In it, he used an RG-14, the type of revolver that Johnson had been carrying that night. He put on a loose, open-front button sweater like the one Johnson had been wearing that night, and then demonstrated how a man could pull out the gun, spin and fire in only a second.

In the final sequence, Ayoob began with his back to two paper targets, shaped like human torsos, to represent Alvarez and Cruz. As Mark held the video camera, Ayoob spun and drew the .22 revolver. He put two shots into the chest of the first target, then two shots into the chest of the second target, finishing with two more shots to the head of the second target.

All six shots took less than two seconds. The tape ended with the camera zooming in on the targets, showing the ragged holes, as Ayoob off camera said, "This is what could have happened."

When I prepared to play the tape to the jury, Laeser objected. The jury was excused, and the judge watched the tape on an eighteen-inch monitor in the courtroom.

Laeser complained that the tape was speculative. "It's a what-might-have-happened scenario. . . . An inaccurate representation. . . . Highly prejudicial. Totally irrelevant."

I fought hard on this one. This tape was graphic and powerful. The sound of the shots, the picture of the jagged holes in the target paper had a frightening authenticity that no words from the witness stand could duplicate. I was certain it should have been admissible because it proved Ayoob's conclusion.

Judge Gersten turned us down. He told us Ayoob could demonstrate his draw in the courtroom.

Making what we could of the situation, we called Ayoob to the witness stand. He explained that the winner of the gunfight is the person who draws first: "Action always beats reaction."

Several times Ayoob stepped down from the witness stand to demonstrate what could have happened, showing how quickly Johnson could have fired if Luis had hesitated.

Ayoob said that if Luis had waited, it would have been "suicide." When

Johnson moved suddenly in the arcade, “a homicide becomes justifiable under the rules a police officer is taught.”

Laeser tried to get him to admit that he could draw and fire much faster than Johnson. Not true, Ayoob said. “I’m five ten, 170. He’s six two, 140. I’m thirty-five. He’s young, twenty years old. He has the reflexes and the suppleness—look he even has the nickname Mr. Snake. That shows you how supple he is.” Ayoob said that if Johnson had wanted to draw very fast, he could have grabbed the gun and, while it was still behind his back and hidden by the sweater, pulled the trigger. It was quite possible that Alvarez and Cruz both would have died without ever seeing Johnson’s hand on the gun.

Our last scheduled witness was a slight, five-foot grocery store employee, Martha Velilla. She walked to the witness stand looking anxiously around the courtroom. Clutching her handbag, she testified that, after the shooting, she saw Johnson’s photo in the newspaper and recognized him as the mugger who had attacked her two months before, ripping off her necklace and stealing her purse. She had waited four months before calling the police. “I was afraid,” she said, close to tears.

On cross-examination Laeser asked why Velilla had waited so long. “You called because you wanted to help Officer Alvarez out?”

Velilla: “Yeah, because he killed a crook.”

Laeser: “And you are allowed to kill crooks in this country? You can just walk up to them and shoot them?”

“No,” Velilla replied, “but I was glad he killed him.”

The hardest question for any criminal lawyer to answer is whether the defendant should testify. We had put on two weeks of defense witnesses who had attacked the credibility of the State’s case. Why should we take the risk? On the other hand, a defendant’s failure to testify, especially if he’s a police officer, will weigh heavily with the jury, regardless of the judge’s instruction not to consider it.

Back at the office, we sat around the conference table and debated. Luis was adamant that he wanted to tell the world what had happened. Mark and Ralph disagreed. If something went wrong, if Laeser goaded Luis into losing his temper, the jurors might conclude that Luis was a hotheaded macho gunslinger. Why gamble?

Luis was sure. "Well, I've testified in court before. There's no problem."

"But that is the problem," I told him. Most police testimony comes across as detached, devoid of emotion—a technique drummed into them in the academy.

"It's my life, my decision. I'm testifying," Luis said, ending the debate.

"All right," I warned, "one piece of advice. Laeser has been cramming for months, and he's quick and smart, but you have the advantage. Theory is no substitute for experience. Only you have patrolled those streets. He can't outsmart you on this unless you let him. He is going to try like hell to make you mad. He wins if you do. If you lose control here, the jury will figure you lost control in the arcade."

At nine o'clock the next morning, the courtroom was packed. The supporters took separate sides. Miami's street cops sat behind the defense table, while the Johnsons, several well-dressed ministers, and street people with slogan-filled T-shirts occupied the other side. In between were political activists, lawyers, prosecutors and courthouse regulars. A dozen reporters, many of them from national publications, were in the courtroom. Other journalists were squeezed into the nearby media room. All were waiting for Luis Alvarez to describe for the first time what had really happened.

We didn't disappoint them. "At this time," I said, rising, "the defense calls Luis Alvarez."

There was a rustle of paper—reporters flipping open note pads—as Luis marched to the witness stand like a soldier doing his duty. I began with some soft questions about his background so that he could settle down and the jury could get to know him. We talked about his coming to Miami at an early age and starting to work at fifteen.

"Why did you work while going to school?"

"Well, I had to. My mother and I lived alone, you know. We needed the money."

I had suggested to Luis that he keep his answers simple, with little elaboration. The direct examination of a defendant is best kept short and concentrated on the main points. Rambling feeds the prosecution.

"Do you still live with your mother?"

"Yes sir." He was sitting ramrod straight in the witness chair.

To make myself inconspicuous I stood toward the back, behind the jury, so when the jurors looked at Luis, they wouldn't even see me. Luis had to be the center of attention now. Questioning a man with whom you have worked closely for a year becomes a dance of almost balletic timing and grace. I had told him what my opening series of questions would be, and what the closing would be, but I dislike a defendant doing detailed memorization because it makes his testimony seem artificial. I wanted Luis to move naturally through the rest of his testimony.

Under my questioning Luis described the service revolver he had been assigned. It had tiny rust spots and an officer-buddy suggested someone he knew could make the gun "nice and shiny." Luis gave his revolver to the buddy to have it buffed up. He never asked that the trigger be made easier to pull. When he received the gun back, he didn't notice anything about the trigger, but he decided that the wooden grips now looked old and grungy. He replaced them with Rogers grips, which many officers used. He bought them at a police products store that the Miami Police Department had a contract with. That's where all the officers went.

"When you purchased these grips, did you know what they were actually made of?"

