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Fargo Street with Tyler Sullivan

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ON DEMAND



# McGovern: Strong offense not best defense

Bob McGovern Thursday, March 02, 2017



Credit: AP photo

MAKING HIS CASE: Lead defense attorney Jose Baez delivers his opening statement on the first day of former Patriots tight end Aaron Hernandez's double murder trial at Suffolk Superior Court.



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Jose Baez has multiple ways to try and get former New England Patriot Aaron Hernandez out of double murder charges — but showing a brutal lack of respect to prosecutors, police and Bay State investigators isn't a smart tactic.

The flashy Florida attorney spent much of his opening statement yesterday trashing the investigation into the July 16, 2012, twin slaying of Daniel de Abreu and Safiro Furtado. And that's fair game — every defense attorney does it.

But Baez went too far. He accused investigators of intimidating witnesses, hiding evidence, desecrating the victims' bodies and other instances of "outright intentional misconduct" during his 1 hour, 2 minute and 36 second opener.

"You're going to see a tale of two investigations," Baez said. "One when they thought they had two black guys on the side of the road, and one when they thought they had an NFL football player."

There is no reason to take this shot when Baez has a trifecta of perfectly good defenses to use. There is no forensic evidence; Alexander Bradley — the star eyewitness — could be painted as the murderer; and killing someone over a

spilled drink isn't exactly a defense-proof motive.

Instead of walking jurors down that road, and showing them the flaws and carefully pointing out the holes, Baez used his first impression to throw napalm instead of breadcrumbs.

"There's a very thin line between being a very fierce advocate for your client and being so insulting that it turns a jury against you," said Peter Elikann, former chairman of the Massachusetts Bar Association's criminal justice section. "Strong arguments can be put forth that don't alienate the jury."

Baez also painted Suffolk District Attorney Dan Conley's office as a publicity-hungry outfit seeking a big fish. He made it sound like Boston's prosecutor wasn't interested in the case until he realized there was some tenuous connection to a high-profile athlete.

"You see, they've got themselves a fallen Patriot," Baez said. "That's what it's all about — a notch on your belt."

If that's the case then why was Patrick Haggan, the first assistant district attorney and Conley's right-hand man, assigned to the case when it was "two black guys on the side of the road" and there was no whisper of Hernandez's name?



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Perhaps it's because there was some unneeded hyperbole in Baez's invective about the commonwealth.

"When you attack with that type of force it's gutter law, and it's something we're not used to up here," said Phil Tracy, a longtime criminal defense attorney. "You need to stick to reasonable doubt."

Baez, who famously got a not guilty verdict in 2011 for Casey Anthony in the death of her 2-year-old daughter, has strong defenses up his sleeve. Painting Bradley as the "devil" who prosecutors made a deal with is a good place to start.

But those whose job it is to secure convictions aren't the bad guys here, and jurors are smart enough to see that.

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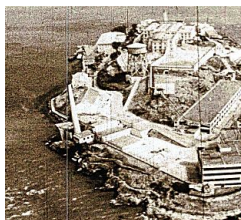
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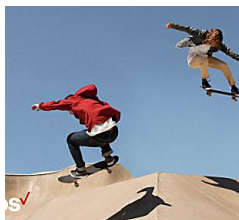
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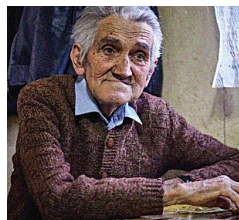
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