

CONDUCT AND ETHICS ESSAYS

By

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A COP'S DILEMMA

When duty and self-interest collide, ethics can fly out the window

By Julius Wachtel, (c) 2010

Protecting public officials may not be the primary mission of the [New York State Police](#), but there's no denying that the Executive Services Detail, a unit of about 200 officers who guard the Governor and his family, is the most prestigious assignment to which Troopers can aspire. With David Paterson's picture prominently displayed on the department homepage (a photo of recently-departed Superintendent Harry Corbitt is buried two layers down) there's little doubt as to who's really in charge. And that may be part of the problem.

On Halloween evening, October 31, 2009, [New York City cops](#) were summoned to a Bronx apartment where an anguished woman told them that David Johnson, a man with whom she had been living, "had choked her, stripped her of much of her clothing, smashed her against a mirrored dresser and taken two telephones from her to prevent her from calling for help." Johnson, who is six-foot seven, was gone, and officers filed a misdemeanor report. Two days later, while seeking a restraining order in family court, [the victim told a referee](#) that her assailant could probably be found at the Governor's mansion.

You see, David Johnson was until days ago the Governor's top aide. Originally hired as an intern in 1999, when Paterson was a State Senator, the strapping young criminal justice major (he later earned a degree) followed his mentor into the executive, and with virtually no other experience [gained so much influence](#) that he was soon giving instructions to high State officials, including, to the chagrin of the Governor's security detail, [their own boss](#).

This wasn't Johnson's first tangle with the law. When eighteen he was arrested for selling crack to an undercover officer. Johnson served five years probation as a youthful offender. Neither was it his only instance of assaulting women. During his service as a Senate aide Johnson had several altercations with girlfriends, [including an incident where he punched](#) one in the face.

Unseemly as they were, those encounters didn't lead to charges (one victim said she had previously called police about Johnson, but to no effect.) But the Halloween incident was different. According to the [New York Times](#), on the very next day Johnson

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prevailed on the Governor's security detail commander, State Police Major Charles Day, to call the victim, ostensibly to smooth things over. After getting clearance from above, Major Day did so, reportedly three times. Former Commissioner Corbitt also got involved, dispatching a subordinate to contact the woman, a curious act as the State Police has no jurisdiction over cases of domestic assault in New York City. Although officials insisted that the calls and visits were out of concern for the woman – in Corbitt's words, "to offer [her] counseling and tell her she had 'options'," – the victim found the contacts heavy-handed and complained about them in court.

That's when the Governor himself took hold of the matter. Enlisting an aide who happened to know the woman, Paterson arranged to personally speak with the victim, and [after several calls](#) apparently got her to drop the case.

And that's where it would have ended but for the *New York Times*. When it first broke news of what happened Paterson minimized his involvement, then to demonstrate good faith suspended David Johnson without pay. But as reporters kept digging the heat got to be too much for State Police Commissioner Corbitt, who abruptly quit. As demands grew that Paterson resign (he's also facing allegations of lying about getting free tickets to the World Series) his top criminal justice advisor, Denise O'Donnell, and his communications director, Peter Kauffmann bailed out, the latter going so far as to say that [he was protecting his own integrity](#), thus implying that the Governor had asked him to lie.

It's not the first time that chief executives have compromised New York's finest. In 2007 then-Governor Eliot Spitzer got State Police Superintendent Preston Felton to use State Police officers to dig up dirt on Spitzer's nemesis, Senate majority leader Joseph Bruno. An [extensive investigation](#) led to hefty fines and the end of several careers, including Felton's (he retired) and Spitzer's (he resigned when it was revealed that he was consorting with call girls.) Before that, Governor Pataki had been accused of using the State Police detail to interfere with a Federal investigation of his campaign staff. Indeed, [a report](#) on the misuse of the State Police and the "politicization" of the Executive Services Detail was recently issued by New York Attorney General Andrew Cuomo. Who requested it? [Governor Paterson](#), supposedly to prevent a recurrence.

When was it delivered? September 8, 2009, less than two months before Halloween.

Security details are in intimate, 24/7 contact with protectees and their families, so they'll routinely encounter situations that call for heavy doses of discretion and forbearance. It's inevitable that officers will grow close to their charges, occasionally too much so. While he was Governor of Georgia, former President Bill Clinton got so buddy-buddy with his State Police protectors that they [allegedly procured him female](#)

[companions](#). Later, once Clinton was in the White House and unsavory stories began to leak, at least one of the former guards was offered a job, purportedly to keep quiet about the past.

What took place in New York is of course different, yet its roots are much the same. Officers working protective assignments are there at the sufferance of the executive, and all the more so for the detail leader, whose plum job rests on remaining in good terms with the protectee, the protectee's family and key staff members. Pressures to go along to get along can turn cops into enablers and, if what's suspected in this episode is true, co-conspirators in obstructing justice.

Temptations often arise in policing. Most are ultimately controlled through the same means that deter ordinary citizens – the penal law. Officers who succumb to the lure of graft by stealing money from drug dealers have wound up in prison. But when the benefits of ignoring one's duty are less tangible, keeping things on the up-and-up is usually left up to the department. That's particularly true for protective details, whose members the law treats as though they're ordinary peace officers, doing the work that cops normally do. Of course they aren't, and they don't. Situations like the above might have never developed if protective officers were forbidden by statute from injecting themselves or exercising authority in matters that are none of their business. That would give every officer the best possible excuse for staying out of trouble:

“I'd really like to help you [Governor, Superintendent, detail leader] but it's a *crime* for me to do anything other than physical protection. My career and freedom depend on it. I sure hope you understand.”

Posted 1/24/20

A RECIPE FOR DISASTER

***Take an uncertain workplace. Toss in a “mission impossible”
and pressures to produce. Voila!***

For Police Issues by Julius (Jay) Wachtel. Early last year [a mother received a letter from LAPD](#) informing her that her son was a gang member. Shocked by the news, the parent promptly marched off to a police station where she vehemently insisted that her kid had nothing whatsoever to do with gangs. LAPD apparently took her complaint to heart. After reviewing the reporting officer’s bodycam footage and “finding inaccuracies in the documentation,” a supervisor contacted the parent and assured her that the teen would not be identified as a gangster.

To its credit, LAPD launched [an expansive inquiry](#). During the following months many members of the agency’s specialized “Metro” division came under investigation. Twenty were ultimately stripped of their official duties. Their alleged misconduct – incorrectly reporting on field interview cards that persons they stopped were gang members – had seriously compromised the agency’s gang database. One of eight regional systems that comprise the state’s [“Cal Gang” intelligence network](#), its use is governed by State law. Only specially certified law enforcement officers can access the system, and adding entries is strictly regulated. Among other requirements, targets for inclusion must meet at least two of eight specified criteria, such as admitted gang membership or displaying a gang tattoo, and must have been contacted not just once but “on multiple occasions.”

[An August 2016 report](#) by the California State Auditor revealed widespread noncompliance with these rules. LAPD, in particular, was singled out for serious and persistent lapses. Yet its problems apparently persisted. Public blowups over LAPD’s controversial stop-and-frisk campaign (see, for example, [“Scapegoat,” Part I](#)) recently led Chief Michel Moore, a veteran officer who took the helm in June 2018, [to publicly announce his determination](#) to right the ship:

I don’t mean this to go on for months or years. I will make a finding on the basis of the completed investigation as to appropriate disposition — whether that be sustained acts of misconduct, including the potential criminality....

“Criminality”? Well, fudging the facts so that a stopped person meets the criteria for inclusion into a gang database sure seems like a purposeful falsification of official

records. But why would an officer do that? L.A.'s a busy place, and it's not as though its street cops lack for things to do. Chief Moore's angst, though, wasn't directed at ordinary badges but members of the elite "Metro" group, which had been assigned to conduct "intensive patrol" – meaning, of course, stop-and-frisks – in neighborhoods beset by gangs and gunplay.

We've suggested in a string of essays (for example, "[Driven to Fail](#)" and "[Good Guy/Bad Guy/Black Guy, Part II](#)") that get-tough campaigns inevitably lead to a profusion of "false positives." That's created major angst among members of minority groups, and not just in Los Angeles. Still, given the high rates of violence that characterize many lower-income areas, their police feel obliged to do *something*. How the outcomes of that "something" get assessed and measured presents some complex dilemmas.

In [a new, thought-provoking article](#), the *L.A. Times* reported that managers evaluated Metro's cops on sixteen criteria, from arrests and citations to "field interviews of gang members." As we mentioned in "[Driven to Fail](#)," Metro's teams were unfamiliar with their assigned areas' patterns and worthy inhabitants. So they adapted, in part, by focusing on pre-identified "chronic offenders." Finding and discreetly following noteworthy prey until there's enough to justify a "Terry" stop, though, proved no easy task. Targets of opportunity became a fallback strategy.

Whether cops free-lance or shadow known targets, the uncertain environment of policing virtually guarantees a profusion of error. [Let's self-plagiarize](#):

Policing is an imprecise sport. And when its well-intended practitioners target geography, meaning, by proxy, racial and ethnic minorities, the social impact of this "imprecision" can be profound. NYPD stopped nearly six times as many blacks (2,885,857) as whites (492,391). Officers frisked 1,644,938 blacks (57 percent) and 211,728 whites (43 percent). About 49,348 blacks (3 percent) and 8,469 whites (4 percent) were caught with weapons or contraband. In other words, more than one and one-half million blacks were searched and caught with...nothing.

Not every unproductive encounter reflects an error of judgment. There were likely more than a few worthy characters among those whom Metro had to ultimately let go. How many? Lacking clear data, it's impossible to know. Yet the abundance of apparent "false positives" created an ideal platform for critics unfamiliar with the vagaries of the police workplace to jump to the conclusion that cops are racists. That, along with relentless pressures to produce measurable outcomes, created a vicious cycle well

known to cops who have participated in get-tough-on-crime campaigns. Fudging someone's gang involvement is a lie, period. But given the intrinsic difficulties of their "mission impossible," Metro's officers might have thought it the surest way to score enough "hits" to satisfy superiors while keeping nettlesome citizens, reporters and civil libertarians off their agency's backs.

Pressures to produce aren't just a problem at LAPD and NYPD. They're endemic to policing. Demands from the top to "give us numbers," which ultimately land on the shoulders of those who occupy the bottom of the flow chart, were obvious to the blogger throughout his law enforcement career. So much so that it inspired the topic of his dissertation. Entitled "Production and Craftsmanship in Police Narcotics Enforcement," it explored the tension between quantity and quality in street drug enforcement. (For an article based on this work, click [here](#).) Here's just one of the many memorable quotes from a "worker bee":

Make cases, put people in jail, numbers. Our department right now is heavily into numbers. It's not so much the quality of the case but it's how many cases you do...because there are stat's being taken through the chain of command.

Not even your blogger, who's obsessed with the notion of craft, would suggest that numbers are wholly irrelevant. Citation counts, for example, can be *one* valid measure (hopefully not the *only* measure) of the quality of an agency's traffic enforcement effort. Yet counting can easily distort what takes place. That's not only true in policing. Unholy pressures to produce quantifiable miracles pervade government, commerce and industry. (In education, your writer's second career, it was "how many graduates did we have this year?") But let's take a *really* long reach. Consider the Boeing 737 fiasco. Is there any doubt that pressures to maximize profits impaired the quality of engineering? Here's an extract from the [New York Times account](#) of an official report filed by former senior engineer Curtis Ewbank:

...Ray Craig, a chief test pilot of the 737, and other engineers wanted to study the possibility of adding the synthetic airspeed system to the Max. But a Boeing executive decided not to look into the matter because of its potential cost and effect on training requirements for pilots. "I was willing to stand up for safety and quality," Mr. Ewbank said in the complaint, "but was unable to actually have an effect in those areas. Boeing management was more concerned with cost and schedule than safety or quality."

All lies aren't equal. "[Why do Cops Lie?](#)" and other posts in our [Conduct and Ethics](#) series offer eye-popping examples of bias, selfishness and greed. Perhaps some of these

qualities apply to a few of Metro's officers as well. But it seems to us that the relentless characteristics of the workplace might have led some otherwise honest, hard-working cops to justify seemingly unproductive stops by fudging their subjects' gang affiliations. Given the circumstances, these might have seemed like only "little white lies."

Of course, in policing there is no such thing.

Posted 2/21/10

A TICKING TIME-BOMB

***Twenty-four years after being let off the hook,
a murderous woman goes on a rampage***

By Julius Wachtel, (c) 2010

I was not on duty at the time of the incident, but I recall how frustrated the members of the department were over the release of Ms. Bishop...The release of Ms. Bishop did not sit well with the police officers and I can assure you that this would not happen in this day and age.

Braintree, Massachusetts police chief [Paul Frazier](#), commenting on his department's lackluster investigation, twenty-four years earlier, of the shooting death of Amy Bishop's brother.

Chief Frazier's thoughts were echoed by current Norfolk County D.A. [William Keating](#). Minutes after "accidentally" killing her brother with a shotgun blast to the chest, Bishop burst into an auto body shop and at gunpoint ordered workers to give her a getaway car. They didn't. She then refused to surrender when police arrived (an officer who snuck up behind her finally got the shotgun away.) How could his predecessors have ignored that?

On Saturday morning, December 6, 1986, Amy Bishop was twenty-one and living with her parents and brother in Braintree, an affluent Boston suburb. After a dispute with her father she brought his shotgun to the kitchen, supposedly to get help unloading it. But when her brother stepped in to assist, Bishop swung the muzzle in his direction, discharging a round and fatally wounding him. She then fired another round into the ceiling and left. That, if one believes Bishop and her mother, would have been the young woman's third unintentional discharge of the day, as she had also just shot a hole in her bedroom wall.

Once she was at the police station Bishop clammed up, so some questions never got answered. Why did she need an escape vehicle? Why did she have a shotgun shell in her pocket? And since the shotgun was pump-action, requiring that users manually work the slide to expel an empty cartridge before firing again, how could she have *accidentally* discharged three rounds? Then an even bigger mystery arose. Word came from police chief [John Polio](#) to let her go.

In his [report](#) to prosecutors, the state trooper assigned to the case said that Bishop was released in part because of her “highly emotional state,” and in part because the shooting was already deemed accidental:

This officer therefore determined that due to the inability to further question the witnesses at that time as a result of their highly emotional state and their inability to recall specifically the facts relating to this occurrence, as well as the fact that [Bishop’s mother] stated that she had witnessed the entire affair and the discharge had been accidental in nature, it was determined that additional interviews would be conducted at a later time, allowing the witnesses a sufficient time to stabilize their emotions.

Or to get their stories straight. Either way, Bishop’s fingerprints would never make it into State or Federal databanks.

Eleven days later the trooper and two Braintree officers, a captain and a detective, went to the Bishop residence to interview the young woman and her parents, obviously not the way one would investigate a possible murder but understandable if the purpose was to tie a pretty ribbon around a package entitled “tragic accident.” As one might expect, Bishop and her parents insisted that’s exactly what it was, and their words were accepted at face value. Inexplicably, the trooper’s report made no mention of the body shop incident and subsequent stand-off. (It does state that Bishop said that she blanked out after the shooting and couldn’t remember anything until arriving at the police station.) The trooper and the Braintree cops (no pun intended) declared that the shooting had been accidental. Case closed.

Ex-Chief Polio now insists that he was never told about the events at the body shop and has “no regrets whatsoever” about what he did. One can only imagine how his comments were received at the University of Alabama at Huntsville, where Bishop, a biology professor, systematically gunned down six colleagues at a faculty meeting two Fridays ago. (Three are dead. Two are in critical condition and the sixth is recovering. True to form, Bishop again insists that she remembers nothing.)

Why did she do it? A Harvard Ph.D. with a reportedly bright future in biotech, Bishop had been denied tenure, a rare step that was probably influenced by her poor reputation with students. Put off by her general weirdness and odd lecturing style – she read straight from the book and avoided eye contact – several dozen reportedly took the rare step of [petitioning the university](#) in writing. “When it came down to tests,” said a former student, “and people asked her what was the best way to study, she’d just tell you, ‘Read the book.’ When the test came, there were just ridiculous questions. No one even knew what she was asking.”

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Well, there are plenty of odd ducks in academia. Yet few would go so far as to punch a fellow diner in the face just because she happened to get the last booster seat, as Bishop did at an International House of Pancakes in 2002. That time Bishop actually got arrested. A judge later turned down a prosecutor's request that she be ordered to take anger management classes, and after six months all charges were dismissed.

A tragic "accident" and a slip-up do not a personality make, you say? Fair enough. So what is one to think of that 1993 incident where a Harvard professor who was involved in a dispute with then-graduate student Bishop [got two pipe bombs in the mail](#)? Bishop and her husband were interviewed by ATF. Although agents apparently suspected that the husband bought the pipe-bomb components, Federal prosecutors ultimately refused to charge the couple for lack of evidence. Curiously, Bishop's husband has said that ATF had issued him and his wife a letter of clearance. (ATF doesn't issue such things, as your blogger, a retired agent, knows. Challenged about the document, the husband now claims it was lost.)

One could go on about Bishop and her temper – former neighbors and associates [had lots to say](#) about that – but enough about her. Let's turn to the fateful decision made by police and prosecutors in 1986. Why did they let Bishop go?

[Braintree](#), an upper-middle class Boston suburb of about 34,000, has one of the lowest crime rates in Massachusetts, if not the whole U.S. (it reported a total of two murders between 2000-2008.) Unaccustomed to serious violence, police were caught off-guard by a killing that intimately involved members of the town's social elite (Bishop's mother and the novelist John Irving are cousins.) Although patrol officers were upset, their more politically-attuned superiors and the state trooper seemed anxious to avoid getting caught up in a fight with a prominent couple that had lost a son and seemed ready to lose their daughter as well. But there was a niggling obstacle. "It was almost like they wanted to put it on the shelf and forget about it," a former body shop employee said [during a recent interview](#). Armed with the shotgun, Bishop had screamed at him to raise his hands (he did). "[If it was] me I'd be wrapping up a long prison sentence. But with this, it seems like they just wanted it to go away."

Is that why the trooper's report was incomplete? [John Kivlan](#), the supervisory prosecutor who handled the case, said that had he known about the body shop incident things would have turned out differently. In the end, whatever the reasons, an explosively violent young woman managed to avoid any consequences. She wasn't arrested or confined, didn't get mental treatment, and her behavior wasn't monitored. Bishop married, earned a prestigious Harvard degree and moved to Alabama, where no one was aware of her deep secret. U of A's background check turned up nothing.

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Then the ticking time-bomb went off.

Posted 5/29/21

ANOTHER VICTIM: THE CRAFT OF POLICING

Ronald Greene succumbed to police abuse one year before George Floyd. How they perished was appallingly similar.



For Police Issues by Julius (Jay) Wachtel. “Let me see ‘em...let me see your [curse] hands...[curse]...” Louisiana State Trooper Dakota DeMoss’ body camera graphically captured what happened (and what was said) during the early morning hours of May 19, 2019 when he and a colleague forcefully extracted the driver of a recklessly-driven vehicle that crashed after a prolonged pursuit. (Click [here](#) for LSP’s video channel, [here](#) for the full bodycam video of the initial encounter and [here](#) for our edited clip of the arrest.)

Ronald Greene, 49 isn’t armed. Neither does he forcefully resist, at least in any conventional sense. But his confused mental state, clumsiness and immense size (shades of [George Floyd](#)) clearly irritate the



officers, and one promptly shoots him with a Taser. That rough handling – and virtually non-stop cursing – continues as troopers drag Mr. Greene from the car and place him on the ground, belly down. That’s when the impaled dart comes into view (left.) An



officer – according to [news reports](#), DeMoss – tells Mr. Greene to “put your hands behind your back, [curse]” but the scared, disoriented man seems unable to comply. Arms outstretched, he whimpers “I’m sorry.” After some blows and a long string of unproductive curses, a trooper delivers another jolt through the Taser (right). Mr.

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Greene continues whimpering and begging for mercy, but troopers ignore his protests and, handcuffs affixed, order him to lay on his stomach.

Unlike what happened to George Floyd, once Mr. Greene was handcuffed he wasn't constantly pressed into the ground. Still, troopers repeatedly warned him to stay on his stomach and occasionally applied force to that effect. Our top image, taken at 5:40 am, about twelve minutes into the encounter, depicts an officer pressing on Mr. Greene as he orders "don't you turn over, lay on your belly, lay on your belly" (click [here](#) for a brief video clip.) But a few moments later another bodycam video (click [here](#)) shows two troopers watching over Mr. Green as he partially sits up.

Many other aspects of this encounter resemble what happened to George Floyd. Troopers handled Mr. Greene very roughly, especially at first. They forcefully extracted him from his car, delivered multiple blows with their fists and jolted him repeatedly with a Taser. Mr. Greene, like Floyd, behaved oddly, mumbling supplications to Lord Jesus in a high-pitched tone of voice. As it turns out, he was also under the influence of a powerful drug: in his case, cocaine. Rough treatment, frail mental and physical health and chemical intoxication comprise the bedrock of the syndrome known as "[excited delirium](#)." A Minneapolis cop thought that it applied to George Floyd. Louisiana's Union Parish Coroner [reportedly identified it](#) as the underlying cause of Mr. Greene's death: "cocaine induced agitated delirium complicated by motor vehicle collision, physical struggle, inflicted head injury, and restraint."



Throughout the first fifteen minutes or so Mr. Greene was conscious and talkative. But as time passed he became unresponsive. This image, taken about 5:46 am, depicts troopers as they begin rendering aid. An ambulance was called. Unlike what happened to Mr. Floyd, troopers closely attended to Mr. Greene after his collapse (click [here](#) for a clip.) Alas, it proved too little, too late.

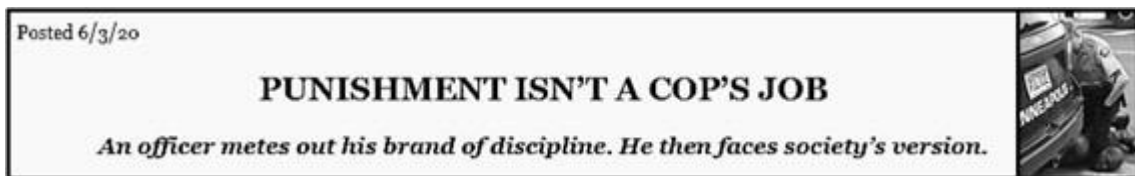
It's not that Mr. Greene shouldn't have been arrested. He was mentally and physically unwell, under the influence of a narcotic, and in no shape to drive. Mr. Greene reportedly ran a stop sign and a traffic light, and during the chase a trooper anxiously radioed that "we got to do something" as Mr. Greene's car was speeding down the "wrong side of the road" and "could kill somebody." Yet watch that video clip of the arrest. Mr. Greene's handling by the two troopers who first encountered him was abominable. Here's what one of these officers (we think, DeMoss) told another trooper by radio as an ambulance rushed Mr. Greene to the hospital (click [here](#) for the clip with audio):

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Well, I think this guy was drunk...and I think he was wet...and I beat the ever-living 'fuck out of him, choked him and everything else trying to get him under control...and we finally got him in handcuffs when [someone else] got there, and the sonofabitch was still fighting with me and still wrestling with me...gotta hold him down since he was spittin' blood everywhere. And all of a sudden he just went limp. Yeah, I thought he was dead. We set him up real quick...he's on an ambulance enroute to...and I'm haulin' ass trying to catch up to them.

Tragically, the recipient of that transmission, Trooper Chris Hollingsworth, an 18-year veteran, [reportedly perished in an off-duty auto accident](#) “shortly after learning he was being fired for his role in Greene's death.”

If all we expect from police is to handle recalcitrant persons however they wish, our “Selection and Training” section – indeed, our entire website – is superfluous. When it comes to the arrest of George Floyd and Ronald Greene, my non-police neighbors would have done better. Of course, so would most other cops. Officers run into clearly troubled characters such as Mr. Greene as a matter of course. And as a matter of course they apply patience and some good-natured persuasion to avoid needlessly turning to force. When involved in fraught encounters, most cops follow the rules of their intricate and demanding craft. They brush off intrusive thoughts such as anger and frustration because they know that getting emotional can poison their decisions. As we've said before, [there's absolutely nothing new](#) about the trendy concept of “de-escalation”; cops who respect their craft – and we assume they're in the vast majority – have faithfully practiced its precepts since the times of Robert Peel.



Yet cops *are* human, so exceptions keep popping up. Minneapolis was one. We quickly “diagnosed” ex-cop Chauvin’s actions as an effort to discipline and humiliate. It’s why [our essay](#), posted eleven days after the tragedy, was entitled as shown. What happened to Mr. Greene in Louisiana seems equally appalling. Whatever notions of “craft” the first officers on scene might have had were instantly extinguished by waves of anger.

But the troopers were experienced cops. This wasn’t their first pursuit. They weren’t assaulted or shot at. So why all the rage? In “[Angry Aggression Among Police Officers](#)” (*Police Quarterly*, March 2003) Sean P. Griffin and Thomas J. Bernard surmise that the

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chronic stressors of policing can make officers aggressive, and that they're prone to take it out on the most vulnerable. So who might that be? As Jeannine Bell argues in "[Dead Canaries in the Coal Mines: The Symbolic Assailant Revisited](#)," (34 *Georgia State University Law Review* 513, 2018) citizens who fit a certain Black male stereotype may be at particular risk. She cites the examples of [Tamir Rice, Philando Castile and Alton Sterling](#). And now we can add George Floyd. And Ronald Greene.

We're not arguing that police abuses are inevitable. Officer personalities vary, and at least in this writer's experience, most cops seem to handle the burdens of their craft rather well. Unfortunately, agencies [have failed to correct](#) officers who repeatedly goof up. As we discussed in "[Third, Fourth and Fifth Chances](#)," failure to reign in errant cops can easily lead to disaster. And we have a ready example. On February 8, 2021, nearly two years after his force-rich, expletive-laden confrontation with Mr. Greene, Trooper DeMoss and two LSP colleagues [were booked by their own agency](#) on misdemeanor charges of "simple battery and malfeasance in office" for using excessive force and turning off their body cameras during a 2020 traffic stop.