"Well, I know now. Then I thought they were wood," he said, taking a sip of water from a white Styrofoam cup. "Nobody knew that those grips were plastic until it was brought out in my case."

We discussed the fact that his superiors respected him so much that, even before the end of his first-year probation, he was selected to be a field training officer and was given a forty-hour course in how to train young officers. December 28 was the first day Cruz was assigned to him.

Following my instructions, Luis looked at me when answering an ordinary question. Only when he reached the crucial parts of his testimony did he swing his head and speak directly to the jurors.

“Why did you take Cruz into Overtown if it was outside your assigned zone that evening?”

“I was assigned to train and test Cruz on December 1, but I was injured from a dog bite, and December 28, the day of the shooting, was my first day back on the street. I had to make up for lost time.” A field training officer has to teach the raw recruit the job of being a real cop. “I wanted to show him the quote unquote bad spots, places where we’ve had problems before, places where we’ve made arrests.” He said they stopped at the arcade because it was on a rough corner. “There is a lot of dope used there. And the owner of the arcade is known to us as a drug trafficker.”

On our counsel table was a two-hour video of the instructional ride that Luis had given Cruz through Overtown the afternoon of the shooting. The video had cost us a lot of time and energy, but despite the investment, I abandoned it. I couldn’t afford to break up Luis’s testimony.

Luis stepped down from the witness stand and showed how he had strolled through the arcade, with Cruz trailing behind, until he spotted the bulge in the sweater at Nevell Johnson’s waist. At first, he wasn’t certain whether it was a gun. “A lot of people carry those big Afro picks. At the top, they have like a hand and it sticks out. Or it’s a brush. So I went up to investigate. I tell Cruz to come on.”

Luis picked up his service revolver from the evidence table. He said Johnson was hunched over the Eagle machine. He asked me to play Johnson’s part. I turned, facing away from him, my hands on the wooden podium, which became our substitute for the Eagle machine. At one time I had thought of subpoenaing the machines into the courtroom to reenact the shooting, but had decided it would be too Hollywood—the jurors would focus on the machines instead of the testimony. This was the most important moment of the trial. The verdict hung on whether the jurors believed what he was about to say.

“I put my right hand on the bulge and I asked him, ‘What is this?’ And he is playing the machine. He turns his head and he goes, ‘It’s a gun,’ but as he turns his head, he stands up straight. It’s a real narrow corridor, and his buttocks are touching the other machine behind him. His hands are not touching the console now, but they are almost on the console.

“When he tells me it’s a gun, I switch hands and I draw my service revolver. And I put my revolver between both of our faces and I go, ‘Don’t

move.’” He barked the command, holding the gun between our faces, barrel pointed toward the ceiling.

Luis was handling this as a monologue. It was going well, and I didn't interrupt.

“And I tell him, ‘All right. We are going to get out of here. You are not going to give me any trouble. You are going to do it slowly and quietly.’”

We were standing near the railing of the jury box—almost close enough to touch the jurors.

“He looks at me,” Luis went on. “When he turned his head, he didn't take his eyes off me. We looked at each other for a second or two. And I tell Cruz to get the gun. I turned my head slightly to look at Cruz. I directed my voice towards him. He was standing close—right where Mrs. Hoodwin is.”

Luis nodded toward one of the jurors, Mary Ellen Hoodwin, who beamed back a smile. What an extraordinary moment this was. Luis had mentioned the retired medical secretary's name casually, naturally, and that quickly made her his partner. The hundreds of hours he had spent working on his own case included memorizing the jurors' names. In this one unexpected moment the work had paid off.

Building on this success, Luis continued with the demonstration, showing that after ordering Cruz to take the gun, he moved his hand from the imaginary gun in my rear waistband to my left shoulder.

“What he does is he pulls and I lose the grasp of what I had. At the same time as I lose the grasp, I started to turn just automatically. When I started to turn, I start to bring my gun up.”

We showed how Johnson spun around, with Luis reacting to the sudden movement. “He's a little tall. I'm looking up. When I see this man, I know he shot me at that time because there is nothing you can do. When I see his hand, that is coming across at that time, I believe I'm dead.”

He had seen the top of Johnson's right hand move toward the left, across his body, as he spun left. Johnson was reaching for the gun. “That is where I got frightened. I got really scared there. They will tell you in training how fast things happen, and you got me. What went through my head was, He got me. I'm dead.

“At the same time, I started to turn. I thrust my gun into his head and my left hand is somewhere around here and it's awkward and I fired.”

"What happens next?" I asked. This was the first question I had asked in fifteen minutes.

"The thing I think is, God, I'm shot. I just like froze and I look at myself." He showed how he looked at his chest for a bullet hole. "Then I realize I'm not shot and I knew that he fell. He didn't look twenty. He looked like a kid, and he was on the floor. There was blood all over the place. I thought, God, I've shot a kid. A gunshot to the head—I knew he wasn't going to make it. I kind of stayed in limbo. I was kind of dazed and I'm looking at him. Then it dawns on me. Wait a second. I'm a policeman. I got to do something. The very first thing that came to my head was get the squad."

Putting his gun back in its holster, he pulled out the portable radio attached to his belt, but amid the blaring jukebox and the clamor of the video machines he couldn't hear. He raced outside and made the call from the sidewalk. "I turned around. Officer Cruz is right there, and I asked him, 'Did you get the gun?' He tells me, 'No, it's still on him.'"

Alvarez ran back inside and grabbed the gun. It was still stuffed in the waistband, but it had been loosened either by Johnson grabbing for it or because of the fall. "When I picked up the gun is the first time I realized he didn't get a shot off." He ordered Cruz to clear people out, and he himself shouted for everyone to leave. "There could have been four more persons armed in there. This man could have had a partner. I don't know." People stood, gawking, until he drew his gun again. Then they ran out.

"Do you remember what you said in that first radio transmission?"

"No sir. First time I heard it was in your office, four or five months after the indictment. And I don't remember asking for the squad. I was fading in and out."

"Has this affected you since then?"

"Yes sir, the first couple of nights I didn't sleep. Every once in a while I get a nightmare. It's always the same scene. I always remember him on the floor, you know, and the blood around him."

"Was this an accident?"

"No sir, this was not an accident. I didn't want to shoot. I shot because I had to shoot."

"Did you shoot him deliberately?"

"Yes sir. I shot him deliberately. When he turned around to shoot me, I shot him."

"Why did you shoot him?"

"Because he was going to shoot me."

