1.5 Deaths in Custody in the USA: Civil Litigation Considerations
Ms Julia Sherwin
Attorney at Law
Haddad and Sherwin LLP
Oakland, California

Learning Objectives
At the end of the presentation, participants will be able to:

1. Discuss the rough contours of death-in-custody civil litigation in the United States;
2. Describe the background and history of the promotion of “Excited Delirium Syndrome” as a defense in these cases;
3. Describe three case-specific examples of deaths in custody and how they were litigated in civil courts in the United States.

Abstract
In the United States, it is very rare for law enforcement officers who kill a person in custody, or during the course of taking the person into custody, to face criminal charges. The people who prosecute such officers are typically the family members of the victims, who bring civil rights litigation to vindicate their loved one’s rights. The United States Congress has determined, decades ago, that people who bring these civil rights cases are “private attorneys general” vindicating constitutional rights of the “highest priority.” However, the United States Supreme Court has created barriers, such as qualified immunity, to impede success in these cases. And, junk-science causation defenses, such as “excited delirium,” are raised in nearly every case involving death during the course of restraint.

Using the George Floyd case, as well as two death-in-custody cases from Julia Sherwin’s caseload, we will discuss how these cases are litigated in civil courts in the United States.