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A WORKPLACE WITHOUT PITY

Doing right by the public might mean doing wrong to the cop

For Police Issues by Julius (Jay) Wachtel. Policing – especially, of the big-city kind – is a controversy-generating machine that not infrequently lands chiefs between the rock of angry citizens and the hard place of irritated cops. To survive and prosper, law enforcement executives must become adept at mollifying the former without permanently damaging their standing with and authority over the latter. But circumstances and personal quirks (and here we mean the foibles of both citizens and police) can collide in ways that place inoffensive solutions out of reach.

And yes, we're writing about Eric Garner. In July, a full five years to the month after his death at the hands of police, the U.S. Justice Department [declined to bring charges](#) as it could not prove that officer Daniel Pantaleo, whom a video depicted gripping Garner's throat, acted "willfully" as the statute requires; that is, with the intent to cause harm. Its action – or some may say, inaction – mirrored an early decision of a New York State grand jury. Issued five months after the tragedy, it concluded that there was "no probable cause" [that officers committed a crime](#).

That left things up to NYPD Commissioner James O'Neill. New York City's Civilian Complaint Review Board had already ruled that officer Pantaleo violated procedures by applying a chokehold, which was forbidden by the [agency's official patrol guide](#). According to the medical examiner, the officer's action "restricted Mr. Garner's breathing" [and caused his death](#). Commissioner O'Neill ordered a departmental trial, [which began this past May](#). Officer Pantaleo did not testify. However, his lawyer insisted that the officer didn't actually apply a chokehold, and that Gardner's death was caused by his resistance, compounded by cardiovascular problems and 395-pound weight.

But the New York City pathologist who performed the autopsy disagreed. [Her testimony](#), that what looked like a chokehold *was* a chokehold, and that it precipitated a "lethal sequence of events" culminating in a fatal asthma attack, carried the day. NYPD's judge, [Deputy Commissioner of Trials Rosemary Maldonado promptly ruled](#) that Pantaleo had used the banned maneuver and recommended he be fired:

...The credible medical evidence and expert testimony demonstrated that Respondent's recklessness caused internal hemorrhaging in Mr. Garner's neck and was a significant factor in triggering the acute asthma attack which

contributed to his death...Accordingly, this tribunal finds that there is only one appropriate penalty for the grave misconduct that yielded an equally grave result -- Respondent can no longer remain a New York City police officer.

Commissioner O'Neill agreed. On August 19 [he fired Pantaleo](#), leaving a 34-year old officer with thirteen years of experience without a pension or career (he had been twenty-nine with eight years on the job when the incident occurred). O'Neill's move was praised by politicians, civil libertarians and the (liberal) press. New York City Mayor Bill de Blasio proudly announced that "today we have finally seen justice done." But as one might expect the firing was condemned by the police rank-and-file. A surprisingly "fair and balanced" piece in the [New York Times](#) reported that most officers felt Pantaleo got a raw deal. Patrolmen Benevolent Association president [Pat Lynch](#) went so far as to accuse the commissioner of choosing "politics and his own self-interest over the police officers he claims to lead."

Until that fateful encounter Pantaleo seemed to be doing a good job. He enjoyed a favorable reputation and was not known for misusing force. Commissioner O'Neill had apparently held him in high regard. Even after the firing [he praised](#) Pantaleo's "commendable service record of nearly 300 arrests and 14 departmental medals."

Eric Garner was also a known quantity, albeit of a different kind. A chronic petty offender, [he had an extensive \(if relatively minor\) record](#) for crimes including assault, resisting arrest and grand larceny. At the time of the incident [he was out on bail](#) for peddling untaxed cigarettes (i.e., "loosies") at the same spot where he would lose his life.

Garner's death took place [during a particularly troubled time](#). Less than a month later, a Ferguson (MO) officer shot and killed [Michael Brown](#), 18. According to the cop, the youth – he had just shoplifted a package of smokes from a convenience store – punched him and made a threatening gesture while trying to get away. Like Garner, Brown was unarmed.

Police shootings of unarmed black men sparked massive protests and gave rise to the movement known as "[Black Lives Matter](#)." Agencies had no choice but to respond. Police executives quickly dusted off alternatives such as "[de-escalation](#)" and [wrote and rewrote rules](#) about officer conduct and the use of force. In some agencies these regulations took on encyclopedic dimensions. Check out, for example, [Part 3](#) of NYPD's three-volume "patrol guide." (Its use of force section starts at 221-01, which also refined the wording of the ban on chokeholds.) LAPD posted its entire manual online (click [here](#) for the index and scroll down to "use of force").

To reduce the frequency of problematic field encounters many departments, including LAPD and NYPD, began cranking back on aggressive strategies such as [stop and frisk](#). “[Broken Windows](#),” a dated, academically-inspired approach that encourages police to enforce minor, “quality of life” violations (like hawking loosies) also fell out of favor.