"Did you ever cock your gun?"

"Sir, I *never* cocked my gun."

As I walked back to my seat, I saw the journalists looking at each other in surprise. Luis's direct testimony had lasted ninety minutes. Perhaps, because of the length of the trial and the importance of the case, they had thought my direct examination would drag on for hours. But I had wanted Luis to tell a simple story, focusing only on the essential facts. Why give Laeser a bigger target?

Laeser's chief investigator piled on the counsel table Luis's internal affairs file, academy records and personnel folders all tabbed and indexed. As I had anticipated, Laeser began by questioning Luis about the complaints made against him. Only two had been sustained. Both concerned minor infractions involving report writing.

"Do you recall," Laeser asked, "an incident at the jai alai fronton and you sort of intervened by claiming one of them was your aunt?"

"Oh yes."

"That person really wasn't your aunt, was she?"

"No sir." Luis explained he was working as an off-duty guard at the fronton when he saw a guy bothering a lady. "He kept following her and she was afraid of him. She kept changing seats and he kept changing seats. He would always sit right directly behind her." She complained to Luis that the man even followed her to work.

"Anyway, I went up to the individual where he was sitting. I told him, 'Listen, I understand you are harassing this lady.' I went through all the allegations that I had received and I told him, 'I really don't appreciate you doing that to my aunt.' I just said that to make him stop, you know. She was not my aunt. And he made a complaint, but there were four or five witnesses, and the complaint was all lies, and it was cleared up right there on the scene."

Several jurors were beaming at Luis.

About this time we broke for lunch. Shortly before court resumed, Wanda Gómez, my secretary, came over and said she had just gotten a call from someone who had threatened to blow up our office.

Back in the courthouse, Laeser's questioning jumped from topic to topic throughout the afternoon as he searched for a weak spot.

"Did you ever speak to the person who you had requested to work on your firearm?"

"I never met him. I never met him before."

"Didn't you meet with Mr. Rivera around November or December of last year, and he explained to you that he was the person that worked on the gun?"

"Never."

"He never met with you?"

"No sir."

As we would learn later, Laeser had set up this little exchange about the gun polisher for a bomb he was planning to drop during rebuttal testimony, but rather than telegraph his intentions he moved on, trying to get Luis's goat by suggesting that he had wanted a big-barrel gun as a symbol of his machismo. When Luis laughed off that idea, the prosecutor went back to talking about the alleged statements Luis had made at the arcade. At one point, Laeser scribbled the word "truth" on the blackboard, as if that gave him extra authority.

At 6:15 p.m. court was adjourned. Luis had held up under almost five hours of cross-examination without a mark on him. As he left the witness stand I gave him a hug and one piece of advice: "Don't be so hostile with Laeser." Luis protested: "What should I say, 'Thanks for ruining my life?'"

At nine o'clock the next morning, Luis was back on the stand. Laeser had come up with an idea overnight: Prove Luis was wrong by having him do a demonstration.

Laeser arranged the two of them in front of the jury box so that Luis was playing Johnson, with the .22-caliber revolver tucked into his rear waistband, underneath his suit coat. Laeser became the arresting officer.

Laeser's plan was to hang on to the gun through the suit coat, so that there was no way the suspect could get the gun and fire. This was what Sergeant Hill claimed Luis should have done. The trouble was that Laeser was trying to keep hold of the gun *through* the coat.

In one swift motion Luis swiveled, jarred Laeser with a sweep of his left elbow, reached under his coat, grabbed the gun and jammed it against Laeser's head.

Stunned, Laeser still clutched at Luis's coat. He said nothing.

"Sir," Luis said, "you ended up with a bullet in your head, and only my coat in your hand."

"That's because you were pulling with your hand on the other end of the coat," Laeser complained.

Precisely. With his left hand, Luis had opened his suit coat, allowing his right hand access to the gun. Laeser had a death grip on the coat, but he couldn't keep a grip on the gun.

Laeser and Alvarez kept staring at each other, the prosecutor still clinging to Luis's coattails, Luis holding the gun to his head. Three jurors in the back row were standing. This was a little too close for comfort. I complained to the judge: "This is getting argumentative."

Laeser exploded. "I'm not trying to be argumentative."

Luis, tugging at his coat, said, "Let go of my suit."

Gersten admonished the prosecutor: "Let's not have any arguments with the witness, Mr. Laeser. Let's get the gun back on the table unless you are going to use it. Now, Mr. Laeser, let's move on. I don't like this."

I liked it a lot more than the judge and certainly more than Laeser. The prosecutor's self-inflicted wound proved the sweater made it impossible to take a firm grip on Johnson's gun. Laeser had violated the rule of never doing a demonstration with a hostile witness.

This debacle left Laeser frustrated and it showed in each of his questions, turning the rest of his cross into an acrimonious argument that lost its effectiveness. Finally, at 4:58 p.m., he gave up, and I announced that the defense rested. Laeser said immediately that he planned to present rebuttal witnesses the next morning.

Laeser surprised even me when he announced Luis Rivera as the next witness.⁸ I had a premonition that Rivera spelled real trouble. A fat man with a thin moustache, Rivera had cleaned and modified Luis's gun. We had tried

8. The Florida Rules of Criminal Procedure permit prosecutors to hide the identity of rebuttal witnesses. The power of surprise cannot be overemphasized. Trial lawyers quickly learn that defeat is the nastiest surprise of all.

very hard to get this man to testify for us about how he had modified Luis's service revolver, and he had repeatedly evaded us, claiming he might lose his job if he stepped forward.

Under Laeser's questioning, Rivera said he was employed at a Burger King and worked on firearms only on the side. Another officer, named Becker, had given him Luis's revolver. He polished the exterior and was paid \$20. He denied trimming the trigger coil.

Rivera claimed that he had met Luis Alvarez once. It was shortly before the trial started, at Officer Becker's house. "He asked me that I had done the polishing on the gun, could I become a witness for him." He said Luis had made a vague reference about Rivera having done nothing wrong, but "when you go to court you take a toothbrush with you, or something." Implying that you're ready to go to prison. What's more, Rivera said, Luis's attorneys had once summoned him to their office and another time had gone to his home. I glanced at the jury and saw the quick intake of breath by two jurors. Others were frowning.