And just as we "go to press" the craft of policing suffers additional blows:

- Washington State authorities announced the [arrest of three Tacoma police officers](#) on murder and manslaughter charges for needlessly pummeling, choking and Tasing Manuel Ellis, a 33-year old Black man, during a seemingly minor encounter on March 3rd. Mr. Ellis complained that he couldn't breathe, and then he died.
- Los Angeles prosecutors [filed perjury charges](#) against a promising L.A. County sheriff's deputy for lying during a preliminary hearing. Deputy Kevin Honea, 33 testified that he found a handgun in the front of a vehicle. Its ready availability helped bind over the car's occupants on robbery charges. In fact, a motel security camera showed that another deputy found the weapon in a box in the car's trunk.

Would Trooper DeMoss be facing charges over a year-old traffic stop had Mr. Greene's death not become a matter of national interest? Would the speedy decision to prosecute the Tacoma officers – we haven't looked into their culpability, but things look bleak – have happened in the absence of Derek Chauvin's trial and conviction? Ditto, Deputy Honea. While his superiors [ascribed his testimony to "sloppiness"](#) and levied a brief suspension, L.A. County's new, progressively-minded D.A., George Gascon, took a far sterner approach.

Examining policing under a microscope is no longer a thing of the "future."

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What's our takeaway? As we pitched in "[More Rules, Less Force?](#)" positive change can't be accomplished by simply making more rules. Instead we must focus on "craft." Police must redouble their efforts to advance the practice of their demanding vocation. In "[Why Do Officers Succeed?](#)" (*Police Chief*, July 2020, p. 26) we suggested that agencies collect examples of good work within their own ranks and use them "to stimulate dialogue about quality policing and the paths to that end."

Officers could be asked to describe recent episodes of fieldwork whose outcomes they found especially gratifying. Examples might range from the seemingly mundane, such as gaining critical information from a hostile resident, to the more noteworthy, say, peacefully and safely taking a dangerous and combative suspect into custody. To learn how these successes came about, officers would be asked to identify the factors they believe helped produce such good results.

Imagine roll-call sessions that focus on craft. And supervisors and senior officers who convey their perspectives about what makes for quality policing to young cops. And should the "uncrafty" take place, promptly step in.

No, that's not dreaming. And while we don't discount formal training, the actual workplace seems to exert the greatest influence on how things actually get done. It's where craftspersons – nurses, physicians, soldiers, plumbers, automobile mechanics and, yes, cops – get "broken in" to their demanding occupations. Naturally, agencies would have to pitch in. Most importantly, they would have to reel in pressures to make "numbers" that, [as we've repeatedly complained](#), can stretch the notion of quality to its breaking point.

Or we can keep driving down this unimaginative, bleak road. It does have an end. It's called "defunding."

Posted 7/3/16

INTENDED OR NOT, A *VERY* ROUGH RIDE

A hung jury and two acquittals mar a prosecutor's crusade against police violence

By Julius (Jay) Wachtel. By now the name “Freddie Gray” has been burned into the minds, if not the conscience, of most every criminal justice professional in the U.S. Briefly, the facts are as follows. During the morning hours of April 12, 2015 Gray, 25, [tried to dodge a police bicycle patrol](#) while walking around inner-city Baltimore. Suspicious cops chased him down and, during a brief but, witnesses say, violent struggle, allegedly found a switchblade in his pockets.

Gray was handcuffed, dragged into a police van and hauled away. One block later the vehicle pulled over. Gray was supposedly thrashing around, so officers shackled his feet. About forty-five minutes later the vehicle, now hauling a second arrestee, pulled into its destination. Officers found Gray on the floor, non-responsive. He was hospitalized with severe spinal cord trauma and died a week later. (For a timeline of the stops click [here](#).)

Most everyone agrees that Gray was never buckled in and that he sustained his fatal injury during the van ride. Three things remain in contention: whether cops purposely drove erratically, whether Gray was purposely left unsecured, and whether his pleas for medical attention, made early during the incident, were purposely ignored.

This isn't the first time that Baltimore officers have been accused of such things. Yet it's seemingly a first for what came next. Six cops, including a lieutenant and a sergeant, were quickly suspended. Baltimore city prosecutor Marilyn Mosby then did the unthinkable: [she promptly charged each officer](#) with crimes ranging from misconduct in office to, in one case, murder.

Many welcomed her aggressive posture. After all, only nine days before Gray's arrest, Baltimore PD [issued a policy](#) requiring that officers obtain medical attention for detained persons “when necessary or requested, and that “whenever a detainee is transported in a police vehicle” they be “secured with the provided seat belt or restraining device.” But some observers worried that the cases were seriously overcharged. After all, proving to a criminal certainty that officers were motivated by a depraved purpose is no easy feat.

So far the concerns have been borne out. [Officer William Porter](#), who was accused of failing to summon medical aid for Gray, was the first to go on trial. Although his

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involvement was clearly the most peripheral, Officer Porter faced several charges, including involuntary manslaughter. Jurors deadlocked on all counts, and on December 16, 2015 a mistrial was called.

Since then there have been two more trials, both by the bench, and both with the same outcomes. On May 23, [Officer Edward Nero](#), a bicycle cop who helped detain Gray and place him in the van, was found innocent on all counts, including reckless endangerment and assault. One month later, [Officer Caesar Goodson](#), the van's driver and the only defendant facing murder charges, was also fully acquitted. When rendering his decision, the judge complained that prosecutors failed to prove that Gray got the "rough ride" prominently featured in their opening argument. "As the trier of fact, the court can't simply let things speak for themselves," he scornfully remarked.

Three more trials are pending – the retrial of Officer Porter, and the trials of Sergeant Alicia White and Lieutenant Brian Rice. Given what's already happened, there is little expectation that prosecutors will meet their evidentiary burden.

On the other hand, as Baltimore well knows, civil cases present a much lesser burden of proof. That may be one reason why it settled with Gray's family in November for \$6.4 million. Another is that this wasn't the first time that Baltimore's finest have been accused of giving rough rides. More than a decade ago, in November 2005, [officers hauled away a man](#) arrested for urinating in public. When Dondi Johnson Sr. was placed in the police van he seemed in good health, but when it arrived at its destination he was paralyzed with a broken neck. Johnson died from complications two weeks later. Before his death, he said that he had been handcuffed but not belted in, and that the officer's aggressive driving had mercilessly flung him around the van.

But that was pre-Gray. Despite [a standing order](#) that detained persons be belted in during transport, none of the officers involved in Johnson's arrest were charged. Neither did the city voluntarily settle the family's claim. At a civil trial, jurors found two cops negligent, a third grossly so, and awarded Johnson's family \$7.4 million. In 2012 [an appellate court](#) agreed with the verdict but invoked statutory limitations that reduced the award to \$219,000.

More recently, in June 2012, officers arrested Christine Abbott during an altercation at her residence. Here is an extract from [her lawyers' account](#) of what happened next:

Officers then forcefully threw Abbott into the back of a police van. Police did not strap or harness Abbott into the back of the police van, nor was a seatbelt used...The Officer controlling the van maniacally drove Ms. Abbott to the police station, during which time Ms. Abbott's person was violently tossed around the

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interior of the police van...Abbott sustained physical injuries as well as mental and emotional injuries...She has difficulty expressing the fear and humiliation that she was subjected to by the Police, but says that she felt “less than human” when she was thrown into the police van and “treated like cargo.”

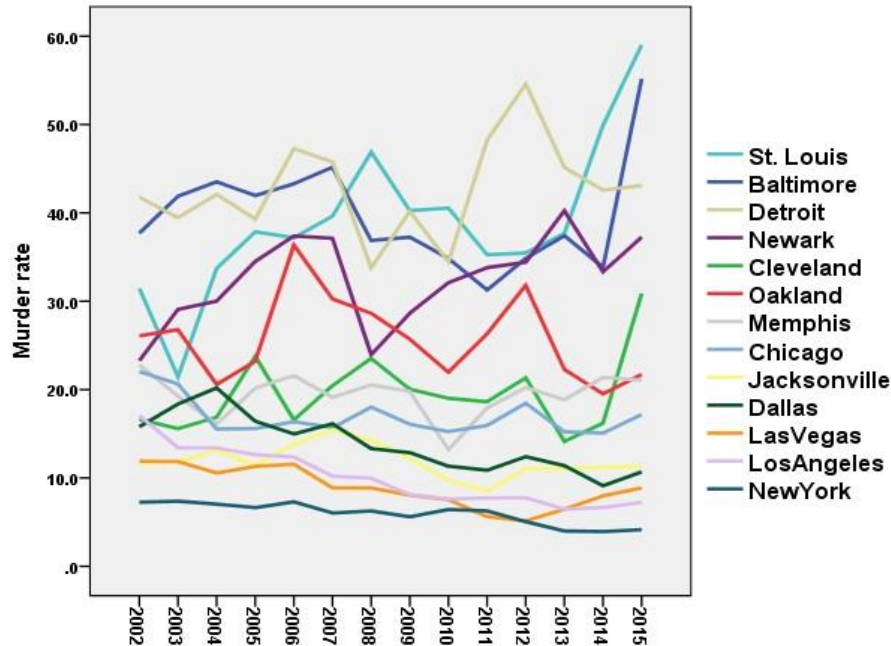
Abbott’s lawsuit [was settled in October 2015](#) for \$95,000.

And then there’s the disturbing episode of [Jeffrey Alston](#), a 32-year Baltimore man who wound up a quadriplegic in 1997 after Baltimore cops arrested him for drunk driving. Like Freddie Gray, Alston also suffered a broken neck. Unlike Gray, Alston claimed it happened when officers manhandled him during arrest. Police, on the other hand, [insist that he self-inflicted his injuries](#) during transport, by purposely head-butting the van’s interior walls. In 2004 a civil jury decided that Alston’s account was correct and awarded him \$39 million; he settled for \$6 million that December. Alston died from complications less than a year later.

Back to Freddie Gray. Given the tenor of the times, one might attribute his alleged mistreatment to racial animus. After all, Gray was black. But so are three of the six cops charged in the case, including officers Porter and Goodson. (In 2013, [40.3 percent](#) of Baltimore’s approx. 3,000 cops were black.) Baltimore’s chief prosecutor, Marilyn Mosby, is also black, as is mayor Stephanie Rawlings-Blake. So was police commissioner/chief Anthony Batts, who was fired three months after Gray’s death and replaced with the current head, Kevin Davis (he is white.)

Still, unless we choose to bury our heads in the sand (actually, ostriches don’t) it’s painfully clear that Baltimore PD has problems. What to do? Shortly after the Gray episode, Mayor Rawlings-Blake [asked the Justice Department](#) to look into the troubled agency. DOJ promptly [opened a “patterns and practices” investigation](#). That’s still a work in progress. Meanwhile Baltimore PD just rewrote its [use of force policy](#). It emphasizes “sanctity of life” and the duty to render aid and urges cops to “de-escalate” incidents whenever possible. (For more on that trendy approach click [here](#).)

Baltimore has always featured prominently in our blog. During the 2008-09 recession we reported that declines in manufacturing may have led to increased crime in the industrial centers of the Northeast, Baltimore included (click [here](#) and [here](#)). But while the city’s economy has substantially recovered – its [present unemployment rate](#), 4.3 percent, is actually a notch under the national average of 4.5 – violence remains stubbornly high. According to a [Brennan Center](#) analysis of crime in the nation’s thirty largest cities, Baltimore’s 2015 violent crime rate of 1,550.6 was second only to notorious Chicago’s. (And by “second” we mean second worst.) Baltimore [also came in number two](#) in the murder sweepstakes, slightly behind homicidal St. Louis.



Nine years ago [one of Police Issues' first posts](#) addressed problems besetting its hometown agency, LAPD, whose reputation had been thrashed by the [Rodney King beating](#) and the [Rampart Scandal](#). Instead of simply turning to the usual correctives (e.g., supervision, training, discipline) we suggested a different approach:

In fractured Los Angeles, reeling from economic disparity, a large, restless underclass, a decaying infrastructure and grossly underfunded schools and public services, cops face inordinate challenges. And the demands keep piling on...Unreasonable demands set up cops to fail. They also ignore the fact that in most cases it is citizen behavior that needs to be “reformed”. Spend a few months on the street taking calls, and you will be convinced that we might carry Palm-Pilots in our pockets, but we are Cro-Magnons at heart. If we want kinder and gentler cops, we need kinder and gentler citizens.

While the iPhone has supplanted the “Palm-Pilot,” our entreaty still applies. Given what’s “going down” on the streets of Baltimore, the stresses of policing may well have spawned a culture of disrespect towards anyone not wearing blue. To be sure, the new chief is presumably trying to instill or re-awaken a lost sense of craft (for more about that critical notion click [here](#).) And there are likely some “bad apples” who may need to be culled from the ranks. Yet, [as we recently suggested](#), reforming cops who labor, day in and day out, in an environment of unrequited violence may prove an exercise in frustration:

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But when gangsters rule the streets, restraint – that valuable commodity that cops in more favorable climes exercise every day – goes out patrol car windows. We can threaten, train and reorganize until the cows come home, but reform can't take hold in an atmosphere of unrequited violence. When officers are enveloped by disorder, the craft of policing is a lost cause.

When we mentioned “something peaceful yet emphatic, perhaps along the lines of Black Lives Matter but aimed within” we were blogging about Chicago. Imagine our surprise when a comparable approach was proposed by Munir Bahar, a notable Baltimorean and leader of the “300 Men March,” an organization of black residents [who regularly stage anti-violence demonstrations](#) in the besieged city. [Interviewed soon after](#) the June 25 assassination of Baltimore rapper “Lor Scoota,” his words resonate with the authority that only comes through personal experience:

Where's the professional men, where's the black intellectuals, the educated folks who have degrees? How come you can't fix your own damn community?

And to that, what can one add but “Amen!” Still, as we pointed out in “Location, Location, Location,” crime is a matter of place, and that “place” is typically economically disadvantaged. That's not where “professional men,” “intellectuals” and “educated folks,” black or white, tend to reside. So we need a way for the overwhelmingly decent and law-abiding citizens who *do* live in these places – these *neighborhoods* – to take them back from the thugs. Figuring out just how police and others can help remains very much a work in progress.

Posted 1/4/11

ABSOLUTE POWER CORRUPTS ABSOLUTELY

Hours before leaving office, Schwarzenegger commutes the sentence of a friend's son

By Julius (Jay) Wachtel. “This is wrong, that’s why they did it on the last day, so they wouldn’t have to answer to anybody...He [Esteban Nunez] had all the big political guns coming out in his defense...We’re just regular people. Is this what justice is all about?” So said [Fred Santos](#), father of Luis Santos, a 22-year old college student stabbed to death in a late-night brawl at San Diego State University two years ago. Two Sacramento men, Ryan Jett, 24, and Esteban Nunez, 21, son of then-Assembly speaker Fabian Nunez, were arrested for murder. Both eventually pled guilty to voluntary manslaughter and received 16-year prison terms.

On December 31, 2010, during his last hours in office, [California Governor Schwarzenegger commuted](#) Esteban Nunez’s sentence to seven years. Schwarzenegger, who is known to be close to Nunez’s father, called the original term excessive because it was Jett, Not Nunez who plunged the knife into Luis Santos’ heart. [Speaking through a press flack](#), the Governor announced that he would not comment on the matter, thus leaving two key questions unanswered: Would he have accorded the same mercy to the son of a “regular” person? And why didn’t he forewarn the victim’s family, which had to learn of his decision from reporters?

The *L.A. Weekly*, an alternative newspaper that occasionally runs investigative pieces has tracked the case from its inception (click [here](#) and [here](#).) According to its reporting, the tragedy unfolded on October 4, 2008 when four young men drove to San Diego to visit friends. Three were members of Sacramento’s upper crust: Esteban Nunez, Ryan Jett, Nunez’s friend from private school, and Rafael Garcia, the son of a well-to-do judge. They were accompanied by Leshanor Thomas, Nunez’s former college roommate.

After several hours of drinking and smoking pot the four tried to crash a party at a campus frat house. Refused entry because they weren’t “Greeks” they skulked off to a friend’s apartment to drink some more and plot revenge. Their alcohol and drug-fueled rant about torching the frat house, which a witness overheard, was probably just talk, not so different from Facebook postings in which Nunez, Jett and Garcia bragged about their “Hazard Crew” and its “gangsta” ways.

Four angry and armed drunks – Nunez and Jett were by now packing knives – went looking for trouble. They soon found it. Although what happened is in some dispute,

they got into a fight with five inebriated students – Luis Santos, Brandon Scheerer, Keith Robertson, Jason Fiori and Evan Henderson. Only difference was, they weren't armed. Within moments three were gravely wounded. Santos lay on the ground dying from a slashed heart. Robertson and Henderson had also been stabbed, Robertson in the shoulder and Henderson in the stomach, a wound that required emergency surgery to keep him from bleeding to death.

Santos' wound was reportedly inflicted by Jett. Esteban Nunez later admitted in court that he stabbed the two others.

The "Hazard Crew" didn't stick around to render aid. Its first act was to flee. Its second, to come up with an alibi (Nunez told the others that his father would "fix" things.) Its third, to burn bloody clothing and dump Jett's knife. Alerted by witnesses, San Diego cops were soon hot on the group's trail. Garcia and Thomas admitted their involvement and pointed fingers at Jett and Nunez.

In his [commutation](#) message Schwarzenegger criticized Nunez's sentence for being the same as Jett's. Although he conceded that Nunez stabbed Robertson and Henderson, the Governor downplayed the youth's culpability in Santos' death. He also pointed out that Nunez had a clean background, while Jett had a lengthy arrest record and a felony conviction.

In California [the crime of voluntary manslaughter](#), to which Jett and Nunez pled guilty, is punishable by imprisonment for either three, six or eleven years (P.C. 193). Both defendants got the maximum – eleven years – plus one year for using a weapon. They also pled guilty to assaulting and gravely wounding Robertson and Henderson, drawing one year for each assault and one year for the use of a weapon, a total of four years. Schwarzenegger commuted Nunez's sentence to the three-year minimum for voluntary manslaughter. Adding in four years for the two surviving victims brought his new term to seven years, less than half that given Santos.

As mutual aiders and abettors, Nunez and Jett pled guilty to the same crimes. But did Nunez's less accurate use of a knife make him less culpable? The judge didn't think so. Perhaps he was swayed by aspects that Schwarzenegger neglected to mention. Shortly after the killing, Nunez text-messed Garcia, "Gangsta rap made us do it. LOL." (LOL stands for "Laughing Out Loud.") When Nunez learned that Thomas was talking he posted threatening rap lyrics on Facebook. He also sent Thomas messages essentially telling him "to keep his mouth shut." (For other revealing tidbits about Nunez check out the stories in the *L.A. Weekly*.)

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In California executive clemency is regulated by [Penal Code sections 4800-14814](#). These authorize the Governor to require that judges and prosecutors supply information about a case and make recommendations as to clemency. Governors can also order in-depth investigations by state agents. (For a full description of the process click [here](#).) Similar procedures are in use by every State and the Federal government. The reasons are obvious: to protect public safety, and to avoid claims of bias.

Schwarzenegger knew that his decision about Nunez presented a clear conflict between the duties of his office and the interests of a close and highly influential friend. Ethical rules require that judges and others who face such conundrums recuse themselves and leave decision-making to others. When that's impossible – after all, only the Governor can commute – the only alternative is to conduct a thorough and impartial investigation, then vet the decision with experts who have no personal stake in the outcome.

Whether in this case Schwarzenegger availed himself of all available resources, and if so to what extent, is impossible to say. Considering his association with Nunez's father he obviously should have used every fact-finding tool at his disposal. But the timing of his announcement, coming only hours before leaving office, and his inexplicable (some might say, inexcusable) failure to give advance notice to the victim's survivors suggests that the outcome was predetermined.

[Article 5, Section 8](#) of the California Constitution gives the Governor the absolute power to pardon and commute. There is no question that Schwarzenegger had the *authority* to give Nunez a break. But was his *motive* legitimate or corrupt? Until he steps forward to resolve any lingering doubts, we must assume it's the latter.

ACCOUNTABILITY? NOT IF YOU'RE A SHERIFF

Popularity contests are no way to select law enforcement officers

By Julius Wachtel, (c) 2010

Considering the many scandals that have rocked his administration, news that Orange County Sheriff Mike Carona faces Federal corruption charges comes as no great surprise. Perhaps the best known faux pas during his watch was the arrest of his former pal, Assistant Sheriff George Jaramillo for taking bribes to promote an auto immobilizer. Carona quickly distanced himself from his friend, firing him and, however improbably, disavowed any inkling that department resources might have been used for private gain. (Jaramillo, who had vaulted to the number two spot in the OCSD after a troubled tenure as a Garden Grove lieutenant, pled guilty and got a year in the slammer.) But the Sheriff soon became embroiled in his very own controversy when it was revealed that the "Hispanic Education Endowment Fund," a charity he set up when taking office, reported outlays that amounted to only a tiny fraction of the hundreds of thousands of dollars that came in from donations. Proving that Hell hath no fury like an Assistant Sheriff scorned, Jaramillo then stepped in with allegations of his own, claiming, among other things, that with the Sheriff's knowledge he had laundered a \$200,000 contribution to Carona's re-election campaign by attributing it to multiple donors.

Despite all the rumors, Carona has been only slapped down twice: once, when the State Department of Justice revoked his grants of badges, guns and full police powers to dozens of unqualified friends, relatives and campaign supporters, and again, when he agreed to a \$15,000 civil fine for billing his campaign committee for thousands of dollars in undocumented "loans". Although many Republicans supported Lieutenant Bill Hunt, Carona's opponent during the 2006 election, the Sheriff won a third term, proving if nothing else that incumbency is not one thing: it's the only thing. Carona then patched up things his way, demoting Hunt for daring to bring up his superior's integrity as a campaign issue. Hunt resigned and sued.

America's infatuation with a decentralized, fragmented police answerable to local politicians has led to a legacy of corruption. "Serpico" didn't become part of the popular lexicon just because it was a terrific movie. Even so, serious misconduct at the very top is thankfully rare, in no small part because most cities select Chiefs through a rigorous, public process that leaves little room for those

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with questionable resumes to sneak in. Electing top police officials holds no such promise. Before rising to head one of the largest law enforcement agencies in the country, Carona was an obscure player in charge of security for the Orange County courts. Ordinary citizens are hardly in a position to examine an applicant's bonafides, and turning the hiring of Sheriffs into a popularity contest bypasses the rigorous vetting process that we should expect for all law enforcement executives. Worse, it instantly makes incumbents dependent on contributors and others with selfish stakes in how justice is administered. Sheriffs like to say that they're accountable to the voters, yet in practice that means being accountable to no one. All that a Board of Supervisors can do to reign in an independent agency like a Sheriff's Department is strangle its finances, an indirect and imprecise measure that only punishes the public.

To avoid problems such as those we now face with "America's Sheriff" (that's what authority-on-everything Larry King once christened Carona) some areas -- for example, Nassau County, New York -- have adopted County police models with appointed, professional chiefs who report to elected executives, who are in turn answerable to the public. It's high time for a like remedy throughout California. We need to assure that all top cops are subject to real rather than pretend oversight. Our citizens deserve no less.

Either that, or we can keep leaving it to the Feds.

Posted 11/08/10

ANSWERING TO A DIFFERENT AUTHORITY

When it comes to the death penalty, a would-be Attorney General's fealty to the law has its limits

By Julius (Jay) Wachtel. Is there a point at which a District Attorney should call out the law? For San Francisco D.A. Kamala Harris, now locked in a tight contest for California Attorney General, that threshold has long been capital punishment. It's not as though she's kept it a secret. Her promise to never seek the death penalty was right in her [2004 inaugural address](#):

As a community that is smart on crime, we must reject simplistic approaches to public policy. Dr. Martin Luther King taught us that, "injustice anywhere is a threat to justice everywhere." It takes much more than building prisons and locking away prisoners to keep our city safe. I will only use "3 strikes" when the third strike is a serious or violent felony. **And I will never charge the death penalty...**At the same time, let me be clear that anyone who commits rape, molests a child, commits murder or does any other violent act will meet the most severe consequences and will be removed from this community so that they can do no more harm.

Harris has remained true to her word, recommending not one case for capital punishment during her two terms (San Francisco voters, who are overwhelmingly opposed to executions, reelected her in 2007.)

Yes, there have been a few "glitches" along the way. Perhaps the most notable involved the murder of a San Francisco cop. On an evening in April 2004 San Francisco police gang officers [Isaac Espinoza](#) and Barry Parker were patrolling a dangerous neighborhood in an unmarked Crown Victoria when they encountered two men. One seemed to be hiding a gun under his coat. As Espinoza pursed him on foot the man turned and fired 14 rounds from an AK-47 rifle, killing Espinoza and wounding Parker. The killer, whose coat, ID and weapon were recovered nearby, was identified as a 19-year old gang member who had done time in a youth prison for a gun-related crime.

Three days after the incident D.A. Harris announced that in line with existing policy her office would not seek the death penalty. It did, however, file first-degree murder and other charges. But despite abundant evidence prosecutors couldn't even get that. Jurors were swayed by the defendant's improbable assertion that [he thought the officers were gang members](#), not cops and convicted him of the lesser offense of second-degree

murder. Fortunately the judge was not so easily fooled. She imposed a sentence of two consecutive life terms without the possibility of parole.

Harris drew a lot of flack on this case. Some came from a friendly source. [A former San Francisco public defender](#) suggested that her quick decision to forego the death penalty made it seem “more like a reflection of a philosophical animus to the death penalty rather than an individualized exercise in discretion.”