Shifting enforcement into low gear upset many cops. Disenchanted with the new religion, some slammed on the brakes, and in some major cities stops and arrests dropped precipitously, far more steeply than what higher-ups had intended. (We discussed these events in a two-parter. See “Police Slowdowns” below.) Slowdowns affected Baltimore after [Freddie Gray](#); Chicago after [Laquan McDonald](#); Minneapolis after [Jamar Clark](#); New York City after Eric Garner; and Los Angeles after a series of perceived anti-cop moves, including the enactment of [Prop. 47](#), an initiative that reduced many felonies to misdemeanors.

While there has been some retrenchment, it’s proven wildly uneven. Not every law enforcement executive sipped from the chalice, and many remain committed to enforcing with vigor. Consider, for example, [their negative reaction](#) to a [PERF recommendation](#) that agencies adopt limits on the use of force that go well beyond the “objectively reasonable” and “split-second” standards set by [Graham v. Connor](#). Bottom line: aggressive strategies weren’t all abandoned. In 2009 LAPD implemented “[LASER](#),” a data-based program that fought gun violence with specialized teams. It remained in effect for nearly a decade ([LASER was recently discontinued](#) because of citizen complaints.)

Well, Los Angeles might be a smidgen *too* peaceful. In crime-beset Baltimore some residents actually became upset when officers adopted a kinder-and-gentler tone. Here’s an extract from “[Driven To Fail](#)”:

At a recent public meeting, an inhabitant of one of the city’s poor, violence-plagued neighborhoods wistfully described her recent visit to a well-off area: “The lighting was so bright. People had scooters. They had bikes. They had babies in strollers. And I said: ‘What city is this? This is not Baltimore City.’ Because if you go up to Martin Luther King Boulevard we’re all bolted in our homes, we’re locked down. All any of us want is equal protection.”

Confused? Imagine what police chiefs go through as they try to adjust what officers do, and how, to the ever-shifting socio/political/economic landscape of urban America. Yet for all the tweaking, the threat of disaster looms around every corner (i.e., Eric Garner, Michael Brown, Freddie Gray, Laquan McDonald, Jamar Clark...) In part, that’s because citizens aren’t bound by guidelines. But their habits, propensities and

inclinations drastically affects what takes place. Ditto, actually, for the cops. Add in the fluidity of street encounters, top it off with a lack of resources – usually, when they’re most needed – and you have a recipe for disaster. Yes, it has a name. It’s called the “police workplace.”

What can be done? [Let’s self-plagiarize](#):

- Officer temperament is crucial. Cops who are easily rattled, risk-intolerant, impulsive or aggressive are more likely to resort to force or apply it inappropriately.
- Good judgment and forbearance take time to develop. Pairing inexperienced cops may be a tragedy waiting to happen.
- Talk isn’t enough. “De-escalation,” a trendy new buzzword, is how most cops have always preferred to do business. But when beats are beset by guns and violence even the most adept communicators might need more than words. Prompt backup is essential. Less-than-lethal weapons must also be at hand and officers should be adept at their use.

None of this should be news to our readers – nor to any cop. Really, unless one decriminalizes all behavior, occasional tragedies are unavoidable. Yet officers must sometimes be held accountable. Doing so, though, can risk creating an unbridgeable gap with the troops. Commissioner O’Neill rode that see-saw. In [a detailed, post-firing speech](#) he blamed Garner for unlawfully resisting arrest and nearly causing himself and officer Pantaleo to crash through a glass storefront. To make his sympathies clear he threw in several “but for the grace of God go I” allusions:

I served for nearly 34 years as a uniformed New York City cop before becoming Police Commissioner. I can tell you that had I been in Officer Pantaleo's situation, I may have made similar mistakes. And had I made those mistakes, I would have wished I had used the arrival of back-up officers to give the situation more time to make the arrest. And I would have wished that I had released my grip before it became a chokehold.

Even in the largest police force in the largest city in the land, there’s nothing “routine” about killing a man. Purposely or not, officer Pantaleo arguably applied a banned chokehold. In the end, a consequence was called for. And [everyone well knew](#) that anything short of firing could have consumed New York in rioting:

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Some officers believe that Commissioner O'Neill sacrificed a single officer to appease the vocal masses. "The price to pay for him standing on his principles and not firing him would have been paid by many other people," one former chief said Tuesday. An officer in Brooklyn put it more bluntly: "We'd be out there in riot gear."

What happened to Daniel Pantaleo was a lot "less wrong" than what happened to Eric Garner. Officer Pantaleo's discharge upheld departmental policy. It prevented a descent into chaos. And not incidentally, it also let the Commish keep his job.

In the end, we must accept that the mean streets *will* occasionally defeat the best efforts of skilled, well-meaning officers working under the most progressive guidelines devised by the most enlightened leaders. [Except, perhaps, in Camden](#). That's where "more than a dozen officers" followed along as a disturbed man staggered down the street waving a carving knife. They kept their guns holstered, and within ten minutes the man let go of the knife and gave up. That episode (turns out it happened in 2015) was cited as inspiration for [newly-released guidelines](#) that emphasize restraint and de-escalation. Some experts have called Camden PD's written rules the nation's "most progressive."

Well, that's fine. But *more than a dozen* cops on one call! Imagine that. Really, *just imagine*.