This was tough stuff. On cross-examination Luis had testified that he had never met Rivera. When Laeser was through, the judge ordered the afternoon recess. In the corridor a television journalist asked me if I thought Luis was going to be indicted for perjury. In the empty men's room I filled my hands with cold water and lowered my face into them. Then I stared at my reflection in the mirror. The months of missing sleep and the stress of the trial had taken their toll. My face looked gaunt, pasty white, and my eyes more red than white. Think, damn it, I said to myself. Concentrate.

Rivera had scored points where we were most vulnerable, not about the shooting, but about Luis's credibility. Few juries will acquit a liar. Rivera had seriously damaged our defense with a concoction of lies and half-truths. I knew that no matter what questions I asked him about his alleged meeting with Luis, he would stick to his original story. I could not allow him to score further points by just repeating his tale. I had only moments to decide on a strategy. What I needed to do was to show that this guy was a spineless little creep who would do anything to protect himself.

Back in the courtroom, trying to look more relaxed than I felt, I asked Rivera: "You and I have met before, have we not?"

"Yes sir, we have."

"I called you numerous times to try to get you to call me, didn't I?"

"I wouldn't say numerous times. You called me twice, I believe."

"I left messages to have you please call me, isn't that true, sir?"

"I suppose it was."

"You never called me, did you?"

"I never called you."

"Finally I got you at home?"

"Yes. That's the day I met you at your office."

"You told us you were afraid?"

"I was afraid that—I was worried."

"You said you had been lying awake at night?"

"Yes, I have."

"You said that you were afraid of getting in trouble."

"Yes, I was."

"You were afraid that you had done something wrong?"

"Yes sir."

"You were afraid because you did not have an occupational license?"

"Exactly. In this country you need a license for anything."

"And you did not have a gunsmithing license, did you?"

"Exactly, sir."

"And you did not have a license in the Bureau of Alcohol, Tobacco and Firearms?"

"No sir."

"And you know that you needed authorization to work on guns, don't you?"

"I didn't know that then. I assumed that as I was doing it as a hobby there was no problem. When this problem popped up, I was afraid."

"You have a buffing wheel, don't you?"

"Yes."

"It's a cloth wheel?"

"Yes."

"You buff up guns for people?"

"Not for people. I buffed, I suppose, a total of five or six guns, and believe me, those will be the last ones I do."

"When you came to my office, I asked you about the spring?"

"Yes, you did."

"You knew that was an important issue in the case, didn't you?"

"Yes."

"I asked you, 'Isn't it true that when you had polished the gun, you clipped the spring?' Do you remember that?"

"Yes."

"And you said that because of the problems involved in the case, you did not want to remember whether or not you clipped the spring?"

"No sir. I told you from the very beginning, okay, that I did not recollect doing that, being it was so long. You told me that I was afraid to admit it, and I said possibly there's fear of me saying so."

"Then you said that you wanted to have a couple of days to think about it, didn't you?"

"Yes."

"You said, 'I will call you back and tell you whether or not I clipped the spring?'"

"Yes."

"You never did call me back?"

"No, I didn't." He kept wiping his sweaty palms on his shiny pants.

"I had to find you again?"

"Yes, you did."

"Unable to get you on the phone, I had to come out to your house, didn't I?"

"You came out."

"About five o'clock on a Sunday afternoon?"

"Right."

"Mr. Seiden was with me?"

"Uh-huh."

"And you were polishing your Camaro on your front lawn, weren't you?"

"Yes, I was."

"I asked you about the spring again?"

"Exactly."

"And I said, 'Would you please tell the truth and testify about clipping the spring?' Do you remember that?"

"Yes sir."

"And once again you said that you were real worried about the situation?"

"I also said, 'Sir—I said I have stayed awake nights trying to remember whether I did it or not, and I said I cannot tell you whether I did it.' You said, 'Well, you have to come up with the truth. You have to be honest yourself and

tell us the truth.' And I said, 'Sir, if I cannot recall it, I cannot recall it.' And you were imposing on me that I did do it."

"I wanted you to tell the truth."

"Yes sir."

"You said you were worried about losing your job?"

"Exactly."

"You were worried about your family?"

"The whole bit."

"Then after we talked on Sunday afternoon, you said, 'Give me a couple of more days to think about it again?'"

"Yes. That was when you said, 'Well, we'll give you maximum three days because we got to know what to do in this case.' "

"And finally you said, 'No, I just really can't remember, and I just don't want to get involved.' Isn't that right?"

"Yes, that's right."

With that I dismissed him. I had taken a risk by sidestepping his lies, focusing instead on his character. The cross was designed to expose him as a moral coward, one who could not be trusted to tell the truth. His job at Burger King was worth more than the truth.

The next morning, even the *Herald* made no intimation about Luis's committing perjury.

The State's final witness was George Kirkham, an associate professor at the School of Criminology at Florida State University. He was a tall, slender man with a moustache and a tweedy look. To Mark and Luis, he was a traitor, a former cop who took money to testify against other cops and was now trying to put one in jail. He was also crucial. As the last witness, he was the one whose words would ring in the jurors' ears as they started deliberations.

Cowart began by running Kirkham through a list of impressive-sounding credentials. His specialty was law enforcement, with a doctorate in criminology from the University of California at Berkeley, and he had the fancy title of "executive director of the National Academy of Police Specialists." He had co-authored a textbook, *Introduction to Law Enforcement*, and written

Signal Zero, describing six months that he worked as a cop in Jacksonville, Florida.

In Cowart's direct examination, Kirkham repeated the prosecution's theory of the case: Luis was wrong to leave his assigned sector; Luis should have told his partner what he was doing; he made a mistake by getting too close to Johnson; and, of course, an officer should not cock his gun.

Cowart described a hypothetical example that repeated the State's theory of the case, in which Luis "flinches." The prosecutor asked Kirkham whether he could tell if the gun was cocked.

I objected. There was no way that Kirkham or anyone else could conclude whether the gun was cocked. Gersten overruled me.

Kirkham answered: "My opinion is that weapon clearly was in a cocked or single action mode."

I heard snickers from the audience behind me. How could he know this? There was no evidence to back him up.

"In examining over one hundred police shootings," he continued, "I have only seen two accidental shootings where the weapon was fired in a double action mode." In each case, the officer had fallen over backwards and fired accidentally.

In this case, the professor maintained, "the shooting is not at all justified. I've seen so many times—it's a cocked gun. You cock that gun in tense field situations, it's very likely that it will go off."

As soon as I had seen Kirkham's name on the witness list, I began tracking down his academic record and all his writings.