Harris just ran for California Attorney General. (See above video. The race was very close and remains undecided.) She caught a lot of grief over her anti-death penalty stance. Her campaign flack, [Brian Brokaw](#), tried to deflect criticism over the cop-killing case by suggesting that the jury’s verdict supported Harris’s decision to not seek the death penalty. What he didn’t mention was that the “decision” was predetermined. Neither did he touch on the fact that her office’s failure to secure a first-degree murder conviction might simply demonstrate its incompetence.

After the killing Harris reportedly established a committee to review potential death-penalty cases and make recommendations. It’s hardly surprising that no such case has ever managed to overcome her philosophical objections.

Bar associations and such offer prosecutors lots of ethical advice, particularly when it comes to defendant rights. To whom a District Attorney owes their fealty gets little attention. Occasionally there’s a reference to [Berger v. United States](#), the 1935 Supreme Court case in which Justices addressed the role of the United States Attorney, the top Federal prosecutor in each Judicial District:

As such, he is in a peculiar and very definite sense the **servant of the law**, the two-fold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor -- indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

Kamala Harris’s public stance on the death penalty pretty well thrashes the “servant of the law” model. [California Penal Code section 190.3](#) provides that when the death penalty is an option it’s up to the “trier of fact,” meaning the jury, to determine whether the special circumstances that justify capital punishment are true, and then to decide on either death or life without parole. Harris made this process moot, apparently by directing her attorneys to not charge special circumstances in the first place. Is that illegal? Your blogger found no law requiring that D.A.’s charge special circumstances when they’re present. Prosecutors are typically tough-minded, law-and-order types, so

legislators probably didn't anticipate that one might choose to sabotage their work out of hand.

Still, Kamala Harris *did* take the [oath of office](#) prescribed by Article 20 of the California Constitution:

I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; **and that I will well and faithfully discharge the duties upon which I am about to enter....**

Does openly disavowing a legal penalty, then circumventing the process which the Legislature prescribed for its use, constitute a “well and faithful” discharge of duties? Your blogger thinks not, but then again, he's not a lawyer.

On the other hand, he *has* taught criminal justice ethics, and here the balance turns decidedly against Harris. Criminal justice practitioners who have a conflict between, say, conscience and duty can recuse themselves and leave the decision to others, or, less effectively, have their prospective decision “vetted” by their peers. Alas, San Francisco D.A. Harris is doing neither (her death penalty “committee” seems nothing more than a pretend version of the latter approach.) So from this perspective your blogger would consider her death penalty decision-making process unethical.

What about Harris's plans as Attorney General? [She has repeatedly promised](#) to “uphold the law” if elected. One hopes so, as it's the A.G.'s duty to contest death penalty appeals. But while it wouldn't be out of line for an Assistant A.G. to be against the death penalty – after all, they can avoid these cases – Harris aims to be top dog. Even if she recused herself from overseeing such matters Harris still decides who gets hired and promoted. Her beliefs could discourage lawyers from applying for a job, and would surely take the wind out of the sails of A.G. staffers who work on death penalty appeals. When the problem lies with the boss, there really is no remedy.

Incidentally, as your blogger's made abundantly clear (click [here](#) and [here](#)) he's against capital punishment. Then again, he's not looking to be A.G.

Posted 4/22/12

ARRESTING THE VICTIM

A 17-year old girl is arrested for not showing up at the trial of her alleged rapist

By Julius (Jay) Wachtel. According to [section 1219\(b\)](#) of the California Code of Civil Procedure, “no court may imprison or otherwise confine or place in custody the victim of a sexual assault [for] refusing to testify concerning that sexual assault or domestic violence crime.” So how is it that a 17-year old rape victim was locked up for three weeks after failing to appear at her alleged assailant’s preliminary hearing and trial? Why is she now [wearing a GPS ankle bracelet](#)?

Because a “material witness” warrant isn’t about testifying. It’s about showing up. After [having to dismiss and refiling](#) the case against Frank Rackley, 37, something that the courts are unlikely to allow twice, that’s what prosecutors are determined that the teen do.

If guilty, Rackley is truly a dangerous man. His alleged victim, a state ward who lives at a foster home, was only sixteen when he allegedly approached her at a transit station, asked if she had a boyfriend, then forced her into a truck, drove to a dark area and raped her. He then pushed her from his truck. She immediately reported the crime, and her description and a DNA match led to his arrest.

Rackley wasn’t hard to find. A parolee with six prior felony convictions (three for robbery and one each for stolen property, stalking and felony evasion), he is literally covered with tattoos, including one of a huge swastika. His record also includes arrests for two 1996 rapes. Neither went to court, one for unknown reasons and the other because the victim wouldn’t testify. He is now being prosecuted for two year-old sexual assaults. One is of the teen, and the other, which took place a month earlier, of a 30-year old prostitute who identified him from a photograph and described his tattoos. Naturally, as an adult and sex worker her testimony isn’t expected to be as compelling as the youth’s.

According to the 17-year old’s lawyer, her client has changed her mind and is now willing to appear and testify. But her travails with the system have become a cause célèbre.

Some claim that prosecutors overstepped their authority. Lisa Franco, the lawyer who negotiated the juvenile’s release, claims that [Marsy’s Law](#), a 2009 act that

enshrined victim rights in the California constitution, [prohibits punishing victims](#) for failing to cooperate. “She’s afraid of confronting her rapist, and she doesn’t want to testify. By imprisoning her it’s just punitive, punishing her for not wanting to testify, which is contrary to what Marsy’s Law stands for. She’s being bullied because she doesn’t want to do what the D.A. wants her to do.”

So far the courts have disagreed. Still, even if detaining victims is legal, it’s arguably bad public policy. Another lawyer who has represented the teen, Amina Merritt, claims that the [youth’s motivation is simple](#). “She is at risk and that is the reason she did not testify previously. She’s afraid, she’s afraid for her life.” Along the same lines, Sandra Henriquez, executive director of the California Coalition Against Sexual Assault, warns that the youth’s arrest may dissuade future victims from cooperating with the authorities. “We’re potentially sending a message that our concern over public safety supersedes our concern over a particular victim. We could also be jeopardizing public safety if fewer victims come forward.”

According to the National Center for Victims of Crime (NCVC), [about six in ten sexual assaults are never reported](#). Among the reasons are fears of “intrusive” and “re-victimizing” court procedures, as well as “shame, embarrassment, self-blame, fear of media exposure, fear of further injury or retaliation, and fear of a legal system that often puts the victim’s behavior and history on trial.” Yet the NCVC cites evidence that reporting these crimes can benefit victims psychologically:

“...many sexual assault survivors report that choosing to follow through with prosecution contributes to a feeling of accomplishment and empowerment because they are attempting to protect themselves and others in the community from being victimized. Many victims also report the attempt to put their assailant(s) in jail allows for a feeling of closure, enabling them to put the assault behind them.

The [Rape, Abuse & Incest National Network](#) (RAINN) agrees:

Many victims say that reporting is the last thing they want to do right after being attacked. That’s perfectly understandable – reporting can seem invasive, time consuming and difficult. Still, there are many good reasons to report, and some victims say that reporting helped their recovery and helped them regain a feeling of control.

In fact, this case began with the victim reporting the crime. Once the machinery of justice was in motion, though, the youth changed her mind. But the authorities didn’t,

eventually arresting her as a material witness. One of the many who question that approach is criminal justice ethicist Dr. Joycelyn Pollack:

Rape is a crime where the victims have lost all power over themselves and their choices – that’s why rape crisis clinics and counselors never push the victim to even go to the police because the whole point is to help her regain some control over her own life. This is the worst case scenario of the victim being controlled by others. What it needs is not sheer power/coercion but, rather, some degree of finesse and empathy on the part of the prosecutors. If she runs, there’s a reason. Fix that and the case may get taken care of as well.

Yet the teen promised to appear but reneged twice, and this in a case where the nature of the alleged crime and the characteristics of the defendant could hardly be more extreme. Assistant D.A. Albert Locher [neatly summed up](#) the dilemma:

It’s the last thing we ever want to do. You never want to have a victim or a witness in custody. But you have to balance protecting the community. When you look at (Rackley’s) background – multiple victims already – it’s important that we try to prevent another victim from being harmed.”

A victim’s failure to cooperate usually dooms sexual assault prosecutions, as it leaves defense lawyers free to argue that whatever happened was consensual. One saving grace in this case is that California’s [age of consent](#) is eighteen. Given the DNA match jurors could convict the defendant of sexual assault (although probably not kidnapping) even without the teen’s testimony. But all bets are off if she doesn’t even appear.

Courtrooms are a humbling experience. Your blogger knows that if one can get a recalcitrant witness to show up – and that’s not always so simple – they’ll usually testify. That’s probably what prosecutors are counting on. Should the accused be guilty and go unpunished, imagine the next girl who might be raped, and how she would feel during and after the act, that is, if she survives.

We’ll see how this plays out over the next few weeks. Stay tuned!

Posted 4/3/11

BE CAREFUL WHAT YOU WISH FOR

Seattle PD chief welcomes DOJ investigation, calls it a “free audit”

By Julius (Jay) Wachtel. In the early morning hours of April 17, 2010, [Seattle police responded](#) to a robbery call at a nightclub parking lot. The victim, who was unharmed, told officers that he gave four men \$40 after they threatened him with a machete. Officers located and pruned out three suspects about a half-mile away. What they may not have realized is that a freelance videographer was taping the encounter. Gang detective Shandy Cobane is overheard yelling, “I’m going to beat the [expletive] Mexican piss out of you, homey. You feel me?” One of the men moved slightly, apparently prompting Cobane to kick him in the head (at :26.) A patrol officer then moved in (at :38) and forcefully planted his shoe on the man’s neck.

Once the video was out – and how it got out is a story in itself – Detective Cobane, a 17-year veteran, weepily apologized for his “offensive and unprofessional” comments. “I know my words cut deep and were very hurtful. I am truly, truly sorry.” Fortunately for him and the patrol officer, [county](#) and [city](#) prosecutors decided that neither the kick nor the foot planting merited prosecution. Two facts undoubtedly weighed on their decision: one of the kickee’s companions [was one of the robbers](#), and that while the kickee didn’t participate in the robbery [he was present](#) when it occurred.

In December, once the legal opinions were in, [Seattle police chief John Diaz](#) announced that he was opening an internal investigation: “The use of any slurs based upon race, ethnicity, religion, or sexual orientation and other gratuitous, unnecessary, unprofessional language by employees of the Seattle Police Department are not tolerated and are against department policy.” By then FBI agents were already on the case. In response to complaints by activists that police were targeting minorities for rough treatment, the Department of Justice opened a preliminary investigation. True enough, both officers who used force were white, while their victim was Hispanic. (Interestingly, two cops on scene also happened to be Hispanic. Neither used force or, as far as is known, complained about their colleagues’ actions.)

Two months later, on June 14, [a punch](#) (temporarily) landed a Seattle cop in hot water. And yes, there was a video. Taken by a bystander, it depicts a cop struggling with a husky teen who tried to walk away from a jaywalking ticket. While they dance around a male youth tries his best to restrain a beefy young woman from interfering.

Alas, he loses his grasp and she aggressively steps in to rescue her friend. That leaves the flummoxed cop little option but to either shoot her (gratefully, he doesn't) or punch her in the face (he does.)

As we reported in "[Dancing With Hooligans](#)," both women turned out to have assaultive histories and the cop was quickly cleared. (Heck, he should have probably gotten a medal for restraint.) But the video weighed in like five pounds of liverwurst. Some things really can't be explained to everyone's satisfaction. Many citizens were inflamed and Seattle's finest got another black eye.

Then on August 30 came the stunning tragedy that we described in "[Sometimes a Drunk With a Knife is Just That](#)." John Williams, an Indian woodcarver, was walking around downtown Seattle. As usual, he had been drinking. In one hand he held a folding knife with a three-inch blade; in the other he carried a wooden board to be fashioned into one of the knick-knacks that he sold to a gift shop. Exactly what happened when he was confronted we can't say – the cop insists that Williams advanced on him and wouldn't put down the knife – but within moments the artisan whom some knew as a mean drunk lay dead with four bullet wounds to the chest.

Among minorities anti-police sentiment rose to fever pitch. [Mayor Mike McGinn and Chief Diaz](#) quickly held a community meeting and promised that practices would change. A new Deputy Chief was appointed to watch over community relations. There was also talk about giving more cops Tasers, as the officer who shot Williams had nothing other than a gun. Then a [police board of inquiry](#) ruled the shooting unjustified and the officer resigned. (Prosecutors decided not to charge him with a crime.)

Two months later, on October 18, four men posing as drug sellers [tried to rip off an undercover Seattle cop](#). One struck the officer in the face. A second undercover officer identified himself and pulled a gun, leading the suspects to scatter. One, a 17-year old black male, [was chased into a convenience store](#) by a plainclothes cop.

A security camera recorded the encounter. It depicts the suspect as he turns towards the officer and raises his hands. But the cop – he's holding a pistol in his left hand – rushes the youth and violently kicks him, sending him to the ground. The officer [keeps on kicking](#) until a uniformed cop runs in and physically pulls him away.

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After watching the video, Seattle PD Deputy Chief Clark Kimerer questioned the need for so much force. The officer was placed on administrative leave. His actions were promptly defended by the police union president, who said that the suspect had refused to get on the ground (the tape lacks audio.) Naturally, the ACLU didn't see it that way. Citing this episode and others, [it formally requested](#) that the Department of Justice open "a pattern or practice investigation into multiple incidents of excessive force by the Seattle Police Department (SPD), particularly force used against persons of color."

[Federal law](#) authorizes the Department of Justice to file civil lawsuits in cases where a law enforcement agency has engaged "in a pattern or practice of conduct...that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States." These matters are investigated by lawyers in the [Special Litigations Section](#) of the Civil Rights Division. At the end they prepare a letter setting out their findings and recommending improvements in areas such as training, supervision, discipline and the investigation of citizen complaints. Such letters have been issued to [twenty police departments](#) since 1997. Agencies are given time to take corrective action, which is then evaluated. If the response is inadequate or violations are very serious DOJ may demand that departments join in a consent decree and remain under supervision of a court-appointed monitor until all deficiencies are satisfactorily resolved (click [here](#) for links to past settlements.) Should an agency refuse, civil complaints can be filed in Federal court and set for trial. (For past and current lawsuits click [here](#).)

Three days ago, on March 31, [DOJ announced](#) that it was opening a "patterns and practices" investigation of the Seattle Police Department and, as well, a separate inquiry into the shooting death of John Williams. Naturally, the ACLU was overjoyed. Unexpectedly, even the cops seemed pleased. Chief Diaz went so far as to characterize the investigation, which he said was fully expected, as a "free audit from the Department of Justice." He insisted that Seattle PD had nothing to hide and pledged its full cooperation:

Our goal with this investigation ... is simple: to ensure that the community has an effective, accountable police department that controls crimes, ensures respect for the Constitution and earns the trust of the public it is charged with protecting.

Even the head of the police union sounded bubbly. "In a way, I'm looking forward to this. There's no doubt in my mind they will not uncover any systemic problems...They may come up with suggestions in ways we could do better in both areas. Great."

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Chief Diaz and the union are spinning it the best they can. Instead of conceding that Seattle PD is in serious trouble, their public comments (dare we guess what they might be saying in private) suggest that the Federal slap-down of what was once considered the premier law enforcement agency in the Pacific northwest is nothing to worry about.

But it is. One can imagine the inquiry's effect on morale. In a more practical sense, it's a blot that could make it difficult for Seattle's up-and-coming to take on command positions in other agencies. Within the department the administrative burden of being under a civil rights investigation is overwhelming; assuming that Seattle isn't completely absolved, once the findings are out it will only get worse. If nothing else, the imbroglio is sure to give citizens who are suing or intending to sue the police – and that includes everyone mentioned above, or in the case of John Williams, his estate – a bucketful of legal ammunition.

Really, no department in its right mind wants to be in the Federal bull's-eye. Chief Diaz and his union friend will soon discover why.

Posted 8/15/10

BEFORE JETBLUE* THERE WAS MAJOR DYMOVSKY

A Russian cop bails out (figuratively) over corruption. Should we pay attention?

By Julius (Jay) Wachtel. [Aleksei Aleksandrovich Dymovsky](#) was fed up. During his years as a cop in Novorossiysk the 32-year old chief of detectives had grown weary of the moral depravity that pervades Russian policing. It wasn't just about taking twenty bucks here and there to supplement the meager pay, a temptation to which even he had succumbed. No – it was about a lot more, from staging arrests and searches for the sole purpose of extorting cash, to brutalizing suspects, to “solving” crimes by forcing innocent persons to confess.

Major Dymovsky didn't have an inflatable escape slide, nor an airplane galley stocked with beer. So last November he did the next best thing. After (presumably) pouring himself a tall glass of vodka he recorded a video clip and posted it on YouTube. “Dear Vladimir Vladimirovich...” he said, respectfully addressing Premier Putin by his patronymic.

Really, he did. Click on the image to watch a subtitled version.

One can guess the official response, and, as well, its career consequences. But before we get too smug about American cops here's a news flash: for all the cultural differences, when it comes to misconduct our officers give the Russians no quarter.

No, this isn't a story about Russia, where one might expect the worst, but about the good old U.S.A., where police corruption is supposedly a distant memory.

The Bad Old Days

New York City (time immemorial – mid 1990's). Audiotapes secretly recorded by [Frank Serpico](#), a disillusioned American cop who went undercover, were used by the 1972 [Knapp Commission](#) to expose entrenched, widespread corruption in the NYPD, ranging from shaking down citizens to stealing and reselling drugs. Two decades later the [Mollen Commission](#) reported that if anything things were worse. Indeed, by the mid-1990's the situation was so dire that one particularly greedy precinct, the 30th., was referred to as “[The Dirty Thirty](#).”

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Miami (1980's). It began with extorting drug peddlers. Before long a hundred-odd "[River Cops](#)" were cruising the Miami shoreline, but instead of arresting smugglers they grabbed the cocaine to sell later and threw the suspects overboard.

Los Angeles (1980's – 1990's). Deputies assigned to the L.A. Sheriff's Department [Majors Squad](#) started out by skimming seized cash to buy supplies and incidentals. Soon they were using the loot to buy boats, cars and vacation homes. A decade later officers in LAPD's [Rampart Division](#) took an anti-gang crusade to new heights, planting evidence, lying on reports and covering up bad shootings. Numerous cops lost their jobs, some were prosecuted, more than 150 felony convictions were tossed and suspects were awarded \$70 million-plus in civil judgments.

New Orleans (1990's). And who can forget [The Big Sleazy](#), where in a single three-year period sixty officers were charged with crimes ranging from drug dealing to murder. In a chilling example two rookies robbed a restaurant while on duty, and when an off-duty cop tried to intervene they shot him dead, along with two employees. But they forgot something. When the triggerman (actually, a female cop) returned to the crime scene an employee who hid during the robbery identified her. And there was the [brutal cop](#) who hired a hit man to kill a pesky complainant (he wound up on death row.)

Whew, those were pretty bad days, all right. But that was then, this is now. Haven't things gotten a lot better?

The Great New Days

Camden (2007 – 2009). "It's going to be a headache for a lot of people for a long time." That's what a former New Jersey police captain said about the scandal unfolding in Camden, where two cops recently admitted that their squad regularly planted evidence and stole money and drugs. More than 200 criminal cases have been dismissed and several prison inmates have been freed. Two other officers and the supervisor are under investigation and will presumably face charges.

New York City (1992 – 2010). [Internal affairs case files](#) recently obtained by the ACLU reveal that more than one-hundred NYPD officers are arrested each year for crimes ranging from consorting with prostitutes to running a gambling empire connected with organized crime. One officer was charged last December with distributing cocaine. Two more were arrested this February for using their badges and guns to rob a warehouse.

Philadelphia (? – 2010). In a startling press conference only days ago, Police Commissioner Charles Ramsey [announced](#) that he was embarking on a "crusade" to

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eliminate a culture of corruption that forced him to fire *fifty-one* officers, half for criminal conduct, since he took over as chief in January 2008.

New Orleans (time immemorial – 2010.) “I have inherited a police force that has been described by many as one of the worst police departments in the country.” Since May, when freshly elected [New Orleans mayor Mitch Landrieu’s](#) plea for help landed on the U.S. Attorney General’s desk, *thirteen* NOPD officers have been indicted for needlessly killing four citizens during the chaos of Hurricane Katrina. They allegedly tried to cover their tracks by burning one of the bodies, planting a gun and spinning tales of fictitious eyewitnesses.

Chicago (1999 – 2008). In May the City of Chicago [agreed to pay](#) a total of \$16.5 million to as many as *twelve-thousand* persons who were arrested for felonies without adequate cause, and were then brutally treated while in custody, ostensibly to get them to confess.

Houston (2010). In June [four police officers were indicted](#), three were fired and five were suspended over their roles in the vicious beating of a handcuffed 16-year old burglary suspect. Caught by security cameras, the incident inflamed a city that was already reeling from the acquittal of an officer who shot and killed a black motorist he had mistakenly suspected of car theft.

Tulsa (2007 – 2009). Oklahoma’s placid burgh is [reeling from news](#) that five current and former police officers and an ATF agent ran a years-long criminal enterprise, lying on search warrants, stealing cash and narcotics, framing suspects and selling drugs. The agent and a cop have pled guilty; four officers are awaiting trial. Several wrongfully convicted persons have been let go, including one serving *two Federal life sentences*.

Well, you get the picture. So what’s to be done? All the usual suspects – poor hiring practices, lousy training, inadequate supervision, a loose moral climate – have been exhaustively addressed in public reports (e.g., the Knapp Commission) and decades of criminal justice literature. Of all these issues inadequate candidate screening seems perhaps the simplest to rectify. [LAPD’s investigation](#) into the causes of Rampart laid much of the blame on hiring candidates with significant drug and criminal histories. Years later a major hiring push by the L.A. Sheriff’s Department was followed by a wave of significant disciplinary problems among rookie deputies. An [independent assessment](#) concluded that in striving for numbers the standards crumbled, with predictable consequences.

It can’t be said that police are ignorant of the risks of feeding from the bottom. Former Miami police executives blame the [River Cops](#) scandal on a hiring binge that

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gave guns and badges to poorly educated, undisciplined youths, including former thieves and gang members. “Our reference to them as time bombs was exactly that. Sooner or later, they’re going to go off. We just don’t know which of them are time bombs or when they’re set to go off.”

Considering what’s expected of a cop, many agencies have long required more than just a high school diploma. Serious problems have led some that didn’t, like [Washington, D.C.](#) and [Chicago](#), to tighten their standards. Both now require either two years of college, significant military experience or a combination. Even the hidebound NYPD [boasts](#) that more than half of a recent academy class had four-year degrees. Yet the supposedly progressive [LAPD](#) and [L.A. Sheriff’s Department](#) continue welcoming applicants with nothing beyond a G.E.D. or a passing score on the California high school proficiency exam, a test of English and math that can be aced by a reasonably bright sixteen-year old.

One would think that after all the ethical meltdowns police entry standards would be commensurate with the grave responsibilities that go along with the job. Alas, one would be wrong. If at this very moment Major Dymovsky were to parachute into any large American city he would probably feel right at home.

And that’s not a good thing.

* In a recent incident aboard an arriving flight, a JetBlue attendant fed up with rude passengers grabbed a beer from the galley, activated the emergency slide and slid to freedom. He’s now a folk hero.

Posted 8/14/14

COOKING THE BOOKS

Has LAPD been using whiteout to fight crime?

By Julius (Jay) Wachtel. Six years ago, a post entitled “Why the Drop?” posed a question about Los Angeles’ crime statistics: “Crime has been falling. Does anyone know why?” Thanks to some intrepid reporting by the Los Angeles Times, we might finally have our answer. And it’s not pretty.

In 2001 the violent crime rate in the City of Angels reached a historic high of 756.5 per 100,000 population. By 2007, the tally had plunged to 398.2. This startling reduction of 47 percent meant that even as the population increased, there were 24,442 fewer violent crimes. True enough, crime had eased throughout the U.S. But even as the national trend line flattened, L.A.’s Part I crime rate (murder, forcible rape, robbery and aggravated assault) kept falling. In 2012 violent crime in the U.S. increased by seven-tenths of one percent. But L.A. reported yet another decline, in this case of nearly seven percent.

Considering its burgeoning population and thin police coverage, L.A.’s unbroken string of victories seemed remarkable. So we wondered. After considering possible causal factors such as demographics and harsh sentencing, our speculation took what may have been a prophetic turn:

National crime stats come from the police, the same agencies whose effectiveness the data supposedly measures. Many reporting problems have surfaced over the years. Bookkeeping errors (unsurprisingly, usually leading to undercounts), differences in categorization, even purposeful jiggling – they’ve all taken place. Suffice it to say that cooking the books is eminently possible, and no one’s watching.

Each year the FBI publishes crime statistics, by city and state. According to the Times, the decline in L.A.’s crime rate is attributable, at least in part, to a practice of purposely downgrading incidents so they don’t reach the Part I threshold. In fact, police departments throughout the U.S. have been cooking the books for years. Want to keep an aggravated assault – the most common Part I violent crime – off the FBI tally? Easy. Simply discourage reporting. Or if a victim refuses to play ball, downplay their account, minimize their injuries or ignore the use of a weapon. Presto! You now have a simple assault, which is not included in the FBI’s report.

Don’t believe it? Here are a few examples:

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- In 1998 the U.S. Justice Department opened an inquiry into fudged crime statistics in Philadelphia. As a local reporter later said, “The phony stats were known for many years. Aggravated assaults were easily changed to simple assaults...Precinct commanders used to joke about this, but behind those statistics are real victims.”
- Detroit chief James Barren was fired in 2009 when his department and the medical examiner were caught misclassifying homicides as self-defense and suicide.
- In the same year a Dallas newspaper investigation revealed that police were reporting only half the crimes called for in FBI guidelines. Although use of a weapon (not just a gun) makes assaults “aggravated,” pipe beatings, to give one example, were being recorded as simple assaults.
- Also in 2009 the Florida Department of Law Enforcement attributed chronic under-reporting of serious crime by Miami police to “a self-imposed pressure that certain [officers] felt as a result of the implementation of Compstat.” One of the examples cited was a carjacking that police downgraded to an “information report.”
- Sometimes crimes can’t be easily downgraded. But Baltimore found an ingenious way to make it seem as though fewer citizens were being shot. How? By reporting shootings with multiple victims as a single crime.