Now I put all these documents to use. Under my questioning, Kirkham acknowledged that all his graduate research was not on police work, but homosexual behavior. Where was his original research and published articles about police procedures? He had to admit he didn't become a specialist in police procedures until he had briefly served as a cop.

As I probed, Kirkham grudgingly agreed that social scientists, like their physical science counterparts, must test their theories by developing hypotheses and subjecting them to rigorous testing. To accentuate that his opinion was

a purely subjective view, unmeasurable, unprovable and supported by nothing more than anecdote, I drew out of him how little he knew about the arcade. He had visited it once, early in the morning, before it was open for business.

“So you had an hour to sit there, mull over your experiences, imagine what it was like with the noise and the tension and the things that were going on, and then in your own mind try to figure out what you would have done under the circumstances?”

“Tried to fairly consider all the possibilities, yes.”

“In formulating your opinion you have referred to yourself as a scientist?”

“Yes, I’ve used that characterization.”

“I take it as a scientist you consider yourself to be an objective person?”

“I seek to be objective.”

“Of course, you have to be honest in an investigation?”

“Yes.”

With that setup I picked up his thick doctoral dissertation. It was a study of men who wanted transsexual operations. In all of the three hundred-plus previous cases Kirkham had been involved in, opposition attorneys had never come up with this document. I asked, “When this went to the dissertation committee, did they require you to write a disclaimer?”

“Well, normally,” he said, swallowing hard, “there’s a preface written.”

In fact, his professors had forced him to admit that he used “conscious deception” in dealing with the transsexuals. Because he was bothered that these men were seeking sex-change operations, he had given the notes of his interviews to the medical committee that would decide whether they should be operated on. He hadn’t told his subjects he was doing that—an omission that angered his professors.

“Does conscious deception mean the same thing as lying?” I asked him.

“Well, you can semantically, I suppose, talk about it in a number of ways,” he dodged. He claimed he was a victim of campus politics.

For the next few minutes I barraged him with questions, repeatedly using the words “conscious deception,” “lying,” “duplicitous” and “unethical.” With this tone set for the jurors, I turned to his short police career that he had written about in *Signal Zero: The True Story of a Professor Who Became a Street Cop*. The book recounted how his field training officer had told him to forget 75 percent of what he had learned in the classroom.

Under my questioning Kirkham acknowledged that he himself had driven outside his assigned zone and had broken another regulation by using hollow-point bullets. According to his book, this infraction could draw a two-week suspension, but officers risked it because they wanted to make certain that if they fired at a suspect, the bullet would stop him.

When he claimed some details in the book were done for “purposes of character development” and were not strictly accurate, I read from his own introduction, in which he promised to “tell it like it is.” Then I turned to a vivid description of his stopping a nineteen-year-old driver. To Kirkham, the young man seemed nice. Suddenly, his partner shouted, “Freeze!” Kirkham saw his partner cocking his .38 and pointing it at the youth’s head. The partner had seen what Kirkham hadn’t: The teenager was reaching for a gun down by the floorboard.

Now, Kirkham said the anecdote wasn’t quite accurate. “There was no cocked weapon.”

I didn’t care what he testified to. The anecdote showed how unexpectedly a suspect could get to his gun. Either his partner cocked the gun to get the suspect’s attention or Kirkham lied in the book. Either way, it was a plus for our side.

I read another anecdote, about Kirkham facing an angry crowd in an impoverished black neighborhood. People were throwing rocks and bottles at him. A woman tried to grab his service revolver. Kirkham knocked the woman down and drew his revolver. He called on the car radio for other officers to come, then pulled out a shotgun and racked a shell into the chamber.

“You pointed it at the people nearest to you?”

“In actuality,” he replied, “I had the weapon in a port arms position.” He claimed that in the book he had merely been using “dramatic license” about aiming the gun.

I read on: “I could see myself standing there with a shotgun. Scared. Cursing. Shouting. ‘Menacing an unarmed assembly with an offensive weapon,’ I once would have said disapprovingly. I had learned that night that the desire to remain alive and uninjured is the lowest common denominator for every human being—including professors of criminology. I had been ready to kill, would have killed, would have done anything I had to in order to survive.”

This book was a powerful expression of what Luis Alvarez and all the other Miami street cops felt. I continued reading. “If I had fired it that night, if I had actually shot, even to save our lives—my God. The community, the newspapers, the civil rights groups, the department’s own internal affairs division would have come down on me like a ton of bricks. It seemed so wrong to me, so consummately unjust, that we who so often found ourselves forced to make the gravest of human decisions in a matter of seconds should then be judged by outsiders, people who enjoyed the luxury of quantities of time in which to dissect and examine every action retrospectively. Outsiders who had never personally experienced the crushing grip of fear, the incomparable climate of emotional pressure in which a policeman must sometimes act. Outsiders for whom the differences between right and wrong were always so clear.’ ”

I paused to let the words sink in. “That’s a pretty good summary of what it’s like being a police officer, isn’t it?”

“Well, I’m pleased that you think it is. I tried to make it be so.”

By this time it was 6 p.m. The judge adjourned for the evening. As we were walking out of the courtroom, a television reporter said to me, “That was a great expert witness you had.”

Back at the office we discussed Kirkham’s testimony. We all agreed that by the time I was through with him, he was more our witness than the State’s. What more was left to do? I could have challenged him directly about the absurdity of claiming the gun was cocked, but I would have run into trouble. He was a professional witness.

The next morning *The Miami Herald* had a bold black headline: “Professor: Cop’s Shot Unnecessary.” When court resumed, I announced that we had no more questions.

We could have gone immediately to closing statements, but Abe Laeser had the flu and the judge ordered a two-day delay. I worked on my summation. I figured I could get through the last day just on adrenaline. Being in a trial is like fighting all night in the foxhole and then looking up in the morning and seeing the enemy charging with bayonets. I don’t care how tired you are—

you're going to keep going. I worked sprawled in a chair, making notes and constantly rearranging the outline for my remarks.

When the trial resumed, on March 15, everyone was prepared for the worst. The officers protecting the courtroom wore bulletproof vests. In black neighborhoods, hundreds of parents kept their children home from school.

The packed courtroom included reporters from the local media, all the television networks, *The New York Times*, *Washington Post*, *Los Angeles Times* and *Time* magazine.

I anticipated a polemic of the type Laeser was famous for and I was not disappointed. "What did Nevell Johnson do to deserve dying? He turned with his hands up. But Luis Alvarez wasn't paying attention. He had his gun on single action. He looked at his partner. His gun just went off."

He harped on Alvarez's first radio message. "He never said, 'I had to fire. I shot my gun. I acted in self-defense.' He never said, 'I was in fear for my life.' Luis Alvarez's own words—out of his own mouth—don't have one single solitary sound that even resembles self-defense."

Laeser picked up Luis's police revolver from the evidence table. He called the gun "the most important piece of evidence in the case." He claimed that the gun had been modified "to become the most lethal machine for killing that a police officer is allowed to carry." He was making it sound sinister while acknowledging that it didn't violate regulations. Laeser leaned over the jury rail, waving the .38 police special and invited the jurors to take the gun into the jury room with them. "Put your finger on that trigger. There's almost no pressure. Just the tiniest of movements and that gun goes off."

He ran through all the errors that Luis had allegedly made in the game room. Then he slowly, dramatically took off his suit coat and picked up Johnson's stolen Saturday night special. He said the gun was not over Johnson's left kidney, as the defense was claiming, but in the small of Johnson's back. "Try it in the jury room all day. You can't get to the gun. The man who put it there, Nevell Johnson, knew he couldn't get it. Nevell Johnson wasn't insane. He wasn't a madman. He wasn't trying to commit suicide."

He blasted me for attacking Johnson's character. "We heard about bad Nevell, archenemy of the people, arrested once as a juvenile and returned to his mother. That's the depths to which the defense has sunk." I flushed with anger. But I knew I would soon have the floor to myself.

Laeser denied there was any political motivation. "There's a difference between a good cop and a bad cop. Even if he's a good cop, the police officer of the year, if he unlawfully kills someone he has to be prosecuted."

He ended with an ominous note to the jury, warning that the "community" wanted "answers." I heard them as code words signaling that if Alvarez was acquitted, the jurors could expect rioting.

As I walked to the podium, I decided I had to shift the jurors' focus from Laeser's argument about Luis's violating minute details of police regulations because the jury could easily decide, sitting a year later in a courtroom, that Luis could have waited another half a second, that perhaps he had misinterpreted Johnson's movements or that he hadn't been in actual danger.

Until this case, despite all my years dealing with cops, I hadn't fully grasped what they felt. How could I expect the jury to?

I stood before the jury rail, without a podium blocking me, and without notes to distract me, I quickly walked the jurors into the arcade: "Alvarez had no choice but to confront him. Imagine his emotion facing a teenage punk with a gun, the most dangerous animal on the street. Fear is just the beginning of your emotions. The situation quickly falls apart. He sees Johnson's eyes lock on his. This isn't going right. He senses it before he sees it, Johnson's arm is going across his chest, his hand reaching for the gun. With a sickening jolt he thinks it's too late, Johnson has the drop on him, he's dead. But his reflexes and training kick in, almost without conscious thought, saving his life.

"The decision made in less time than it takes to get out the fourth word of this sentence. As soon as the crack of the .38 police special fades, reality slams in, nausea hits him like a tidal wave. He loses sense of time, objectivity. All he can think, Get on the air, call for emergency, get me out of this. He had to force himself to pull out his hand-held radio. He kept thinking to himself, It wasn't my fault. That one thought keeps recycling through his head as he struggles to make sense of what happened.

"The law of self-defense requires you to put yourself in Luis's shoes, patrolling the ghetto of Overtown, walking into that game room, confronting a man with a gun who quickly turns, grabbing for his gun. The question you must answer: Would a reasonable person believe that under these circumstances he had a right to defend his own life?

"But in this case, because Luis was a police officer, *wearing our uniform*

and our shield, you must look further. Under Florida law, police officers have an expanded right of self-defense. The law provides that a police officer may use as much force as he reasonably believes necessary to make an arrest and to protect his own life. The law makes a distinction between the self-defense rights of a police officer versus that of other citizens. If I see a man on the street with a gun, I have no responsibility to arrest him. I can simply turn around and walk to the nearest telephone, dial 911 and shift the responsibility to their shoulders.

“But a police officer doesn’t have that luxury. He can’t turn his back and walk away. No matter how distasteful, no matter how dangerous, he is required to confront that criminal, even if he has a gun. The law, using great common sense, says that since he’s required to do that, he is entitled to special protection, granting him the right to use whatever force is necessary to protect his own life while arresting him.” He has to confront knives, guns, burning cars, ticking bombs, landslides, earthquakes and floods, while we all seek shelter. Sudden and senseless death is a frequent companion in a street cop’s life.

“The cops call it ‘The Street.’ It’s a world full of predators and victims. It’s thick with the expectation of violence. You are constantly alert. You know the criminals don’t follow rules. They can shoot you just because they’re having a bad day.”

I went through all of Laeser’s accusations about what Luis had done inside the arcade. All his actions—approaching Johnson quietly because he didn’t want to alert everyone in the arcade, drawing his gun, having Cruz reach for the Saturday night special—were perfectly proper. “They descend so far as to even complain about the wording of his police commands. They say Officer Alvarez told Nevell Johnson, ‘Well, let’s walk out of the game room together,’ and that’s all Johnson was doing. Ladies and gentlemen, that is hogwash. There can be no doubt that when Officer Alvarez told Nevell Johnson don’t move, showed him the gun, grabbed him by the sweater and held him there, that man knew he was not supposed to move.

“Mr. Johnson saw the revolver. He saw the uniform. He looked at the officer. He *knew* he’s not supposed to move. Do you really believe that under these circumstances, knowing what’s going on in that game room, the showing of the gun, the uniform, the commands, that Mr. Johnson, Mr. Snake, the

man with the street-wise experience thought, Well, gentlemen, now we're going to stroll out of here nicely and hail a cab on the corner and we're all going to go down to the Dade County Jail?

"The prosecutors conveniently overlook time and time again that Officer Alvarez had hold of him, had grabbed on to him so he couldn't move. In order to break that hold he had to jerk his shoulder back to break the grasp of the hold. This is not someone casually strolling out of the game room to get into a cab."

I had to answer one of Laeser's main arguments: Johnson had placed the gun in a location where it could not be reached or drawn. If the jury believed that, they would also logically conclude that Johnson wouldn't be going for the gun. If he weren't, there was no reason to shoot him.