For possibly the longest running and most systematic manipulation of crime data look to the Big Apple. NYPD officers have been accusing their agency of undercounting serious crime for years. As one cop said, “If it’s a robbery, they’ll make it a petty larceny...a civilian punched in the face, menaced with a gun, and his wallet was removed, and they wrote ‘lost property’.” Indeed, some cops got so angry that they secretly taped superiors telling them to downgrade reports. By 2010 the department had no choice but to formally investigate. It concluded that, yes, a few rogue managers were purposely downgrading crimes. Orders were duly issued banning the practice.

Yet the problem apparently persisted. In *The Crime Numbers Game: Management by Manipulation*, a stinging exposé published in 2012, two criminal justice professors (one, a retired NYPD captain) alleged that these unsavory practices have not only continued but are literally embedded in the troubled agency’s DNA.

Compstat, NYPD’s vaunted number-crunching tool, likely deserves much of the blame. Brought to Los Angeles by former (and current) NYPD Commissioner Bill Bratton, it measures officer performance by tallying enforcement activity – stops, tickets and arrests – and the agency’s success by counting crimes. Of course, once NYPD

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started bragging about its success, crime rates had to keep going down. And even if crime really was falling, cops (at least those seeking good evaluations) remained under instructions to make as many stops and arrests as possible. (Thanks to the law of unintended consequences, high levels of police activity can have negative effects. New York's stop and frisk campaign seemed like a great idea – until it didn't.)

As we've repeatedly said, what really "counts" in policing can be impossible to adequately express with numbers. Police departments aren't factories, and officers aren't assembly-line workers. Adopting programs such as Compstat can push aside worthy objectives and distort what actually gets done. And while relying on numbers alone to form public policy is a bad idea, fudging them is unforgivable. It turns cops into liars. It misleads policymakers and the public. Granting offenders undeserved breaks also shortchanges victims and increases everyone's risk of becoming the next casualty.

Hopefully the Times' jaw-dropping findings will lead LAPD to reassess both the value and accuracy of its statistics. Coincidentally, just as this post was going to press, the California State Board of Equalization issued an alert warning that some businesses were gaming tax collectors with "illegal sales suppression software" that automatically understates sales volume. While there is no known application that does that for city crime statistics, one can only imagine the possibilities!

Posted 2/3/23

DOES RACE DRIVE POLICING?

Renewed concerns that police target Black persons roil Los Angeles



For Police Issues by Julius (Jay) Wachtel. In 2015 California legislators enacted Penal Code section 12525, the “[Racial and Identity Profiling Advisory Act](#)” (RIPA). Since 2018 all State and most local law enforcement agencies have been required to disclose public complaints of racial and identity profiling and furnish annual reports about pedestrian and vehicle stops (small agencies had until this year to comply.) Required information includes the reason for a stop, the race and ethnicity of pedestrians, drivers and other persons who influenced a stop decision, any use of force, and whether someone was detained or arrested, and *why* (for the official guide, click [here](#).)

A Board was formed to oversee the process. Alas, its weighty, just-released [2023 Annual Report](#) doesn’t offer much hope:

Over the past four years, the data collected under the Racial and Identity Profiling Act (“RIPA”) has provided empirical evidence showing disparities in policing throughout California. This year’s data demonstrates the same trends in disparities for all aspects of law enforcement stops, from the reason for stop to actions taken during stop to results of stop.

From their initial release, RIPA’s annual reports have blasted the seemingly unequal treatment of racial and ethnic minorities. Little has apparently improved:

Overall, the disparity between the proportion of stops and the proportion of residential population was greatest for Multiracial and Black individuals. Multiracial individuals were stopped 87.4 percent less frequently than expected, while Black individuals were stopped 144.2 percent more frequently than expected.

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According to the report, Black persons comprised six percent of the State's 2021 population but accounted for twenty-one percent of stops. Hispanics also shouldered a burden, although of substantially lesser magnitude (36 pct. of pop. v. 42 pct. of stops). On the other hand, White persons carried an advantage (35 pct. of pop. v. 31 percent of stops). Force, including lethal force, was also far more likely to be used against Black persons and substantially more likely to be used against Hispanic persons than against Whites.

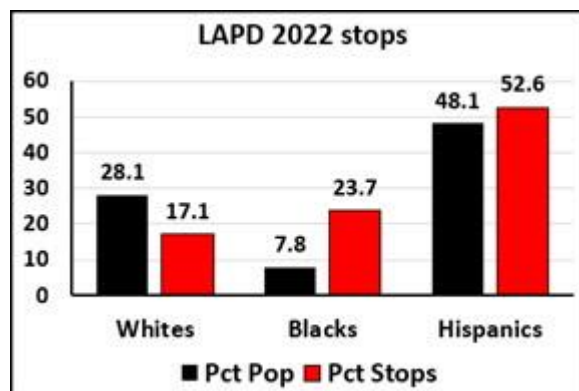


On first read, RIPA's 222-page piece seems a thorough work. But as our readers know, we're concerned about the influence of economic conditions on crime. As to these, RIPA's silent. While its report insists that it did "closely analyze and isolate calls for service, stops, and other contacts to identify disparities while controlling for factors like neighborhood crime and poverty levels" (p. 216), RIPA kept mum about crime rates or economic conditions. So their impact (if any) on agency and officer decisions was ignored.

From the start, critics have used RIPA data to accuse California cops of discriminating against members of minority groups. Our 2019 two-parter ("[Did the Times Scapegoat L.A.'s Finest?](#)") was prompted by a series of articles in the *Los Angeles Times* that used RIPA data to question why only 17.9 percent of LAPD's vehicle stops were of Whites. We selected a sample of one-hundred stops and took it from there. Our present journey was inspired by [a recent piece in the Associated Press](#) about RIPA's reveal of similar racial and ethnic disparities in 2021 stops:

In more than 42% of the 3.1 million stops by those agencies in 2021, the individual was perceived to be Hispanic or Latino, according to the report. More than 30% were perceived to be white and 15% were believed to be Black.

Statewide, however, 2021 Census estimates say Black or African American people made up only 6.5% of California's population, while white people were about 35%. Hispanic or Latino people made up roughly 40% of the state's population that year.

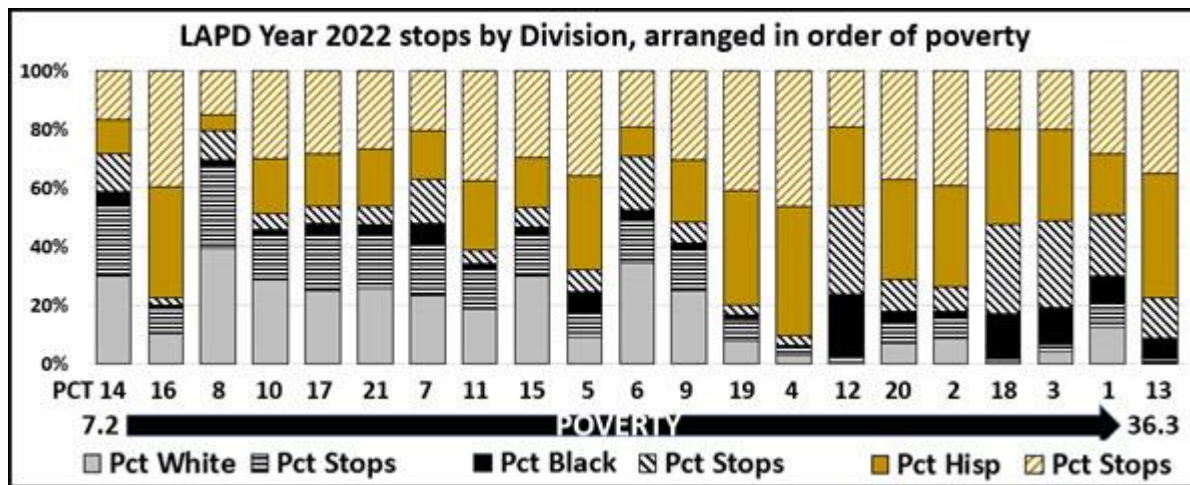


Well, 2022 RIPA stop data is in. We again focused on LAPD. (Click [here](#) for data on when and where stops took place, and [here](#) for details about suspects, officer actions, and outcomes.) Once again, the

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numbers create concern. According to [Census ACS 2021](#) estimates, L.A.'s population is 28.1 percent White, 7.8 percent Black and 48.1 percent Hispanic. Yet only 17.1 percent of the 330,075 stops in 2022 were of White persons. Black persons were stopped at a rate about three times their share of the population, while Hispanics suffered a lesser disadvantage.

What's more, Black persons were stopped at higher rates throughout Los Angeles. This graphic, which we generated using RIPA data, arranges police Divisions by poverty, from prosperous Division 14, "Pacific", where only 7.2 percent of residents are poor, to the impoverished Division 13, "Newton", where 36.3 percent are poor:



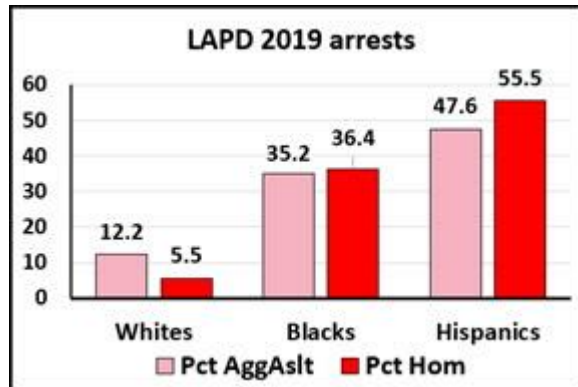
LAPD DIV.		14	16	8	10	17	21	7	11	15	5	6	9	19	4	12	20	2	18	3	1	13
HISP	% STOPS	28	74	24	52	47	46	35	65	55	66	34	55	75	85	38	56	69	38	37	46	69
	% POP	20	71	9	32	30	34	29	41	31	60	18	39	71	82	53	52	61	62	58	33	84
BLK	% STOPS	22	5	16	9	10	11	25	8	12	14	33	12	6	6	59	17	15	59	55	33	27
	% POP	8	2	4	4	6	5	12	3	5	14	6	5	3	1	42	6	4	29	23	15	14
WHI	% STOPS	41	16	45	25	32	32	30	23	26	15	26	25	12	5	3	10	12	2	5	14	2
	% POP	51	20	65	50	42	45	40	33	55	17	63	46	15	6	2	11	16	2	8	20	1

(Division pop. figures are posted on each [Division's homepage](#). Racial and ethnic distributions are from the [LAPD I.G.'s 2019 report](#). Division poverty was estimated by overlaying the [city ZIP Code map](#) on the [LAPD Division map](#) and averaging [Census poverty scores](#) across ZIP's. Division Part I crime rates, mentioned below, are from the [L.A. City hub](#).)

RIPA mentions that Black persons were often stopped outside their area of likely residence. For example, White persons comprise 51 percent of the residents of prosperous Pacific Division but figured in only 41 percent of stops. Meanwhile Black persons, who only form eight percent of that Division's population, accounted for twenty-two percent of stops. Indeed, White persons seemed to enjoy a modest

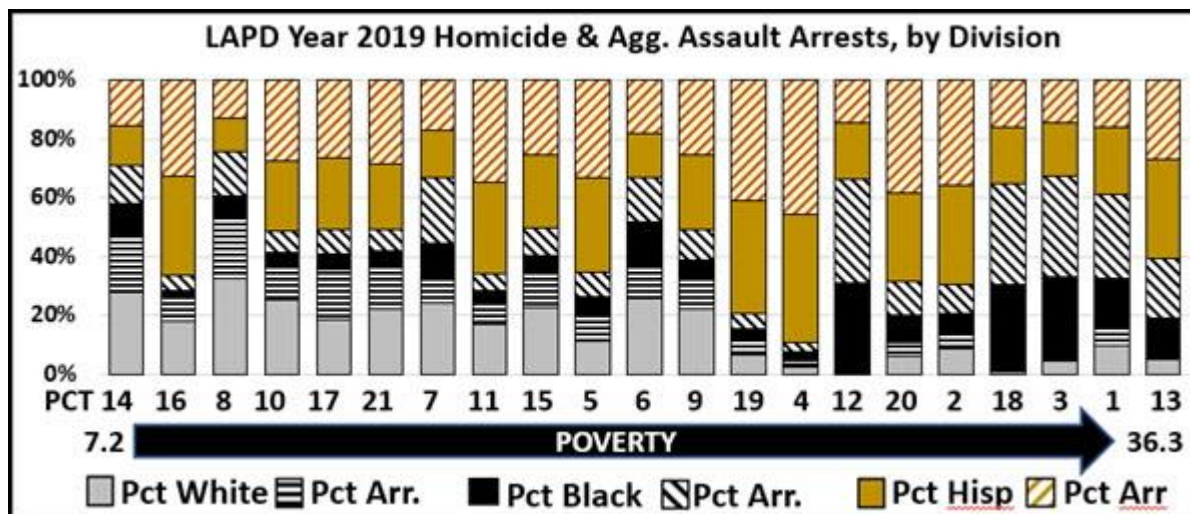
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advantage throughout. As poverty scores increase, their proportion of the population, and of stops, plunges. (One exception, Div. 1, “Central”, which covers L.A.’s downtown, has a small resident population but experiences a large influx during the daytime.)



RIPA doesn’t collect data about crimes or arrests. For that we turned to the city’s [public safety portal](#). On the left is a graphic that depicts the racial and ethnic distribution of LAPD arrests for aggravated assault and homicide in 2019 (the most recent year available), when 1,447 persons were arrested for homicide and 16,839 for aggravated assault. The disparities are obvious.

Our next graphic arranges things as we did for stops:



LAPD DIV.		14	16	8	10	17	21	7	11	15	5	6	9	19	4	12	20	2	18	3	1	13
HISP	% ARR	32	71	27	59	51	57	36	72	55	67	41	55	80	89	29	70	72	32	29	32	56
	% POP	28	74	24	52	47	46	35	65	55	66	34	55	75	85	38	56	69	38	37	46	69
BLK	% ARR	27	12	31	16	15	14	47	12	19	17	34	22	10	7	70	21	19	68	69	57	42
	% POP	22	5	16	9	10	11	25	8	12	14	33	12	6	6	59	17	15	59	55	33	27
WHI	% ARR	41	18	42	25	33	29	17	16	26	17	25	23	11	4	1	9	10	0	2	12	2
	% POP	57	40	68	54	36	44	51	35	49	23	58	47	13	5	1	11	18	2	10	19	10

Black persons seem substantially over-represented as alleged perpetrators of violent crimes, and particularly in the poorer districts. But there’s lots of numbers. So we turned to the “*r*” (correlation) statistic. (It ranges from zero to one. Zero means no relationship between variables; one reflects a perfect lock-step association. Positive *r*’s mean that

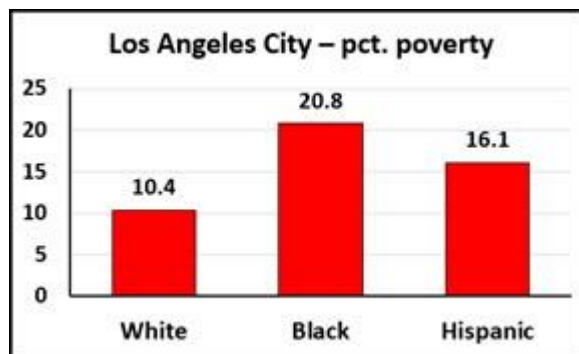
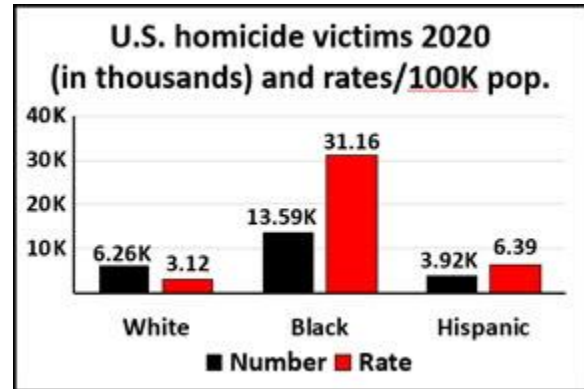
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variables move up and down together; a negative [-] r indicates that they travel in opposite directions.)

	Poverty	PctWhite	PctBlack	PctHisp	Stop rt	Pt. I cr. rt	H/Agg rt
Poverty		-0.76	0.51	0.22	0.63	-0.22	0.57
Pct White	-0.76		-0.42	-0.43	-0.43	0.96	-0.43
Pct Black	0.51	-0.42		-0.56	0.34	0.25	0.41
Pct Hisp	0.22	-0.43	-0.56		-0.01	-0.12	-0.07
Stop rt	0.63	-0.43	0.34	-0.01		0.95	0.97
Pt. I cr. rt.	-0.22	-0.05	0.25	-0.12	0.95		0.96
H/Agg rt.	0.57	-0.43	0.41	-0.07	0.97	0.96	

Consider the relationship between Pct. White and Poverty. That strong negative r (- .76) means that as the proportion of White residents in a Division increases, percent poor consistently declines. In contrast, Pct. Black's r with Poverty, a relatively strong [+].51, indicates that Black residents and poverty increase and decrease pretty much in unison. There's a similar relationship, but of lesser strength, between Pct. Hispanic and Poverty. And note that strong "positive" relationship between Poverty and Stop rates. Its r , a robust [+].63, would yield highly visible, real-world consequences at poverty's higher levels, say, from Div. 12 ("77th. Street") on.

As one might expect, Part I crimes and Homicide/Agg. Assault rates are in near-perfect sync. Ditto, the relationship of each with stop rates. Maybe LAPD's focus really *was* on high-crime areas. But put stops aside. What's most troubling is that as the proportion of Black residents increases, a Division's inhabitants become considerably more likely to fall victim to violent crime. Indeed, the (+) .41 between Pct. Black and H/Agg. is a virtual opposite to the -.43 between Pct. White and H/Agg. That's common throughout the U.S. Grab a look at the right graphic, which displays [CDC's 2020 national homicide victimization rates](#).

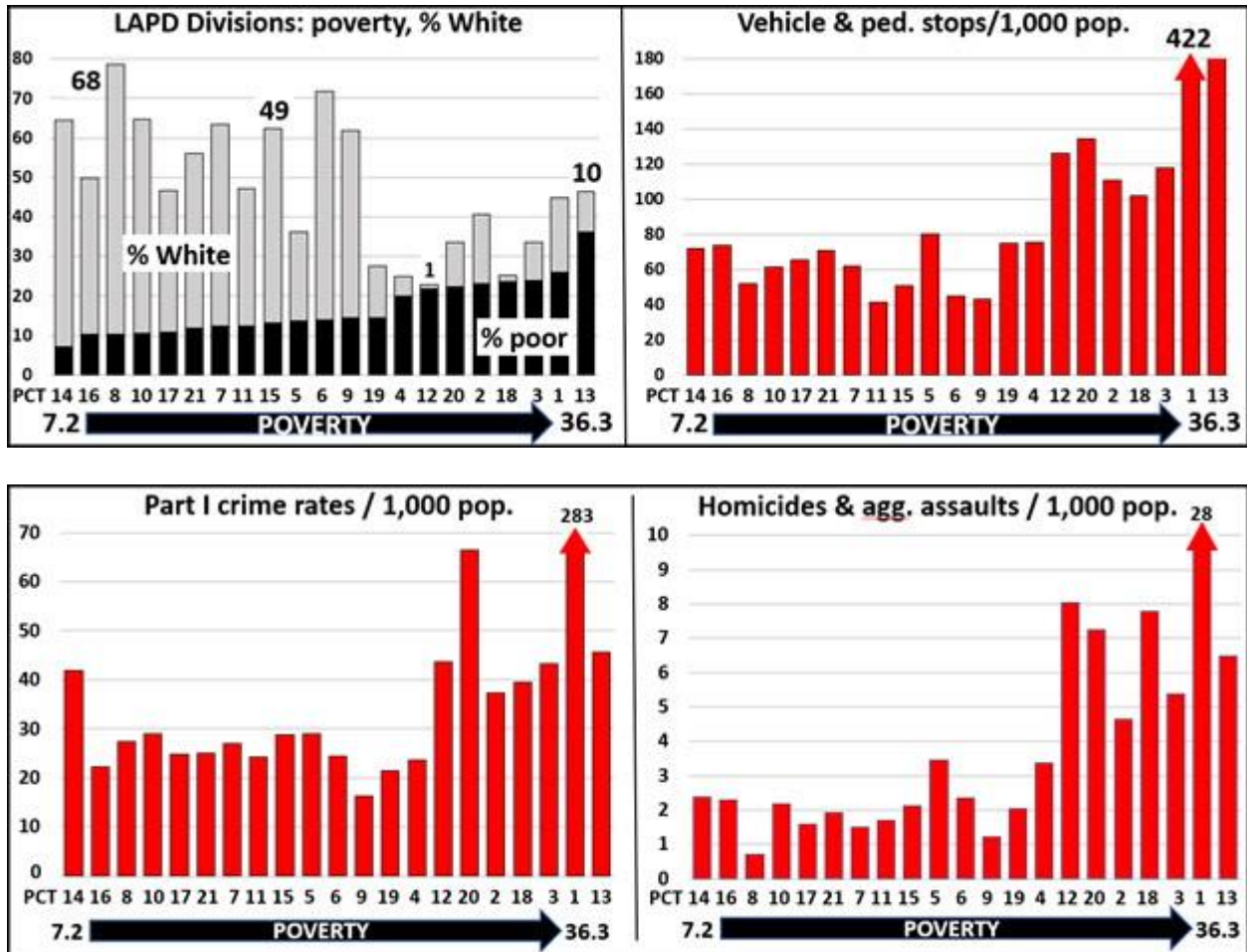


Police Issues has always rejected the notion that race and ethnicity "cause" crime and violence. Instead, we've consistently laid the blame on poor economic conditions. And even in supposedly prosperous Los Angeles, [material wealth is sharply distributed according to skin color](#). Just consider the

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challenges of living in an economically-challenged neighborhood: poor education, lousy child care, a lack of marketable skills, substandard housing, and an absence of health care and other critical supports. (For a “primer” check out “[Fix Those Neighborhoods](#)”. It’s part of our “[Neighborhoods](#)” special section, which offers a wealth of posts on point.)

Let’s bring it together. Set aside ideologically-infused narratives. Or even our well-intentioned try at objectivity. Share these two graphics with your friends. They really *do* say it all:



p.s. As we were putting the finishing touches on this piece, [Memphis](#) happened. An indisputable abuse by some clearly out-of-control cops, and a man died. We’ve got an approach that might prove of value. Stay tuned!

Posted 5/13/12

DOJ V. SHERIFF JOE

On a mission to quash illegal immigration, a mercurial Arizona sheriff tangles with the Feds

By Julius (Jay) Wachtel. “Today, the Department of Justice did something it has done only once before in the 18-year history of our civil police reform work; we filed a contested lawsuit to stop discriminatory and unconstitutional law enforcement practices.” That’s how Assistant Attorney General Thomas Perez [prefaced the announcement](#) that placed Phoenix Sheriff Joe Arpaio’s preoccupation with illegal immigrants under the Federal microscope.

In a detailed 32-page [civil complaint](#) filed Wednesday, the Feds charged Maricopa County, its Sheriff’s Office and Sheriff Joe Arpaio with violating the [1964 Civil Rights Act](#) by engaging in law enforcement and correctional practices that discriminate against Latino residents and against Latino inmates, and for retaliating against their critics.

Graphic depictions of abuse begin on the second page:

MCSO jail employees frequently refer to Latinos as “wetbacks,” “Mexican bitches,” and “stupid Mexicans.” MCSO supervisors involved in immigration enforcement have expressed anti-Latino bias...distributing an email that included a photograph of a Chihuahua dog dressed in swimming gear with the caption “A Rare Photo of a Mexican Navy Seal.”

According to the complaint, deputies targeted Latinos, using pretexts to stop vehicles and search their occupants:

...officers stopped and detained a Latino driver and Latino passengers for a human smuggling investigation because they “appeared to be laying or leaning on top of each other” and “appeared, disheveled, dirty, or stained clothing [sic].” However, MCSO pictures taken at the scene show neatly dressed passengers sitting comfortably in the rear of the vehicle.

...officers stopped a car carrying four Latino men, although the car was not violating any traffic laws. The MCSO officers ordered the men out of the car, zip-tied them, and made them sit on the curb for an hour before releasing all of them. The only reason given for the stop was that the men’s car “was a little low,” which is not a criminal or traffic violation.

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Females weren't immune. One Latina motorist, a U.S. citizen and five months pregnant, was allegedly roughed up then left to swelter in a non-air conditioned police car for a half hour. Her crime? No proof of insurance, a charge that was dismissed when she brought her insurance card to court. Another Latina, also a U.S. citizen, got into a tussle with deputies who followed her home for a "nonfunctioning license plate light." That ticket was also dismissed.

Deputies raided homes and businesses looking for illegals. But how is it that local cops wound up doing so? In 2007 the Feds contracted with selected police agencies across the U.S., including the MCSO, to enforce immigration laws on the street and in detention facilities. But two years later when its contract came up for renewal Maricopa County [was stripped of its powers](#) to do anything beyond check the immigration status of inmates (it was the only agency so snubbed.)

Despite the setback Sheriff Joe kept sweeping up illegal aliens, using authority he claimed under Federal and state laws. In April 2010 his legal standing got a boost when [Arizona passed its own immigration laws](#), which among other things authorized police to detain persons whom they reasonably suspected were illegally in the U.S. However, a [Federal district judge soon enjoined this](#) and other key provisions of the law. [Her decision](#) was promptly affirmed by the Ninth Circuit.

Arizona appealed and the Supreme Court granted certiorari. [Oral arguments were heard April 25](#). Analyzing the situation for the SCOTUS blog, Lyle Denniston reported that the Supremes are likely to grant police considerable leeway in dealing with possible illegal aliens, including temporarily detaining them for investigation. But creating parallel state offenses that punish illegal status, as Arizona has done, will probably not be allowed.

In December 2011 Arpaio's difficulties with DOJ [led to the revocation of his jailers' authority](#) to check immigration databases. That's now become the purview of ICE agents assigned to the jails.

No matter how the Supreme Court rules, the limits imposed on the MCSO will likely hold until the lawsuit is resolved. Sheriff Joe must still respond to claims that "inadequate policies, ineffective training, virtually non-existent accountability measures, poor supervision, scant data collection mechanisms, distorted enforcement prioritization, an ineffective complaint and disciplinary system, and dramatic departures from standard law enforcement practices" created a culture of bias and indifference towards Latinos.

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But Maricopa County's chief law enforcement officer isn't one to give up easily. Only one day before DOJ dropped the hammer Sheriff Joe released a [17-page pamphlet](#). It features a list of improvements in management, training, supervision and discipline that would ostensibly prevent abuses, enhance accountability and improve community relations. Here are a few:

- Establish and maintain specific bias-free law enforcement and detention services/policies
- Standardize a method of reporting policy deficiencies including opportunities for public input
- Provide mandatory stand-alone training for all employees relating to bias-free law enforcement and detention services
- Develop and implement policies specific to bias-free law enforcement and detention services
- Enhance and mandate training focused on bias-free practices
- ...enhance communication overall and build language competencies for effective communication with those of limited English proficiency...
- Provide and maintain training on decision-making, conflict resolution, and use of force options consistent with best industry standards
- Standardize procedures for receiving, investigating, tracking, and reporting complaints of excessive use of force
- Seek citizen feedback and evaluation through surveys or other similar methods to assess Sheriff's Office performance
- Implement an early intervention/recognition system to minimize the potential for escalation of employee behavior into incidents involving serious misconduct and promote employee development
- Implement training on the rights and actions of members of our community who witness, observe, record and/or comment on law enforcement actions, including stops, detentions, searches, arrests, or uses of force that are in accordance with the United States and Arizona Constitutions and the laws
- Review and revise, as needed, policies and procedures for receiving and investigating complaints to ensure fair and appropriate responses
- Maintain clear prohibitions against and severe consequences for retaliation
- Provide easy access for public complaint, comment and commendation about Sheriff's Office personnel
- Develop a system to track comments and complaints, analyze and report results, issues or trends

DOJ's Thomas Perez [quickly rejected Sheriff Joe's proffer](#). "This too-little, too-late document, cobbled together at beyond the eleventh hour, is no substitute for meaningful

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reform.” One suspects that Perez wasn’t referring to the brochure’s content, which is a fairly comprehensive summary of best practices in police management. What must really miff DOJ is that Sheriff Joe refuses to accede to the usual remedy – a consent decree and a court-supervised outside monitor. Instead he continues to insist that he’s the sheriff and that any and all outside inquisitors must [report directly to him](#). And what does he offer as a peace token? A pamphlet!

One thing’s for sure. If deputy behavior was indeed scandalous – and it seems clear that Sheriff Joe’s obsession with immigration enforcement led him and his staff seriously astray – it will take a lot more than rewriting the rule book and increasing the sergeant-deputy ratio to fix things. True reform requires an unwavering commitment from the top. But Sheriff Joe’s dismissive attitude and combative style send out all the wrong signals. It will be difficult – likely, impossible – to implement true change with him in place, and that’s all the more so should the Supreme Court rule in Arizona’s favor.

DOJ obviously realizes that having Sheriff Joe as the go-to guy for his agency’s transformation is like letting the fox guard the chicken coop. That’s why they finally, and most reluctantly, sued.

We’re eager for round two.

Posted 11/13/07

(EX-)COMMISH LEAVES CARONA IN THE DUST

How law enforcement executives are selected is crucial

By Julius Wachtel, (c) 2010

With his indictment for secretly pocketing more than a half-million dollars from a mob-tainted waste disposal firm and a New York City developer, former Big Apple police commissioner Bernard Kerik has bumped our very own Sheriff Mike Carona from the #1 spot in this year's allegedly-crooked-top-cop sweepstakes.

According to the Feds, Kerik's income tax bloopers date back to 1999 when he was in charge of the New York City Department of Corrections. Kerik, a former NYPD detective, was appointed to this position by Rudy Giuliani after serving as the Mayor's driver/bodyguard. Pooh-poohing doubts about Kerik's qualifications, Giuliani then promoted him to be the city's Police Commissioner, a post the protégé held until December 2001 when his benefactor left office.

And there was more. Three years later, under pressure from -- yes -- Giuliani, President Bush nominated Kerik to head the Department of Homeland Security. Kerik had to withdraw when word leaked that he had employed an illegal alien as a nanny. Sadly, he didn't get his application form back, leading to another count in the indictment, accusing him of perjury for not disclosing his under-the-table earnings.

What are Kerik's prospects? His ability to mount a convincing defense is complicated by his 2006 plea of guilty to misdemeanors for leaving out a loan and a gift from the same sources cited by the Feds on his New York City conflict-of-interest reports. Despite everything, his friendship with Giuliani seems unaffected, and to this date the Presidential contender dismisses his buddy's infractions as harmless oversights.

The selections of Kerik and Carona for high-level law enforcement jobs reflect an appalling unconcern for the skills and experience required by such lofty positions. Both were plucked from obscurity: Carona, by the Orange County Republican Party; Kerik, by an influential politico. Neither had to submit to questioning by independent experts. And neither endured a rigorous pre-employment investigation (well, not until Kerik got tripped up by Homeland Security.) And just what were their backgrounds? Kerik had been a street cop and detective. He lacked a bachelor's degree, a requirement for promotion to NYPD management slots. Before running for Sheriff, Carona's entire

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career was served in the Orange County Marshal's office, a now-defunct agency whose functions were limited to process service and courtroom security. (Carona's lack of law enforcement experience was pointedly noted in the campaign bio of his rival, Santa Ana Police Chief Paul Walters: "27 years of real experience, leading real cops, and fighting real crime".)

It's true that exhaustive nationwide searches, the normal practice when hiring a major city chief, don't always produce ideal results. Consider, for example, Willie Williams, whose tenure at LAPD many think a disaster. Still, rigorous screening is vastly preferable to its alternative. After suffering through the abortive nomination of Harriet Miers to the Supreme Court and the disastrous appointment of Alberto Gonzalez as Attorney General, Americans are ready for a President who doesn't need to pack his chums around him to feel secure.

Are you listening, Rudy?

Posted 7/18/10

EXTREME MEASURES (PART II)

Turning cops into immigration agents invites misconduct and corruption

By Julius Wachtel, (c) 2010

Everyone knows that they can be stopped by police for a traffic infraction. What many don't realize is that officers can detain them at length for other reasons, and with far less justification than is required for an arrest. Barring a last-minute decision by a Federal judge, Arizona cops will soon be wielding that authority in an unprecedented way.

[A.R.S. § 11-1051B](#), which takes effect July 29, 2010 provides that in any "lawful contact stop, detention or arrest made by a law enforcement official...in the enforcement of any other law or ordinance of a county, city or town or this state where *reasonable suspicion* exists that the person is an alien...unlawfully present in the United States, a reasonable attempt *shall* be made, when practicable, to determine the immigration status of the person, except if the determination may hinder or obstruct an investigation" (emphasis added.)

There's nothing new about "reasonable suspicion." More than forty years ago, in the landmark case of [Terry v. Ohio](#), the Supreme Court authorized officers to temporarily detain persons (and, if warranted, to pat them down for weapons) if there was reasonable suspicion that they had committed a crime or were about to do so. However, officers can't simply rely on conjecture; what's needed are "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion."

From hot-spot policing to anti-gun patrols, stop and frisk has become a key component of the police arsenal. Since *Terry* a series of Supreme Court ([U.S. v. Sokolow](#), 1989; [U.S. v. Arvizu](#), 2002) and circuit court decisions have continued to grant police considerable leeway in deciding when to make a stop.

As we suggested in "[Too Much of a Good Thing?](#)" the inherent subjectivity of reasonable suspicion stops make them ripe for abuse. Yet until now they've always been directed at ordinary crime and ordinary criminals, things that police know something about. So one can imagine what [Arizona POST](#) faced when it was charged with training the state's cops to take on the role of border police.

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POST's hastily-produced [90-minute instructional DVD](#) begins with excerpts from the speech delivered by Governor Jan Brewer when she signed the controversial measure:

My signature today represents my steadfast support for enforcing the law, both against illegal immigration and against racial profiling...As committed as I am to protecting our state from crime associated with illegal immigration, I am equally committed to holding law enforcement accountable should this statute ever be misused to violate an individual's rights....

Concerns that Arizona will be accused of racism suffuse the video. Hardly a minute goes by without one of its half-dozen instructors reminding viewers that they must ignore race and ethnicity when considering whether someone is illegally present in the U.S. To underline that point lawyer Beverly Ginn brings up [U.S. v. Montero-Camargo](#), a Ninth Circuit decision which held that Hispanic appearance is irrelevant in a community – in this case, El Centro – whose ethnic composition is substantially Hispanic. (Ginn leaves out the qualification. Neither does she mention that, as the justices readily conceded, Montero-Camargo contradicts the one Supreme Court case on point, [U.S. v. Brignoni-Ponce](#), which held that “Mexican appearance” can be a factor – just not the only one – in forming reasonable suspicion of illegal entry.)

As one sits through the presentations it's obvious that applying reasonable suspicion to immigration matters is far from simple. Viewers get clobbered with a voluminous list of indicators ranging from lack of ID (when having ID is required), to voluntarily making incriminating statements, to evading police, being with known illegal aliens or at a place where illegal aliens gather, riding in an overcrowded vehicle, traveling in tandem, providing false, misleading or nonsensical information, difficulty communicating in English, nervousness, and so on.

How many factors will do? Well, viewers must figure that out for themselves. So here's a question. In two weeks, when the law is scheduled to take effect, will cops be sufficiently “trained” and “experienced” to form reasonable suspicion of illegal presence in the way that the Supreme Court intended?

Originally the bill authorized police to detain likely immigration violators on sight. Yet, having declared an illegal alien emergency and devised a jaw-dropping remedy, legislators apparently had second thoughts. What if their newly-empowered brigadoons run amok? That led them to insert a precondition: yes, suspected immigration violations must be investigated, but only within the context of a lawful detention for an extraneous, non-immigration reason; for example, while writing a ticket for a traffic infraction. One can well imagine all the pretextual stops and dishonest reporting *that* will encourage.

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Arizona's law is an ideal platform for other forms of misconduct. To be sure, police can threaten to arrest for many reasons, but even in traffic cases the legal process doesn't end with the cops. Illegal immigrants are caught in a different vise. Letting cops get mixed up in immigration matters will let the unscrupulous few take advantage to line their pockets or worse, with little chance of detection.

Knowing that every police car is a potential deportation machine must be a chilling prospect for victims and witnesses. It's one of the reasons why [Phoenix police chief Jack Harris](#) and [Tucson police chief Roberto Villasenor](#) came out strongly against the law. Naturally, their opposition will make officers think twice before enforcing the measure. That portends serious conflicts down the road, as politicians tug one way and cops another. (Villasenor appears in the POST video, apparently to reassure skeptical officers that whatever happens, the world won't come to an end.)

In our [earlier post](#) we agreed that Arizona needs better border enforcement. Yet transforming street cops into immigration police is a step into the Twilight Zone. ICE doesn't cruise city streets. Their patrols stick close to the border, where on-sight violations (think overloaded, speeding vans) are obvious and concerns about racial profiling seldom arise. Immigration agents work in teams, concentrating on workplace violations and immigrant smuggling rings. And still they get in trouble. One can only wonder what will happen should legions of cops step into the fray.

FLASH: WHITEHOUSE TORTURES MUKASEY!

For the would-be Attorney General, waterboarding isn't torture, unless it is

By Julius Wachtel, (c) 2010

Q: "Is waterboarding Constitutional?"

A: "I don't know what's involved in the technique. If waterboarding is torture, torture is not Constitutional."

Q: "'If waterboarding [is torture]', that's a massive hedge. I mean it either is or isn't. Do you have an opinion on waterboarding, which is the practice of putting someone in a reclining position, strapping them down, putting cloth over their faces and pouring water over the cloth to simulate the feeling of drowning. Is that Constitutional?"

A: [Long pause] "If it amounts to torture, it is not Constitutional."

Q: [Looking grim] "I'm very disappointed in that answer, I think it is purely semantics."

A: "Sorry."

As we know, this Orwellian conversation between Senator Sheldon Whitehouse (D - RI) and Judge Michael Mukasey took place in the chambers of the United States Senate during the second day of hearings on the judge's nomination to be Attorney General (click [here](#) to watch the video). After spending the opening day vowing the committee with promises to run an independent ship, the Judge apparently suffered an overnight conversion, leading at least two Senators to ask whether he had been warned to get back in line. Mukasey said no, but the happy talk went away and his confirmation was placed in serious jeopardy.

Realizing that the dodge was poorly received, Mukasey wrote the committee a letter explaining that it was important to avoid prejudging the lawfulness of techniques he knew little about and might well be used by American authorities in one form or another. Having already dropped a bombshell, that in his opinion the President's authority as commander-in-chief supersedes all laws short of the Constitution, his attempt to mollify the committee with double-talk only made a lousy situation worse. Did the judge really intend to keep a firewall between the White House (the building,

not the Senator) and the Department of Justice? Was he to be America's chief law enforcement officer, or the President's? Keep in mind that the job wouldn't even be vacant but for the prior incumbent's bumbling. When Alberto Gonzalez was White House counsel he was rightfully Bush's toady, for that was his role, but when he moved over to Justice one expected a lot more. The rules changed, the man didn't, and the rest is history. Would Mukasey be a re-run?

Let's rewind. Say that Mukasey has another epiphany and shows up ready to declare every interrogation technique short of back rubs illegal. Was he right in the first place? Should he insert himself into a process that might best be left for the courts to decide? That is a resounding...maybe. The Attorney General's obligation is twofold: to enforce the law, and to supervise its agents of social control. If a practice is so well defined (like, by Senator Whitehouse) that it cannot be but torture, we need to know that Mukasey is smart enough to recognize it and brave enough to say so, no matter whose ox gets gored. Unlike the White House counsel, the Attorney General's primary loyalties are not to individuals or agencies but to the Constitution and the laws of the land. When the writer was a Federal agent he was sued twice (both times unsuccessfully) by criminal defendants for alleged civil rights violations. Although the AG came to my defense, he was not obligated to do so, and had he deemed my actions sufficiently egregious I could have been prosecuted!

Back to the present. Mukasey has a chance to redeem himself, but after all the "water" that's flowed under this bridge it's hard to picture how. Because of the dreadful consequences should they do the wrong thing, our law enforcement officers must be more than technicians -- they must be moral agents as well. Should we trust someone who hides behind legalese to lead our pre-eminent agency of justice? Having heard all his evasions, what kind of example would he be? Let the good judge go back to writing contracts, drafting wills or just sunning himself on the beach, thinking about what might have been. Or rather, what *he* might have been.

Posted 5/18/08

FOLLOWING THE RULES OVER A CLIFF

Legal ethics aren't an end: they're a means

By Julius Wachtel, (c) 2010

Imagine that you're a defense attorney. What do you do if your client, who is facing murder charges, tells you that he did it and that his alleged accomplice, who has a different lawyer, wasn't involved?

"I never told nobody that I was an angel," says [Lee Hunt](#), who has insisted for twenty-two years that he is innocent. In 1986 Hunt and Jerry Cashwell were separately tried and convicted for the execution-style killings of a North Carolina man and his wife, supposedly over a drug deal gone sour. Evidence against Hunt consisted of testimony by two witnesses who got deals on unrelated cases and an FBI forensic scientist who matched the lead of bullets removed from the victims to an ammunition box tied to Cashwell.

Cashwell got the death penalty; Hunt, life in prison. What Hunt's jurors didn't know was that his alleged accomplice told his lawyer that he shot the victims during a quarrel that had nothing to do with drugs. Hunt, he insisted, wasn't involved -- he wasn't even there. But to protect Cashwell, his lawyer kept mum.

Think that's rare? In 1982 [Alton Logan](#) was convicted of killing a security guard at a Chicago-area MacDonald's. He was identified by three witnesses who picked him out of a photo lineup. There was no other evidence. Meanwhile, a man named Andrew Wilson who was awaiting trial for killing two police officers and had no connection to Logan told his lawyers that he was the one who murdered the guard. Deciding that they couldn't break Wilson's confidence, attorneys Dale Coventry and Jamie Kunz told no one. Luckily, Logan got life instead of the chair.

In 2003, seventeen years after Lee Hunt was unjustly locked up, Cashwell, the real double-murderer, told his attorney that "he felt bad about what happened to [Hunt]." Not long after he committed suicide in prison.

In 2007, twenty-six years after Alton Logan was unjustly locked up, Wilson, the security guard's real killer, died in prison from natural causes.

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After Cashwell died his lawyer came forward. It did little good. Not only was Hunt's bid for freedom denied, but the judge referred the lawyer to the State bar for violating his dead client's confidence. (The complaint was recently dismissed.) Hunt's only remaining hope lies with the State Supreme Court.

Logan had better luck. Wilson's lawyers had their client sign a waiver allowing them to reveal his story when he died. Based on this and other factors a judge set aside Logan's conviction and released him on bail. Amazingly, Logan's [current lawyer](#) agrees that the cop-killer's attorneys were right to keep quiet. "I wish there had been a way this could have come out earlier," he said. "Under the...Illinois ethics code, I think the only way would have been if [the real killer] had released his lawyers earlier." Logan's new trial date hasn't been set.

Let's look at this "ethics code" that lawyers seem so keen to obey. Are its rules really that strict? Here's what the Illinois Supreme Court's Rules of Professional Conduct say about [confidentiality](#):

Rule 1.6. Confidentiality of Information

(a) Except when required under Rule 1.6(b) or permitted under Rule 1.6(c), a lawyer shall not, during or after termination of the professional relationship with the client, use or reveal a confidence or secret of the client known to the lawyer unless the client consents after disclosure.

(b) A lawyer shall reveal information about a client to the extent it appears necessary to prevent the client from committing an act that would result in death or serious bodily harm.

(c) A lawyer may use or reveal:

(1) confidences or secrets when permitted under these Rules or required by law or court order;

(2) the intention of a client to commit a crime in circumstances other than those enumerated in Rule 1.6(b); or

(3) confidences or secrets necessary to establish or collect the lawyer's fee or to defend the lawyer or the lawyer's employees or associates against an accusation of wrongful conduct....

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Illinois' rules are commonplace. Lawyers may breach a confidence with their client's consent. Lacking that, they may only violate confidentiality to prevent a new crime from occurring (mandatory disclosure if death or serious bodily harm may result, optional otherwise), to help collect their fees, or to defend against a lawsuit.

On first blush it seems that the bad guys' lawyers were right to keep mum. Yet confidentiality doesn't trump everything. [Other rules](#) forbid attorneys from making "a statement of material fact or law to a tribunal which the lawyer knows or reasonably should know is false." Lawyers must also disclose to the court "a material fact known to the lawyer when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client." Surely there's some wiggle room in all this!

But let's not quibble. If we must cross a double-yellow to avoid a horrible accident, we do it. If we must bend a rule to avoid consigning an innocent to decades of imprisonment, we do it. Ethical rules are supposed to further justice, not frustrate it. They're *means*, not *ends*. There are plenty of talented lawyers who could put their heads together and craft solutions that would keep the legal system on an even keel while helping avoid the calamities that befell Lee Hunt and Alton Logan.

Wrongful convictions have shaken citizen confidence in the criminal justice system. And now we know that the problem is even worse than it appears, with the system enshrining behavior that inevitably leads to corrupt outcomes. How can we in good conscience ask judges and jurors to render decisions while hiding from them the fact that they might be dooming an innocent person?

When interviewed by "60 Minutes" one of the cop-killer's lawyers said that "there may be other attorneys who have similar secrets that they're keeping." That's a frightening thought. For humanity's sake, would they please speak up?

Posted 9/27/21

FULL STOP AHEAD

Floyd and the virus upend policing. Some cops react poorly.



For Police Issues by Julius (Jay) Wachtel. Rebelling against shots was once consigned to society's fringes. No longer. Two months ago, as municipalities across the U.S. struggled with their vaccination *refuseniks* Southern California's progressives stepped to the plate. On July 27th. [Mayor Eric Garcetti and City Council President Nury Martinez announced](#) that Los Angeles city employees would be required to "either submit proof of [COVID-19] vaccination or a weekly negative test." [An ordinance to that effect](#) was enacted in August. Approved on a 13-0 council vote, it requires that city employees be fully vaccinated by October 19 "unless approved for an exemption...as a reasonable accommodation for a medical condition or restriction or sincerely held religious beliefs." Exempted employees, however, will be required to submit to weekly testing.

San Diego soon followed [with a similar law](#). Its deadline for employees to get vaccinated or exempt is November 2.

Well, that's as it should be. Vaccination has long been an integral part of a "[social contract](#)" which calls on citizens to give up certain freedoms in exchange for the benefits they accrue from society and the state. So job done, right? Not exactly. You see, it seems that in both Los Angeles and San Diego an aversion to (literally) roll up one's sleeves "[infected](#)" [a goodly number of emergency responders](#). As of the first week of September, 53 percent of Los Angeles' police officers and 41 percent of its firefighters [reportedly lacked their full complement of shots](#). And many remain ill-disposed to get poked. [Insider data](#) obtained by KNX-1070 radio reveals that over 3,000 LAPD employees – about one out of every four in a force of 9,000 officers and 3,000 civilians – intend to seek exemptions.

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LAPD empl	Fully vaccd	Partly vaccd	Not vaccd	Unk	Wants relig exempt	Wants medical exempt
12315	6377	164	1918	3856	2651	368

What's more, some aren't just asking. With assistance from [a legal nonprofit](#) that peddles the notion that vaccination mandates "are unreasonable and impede on the religious rights of individuals," [six LAPD employees](#) filed a [Federal lawsuit](#) that seeks to block the ordinance. Calling it an "overbroad and unwarranted intrusion into the confidential medical conditions of Plaintiffs and thousands of employees," they argue it violates "fundamental Constitutional rights to bodily integrity, including, especially, to be free from unconsented to or coerced medical treatment."

Coercion seems the key concern. According to the plaintiffs, the vaccines' emergency-use approval affords individuals the choice "to accept or refuse administration." But the ordinance makes full vaccination "a condition of employment." So police employees really have no choice. To keep their jobs they must either submit to poking or, should they gain an exemption, endure "onerous" and "intrusive" weekly testing. Several plaintiffs revealed that they've had COVID, thus acquired a natural immunity that's supposedly better than what vaccination offers. Yet the ordinance ignores this advantage. It's also alleged that the city failed to outline a detailed process and allot "a reasonable time" to prepare and submit requests for exemption.

Ditto San Diego. [In an online rant](#), a cop urged his colleagues to "stand up for our God given freedoms" and reject the mandate. Nearly half of San Diego's 2,000 police officers [remain unvaccinated](#). Ninety percent who responded to a union survey oppose mandatory shots, and sixty-five percent indicated they would consider resigning if vaccination was required.

L.A.'s powerful officer union, the Los Angeles Police Protective League, seems to support officer vaccination. However, it worries that enforcing the ordinance would lead to even more cops leaving and could have a "debilitating and catastrophic impact" on public safety. Instead of shots, [it suggests that weekly testing](#) would create "an appropriate balance" between personal rights and public health. Same-o, same-o in San Diego, whose police union has drawn a "line in the sand against mandatory vaccinations." But its president, Jack Schaeffer, says that the alternative of weekly testing is fine. So far both cities seem to be sticking with their deadlines. So we'll see.

To avoid such battles other communities [have considered fully exempting](#) the police. After [warnings from the police union](#) that a mandate would "exacerbate an already

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dangerous staffing crisis,” [Portland moved to exempt](#) officers from a regulation requiring that city workers get poked. Cincinnati, which is supposedly “struggling to retain and attract enough police officers,” [is leaning towards the substitute](#) of weekly testing. Struggles between cities and their cops are also underway in San Jose, New York City and Chicago, whose police union leader [likened mandatory vaccination to the Holocaust](#). (He apologized.)

Yet doesn’t the “social contract” cut both ways? Officers chronically complain about citizen non-compliance. So shouldn’t the badge-carriers set the example? Problem is, vaccination mandates are coming at a time of severe disruption to the police workplace. [George Floyd’s killing](#) brought on a flurry of rulemaking that sought to limit officer discretion and insure that cops got penalized for the blunders they *did* make. Consider, for example, the “[George Floyd Justice in Policing Act](#)”. Although it never made it out of the Senate, the proposed Federal law would have abolished the defense of qualified immunity, which protects officers from private lawsuits. It would have also required that jurisdictions receiving Federal law enforcement funds adopt Federal use-of-force standards and participate in a national police misconduct registry.