"Mr. Laeser claims that the best evidence Johnson wasn't going for his gun was that the gun was secreted in the small of his back where Johnson couldn't reach it. Mr. Laeser told you: 'The man who put it there knew he couldn't get to it.' That argument has some superficial appeal, but it is illogical and foolish once you examine it. How could Johnson place a gun where he couldn't reach it? And more importantly, *why* would he put a gun in a place where he couldn't reach it?

"Picture in your mind the scene. They are in the game room. [Alvarez is] confronting Johnson. He feels the gun in Johnson's waistband. The noise is deafening. The thunder-like percussion of fifty electronic machines blasting, exploding, banging, roaring, clanging in his ears. He is surrounded by children. He has to disarm this man, without endangering himself, and without endangering the children engrossed in their video games. Then, in a heartbeat, Luis feels Johnson jerking around and thinks: He's going to shoot me."

Then I turned to Laeser's argument that Luis's call to the dispatcher proved his actions were not in self-defense. Laeser had argued, "He never said, 'I had to fire, I acted in self-defense, I was in fear for my life.'" If it had been self-defense, Laeser claimed, Luis would have said so instantly on the radio. I wanted the jury to feel the shock, the confusion, the hurt that Luis had felt. The purpose of the call was not to create an alibi or an excuse. The only thought in Luis's mind was that this kid needed help.

The novelist Willa Cather claimed that only opera singers, novelists and doctors entered the skin of another human. She wasn't thinking about juries.

In the moments after the shot, I told the jurors, Luis was in emotional turmoil. I pointed to Dr. Fitzhugh's description of the "intense state of shock and confusion" that an officer feels after a shooting. It's the same thing that soldiers feel in war. Both cops and soldiers are subject to post-traumatic shock disorder. I reached back and replayed descriptions the jurors voiced in voir dire of confronting sudden danger and the almost paralyzing aftermath.

I moved on to the cocked gun theory. I made sure I framed it as Laeser's "theory" because the choice of words is important. Juries are not going to send a police officer to prison on a "theory."

"The major theory of the State's case is that the gun was cocked. But where is the evidence? Let us examine the alleged eyewitnesses' testimony. Bell claimed while Officer Alvarez is walking up to Mr. Johnson, he's drawing his gun and cocking it. We know that's untrue. We've heard testimony from Officer Alvarez, Officer Cruz and even Mr. Laeser admits that Officer Alvarez did not draw his gun until he felt the gun in Johnson's waistband and asked him what is it, and Johnson said it's a gun. *Then* Officer Alvarez drew his gun from his holster.

"The important part of Mr. Bell's testimony, the part studiously ignored by Mr. Laeser, is that Officer Cruz never got anywhere near Johnson. Bell claimed he could see right through the doors that Officer Cruz never approached or stood near Johnson, nor did Officer Cruz ever reach for Johnson's gun.

"If there's one fact you can rely on, it's that Officer Cruz was there, that he did reach for the gun, that his hand was only two or three inches from the gun at the time the shooting happened. Yet Mr. Bell, who the State tells you has acute eyesight, for some reason could not see a large man wearing a dark blue, distinctive police uniform, standing right next to Johnson. Mr. Bell's testimony is absurd. Could he see a hammer being cocked from thirty-four feet away, yet not see a man in a police uniform?

"You remember the multiple-choice tests we all used to take in school? Mr. Hoskins has a twist on that—he gives multiple *answers*." Answer no. 1: Officer Alvarez comes in and first grabs Mr. Johnson by the arm, swings him around against the other machine and shoots him. Answer no. 2: He grabs him by the shoulder, swings him around, and shoots him by the machine. And answer no. 3, my favorite of all, the one that he gave on his TV interview when he had his press conference, Mr. Hoskins says that Alvarez comes in, grabs him

in a headlock, swings him around and shoots him, all while still holding him by the head.

I shifted the focus to Luis. "On December 28, what did he do when he got up in the morning, when he went to work, when he put on his uniform, when he put on his badge, when he put on his gun? Did he say, 'Well, I'm going to go out and kill someone today'? Did he say, 'I'm going to go out and commit a crime today'? When he put on that uniform, his only thought was going to do his duty as a police officer, and he was going to try to stay alive so he could go home at the end of his shift.

"Ladies and gentlemen, you are soon going to retire to reach a verdict in this case. But no matter what verdict you return, you can never undo the year of agony of what this man has gone through. You can never undo the fifteen months of vilification in the press that he has undergone. You can never undo the heartache that his family has suffered for the last fifteen months. You can't do anything about the civil suit that's going to follow this trial. But there is one thing you can do. You can reject this criminal charge and let Luis Alvarez walk out of this courtroom a free man."

When drafting the indictment, prosecutors had used the trick of overcharging in an attempt to frighten the defendant into a guilty plea to a lesser offense. Now it was payback time. "One final matter: The judge will instruct you that Officer Alvarez is charged with a crime of manslaughter with a firearm. We have a special statute in Florida which doubles the sentence for criminals who use a gun to commit a crime. Manslaughter usually carries fifteen years, but under this special statute Officer Alvarez can get thirty years.

"The last indignity of this case is that the prosecutor deliberately charged this officer, so he gets double the sentence. Can you imagine? Prosecutors charging a police officer who's authorized to carry a gun by us and saying we're going to charge him under a statute that's going to punish him double because he was carrying a gun. That's the ultimate slap, the ultimate viciousness, the ultimate insult to every law enforcement officer in this community."

My summation lasted two hours and forty-two minutes. Trial lawyers learn by sad experience that juries can be influenced by one seemingly insignificant

fact. As a young lawyer I had studiously avoided discussing the difficult points of my opponent. I soon learned that was the path to disaster. Answer them all.

At 6:10 p.m. the jurors began deliberations. Gersten was expecting a long bout. He ordered dinner sent into the jury room and told us he would allow the jurors to deliberate until midnight before sending them back to the hotel.

We packed up our case files and returned to our office, escorted by a string of squad cars. Rumors were flying that there might be attempts to assassinate us if there was an acquittal. Back at our thirty-four-story office building, a SWAT team in full-body armor had taken up spots on the roof, in the main lobby and in the corridor in front of our offices. It was a besieged fortress. Less than two hours later we received a call: The jury had a verdict.