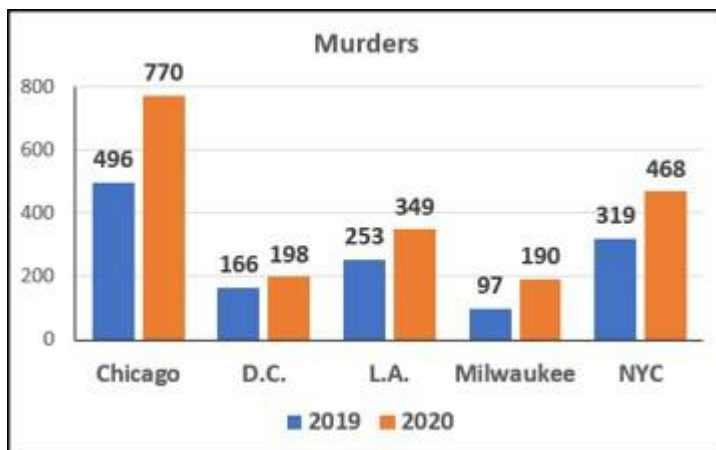
Meanwhile, [California State Senate Bill 2](#) sits on Governor Gavin Newsom’s desk. If he signs it, State authorities could investigate alleged police wrongdoing anywhere in the Golden State and, should they find misconduct, revoke officers’ peace officer status – meaning, put them out of a job – no prosecution necessary. According to the measure’s author, a Los Angeles-area State Senator, “we’ve seen 150 years of police policing themselves and it doesn’t work.” There have even been moves to do away with police departments altogether. Minneapolis voters will have a chance this November [to “replace” their police force](#) “with a Department of Public Safety which could include licensed peace officers (police officers) *if necessary...*” (emphasis ours).

“Replacing” cops, though, seems an incomplete remedy. What the Minneapolis initiative wouldn’t “replace” is criminals. If it takes effect – and we doubt it will – and if crime keeps taking place – and we’re sure it will – *someone* will still have to interact with suspects and witnesses, gather evidence and make arrests. They’ll quickly discover what their badge-carrying forerunners well knew: policing doesn’t come close to providing the clarity that practitioners of more peaceable occupations take for granted. Is that citizen reaching for a cell phone or a gun? Would being “nice” gain compliance or encourage flight? Essays in our “[Compliance and Force](#)” section frequently refer to the reluctance by some members of the public to voluntarily comply with officer orders and requests. Check out “[Dancing With Hooligans](#).” It’s somewhat colorfully subtitled “For street cops every day’s a reality show. And that reality is often unpleasant.”

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No, officers don't always behave wisely. As we've often pointed out (e.g., "[Speed Kills](#)") rushed, "split-second" decisions can easily precipitate tragic endings. Cop personalities also vary. Some officers are chronically impulsive; others seem unwilling to accept even a smidgen of risk. Still, deciding whom to stop or chase, when to use force, and, most importantly, how much and of what kind, requires that cops exercise considerable autonomy. Yet the trend is clearly to tighten that leash. Consider Chicago's [mammoth new foot-chase policy](#). Characterized as a "no-foot-chase policy" by the leader of the police union, the new rule was adopted without significant officer input. Coming in at (our count) 5,777 words, [three times the length of its predecessor](#), it forbids foot chases when, among other things, "the established reasonable articulable suspicion or probable cause is solely for a criminal offense less than a Class A misdemeanor (a sentence of less than one year of imprisonment) and the person...poses no obvious threat to the community or any person [or] has no obvious medical or mental health issues that pose a risk to their own safety."

Got it? Now implement that on the street!



Something else accompanied the pandemic and the killing of George Floyd. As rulemaking soared, [so did homicide](#). Milwaukee had [190 murders in 2020](#). That's supposedly "the most ever recorded" and nearly twice its previous year's toll. Notoriously violence-fraught Chicago [endured half-again as many murders in 2020](#) as in 2019 (there's been an appalling 558 so far in 2021.)

[Los Angeles](#) and [New York City](#) endured steep 2019-2020 increases as well (47 percent and 38 percent respectively). And our nation's [violence-troubled capital](#) experienced a lesser but still considerable jump of 19 percent.

Why did murder sharply increase? Some attribute it to an exit of cops. "[Elevated police turnover following the summer of George Floyd protests](#)," a recent article in *Criminology & Public Policy*, confirmed that an exit did occur. We were able to readily gather the number of sworn officers pre- and post-pandemic for Milwaukee, New York City and Los Angeles. [Data for 2019 came from the UCR](#). Since its 2020 release is not yet in, we used city-linked websites for more recent numbers. (Click [here](#) for Milwaukee's 2020 numbers, [here](#) for New York City's 2021 numbers, and [here](#) for L.A.'s 2021 numbers.) Sworn employee staffing modestly declined in each city; all were in the

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five-percent range. Milwaukee reported 1832 sworn officers in 2019 and 1738 in 2020 (-5.1%). New York City went from 36,563 in 2019 to 34,770 as of September 2021 (-4.9%). Los Angeles, which had 10,002 officers in 2019, reported 9,432 as of August 2021 (-5.7%).

Cause and effect, right?

Well, not so fast. While the “elevated turnover” article *did* mention that “fewer officers per capita have been linked to higher crime rates,” it didn’t probe further. And to complicate things, another article in the same issue, [“Crime, quarantine, and the U.S. coronavirus pandemic”](#) reported that property crimes, drug crimes, robberies and aggravated assaults went *down*. At some point, a reduction in sworn staff would likely lead to more crime, of whatever kind. But whether a relatively small decline (five percent) would precipitate a spike in murder seems questionable. After all, the ninety-five percent of cops who remain are still doing their jobs, right?

Well, not so fast. To be sure, intensively patrolling afflicted areas to discourage gunslinging and other loutish behavior had become a popular police practice. [“Geographically focused”](#) and [“hot spots”](#) have been deemed successful at preventing crime by both NIJ and independent scholars ([“Hot spots policing and crime reduction”](#), *Journal of Experimental Criminology*, 2019). Unfortunately, when these approaches are implemented, productivity pressures and the uncertainties of the street can create an abundance of “false positives” – meaning that lots of citizens get needlessly hassled ([“Turning Cops Into Liars”](#) and [“Driven to Fail”](#)). High-crime areas are often predominantly populated by citizens of color, so they bear the brunt of these errors ([“Scapegoat I”](#) and [“Scapegoat II”](#)). Bottom line: by the end of the last decade, blowback over alleged racial profiling led police departments – New York, Chicago and Los Angeles, to mention three – to throttle back. That easing became even more pronounced after George Floyd.

Something else might also be at work. In a recent assessment, the typically “progressive” *New York Times* blamed an increase in the Big Apple’s gun violence [on a purposeful slowdown by disaffected cops](#). If so, it wouldn’t be the first time that officers have held back. Intense criticism and heightened oversight brought on by controversial shootings propelled “police slowdowns” in Baltimore, Chicago and Minneapolis during the mid-2010’s (see [“Police Slowdowns”](#)). Now consider all the negative, anti-police sentiment that followed the killing of George Floyd. All those new, complex rules. Really, one would expect cops to become at least somewhat disenchanted. Who wouldn’t?

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And let's look beyond police behavior. "[Has COVID-19 Changed Crime? Crime Rates in the United States during the Pandemic](#)," a recent article in the *American Journal of Criminal Justice*, suggests that increased stress and reduced personal mobility brought on by the virus created a "rampant opportunity for intimate partner violence, serious batteries, and homicides." So throw that in as well. Somewhat fewer, decidedly less-enthusiastic cops applying less-than-optimal strategies at a time when citizens are going bonkers. Are we closer to explaining the severity of the murder spike?

Well, back to the future! [LAPD recently brought back that "bad old" hot spots approach](#) for another go-round. Ditto, [Chicago](#) and [New York City](#). And we're happy that a proven approach is getting a second look. Applying effective strategies while assuring that targets are selected with great care is a perfect mission for those highly autonomous public servants we call "cops." As to that, we cut them no slack. While the "exchange agreement" entitles them to certain benefits – like a good salary – it doesn't give them the right to "slow down" or otherwise slough off. Police officers have awesome responsibilities. They must strive to do their best no matter how often managers and public officials change their ever-loving minds. In the end, if a cop can't do their daily best on the street, it really is best that they resign.

Posted 6/9/20

GOLD BADGES CAN BE THE PROBLEM

“Ordinary” cops often know what’s best. They should act on it.



For Police Issues by Julius (Jay) Wachtel. It wasn't Buffalo's best weekend. On Saturday evening, May 30, protesters besieged Niagara Square, the city's government center. Vandals quickly [capitalized on the disorder](#). After setting a bail bonds van on fire they tried (albeit, unsuccessfully) to torch City Hall, [then went on a looting spree](#). Two days later an S.U.V. "barreled through" a group of cops, [striking three](#). A state trooper was seriously injured, suffering a broken leg and shattered pelvis.

Lamenting that lawful protests were being used as "a cover to loot, to vandalize, to throw rocks, to try to injure," Mayor Byron Brown [declared an 8 pm curfew](#), to remain in effect through the following Sunday. He also implored his constituents to tone it down:

Protest with a purpose, and peacefully. If you don't have a purpose to protest, if you don't have a message to protest with, stay home...please do not protest unnecessarily...the message is out. We get it. We feel it...as a black man who happens to be mayor, or a mayor who happens to be black, I feel the sting and pain of racism every single day myself.

His heartfelt message had little effect. Two days later, on Thursday, June 4, [demonstrators blockaded City Hall](#). Police cleared the front of the building, making several arrests. Hours later, as curfew began but demonstrations continued, the city's nearly-60 strong tactical team moved in on protesters who remained in Niagara Square.

That's when "it" happened again. As often happens, "it" was [captured on video](#). As Buffalo's specially-formed riot squad marched towards the non-complying delinquents, [Mr. Martin Gugino](#), a septuagenarian "peace activist" [walked right up](#) holding "what

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appears to be a phone in his right hand and a helmet in his left.” A pair of officers positioned directly in front of their commander (he’s the one with the gold badge) promptly pushed Mr. Gugino away, by all appearances not very forcefully.



Alas, the elderly activist lost his balance and fell backwards. His head forcefully struck the ground, and a pool of blood promptly formed. While the formation kept going, one of the officers who shoved him knelt to render aid. But the one with the gold badge pushed him away. After all, the old-timer wasn’t their objective. Keep moving!



Alas, the officer obeyed. Without as much as kneeling to check the man’s pulse, his superior placed a quick radio call (assumedly, to summon medical help) and quickly rejoined the team. He in effect abandoned a stricken citizen. Momentarily officers at the front encountered a picketer and handed him down the line. The “job” was on!

A couple weeks ago in “[Punishment Isn’t a Cop’s Job](#)” we commented on the “impassivity,” the “look of indifference” on that long-serving Minneapolis cop’s face as he pressed his knee against a citizen’s neck. Two rookies were present, and at least one expressed concern that maybe – just maybe – George Floyd really *couldn’t* breathe. But the training officer ignored him.

Something very much like that happened again. Why?

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Perhaps because Buffalo P.D. conflated its team with a military unit. That identity likely took hold when the riot squad was conceived and was carried over into training, then into the field. Whatever the one with the gold badge wants, they get. And when a misguided leader abandoned the seriously injured man and relentlessly kept his “troops” moving towards their objective, the silver badges obeyed. So it’s their fault, too. After all, it’s not as though the cops were under attack. They were rounding up curfew violators! There was no reason that the team couldn’t have paused or that several members couldn’t have fallen out to carry out the core function of the police – their *raison d’etre*: helping citizens, even elderly truants.

But they didn’t. That “[lack of concern](#)” (the words of State Attorney General Letitia James) deeply troubled Erie County Executive Mark Poloncarz:

The officer who pushed the individual down, I think he realized right away the gentleman was severely hurt, and it looked like he was reaching down to help him. And then his superior seemed to push him to go forward. That one action, I hope, does not destroy the efforts of so many to reach that agreement for all, that we can work together.

Bottom line: a gold badge directed his officers away from their *real* job. And as in Minneapolis, the underlings went along. In other times there might have been little blowback. Not *this* time. Exploding in the media, the incident ricocheted through a deeply polarized landscape and provoked even more antagonism towards the ruling class. As in Minneapolis, worried politicians instantly reacted. Calling the episode “fundamentally offensive and frightening,” [Governor Andrew Cuomo promptly urged](#) that the two Buffalo officers be fired and criminally investigated.

He got his wish, and more. Within one day of the episode Buffalo’s mayor suspended both officers suspended without pay. (His action led every member of the team [to resign from the unit](#).) And merely one day after that, [both cops found themselves under arrest for 2nd. degree felony assault](#). To make the case stick Erie County prosecutors will have to prove that the officers *intended* to injure a person over the age of 65 and at least ten years older. Both cops pled not guilty and were released pending their next court date, on July 20.

Well, Mr. Gugino is *seventy-five*, so the age thingy isn’t at issue. (At this writing he’s thankfully improved and is in “serious but stable condition.”) Yet we’ve repeatedly watched the video and can’t fathom how the State intends to prove “intent to injure.” Both officers were marching directly in front of (and assumedly protecting) their commander. Mr. Gugino clearly interfered with the team’s progress, and that shove to get him out of the way doesn’t seem violent. For a prosecutor to argue that the officers

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intended to make him fall and crack his skull seems a very big stretch. Beyond a reasonable doubt? No way. On the other hand, [third-degree assault](#), which can be satisfied by reckless conduct alone, is a misdemeanor. Natch, in these ideologically charged times, county prosecutors – they’re politicians, after all – are unlikely to risk being accused of favoring rogue cops. Whether jurors might, who knows?

To be sure, what the silver badges did was nonetheless troubling. [A recently updated page](#) of DOJ’s “law enforcement misconduct” section points out that officers who fail to intervene when colleagues are violating someone’s Constitutional rights can be held civilly and criminally liable. That’s not news to the police, for whom such regulations are relatively commonplace. For example, [here’s an extract from the LAPD manual](#):

210.46 EMPLOYEE'S DUTY TO REPORT MISCONDUCT. The reporting of misconduct and prevention of the escalation of misconduct are areas that demand an employee to exercise courage, integrity, and decisiveness. Department Manual Section 3/813.05 requires that when an employee, at any level, becomes aware of possible misconduct by another member of this Department, the employee shall immediately report the incident to a supervisor or directly to Internal Affairs Group. Furthermore, an employee who observes serious misconduct shall take appropriate action to cause the misconduct to immediately cease. The fact that a supervisor is present and not taking appropriate action to stop the misconduct does not relieve other employees present from this obligation.

Minneapolis has had a like policy on the books for several years:

5-303.01 DUTY TO INTERVENE (07/28/16) (A-D)

- A. Sworn employees have an obligation to protect the public and other employees.
- B. It shall be the duty of every sworn employee present at any scene where physical force is being applied to either stop or attempt to stop another sworn employee when force is being inappropriately applied or is no longer required.

Ditto, Buffalo ([General Order 2019-010, Section 6.2E](#)):

DUTY TO INTERVENE

Any officer present and observing another officer using force that he/she reasonably believes to

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be clearly beyond that which is objectively reasonable under the circumstances shall intercede to prevent the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm.

Thanks to current events, “duty to intervene” policies are being quickly adopted by agencies that lack them (for Dallas, click [here](#).) Yet our reading suggests that both existing and new policies tend to focus on use of force, not on rendering aid. They also fail to articulate that the obligation to help citizens in distress overrides supervisory directions. Of course, authorizing underlings to decide whether to obey orders is fraught with complications. Until police management experts untangle that issue, agencies ought at a minimum to abandon the military approach to police operations. They should also explicitly direct officers and supervisors to immediately stop and provide aid should someone appear to be in even moderate distress. And to remain there until, say, the medics arrive.

And yes, as far as we know, the (disbanded) unit’s leader still has that gold badge.

Posted 8/16/09

HE SAID THAT SHE SAID...*BUT DID SHE?*

Does the Cambridge PD report truthfully reflect what a witness said?

By Julius Wachtel, (c) 2010

REPORTER 1: [at 7:10] Did you ever talk to Sergeant Crowley?

WHALEN: As I said the only words I exchanged were "I was the nine-one caller" and he pointed to me and said "stay right there."

REPORTER 1: Nothing more.

WHALEN: Nothing more than that.

REPORTER 2: Did you find any inaccuracies in the police report given that he'd said he'd spoken to you directly and that you had said that they were African American...

WHALEN'S LAWYER: She's not going to answer questions about the police report.

On July 29 the woman whose 911 call precipitated the encounter between Cambridge PD Sgt. James Crowley and Henry Gates met with reporters to counter the "scorn and ridicule because of the things I never said."

Our prior post, "[When Very Hard Heads Collide](#)," analyzed the interaction between the cop and the prof. This time we're interested in what happened when Sgt. Crowley, having just arrived at the scene, contacted Lucia Whalen, the Harvard fund-raiser who made the 911 call. Let's start by examining [Sgt. Crowley's report](#), which was released a few days after the July 16 incident:

When I arrived at [17] Ware Street I radioed WCC and asked that they have the caller meet me at the front door to the residence. I was told that the caller was already outside. As I was getting this information, I climbed the porch stairs towards the front door. As I reached the door, a female voice called out to me. I turned and looked in the direction of the voice and observed a white female, later identified as Lucia Whalen, who was standing on the sidewalk in front of the residence, held a wireless telephone in her hand and told me that it was she who called. **She went on to tell me that she observed what appeared to be two black males with backpacks on the porch of [17] Ware Street.** She told me that her suspicions were aroused when she observed one of the men wedging his shoulder into the door as if he was trying to force entry. Since I was the only police officer on location and had my back to the front door as I spoke

with her, I asked that she wait for other responding officers while I investigated further.

With the 911 tape under wraps for another week, the public had no reason to suspect that Ms. Whalen might have been incorrectly quoted. Had her purported depiction of “black males with backpacks” proven accurate it wouldn’t have raised an eyebrow. But it was wildly off the mark: while Gates was black, his taxi driver wasn’t, and the backpacks were really suitcases.

Whalen instantly became a target of the blogosphere. [Here’s](#) an extract from one of the loonier postings:

Lucia Whalen goes down in history as the woman who showed the world that racism is alive in America today. Lucia Whalen goes down in history as the woman who almost started a race riot, and international incident. She goes down as the woman who led President Obama to be reminded by bigoted white folks that even though he is President he is still an n-word! Thanks to Lucia Whalen, a stellar police sergeant is now labelled, Sgt. Jim Crow, while Prof. gates is labelled Prof. Uppity! Now there's a new saying, "Being home while black!" Yes, it was her actions that started the tsunami of emotion and polarization.

Even more “respectable” sites couldn’t wait to unleash their poison. Here’s a sliver from John Cook’s piece in [Gawker](#):

Harvard's star African-American studies professor Henry Louis Gates got hauled to jail by the cops for breaking into his own house because the lock was broken. That's racist. So is the lady who called them, who also works for Harvard.

Cambridge police released the [911 tape](#) a week later. That proved the biggest shock of all. In her conversations with the 911 dispatcher, Whalen, who happens to be of Portuguese descent, had actually taken great care to portray her observations as accurately as possible. She said “suitcases,” not “backpacks.” Her only mention of race was in response to a prompt, and only to suggest that one of the men (as it turns out, the taxi driver) might have been Hispanic:

DISPATCH: Ok what's the problem? Can you tell me exactly what happened?

CALLER: Uhm, I don't know what's happening. I just had a, uh, older woman standing here and she had noticed two gentlemen trying to get in a house at that number 17 Ware Street. And they kind of had to barge in and they broke the screen door and they finally got in and when I (inaudible) and looked, I went closer to the house a little bit after the gentlemen were already in the house I

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noticed two suitcases. So I'm not sure if these are two individuals who actually work there or maybe live there.

DISPATCH: Were they white, black, or Hispanic?

CALLER: **Uhm, well they were two larger men. One looked kind of Hispanic but I'm not really sure. And the other one entered and I didn't see what he looked like at all.** I just saw her from a distance and this older woman was worried thinking someone's breaking into someone's house. They've been barging in and she interrupted me and that's when I had noticed otherwise I probably wouldn't have noticed it at all to be honest with you. So I was just calling because she was a concerned neighbor. I guess.

The 911 operator accurately passed on Ms. Whalen's remarks to the beat officer. Nothing was said about black persons or backpacks. (Sgt. Crowley, an administrative officer who happened to be in the area, soon offered to take the call.)

911: Control to Car 1, 18-4-0.

OFFICER: O-R

911: Respond to 17 Ware Street for a possible B-D in progress, two S-P's barged their way into the home. **They have suitcases.** (inaudible) S-P. Standby. Trying to get further.

OFFICER: 52-0. Ware Street right now, 17?

911: 17 Ware Street, uhm, both S-P's are still in the house, **unknown on the race. Ah, one may be Hispanic I'm not sure.**

Journalists immediately jumped on the clash between what Ms. Whalen said to the dispatcher (one possible Hispanic and suitcases) and what she reportedly told Sgt. Crowley (two blacks with backpacks.) [Contacted by a journalist](#), the officer affirmed that the report was correct. "Obviously, I stand behind everything that's in the police report. It wouldn't be in there if it wasn't true."

But his chief didn't seem quite as certain. Interviewed the night before the 911 tapes were released, [Commissioner Robert C. Haas](#) implied that the police report shouldn't be taken too literally:

In an interview last night, Cambridge Police Commissioner Robert C. Haas said it was accurate that Whalen did not mention race in her 911 call. He acknowledged that a police report of the incident did include a race reference. The report says Whalen observed "what appeared to be two black males with backpacks on the front porch" of a Ware Street home on July 16.

That reference is there, said Haas, because the police report is a summary. Its descriptions - like the race of the two men - were collected during the inquiry, not necessarily from the initial 911 call, he said.

Is that what police reports really are? Summaries? While they often condense what witnesses and suspects say (much like the above two paragraphs condense what the Commissioner supposedly told the journalist) police reports are critical documents that form a basis for further inquiries and are frequently referred to in charging documents and in court. Officers know to keep them factual. Of course, how much to include depends on the circumstances; for example, Sgt. Crowley, who was enmeshed in a ticklish situation, depicted his actions in excruciating detail.

No matter how the cops may choose to spin it, it's painfully obvious that "she went on to tell me that she observed what appeared to be two black males with backpacks on the porch..." is intended to convey the thoughts of a single person, not a collective. But for the sake of argument let's assume that Cambridge police operate in a parallel universe where "she" really means "they" and officers are free to summarize accordingly. Where might have Sgt. Crowley "collected" information that there were two black suspects with backpacks? Having ruled out the 911 operator we're left with three possible sources: other officers or civilians who had reason to believe that a pair of black males with backpacks were committing burglaries, the older woman who originally alerted Ms. Whalen to the odd goings-on at 17 Ware Street, and Ms. Whalen herself.

As to the first two we simply don't know (the elderly lady wasn't identified on the police report or in known media accounts of the case.) As for Ms. Whalen; well, it's easy to understand why she might have felt compelled to speak out. Forget the 911 call: if the police report is accurate, she's still morally on the hook for making incorrect, racially-charged statements to Sgt. Crowley.

What's Cambridge PD doing to resolve the dilemma? According to the [Boston Herald](#), very little. A spokesperson for Crowley and the Cambridge police union refuses to comment any further than to say that both "stand by" the police report. Meanwhile Commissioner Haas appointed a panel to look into the incident and is pressing to put the whole mess behind him.

In the end, either Ms. Whalen told Sgt. Crowley "that she observed what appeared to be two black males with backpacks on the porch of [17] Ware Street" or she didn't. If the latter's true -- that's what Commissioner Haas apparently thinks, and that's how it seems to this blogger -- then Sgt. Crowley's report is glaringly incorrect. After all, unless Ms. Whalen saw something new -- and there's no indication that she did -- it strains credulity to think that her account would have shifted so drastically during the brief

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interval between her 911 call and Sgt. Crowley's arrival. Did he make an honest mistake, and if so, how did it come about? Was he pressured to tweak the facts? Did he purposefully lie? Resolving these questions is of great importance. Citizens are entitled to have confidence in the integrity of their police. Sgt. Crowley's career and effectiveness could also be on the line. Lying on a police report can create criminal liability. Under the [Brady rule](#) it also makes an officer's testimony perpetually subject to challenge, thus rendering a cop essentially worthless in the field.

On August 10 the blogger e-mailed a set of questions to Frank Pasquarello, Cambridge PD's public information officer, and Sgt. Silverio Ferreira, its professional standards officer. As of yet there's been no response.

Posted 6/22/08

HOISTED BY HIS OWN PETARD

Pornography, a Federal judge discovers, is in the eye of the beholder

By Julius Wachtel, (c) 2010

Once upon a time (actually, May 2001) Judge Alex Kozinski of the U.S. Ninth Circuit Court of Appeals was terribly angry. Federal court employees around the country had been downloading large, naughty files from porn sites, so to stop them the pinheads in Washington installed filters and remote monitoring devices.

This enraged the good judge, who insisted that his staff -- naturally, including himself -- be able to cruise the Internet unmolested.

Judge Kozinski again made news in 2003. This time it was because of his unusual relationship with Michael W. Hunter, a California inmate on death row for murdering his father and stepmother. Hunter read an article that Kozinski wrote about the death penalty and they started corresponding. Kozinski later visited Hunter. They discussed other death row prisoners, including James Richard Odle, for whom Kozinski had ordered a competency hearing. Hunter (he was eventually re-sentenced to life without parole) later told California State investigators that Kozinski asked him whether Odle was "really crazy." That worried then-California Attorney General Bill Lockyer enough to file a motion asking that Kozinski be barred from ruling on capital appeals in California.

This got the good judge mad. Lockyer's actions were "crazy"!

Three years later Judge Kozinski got -- you guessed it -- mad as a hornet. Mary Schroeder, then Chief Judge of the Ninth Circuit, had twice dismissed a disciplinary case against Los Angeles Federal District Court Judge Manuel Real. Judge Real, a controversial jurist, had allegedly interfered in the bankruptcy case of a "comely" female probationer whom he had been *personally* supervising. Judge Kozinski's dogged pursuit of the matter eventually got Judge Real censured (Congress even began an impeachment process against Real. It went nowhere.)

Having established his reputation as a square-shooting disciplinarian, Kozinski became Chief Judge of the Ninth Circuit Court of Appeals in November 2007. In this position he oversees the Court's business side, assigns the writing of opinions and supervises its judges. Everything was going swimmingly until that fateful day when he took a swing at being a trial judge.

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According to the [L.A. Times](#) Appeals Court Judges fill extra time on their hands hearing regular cases. That's how Judge Kozinski recently wound up presiding over the trial of Ira Isaacs, an accused pornographer whose product is supposedly so vile that it even offends the citizens of SoCal. (Isaacs insists that the videos he makes and markets are "art," thus exempt from regulation. Even so he's been quoted as saying "I think I'd freak out if I had to watch six hours of the stuff." He's referring to the rancid displays of bestiality and defecation that twelve lucky jurors will get to see.)

On June 11, 2008, only a couple of days into the trial, Judge Kozinski called a halt to the proceedings. He had learned that the *L.A. Times* was about to publish an article suggesting that he had more than a professional interest in sexually titillating materials. [Marcy Tiffany](#), the judge's wife for more than thirty years and a respected attorney in her own right, jumped to her husband's defense. In a long letter to a popular blog she called the *Times* article "riddled with half-truths, gross mischaracterizations and outright lies." So what really happened? Well, like other tech-savvy families the Kozinskis have their own web-enabled storage device, allowing them to view and upload data from wherever they are. (Judge Kozinski told the *Times* that he occasionally shared files with others.) Among the materials were stills and videos depicting sexual, um, *stuff*, some of which the judge suggested might have been posted by an adult son.

If you believe the *Times*, the materials were offensive and pornographic (one, a step-by-step "instructional video" shows a woman shaving her public hair.) If you believe Judge Kozinski, some were offensive but "funny." If you believe Mrs. Kozinski, what little there was, was "comic-sexual":

"The fact is, Alex [her husband, not the son] is not into porn -- he is into funny -- and sometimes funny has a sexual character. The tiny percentage of the material that was sexual in nature was all of a humorous character. For example, the "women's crotches" [referring to what the *Times* described as bared pubic hair and genitalia] was one of the "camel toe" series that is widely available on the net."

Whatever their educational value, how did the files get out? The villain, according to Mrs. Kozinski, is [Cyrus Sanai](#), a Beverly Hills lawyer whose bitter dispute with the Ninth Circuit supposedly led him to target her husband for retaliation. Whether he gained access through reverse engineering (as Mrs. Kozinski wrote) or, as seems more likely, because the directories weren't password-protected, Sanai did the natural thing: he called the *Times*. Their article stunned prosecutors, who immediately filed a motion asking Judge Kozinski to recuse himself.

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Against the defendant's wishes (Isaacs praised the judge during a radio interview) Kozinski not only called a mistrial but referred the whole mess to, yes, those pinheads in Washington. They in turn dumped it on a [panel](#) of Federal judges in Philadelphia's Third Circuit. As such things are handled confidentially, unless Kozinski is prosecuted or impeached we may never know what they decide. Did he violate Federal law or the canons of his office? Did his acts discredit the judiciary? Taking at face value Judge Kozinski's statements that he wound up on the porn case strictly by chance, one would think that given his personal interest in salacious material he would have declined the assignment. It's not only defendants who are entitled to a fair trial. Had Mr. Sanai *not* come forward, would the People have gotten a fair shake in court?

Judge Kozinski is not your average jurist. After graduating with honors from UCLA Law School he clerked at the Supreme Court, then served in the Reagan White House and at the Federal Claims Court before being appointed to the Ninth Circuit at the ripe old age of 35. A [prolific writer](#) with an eclectic taste, he's published in everything from staid law reviews to *Forbes* (on building computers) and the *New Yorker* (on the death penalty).

During his distinguished career Judge Kozinski has developed something most jurists decidedly lack: a fascinating public persona. We'll have to see how well it serves him in this latest challenge.

IGNORANCE IS NOT BLISS

Playing ostrich about officer misconduct doesn't make it go away

By Julius Wachtel, (c) 2010

It was a brisk Virginia morning. Dressing quickly, your blogger rushed to the hotel conference center, eager to grab a good seat for what promised to be the most interesting panel at [NIJ's 2009 conference](#). Entitled "The View From the Street: Police Leaders Share Their Perspective on Urgent Research and Policy Issues Facing Law Enforcement in 2009 and Beyond," the session featured six police chiefs, among them the President of the [International Association of Chiefs of Police](#), Algonquin (Ill.) chief Russell Laine. Nashville chief Ronal W. Serpas, co-chair of the IACP Research Advisory Committee served as moderator.

Chief Serpas began by mentioning that in a recent survey, police chiefs identified their top three concerns as leadership, personnel management and -- one of your blogger's favorite topics -- ethics. Alas, after that promising start it took ninety minutes for ethics to come up again. Only moments before the session ended, a panelist mentioned that, by the way, "ethics and discipline, holding people accountable" were just as important as all the nuts-and-bolts concerns that had dominated the discussion. That conduct issues got such short shrift was somewhat surprising, as [in 1997 the IACP had itself stated](#) that "ethics is our greatest training and leadership need today and into the next century."

In September 2008 the IACP, in conjunction with NIJ, published the "National Law Enforcement Research Agenda" ([NLERA](#)). A representative survey of 1,000 IACP members yielded eight issues that police executives consider most worthy of research. Ethics is nowhere to be found. In fact, the only conduct-related concern is "use of force." But once response data was incorporated into a formal agenda, things changed. Use of force went inexplicably AWOL, while ethics was mentioned -- once, in the "Leadership" category, shoved in between "transparency" and "accountability". Ethics also came up twice in the text: near the end of the definition for leadership ("Finally, the chief is expected to set the standard for professionalism, accountability, and ethical conduct in his or her agency"), and in the middle of a massive to-do list ("How well does the Internal Affairs department function address the core issues of accountability, transparency, and ethics/integrity?")

Other than for these pitifully brief mentions, the IACP's research agenda for the 21st. century literally ignores officer behavior. That seems an awfully shallow approach. Given the occasionally tragic consequences of even the best police work, law

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enforcement executives desperately need to know what makes cops cross the line, and why. If you don't believe that studying the causes of misconduct is all that important, here are some recent examples that'll curl your hair:

Two Hollywood (Fla.) police officers, a sergeant, a CSO and a civilian are being investigated for allegedly [falsifying an arrest report](#) to cover up a car wreck.

[A Federal monitor](#) spent nearly a *decade* supervising LAPD's adherence to the provisions of the [Rampart](#) consent decree.

A just-released [Minnesota investigative report](#) accuses members of a defunct Minneapolis gang strike force of appropriating seized valuables for their own use.

A recent, high-profile arrest in Cambridge not only brought an officer's [truthfulness](#) into question but precipitated [a major inquiry](#) into police-community relations.

The Orange County (Calif.) Sheriff's Department faces a [Federal inquiry](#) about jailhouse abuses that could lead to the imposition of a Rampart-like monitoring scheme.

At least [fourteen Customs and Border Protection agents](#) have been arrested so far this year for taking bribes from drug traffickers.

Cuyahoga County's long-serving Sheriff resigned after a newspaper reporter [exposed alleged misdeeds](#) ranging from working only one day a week to giving donors rich contracts.

Five Birmingham police officers were fired for [kicking and beating a suspect](#) with a club and fists after a 22-minute pursuit. Their acts are under Federal investigation.

Orange County's (Calif.) D.A. openly accused several sheriff's deputies of [lying on the stand](#) to keep a colleague from being convicted for misusing a Taser.

A [recent report](#) by the California Attorney General slammed the Maywood Police Department for hiring unqualified cops, illegally detaining citizens and using excessive force.

An L.A. County deputy sheriff was [charged with perjury](#) for falsely testifying about the circumstances that led him to arrest a suspected drug dealer.

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[FBI agents are investigating twelve Philadelphia officers](#) for knowingly using false information from an informant to secure numerous search warrants.

In Bellaire (Tex.) a police officer was arrested for needlessly shooting and killing a man who was mistakenly thought to be driving a stolen car.

LAPD officers have been [awarded multi-million dollar jury verdicts](#) against the City for alleged discrimination and sexual harassment by colleagues and superiors.

Montague County's (Tex.) former Sheriff, nine guards and four inmates were indicted for turning a jail into an "[animal house](#)" of drugs and sex.

[Hundreds of felony cases were dismissed](#) because Louisville cops failed to attend court hearings. Many missed their appearances on purpose; few were disciplined.

Tenaha (Tex.) police and prosecutors are accused of [coercing black citizens](#) driving through town to turn over cash and valuables on pain of being prosecuted for money laundering.

The St. Louis (Mo.) D.A. [dropped 47 cases and is reviewing 986 convictions](#) after a cop confessed that he and his partner planted evidence and stole money from a drug dealer.

Several LAPD officers face a [civil rights investigation](#) for allegedly lying on the stand. One was recorded advising a colleague to be "creative" on the arrest report.

Orange County's (Calif.) ex-Sheriff, Mike Carona, faces six years in Federal prison after his [conviction for jury tampering](#).

These episodes, which were culled from [news clips](#) posted in Police Issues between January 2009 and the present, constitute only a small fraction of the instances reported in the media. No, we're not claiming that policing is hopelessly awash in evil-doing. But burying our heads in the sand -- and that's what IACP's proposed research agenda amounts to -- is precisely the wrong approach. However uncomfortable honest self-assessment might be, there is a pressing need to dispassionately study why cops cross the line. Yet given the short shrift accorded to ethics and misconduct at the NIJ Conference (the chief's panel wasn't the only "violin"), whether anything can be accomplished through the present system seems questionable.

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Well, this concludes our posts about the 2009 NIJ Conference. We hope that you've found the series useful!

Posted 2/28/22

IN TWO FELL SWOOPS

Ideological struggles buffet California traffic cops and Austin police



For Police Issues by Julius (Jay) Wachtel. Thursday, February 17 was a very bad day for fifty-four traffic officers from the California Highway Patrol's East Los Angeles station. And thirteen-hundred miles to the East, for nineteen police officers in Austin, Texas' capital city. For on that day a new breed of prosecutors levied felony charges that may cost these officers a lot more than their careers.

Even during the “bad old days” of the nineties, when New York City's [Mollen Commission](#) and L.A.'s [Rampart Independent Review Panel](#) issued voluminous, mind-numbing reports about systemic police corruption in America's two largest cities, arresting four-and-one-half dozen cops in one fell swoop would have raised eyebrows.

Yet the recent booking of *fifty-four* current and former officers of the California Highway Patrol on felony criminal charges passed by literally unnoticed. Other than generating a handful of news pieces (click [here](#) for the *L.A. Times* article), California Attorney General Rob Bonta's [press release](#) provoked little more than a shrug.

Actually, his announcement didn't come as a total surprise. In 2019 [the CHP had revealed](#) that it was looking into fudged claims of overtime. One of its executives [was quoted bemoaning](#) “a culture of corruption by a group of greedy officers who had developed a system involving supervisors that created a firewall between themselves and managers like myself.” Yet then-California Attorney General Xavier Becerra left office in March 2021 without taking any visible action about the matter.

Perhaps the officers were innocent. Or maybe what they supposedly did wasn't considered sufficiently serious. Instead of busting citizen heads or arresting innocents, their alleged misconduct consisted of filing exaggerated claims of overtime while providing security on road construction projects during 2016-2018. Their total “take”

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was a measly \$226,556. Means and ends-wise that doesn't hold a candle to classic episodes of police corruption. Such as NYPD's "[Buddy Boys](#)" of the eighties, who were "robbing drug dealers in broad daylight" then "selling the drugs and goods themselves." Or LAPD Rampart Division's [anti-gang "CRASH" cops](#) of the nineties, who robbed a bank, stole cocaine from evidence lockers, framed and beat suspects into falsely confessing and committed needless shootings.

On the other hand, some claim that the Democratic lawyer's inaction was [a political calculation](#), part and parcel of a cop-friendly approach [that helped him gain](#) over \$300,000 in contributions from police unions for his 2018 campaign.



In 2021 Mr. Becerra was called away to run the U.S. Department of Health and Human Services. His mantle as California A.G. was assumed by Rob Bonta. And *this* Democrat's inclinations were substantially different. As a California assemblyman [Mr. Bonta co-authored bills](#) to eliminate cash bail, ease punishment, and require that the State investigate all officer shootings. During confirmation hearings the progressively-minded San Franciscan [emphasized that holding police accountable](#) was crucial. So other than for the sheer number of accused, [his filing of criminal charges](#) alleging that *four-and-one-half dozen* CHP officers committed [Grand Theft](#) and presented a [Fraudulent Claim](#) shouldn't have come as a surprise.

But the identity of one of the lawyers defending the Chippies (no slam, it's what we call 'em) *did*. It's Steve Cooley, L.A. County's former District Attorney (2000-2012). Co-author of "[Blue Lives in Jeopardy](#)," the life-long Republican recently affirmed his pro-cop inclinations by slamming current D.A. George Gascon [for creating a panel](#) to review past police use of deadly force. That, according to Cooley, supposedly proves (beyond a reasonable doubt?) that the progressive Democrat is "hell-bent on putting some law enforcement filing notches on his belt."

Cooley's pro-cop stance is evident [in his stinging rebuke](#) of A.G. Bonta's persecution – oops, we mean *prosecution* – of the CHP officers:

When it comes to the alleged overtime scheme, Attorney General Bonta is flat wrong. Almost all of them are totally innocent...CHP wanted to show them a lesson. Guess who's in charge boys? Do not file a grievance against management because we will [expletive] with you.

In his view, the charges are no more than payback over a grievance filed by officers upset that their overtime hours had been slashed. Cooley contends that his clients are

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totally innocent: they understood that they would be paid for all the time they spent on call, awaiting deployment, whether they were at home or doing personal business, and that an agreement to that effect was in writing.

Well, that “writing” hasn’t been released. So we reviewed CHP’s [current labor contract](#). Its coverage of overtime pay (p. 26) seems quite detailed, and we didn’t find anything that offers something for nothing. But there is some “wiggle-room.” A separate provision, “Call-Back time” (p. 28) guarantees at least four hours’ pay should an off-duty officer be required to report to work. Anyways, we’re [Joe Fridays](#) at heart. Since “all the facts” haven’t been made public, whether several dozen (former?) Chippies purposely misconstrued things so as to line their pockets is impossible for us to say.

“Is there any other employer in the county to whom we would give a heads-up call if their employee was indicted?” That’s how Travis County (Austin, TX) [District Attorney Jose Garza replied](#) when, less than three weeks into his term, one of his prosecutors asked whether Austin’s police chief should get a “heads up” that two of his officers had been indicted for assault.

No advance notice was given. Officers Chance Bretches and Gregory Gentry (they were still on the job) [allegedly beat up an arrestee](#) during a narcotics investigation two years earlier. Both were cleared during an internal police inquiry. But soon after taking office Mr. Garza sent the case to the Grand Jury, which promptly indicted both officers on aggravated assault. (Gentry was ultimately cleared.)

When the Democratic civil-rights crusader and former public defender ran for D.A. he promised to right the ship of criminal justice so that minorities and the poor stopped being thrown overboard. And while the police union called his approach a “delusional game of political chess,” it wasn’t just talk. As one might expect, many cops were dismayed and Chief Brian Manley quickly retired. More than a few prosecutors were also bewildered, and in short time nineteen out of about one-hundred left.

Mr. Garza’s initial efforts focused on police uses of force that his predecessor, Margaret Moore, had seemingly brushed aside. There were more than a few. One year earlier Austin police officer Christopher Taylor [shot and killed an unarmed 42-year old man](#) who tried to drive away as officers investigated a complaint that he held a gun to a woman’s head. In March 2021, two months after taking office, Mr. Garza obtained the officer’s indictment for first-degree murder.

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Five months later it was “déjà vu all over again” as that same cop, Christopher Taylor, and a colleague, officer Karl Krycia, [were indicted for first-degree murder](#) over an earlier episode, the 2019 shooting death of a mentally-ill man who reportedly held a knife to his own throat.



There were a handful of other cases. But the stage for Mr. Garza’s “really big show” was set seven months before he took office. Soon after the killing of George Floyd Austin was besieged by the protests against police brutality that were rocking the nation. Alas, some of the city’s cops apparently responded heavy-handedly. In December 2020 then-chief Manley [announced that eleven had been disciplined](#) over use-of-force violations during the disorder.

Elected one month earlier, Jose Garza had not yet assumed office. But he clearly placed the chief’s announcement in his to-do basket.

It took a while, but fourteen months later the effects of his handiwork came into view. On February 17, 2022 [the City of Austin revealed](#) that it had settled lawsuits filed by two seriously injured protesters for a combined \$10 million, not exactly pocket change for the financially stressed city. And during a special press conference, D.A. Jose Garza announced that a Grand Jury had returned indictments charging a stunning *nineteen* Austin police officers for using excessive force on demonstrators:

We believe many protesters injured by law enforcement officers during the protest were innocent bystanders. We also believe that the overwhelming majority of victims in the incidents that were investigated suffered significant injuries. Some will never fully recover.

As one might expect, Garza was promptly blasted by the police union. His actions also put him in a lonely place within government circles. Police Chief Joseph Chacon and City Manager Spencer Cronk strongly objected to the indictment and lamented its effects on officer morale and the city’s ability to retain cops. In their view, Austin’s finest had done the best they reasonably could in the face of riotous crowds. “We are disappointed to be in this position,” Mr. Cronk said, “and we do not believe that criminal indictments of the officers working under very difficult circumstances is the correct outcome.”

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Today's pronounced Red/Blue divide has deeply affected the practice of policing, for better *and* worse. Let's self-plagiarize from "[Backing Off](#)":

Law enforcement is replete with ambiguity and uncertainty, and in the real world of the streets, crude responses are sometimes unavoidable. Over the last several years, though, the permissible margin of error has substantially narrowed...Fine-tuning the police response so that our emerging notions of justice and equity aren't breached and everyone is pleased has human and practical limits. And they've likely been reached.



For an example of these "limits" let's turn to (where else?) [George Floyd](#). His killing led to ex-Minneapolis cop [Derek Chauvin's conviction](#) on State murder charges and, just the other day, to the [conviction of his three colleagues](#) on Federal civil rights charges. *Police Issues* never considered Chauvin's behavior even marginally acceptable – our essay, posted nine days after the officers' encounter with Mr. Floyd, was entitled "Punishment Isn't a Cop's Job."

On the other hand, our assessment of officer Thomas Lane's behavior is far more forgiving. Here's an outtake from our recent essay, "[Backing Off](#)":

Pulling a gun isn't pretty, but that's what rookie MPD officer Thomas Lane did when Mr. Floyd seemed reluctant to step out of the car. As depicted in [bodycam video](#), officer Lane soon had the drugged man out of the driver's seat and in physical custody, avoiding further risks to citizens and police....

Grimace if you wish, but in the everyday world of law enforcement, where cops face citizens who are often obstinate and all-too-frequently armed, that scores as a "success." But Lane, who was only on his fourth shift as a full-fledged cop, [displayed compassion](#). Once Mr. Floyd was pinned down and unresisting, the rookie voiced concern about the arrestee's well-being and (twice) suggested he be rolled over. But Chauvin said "no." As Lane's flustered lawyer [contended during closing arguments](#), Chauvin treated his colleagues, including Lane and his rookie partner Kueng, like peons. "Tom Lane can't argue with him," said Earl Gray. "That's common sense...Chauvin was going to be the leader of the pack with these two kids." Lane's good intentions, he added, were evident when EMT's arrived. (He jumped in to help, then rode in the ambulance and participated in doing CPR.)

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Indeed, the lawyer expressed outrage that his client was charged. He called the decision a product of “mob politics”:

Why did the government indict them? We all know why. Politics, ladies and gentlemen. He was indicted – an innocent man.

That promptly drew an objection, which was (perhaps surprisingly) overruled. No matter. Thomas Lane, his rookie partner J. Alexander Kueng, and Chauvin’s partner Tou Thao [were convicted as charged](#).

Back to the present. [As fierce battles continue](#) over how far to go in regulating and, yes, *constraining* the police, the tenor of *these* times – what Lane’s attorney referred to as “politics” – is undeniably different. We’ve often warned in our “[Wrongful Conviction](#)” essays that “confirmation bias,” the tendency to accept what’s consistent with one’s beliefs and reject what’s not, can play havoc with the truth (see, for example, “[Guilty Until Proven Innocent](#)”). In our fraught atmosphere, the possibility that judgments might be warped by ideology gives cause for alarm. Let’s hope that Lane’s sentence and the cases against fifty-four California Highway Patrol officers and nineteen Austin police officers will reflect the truth – and nothing but.

Posted 6/28/08

JUSTICE WAS HIS CLIENT

A prosecutor chooses between what's right and what's expedient

By Julius Wachtel, (c) 2010

Twenty-one years as a prosecutor in the Manhattan D.A.'s office had left Daniel Bibb with little patience for law school abstractions. He was there for one reason, and one only: to serve the citizens of New York. And until this particular day in 2005 he had never questioned his purpose, nor those of his colleagues.

In 1990 a bouncer was [shot and killed](#) and his supervisor was wounded at the Palladium nightclub in New York City. Suspicion quickly fell on two men, David Lemus and Olmedo Hidalgo. Despite witnesses who swore that the accused were elsewhere both were convicted and got twenty-five to life. Evidence of their innocence continued to accumulate, and by the time that they passed their fifth anniversary in prison ("celebrate" seems the wrong word) it seemed far more likely that the real killers were two local gangsters, Joseph Pillot and Thomas Morales, aka Jimmy Rodriguez. Eventually the Feds got involved, and as the episode turned into a cause célèbre the D.A. himself, the famous Robert Morgenthau, put Daniel Bibb on the case. Spend all the time you need, he was told, and get to the bottom of this mess. Let the hammer of justice fall where it might.

That's exactly what he did. And as he sat in his superiors' office two years later, he was certain as could be that [the wrong men were in prison](#). The evidence against them had been thoroughly debunked. What's more, Pillot had confessed and implicated Morales, and his confession was corroborated. Far from being happy at his good work, Bibb's bosses were appalled. Freeing the men would be a major embarrassment. Lemus and Hidalgo had asked for a new trial. Go to the hearing, the prosecutor was told, and fight *against* their release. Remember who you represent!

Lawyers are sworn to [zealously pursue](#) the interests of their clients. For criminal defendants that's to avoid conviction, or if convicted to minimize any penalty that might be imposed. But Daniel Bibb felt caught in a bind. Just who *was* this "client" whose interests would be served by leaving innocents in prison, and, not incidentally, letting the guilty go free? No, he decided, this was an injustice that must be corrected. Worried that if he stepped aside another prosecutor might succeed in keeping the wrong men locked up, Bibb remained on the case.

He had decided to throw the fight.

Bibb started helping Lemus's and Hidalgo's lawyers however he could. He in effect became Defense Lawyer Bibb, finding new witnesses and suggesting strategies to counter the prosecution's case -- *his* case. In time his bosses let him dismiss the charges against Hidalgo, but they stubbornly insisted on proceeding against Lemus. Bibb had had enough. He quit and became a defense attorney. His transformation was complete.

Lemus got his new trial. When he was acquitted in December 2007 Bibb finally felt free to come forward with his story. Then the arrows started flying. From his comfortable office at New York University a professor of legal ethics accused the veteran prosecutor of failing to represent his "client": "He's entitled to his conscience, but his conscience does not entitle him to subvert his client's case. It entitles him to withdraw from the case, or quit if he can't."

That might make sense if prosecutors really *had* "clients." One thing's for sure -- they're not ordinary lawyers. Unlike defense attorneys, prosecutors must share exculpatory and mitigating evidence with the other side ([Brady v. Maryland](#)). Ethical guidelines also require them to correct miscarriages of justice. According to the American Bar Association's [Model Rules of Professional Conduct](#), prosecutors who learn of "new, credible and material evidence" that reasonably suggests someone was wrongly convicted *must* investigate, and should evidence of innocence become "clear and convincing" they *must* act.

Prosecutors *are* different. They're charged with doing justice regardless of what their superiors, the police or the public want. More than two decades earlier, it was that transcendent goal that encouraged a young man fresh out of law school to take on the role. That he had to leave it to remain true to its precepts was the final irony of this sad affair.

Posted 11/13/11

L.A.S.D. BLUE

“We police ourselves,” insists Sheriff Baca. But running a department takes a lot more.

By Julius (Jay) Wachtel. Sheriff Lee Baca was upset. “It’s illegal. It’s a misdemeanor and then there’s a conspiracy law that goes along with it,” he growled. But his anger wasn’t directed at the deputy who had snuck contraband into the Men’s Central Jail. Instead, [L.A. County’s top cop was mad at the FBI](#).

Why was the sheriff irritated? The Feds committed no crime. An undercover agent paid a corrupt deputy \$1,500 to pass on a cell phone to an inmate who was secretly an FBI stoolie. It was a creative and fully legitimate exercise of the Bureau’s mission to root out corrupt cops. Why was Baca really miffed? Because the Feds didn’t ask first. They embarrassed him. And because they were evidently still nosing around “his” jails.

As far as is known the FBI’s interest began last year. That’s when agents interviewed a former inmate who sued deputies for beating him up (he lost the fight and the lawsuit.) An FBI spokesperson told reporters that agents were investigating that incident as well as another in which Baca’s deputies allegedly etched a slur into an inmate’s scalp.

Since the signing of a consent decree in 1985 ACLU monitors have observed the jails. One who was at the Twin Towers jail on January 24 [reportedly observed deputies](#) punching, kicking and repeatedly Taser-ing a limp, unresisting inmate. Her declaration called a log entry that portrayed the inmate as violent a complete fabrication. An inmate who said he was warned not to cooperate furnished a supporting declaration. These documents were filed by the ACLU on February 7, the same day that the inmate was charged for battering his jailers. Was it a coincidence? Who knows?