Escorted by armed guards, we set off for the courthouse. Mark had a bulletproof vest, two pistols and four extra magazines. We were driven through the dark, empty streets of Miami into a garage in the courthouse basement, where we were met by more guards and bomb-sniffing dogs. An escort took us to an elevator. When we stepped out on the fourth floor, a hundred reporters and cameramen were waiting. Blinded by the bright TV lights, we made our way to the courtroom, which by the judge's order was empty of spectators because he feared a violent reaction to the verdict. Not that anything was being kept secret: Miami's television stations were broadcasting the verdict live.

We waited a short time for the prosecution team to arrive. Mark was pacing. Luis lounged in a chair. "Aren't you nervous?" Mark asked.

"Of course I'm nervous," Luis said quietly. "But I'm not going to show it."

As for myself, the pressure was excruciating. My heart was pounding. I felt an odd lightness in my head, as if I were about to faint.

Finally, Laeser and his associates arrived, and the jury was brought in. Mark whispered, "They're not looking at us. We lost." Luis groaned.

The clerk began reading the verdict sheet. "In the case of *State v. Alvarez*, we the jury find on this 15th of March, 1984, as to the charge of . . ."

When the clerk reached the actual words of the verdict, her voice cracked. Finally, she got them out: "Not guilty."

Luis leaped up. He raised clenched fists in the air, then embraced us. "Thank you, thank you," I shouted to the jurors as they filed out.

Now all we had to do was worry about our lives. We were led to a fire escape at the end of the corridor. As we dashed down the stairs, we saw an armed guard on each landing. One of them gave Luis a thumbs-up sign.

In the basement, the jurors were being loaded into a bus. We banged on the windows and waved thanks. Then the guards led us to an unmarked squad car. There had been discussions about getting us out via helicopter or squad-car convoy, but it was decided that an unmarked car would attract the least attention.

As we sped back to our office, squad cars blocked the intersections. An odd clicking sound was coming from the police radio. Luis told me what it was: Street cops all over Miami were sending secret congratulations. They knew all their transmissions were taped. They were showing their feelings by clicking the on-off buttons on their radios.

At our office building, we hurried past the guards in the lobby to our special elevator and then up to our offices. Soon, the place was filled with street cops dropping by to congratulate Luis. Some were prepared for anything; they wore bandoliers of shotgun shells crisscrossed on their chests. We opened a couple of bottles of champagne, and Ralph brought out a bottle of Scotch. So many officers and friends were dropping by that the liquor didn't go far.

Meanwhile, rioting was breaking out all over the city. Crowds were throwing rocks and bottles, setting fires, moving through the streets. This time the police were prepared. A thousand city, county and state officers were ordered to take control. Trouble spots were barricaded off. Field-force convoys of twenty-plus squad cars moved through Overtown and Liberty City to discourage people from taking to the streets.

Sometime after 1 a.m. I headed home. The way I usually take down U.S. 1 was blocked by a barricade of squad cars, to keep motorists from running into rock throwers and snipers.

The next morning Luis's acquittal and the riots made the front pages of *The New York Times*, *Washington Post*, *Los Angeles Times* and *USA Today*. The network morning programs showed scenes of burning cars and officers in gas masks. "Alvarez! Alvarez!" black youths shouted at the cameras. Most of the

victims were black. As with every riot, there were photos of black shopowners forlornly staring at the wreckage of their burned-out stores.

Altogether, about four hundred were arrested. Twenty-four people were injured, including four police officers. This time no one was killed. In Miami, that's called progress.

The Aftermath: *The Miami Herald* and other news media expressed shock at the verdict and found it more convenient to place the blame on the jury.

Luis Cruz was still in his first year probationary period so the city could—and did—fire him without cause. He took the only law enforcement job he could, as a guard at Metropolitan Correctional Center in Miami, the federal prison in south Dade. He continued to show his courage by becoming a volunteer pilot for Brothers to the Rescue, a group that searched for Cuban rafters in the Straits of Florida. In 1996, four members of the group were shot down by Cuban MiGs.

As expected, the Johnson family pursued a civil suit against the city. Rather than risk another riot, the government settled for \$1.1 million. With this windfall, Nevell Johnson Sr. bought a couple of Cadillacs and moved to a nice suburb. His grand life lasted less than two years. By 1986, his money was gone, and he was arrested for selling crack and carrying a concealed weapon. A judge sentenced him to three and a half years.

In March 1993, Janet Reno became the Attorney General of the United States. Several weeks later she ordered a tank assault on the Branch Davidian compound in Waco, Texas, killing at least eighty people, including at least seventeen children. While Luis Alvarez had been indicted for making a split-second decision that cost one life, Saint Janet's decision had cost eighty lives. She didn't indict herself for manslaughter. She didn't even resign. In fact, her decision made her wildly popular.

In February 1998, Jeffrey Hoskins was indicted for buying votes at ten dollars apiece in the mayoral election scandal. Hoskins, in a newspaper interview, claimed votes cost ten dollars in Liberty City and Coconut Grove, but only five dollars in Overtown. He quickly turned State's evidence.

Under the Florida constitution, an acquitted defendant is entitled to

prompt reimbursement of a limited number of trial costs. Soon after the verdict Judge Gersten ordered the county to pay \$48,041.17. For the past twelve years the Fraternal Order of Police has sought repayment. Despite lobbying and a lawsuit, the county still hasn't paid a dime.

As for Luis Alvarez, he started a company of security guards. When he went around soliciting business, people recognized him and trusted him. Luis had a great business sense. He started a branch for security alarms, which by itself grossed \$3.5 million a year. Eventually, he sold the guard business to Pinkerton for a huge profit. For a while he was a Pinkerton vice president. Then he became a security consultant, establishing guard and alarm businesses throughout Central and South America. In Mexico alone, he built thirty-two central-alarm stations, set up a nationwide guard company and helped launch a training program for Mexican police officers.

For me, the ending was more prosaic. The verdict was read on Thursday night. At 9 a.m. Monday, I was picking a jury in the frozen tundra of Hammond, Indiana, before a federal judge who twice tried to find me in contempt because he had to delay his trial due to the unanticipated length of Luis's trial. Only two appeals kept me out of jail.

Turning point: The prosecution's case began collapsing when we turned Laeser's main witness, Detective Buhrmaster, into our own witness. By the time he was through, the police detective had become the unwitting ally for our cause, the good-guy lawyers defending the police officer, while the prosecutors were defending the young man with the criminal past.

Still, the case could have collapsed on us if Luis had come across as a lying hothead on the witness stand. Instead, he was calm, charming a juror by name and impressing everyone in the courtroom with his sincerity.