FBI agents interviewed the monitor. A Federal grand jury subpoenaed the *Los Angeles Times* for the identities of two readers who commented on the story. One mentioned observing “brutal beatings of prisoners on a daily basis” at a hospital jail ward. Another, purportedly an ambulance attendant, wrote of regularly taking “the sheriff’s assault victims” to hospitals. (The *Times* refused to release the information.)

Back to the present. Sheriff Baca was barely done sniping at the FBI when the ACLU filed its [yearly jail oversight report](#). Entitled “Cruel and Unusual Punishment: How a

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Savage Gang of Deputies Controls L.A. County Jails,” it harshly criticized jail deputies’ alleged culture of intimidation and brutality:

In the past year, deputies have assaulted scores of non-resisting inmates, according to reports from jail chaplains, civilians, and inmates. Deputies have attacked inmates for complaining about property missing from their cells. They have beaten inmates for asking for medical treatment, for the nature of their alleged offenses, and for the color of their skin. They have beaten inmates in wheelchairs. They have beaten an inmate, paraded him naked down a jail module, and placed him in a cell to be sexually assaulted....

Prisoners submitted dozens of affidavits. But it wasn’t only them. Jail chaplain Paulino Juarez mentioned an incident he witnessed in 2009. “To this day, recalling the beating brings tears to my eyes, and I cannot finish talking about it without taking a few moments to compose myself.” An anonymous colleague spoke of an episode earlier this year: “I was so shocked that despite the deputies seeing me watch them beat up the inmate, they continued to kick and beat him. It was like they didn’t even care that there was a witness.” Scott Budnick, a well-regarded civilian volunteer, said that he witnessed four beatings over the years. In one a deputy smashed an inmate’s head into a wall for no apparent reason; in another three deputies kicked and punched an unresisting inmate while yelling “stop resisting!” Here’s what a retired FBI executive (he formerly headed the agency’s Los Angeles office) who helped the ACLU prepare the report had to say:

To an astonishing extent, unchecked violence, both deputy-on-inmate and inmate-upon-inmate, permeates Men’s Central Jail and Twin Towers jails...The voluminous evidence I have reviewed cries out for an independent, far-reaching, and in-depth investigation by the Federal Government. The problem can no longer be ignored.

Then the other shoe dropped. A hurriedly prepared but informative [report](#) by the Los Angeles County Office of Independent Review (OIR), which oversees the LASD, criticized jail oversight. According to the report, determining what really happens in the jails is a challenge, as there are few video cameras or unbiased witnesses. Its review of a sample of thirteen episodes of deputy misconduct revealed many examples of officers who failed to report abuse or lied about what took place.

Within days the ground on which Baca stood began giving way. An inmate was discovered dead in his cell. [He had been punched by a deputy](#) two days earlier. [A rookie deputy resigned](#), ostensibly because his supervisor forced him to beat up a mentally ill prisoner. The deputy who fell prey to the Fed’s cell phone sting resigned. [He then](#)

[started talking](#) – naturally, about inmate beatings. Baca's friends in the media turned their backs on the once-popular Sheriff. *L.A. Times* columnist Steve Lopez [urged him to resign](#): “Baca's sheriff's department is looking more and more like the Hazzard County department run by Boss Hogg. Guess what, Lee. ‘Dukes of Hazzard’ was *not* a training film.”

Baca brushed off the suggestion. As an elected official (he's on his fifth four-year term) he left it to the voters to “decide.” Still, he had to do *something*. [He promoted three area commanders](#) and sent them off to take charge of the jails. A task force of 35 deputies was formed to review past allegations of abuse. Then came the requisite perp walk to the *L.A. Times*, where Baca delivered the obligatory *mea culpa*. True to form, [he blamed commanders](#) for keeping him in the dark. Yet he also admitted having been “out of touch” with the jails. “The truth is I should have known. Now I do know.” He promised reforms. One tangible step was to install 69 video cameras that had been sitting in their original boxes for a year.

And it's still not over. A two-year old internal report turned up that [accused deputies at the Men's Central Jail](#) of beating disrespectful inmates and “dramatizing” incidents to justify the use of force. It also criticized the practice of assigning rookies to the third floor where the most dangerous inmates are housed. (Earlier this year [the department fired](#) six third-floor deputies who assaulted two deputies from another floor while off duty. The injured officers [sued LASD](#) for letting the tattooed, gang-like deputy clique form.)

Baca's stewardship of the department has come under criticism over the years (see the [Lopez article](#) for a rundown of the gripes.) Still, controlling the largest municipal jail system in the U.S. would be a challenge even for competent administrators. As the Office of Independent Review (OIR) noted, jail deputies are mostly left to police themselves. Really, there are few occupations that expect practitioners to exercise as much self-control and restraint as law enforcement, where near-adolescents are given badges and guns and sent to go do God's work, often under the sketchiest oversight.

To be sure, good supervision is important. But the most important line of defense remains an individual's good judgment. Yet how the LASD selects, trains and deploys deputies leaves a lot to be desired.

In 2009 the OIR issued a [report](#) that blasted the LASD for dreaming up a “holistic” approach that led applicants with significant integrity, temperament and criminal issues to be hired. That debacle, whose effects continue to the present day, was caused by a major recruitment drive during 2005-07, when a stunning 2,500 deputies were added to the rolls.

Processing an applicant pool large enough to yield so many cops in such a brief timeframe seems impossible, at least without taking shortcuts. [In a rush to bring deputies on board](#), that's what the LASD did, swamping background investigators and ignoring their concerns. Academy standards were lowered to make sure that everyone passed. Staff gave out answers to exam questions ahead of time and repeatedly recycled cadets who still managed to flunk. That led to another critical OIR [report](#) as well as the academy's near-decertification by the state's peace officer and training commission, which was stunned by the department's indifference to the integrity of the testing process.

Did Sheriff Baca take these reports to heart? Apparently not. While his managers jammed trainees through the process he let TV producers film a reality show. "[The Academy](#)," which ran for three seasons, portrayed the LASD's hyper-military, stress-style academy in graphic detail, with each episode starring a campaign-hatted cadre of drill instructors yelling at recruits and humiliating them at every opportunity. (For our prior post about the show click [here](#).)

Opinions differ on whether such settings are appropriate for training law enforcement officers. Leaving that issue for another time, it seems reasonable to assume that the LASD, whose training continues along these lines, intends to produce deputies who obey without question. That effect is likely amplified by the relative youth and immaturity of its cadets, who require no more education than high-school equivalency. What's more, since L.A. County jails are staffed strictly by sworn deputies, recruits must work detention for several years before going on patrol.

The consequences seem all too predictable. When unworldly, impressionable youngsters who have been inculcated with an exaggerated respect for authority come face to face with the world behind bars, it's no wonder that some turn to the comfort of cliques and leave their better judgment behind. Even if they don't participate in abuses – and hopefully most won't – few are likely to hazard making waves at such an early stage of their careers. Looking the other way becomes a way to survive.

And yet another problem has surfaced. Many cops find jail duty unpleasant. Of course, at the LASD it comes with the territory, so cycling through the lockups is mandatory for those who wish to promote. [According to a recent report](#), serving in the jails is so devalued that it's become a dumping ground for deputies who get in trouble or can't make it on patrol. Sheriff Baca says he's putting a stop to that, but the harm's been done.

Much more than recrimination, what the LASD most needs is a thorough, dispassionate reassessment of how it develops and uses its workforce. Do its practices

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yield deputies who can think independently and make ethically sound decisions? Or do they produce drones susceptible to groupthink? LASD must also consider what is routine elsewhere, splitting patrol and custody so that each becomes a career track in its own right. Corrections is far too complex and demanding a profession to be left to the unwilling or incompetent. Really, until such issues are seriously addressed it hardly matters who sits behind the boss's desk.

Posted 2/15/10

LIARS FIGURE

Pressured by Compstat, police commanders cook the books

By Julius Wachtel, (c) 2010

Who would have thought? In response to a [questionnaire](#) more than one-hundred retired NYPD officers with ranks of captain and above said that crime reports were routinely fudged to minimize the number of Part I offenses that had to be reported to the FBI. Dodges ranged from tweaking thefts so that losses fell under \$1,000 to encouraging victims of violence to minimize what took place, thus holding down the number of aggravated assaults.

Conducted with the assistance of the command officers' union, the survey forms the basis of "Unveiling Compstat: The Naked Truth." A forthcoming book by criminal justice professors John Eterno and Eli B. Silverman, it asserts that the deception was driven by weekly Compstat sessions where headquarters staff mercilessly grilled precinct commanders over crime in their districts.

As might be expected, NYPD reacted angrily. Pointing to other studies that affirmed the accuracy of the department's stats, officials suggested that those surveyed either weren't in a position to know whether the books were being cooked or were simply passing on rumors about the same incident. Professor Eterno, who retired from NYPD's crime analysis section before becoming an academic, poo-pooed that notion. "Those people in the Compstat era felt enormous pressure to downgrade index crime, which determines the crime rate, and at the same time they felt less pressure to maintain the integrity of the crime statistics."

It's not the first time that NYPD has found itself in the cross-hairs of a crime reporting controversy. In 2005 it successfully [fought off attempts](#) by a city investigative commission to look into alleged tinkering with the stats. More recently, the department admitted that such "manipulation" led to the removal of three district commanders. What's more, an NYPD officer on suspension for other reasons recently [accused his precinct](#), including a Lieutenant known as "The Shredder" of systematically reducing felonies to misdemeanors and refusing to take crime reports.

Several victims backed up his account. One told reporters that he was bloodied in a street robbery but all officers did was take a "lost property" report. Another, an elderly

man, complained that police refused to believe his home was burglarized because of a lack of “evidence.”

There’s no doubt that Compstat sessions can unnerve police commanders, placing them on the hot seat over deep-rooted social problems that cops can’t hope to influence. And while the steep downward trend in crime that got underway in the nineties has seemingly leveled off, Compstat brooks no such excuses. Crime must keep going down, or else.

Exaggerating accomplishments isn’t a problem only in the Big Apple. A 2009 report by the Florida Department of Law Enforcement attributed [chronic under-reporting by Miami police](#) to “a self-imposed pressure that certain [officers] felt as a result of the implementation of Compstat.” One of the examples cited was a carjacking that police downgraded to an “information report.”

Miami police chief (and Compstat booster) John Timoney rejected the findings out of hand. That impolitic response probably cost him his job. Timoney joined ex-Detroit police chief [James Barren](#), who was fired last year after DPD and the medical examiner got caught [classifying homicides as self-defense and suicide](#). A Dallas newspaper investigation revealed that police were reporting only half the crimes called for by FBI guidelines. Dallas hasn’t counted being beat with a pipe as an [aggravated assault](#) since 2007; to keep from counting unfounded vehicle break-ins it’s also supposedly [stopped reporting real ones](#). Meanwhile [Baltimore police](#) have been classifying shootings with multiple victims as a single crime. Just like NYPD, they’ve also juggled the value of stolen property to keep incidents from reaching the felony threshold.

Lying about stats to look good is nothing new. Speaking at a [2009 conference](#) of criminal justice journalists a reporter for the *Philadelphia Inquirer* described a [scandal](#) uncovered by his paper more than a decade ago. “The phony stats were known for many years. Aggravated assaults were easily changed to simple assaults...Precinct commanders used to joke about this, but behind those statistics are real victims.”

Of course, there have always been pressures to show improvement. Yet in the charged, accusatory atmosphere of Compstat, where numbers are king, officers may feel that they have little choice but to dissemble. Indeed, complaints by commanders that they were being ridiculed in public led NYPD to [bar outsiders](#) from attending Compstat meetings. (Of course, the meetings didn’t stop.)

Camden’s abysmal finances and sky-high crime rate led the State to place the Attorney General in charge of the police. Compstat was promptly installed. During one

of the tense meetings that the police union called “[nightmares](#)”, the AG’s representative challenged a 25-year police veteran to explain why an undercover squad arrested only one person in four days:

“Let me ask you this. You’ve been a police officer for quite some time. Does that [only one arrest] sound right?”

“No, sir.”

“No, it doesn’t. It doesn’t,” the AG’s man self-righteously concluded.

What the inquisitor didn’t ask, probably because he didn’t know any better, was the obvious: Was it a major arrest? Did it require intensive investigation? Was the suspect a particularly desirable target?

Amplified by the widespread embrace of Compstat, pressures to reach numerical objectives have displaced worthy goals and turned cops into liars. Cooking the books has also brought assumptions about crime trends into question. Long considered the world’s premier source of crime data, the UCR can’t be any more trustworthy than its weakest link, the police. Considering what’s been happening around the U.S., that’s not a reassuring notion.

Posted 7/20/08

LYING: THE GIFT THAT KEEPS ON GIVING

Deceiving suspects to get them to confess can backfire

By Julius Wachtel, (c) 2010

In 2003 a sixteen-year old girl was [shot in the face](#) by a gang member. Five years later it's revealed that a few months before her killing an LAPD homicide detective told another member of the same gang that she had identified him in a murder. Except that she hadn't.

"It became clear that we needed to add more pieces to our training," said LAPD's new chief of detectives, Charlie Beck. What made it "clear" wasn't the department's own digging but a remarkable article in the Los Angeles Times that revealed the detective and his then-partner [altered a photospread](#) to make it look like someone had identified hardcore gangster Jose Ledesma, 19.

Then these officers did the incredible. To get Ledesma to confess, they showed him the doctored six-pack and said that sixteen-year old Martha Puebla was the one who circled his face and wrote "those is the guy who killed my friends boyfriend." All that managed to accomplish was to get Ledesma to put a "hit" on the girl the next evening from the jail pay phone.

How is all this known? The call was recorded. Unfortunately, this particular conversation wasn't listened to until after the young woman's murder.

Forget CSI. In many shootings (think walk-up and drive-by) there's hardly any physical evidence left behind. There are no fingerprints or DNA. Although there is a bullet, the gun that fired it must usually be found through other means before a comparison is possible. Witnesses will always be a detective's best friend. But for the very reason demonstrated by Martha Puebla's murder, witnesses to gang crimes are often too scared to come forward. According to the Police Executive Research Forum, an organization sponsored by the nation's largest police departments, [witness intimidation](#) is the main obstacle in solving violent crime. Boston's police commissioner was particularly blunt, claiming that fear of retaliation is why his city cleared less than four in ten homicides in 2006.

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There is no greater pressure to make an arrest than in gang-related homicides. Citizens and politicians are unlikely to let police off the hook just because there are no witnesses or physical evidence is lacking (no one who watches TV crime shows would believe that, anyway.) In large, busy departments the demands on detective time are so great that should a viable suspect be developed the rush is on to get a confession. It's precisely at that point when professionalism is most at risk

As LiberalPig's mentioned elsewhere (for example, see [Rampart](#)), pressures to produce can easily distort how police work gets done. Taking shortcuts such as lying to suspects to get them to confess places forces into play whose consequences may be impossible to contain or predict. Lying can lead innocent persons to confess and falsely accuse others, distracting investigators and delaying or preventing the capture of the real perpetrator. For an example look no further than [David Allen Jones](#), a mentally retarded man who under pressure from LAPD detectives falsely confessed to raping and killing two prostitutes. After serving eleven years Jones was freed when another detective used DNA to prove that the real murderer of these two women, and at least eight others, was [Chester D. Turner](#), then in prison on a rape charge. Turner was convicted of the ten murders in 2007.

Many detectives feel that lying to suspects is beneath them. Others turn to it as a last resort. Commonplace lies include false claims that fingerprints were recovered or than an accomplice confessed. Drawing in innocent citizens is, as Deputy Chief Charlie Beck asserts, rare. But simply because "we have never had this issue arise before" begs the question of what other kinds of lies detectives tell, what consequences they might have, and whether his intention to train detectives to do a cost-benefit analysis before lying (police always like to "train" out of problems) is a realistic solution or just a way to get outsiders off the LAPD's back.

One thing's for sure. Once a lie's told, the professionalism of an investigation and the investigator are instantly thrown into question. Even the most "acceptable" lies can prove embarrassing and make police look inept, so they're seldom if ever mentioned in reports. Naturally, pretending like nothing happened presents its own set of ethical and legal dilemmas. Should ruses be kept from the defense? the Court? Juries? Must they be documented and preserved just like the confession itself?

There is a simple solution: DON'T LIE. Many fine detectives stick to that rule throughout their careers. Maybe it's time to consider it at the LAPD.

NOTE: Click [here](#) to view the lawsuit filed against the LAPD on the Martha Puebla case.

Posted 5/16/11

MELTDOWN IN SOCAL

When thinking “troubled police,” Southern California doesn’t usually come to mind. Well, think again.

By Julius (Jay) Wachtel. [Daniel Dana](#) was a San Diego cop. Married, with a kid on the way, the former Marine had been enforcing the law in one of Southern California’s favorite tourist destinations for four years. Just a few days ago his career hit a brick wall. Dana, 26, is now facing charges of extorting sex from a prostitute who complained that he had been relentlessly text-messaging threats to arrest her unless she submitted to his demands. What these were became clear at his arraignment two days ago, when he pled not guilty to felonies including rape and oral copulation under color of authority. Dana is being held on \$300,000 bail. A police spokesman says that other women have come forward with similar tales.

Officer Dana (actually, ex-officer, as he has reportedly resigned) isn’t the only San Diego cop to find himself on the wrong side of the law. One week earlier officer [William Johnson](#), a 12-year veteran, was arrested for DUI after being involved in a minor traffic accident in a nearby city. But the worst of it happened in March. That month brought the arrest of three veteran San Diego officers: [Roel Tungcab](#), 39, for domestic violence; [Sergeant Kenneth H. Davis](#), 47, for stalking and harassing a female officer with whom he once had an affair; and in the most serious case, [officer Anthony Arevalos](#), for pulling over and sexually assaulting female drivers who were leaving a nightclub district. One victim complained, and during a telephone call that investigators recorded Arevalos reportedly admitted his crime. More complaints have surfaced; Arevalos has been fired and awaits trial on eighteen felony counts.

And there’s more. In February a 19-year old college student told El Cajon police that she was raped by San Diego vice detective [Arthur A. Perea](#). Perea, 42 was placed on unpaid leave and resigned the following month. Also in February off-duty San Diego motorcycle cop [David C. Hall](#), 41 allegedly left the scene of a traffic accident. An alcohol test reportedly revealed that he was three times the legal limit.

“You know you disrespected us by talking like that.” That was all the warning that Los Angeles County Sheriff’s Deputy [Chris Vasquez](#) supposedly got before six deputies jumped him and a colleague at a Christmas party last year. What was the reason? According to Vasquez’s Federal lawsuit the six were members of “The 3,000 Boys,” a

gang-like clique of deputies who worked on the third floor of the Men's Central Jail, which houses many hardened offenders. They were apparently incensed by Vasquez's complaint about their inefficiency and used their fists to let him know it.

Vasquez was lucky to come out of it with only a few bruises. According to [a KTLA investigative series](#) the six deputies had taken on the trappings of a street gang and were mimicking the appearance and behavior of the thugs they watched. Three are defendants in a lawsuit filed by an inmate who complained that he was severely beaten and arrested after complaining about jail conditions. (Charges against him were later dismissed.) Asked about the clique's tattoos (members sport the number "3,000" on the back of their necks) and use of a hand sign, Michael

Gennaco, head of a county agency that investigates serious misconduct within the Sheriff's department, said "I think it suggests that a group of individuals within the jail...have lost their way." The department has moved to fire the deputies, who have been suspended without pay.

It's been nearly two years since [a Federal judge released](#) the LAPD, Southern California's largest law enforcement agency, from a decade of monitoring imposed by DOJ in connection with the [Rampart](#) scandal. Since then the department has caught considerable flack over a string of controversial shootings (for recent examples click [here](#), [here](#) and [here](#).) But according to [a recent Los Angeles Times](#) analysis, the LAPD's problems haven't only been with citizens. Over the past decade lawsuits filed by LAPD officers against their superiors, alleging sexual harassment, discrimination and retaliation, have made millionaires out of a stunning *seventeen* cops. Dozens more have won or settled like cases against the city for amounts in the five and six figures.

Litigation and misconduct have also beset nearby agencies. The L.A. suburb of Glendale (pop. 191,000) [just fired three officers](#) for taking a police car to Las Vegas (there may be more to it, but the department's not saying.) Several Glendale cops are also under investigation for conduct ranging from an off-duty road rage incident to sexual solicitation. Meanwhile, taking a cue from their LAPD brethren, a number of cops in Glendale and a neighboring city, Burbank, [have sued their agencies](#) for discrimination and shabby treatment.

What's to be done? [San Diego chief William Lansdowne](#) says his department will increase the number of internal investigators, create a hotline to take citizen complaints

and make better use of a system that alerts superiors about problem officers. While Mayor Jerry Sanders, the city's former police chief, welcomes the improvements, he has brushed off the scandal to a few bad apples. "I'm concerned," he said, "about the fact that we have so many officers out there that work so hard and do such a great job, and then they get tarred by a few of these guys who are absolute jerks."

Chief Lansdowne, Mayor Sanders and other city leaders insist that the troubles of "America's Finest" (SDPD's motto, displayed on patrol cars in bold print) amount to nothing more than [a series of isolated events](#). Tony Young, the president and sole African-American member of the city council gushes that cops and minorities get along famously. Despite what's happened he calls SDPD "one of the finest police departments, if not the finest, in the country." Even the normally skeptical *Los Angeles Times* has apparently bought the line that SDPD's problems don't reflect a systemic failure: "There are no accusations involving racial or ethnic bias; there is no evidence of a cover-up among police officials; the allegations do not seem to point to one particular station house or division."

Yet there are things to worry about beyond biased policing. As for the department's supposedly brisk and forthright response, the cases that came to light did so because victims complained. What's more, several of the incidents occurred in other cities, so the decisions to arrest had not been San Diego's to make.

When a bunch of officers get caught up in serious offending – the present count stands at ten, including a couple of episodes of excessive force – there's reason to suspect that something's rotten in Denmark. Pressed to explain why so many cops got in trouble in such a brief period, Mayor Sanders fell back on the economy. "You know, there are stresses right now. There are stresses for city employees, but I think especially the police officers."

Conflating financial problems and sexual assault is ridiculous. [Sheriff Lee Baca's](#) explanation that the scandal at the L.A. County Jail was caused by a "locker room mentality" is equally lame. Despite past problems with deputy cliques he refuses to acknowledge what is clearly an appalling failure of supervision. "I don't think it's the environment of the jail that's a problem," he said. "It's a failure to follow the department's core values."

Gennaco, the county's external investigator, is far more candid (naturally, he doesn't need to run for reelection.) He sharply faults a past lowering of entry standards to fill vacancies. "You end up hiring some deputies you wouldn't ordinarily hire. Folks had been disqualified or not hired by the LAPD or other agencies got jobs...because they just needed bodies." (Click [here](#) and [here](#) for related posts.)

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In the end it all comes back to selection and oversight. Much of the misconduct reported in San Diego and Los Angeles literally screams personal character. Poor screening may have allowed individuals who lacked integrity to join the force. Once they got in an absence of guidance and supervision let them get and stay on the wrong track. Placing immature, impressionable rookies in the jails for up to five years is bad enough; not watching them closely is unforgivable. How could sworn law enforcement officers run around sporting gangster-like tattoos without challenge? Where were their managers? And most importantly, why didn't someone in authority ask that most basic of questions:

“Why?”

MISSION NOT ACCOMPLISHED

Supervisors' refusal to exercise oversight leaves the Sheriff unaccountable

By Julius Wachtel, (c) 2010

Upstaging our spineless Board of Supervisors, which decided 3-2 against forcing him to take as much as a temporary powder, Orange County Sheriff-under-Federal-indictment Mike Carona placed himself on sixty-day hiatus, leaving Undersheriff Jo Ann Galisky in charge of the anxious and demoralized agency.

What's wrong with this picture? Plenty. With the Sheriff in limbo and two former top aides sucking wind (Assistant Sheriff George Jaramillo in the slammer; Assistant Sheriff Don Haidl, who recently pled guilty to Federal corruption charges, packing his lunch) it's not enough to pass the baton to the most senior officer not facing prosecution and hope that the strong odor in the executive suites simply goes away. We desperately need a thorough, no-holds-barred investigation of the department's entire command staff; after all, it was Carona who promoted them: where do you think their loyalties lie?

That, as Supervisor John Moorlach and Board Chair Chris Norby (the only good guys in this picture) probably realize, is not something that can happen from within. In any competent organization the penthouse would have already been sealed and its occupants placed on paid leave while knowledgeable outsiders come in to interview underlings, review records and get a handle on exactly what's been going on during the last few years. How was the agency run? How were its leaders selected? Are there other instances of misconduct? Meanwhile the department can be run by a competent retired Chief without a stake in the outcome (no offense, Paul Walters, but everyone knows you want to be Sheriff.)

Where's the beef, you ask? How about the California Constitution? Article 5, section 13, implemented in Government Code section 12560, places Sheriffs under the "direct supervision" of the Attorney General. Not that our sorry board would dream of exercising it, but Government Code section 25303 also gives county supervisors authority over all county officials, sheriffs included, and even requires that they assure these officers "faithfully perform their duties."

Now that the Federal attorney general has had his say, we need California's to exercise his Constitutional authority and send a crew of Cal DOJ agents post-haste to

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turn off the shredders, lock the cabinets and shut the doors and windows before all potential evidence of mismanagement or criminal activity disappears.

Earth to Jerry Brown...come in, please. We're waiting!

Posted 10/10/10

NEVER HAVING TO SAY YOU'RE SORRY

The limits – if any – of prosecutorial immunity are the focus of a new Supreme Court case

By Julius (Jay) Wachtel. If the criminal justice system had “worked” the way that Orleans Parish prosecutors intended this posting wouldn’t exist, as [John Thompson](#) would be rotting in his grave and his case would be long forgotten. But a few weeks before May 20, 1999, the day scheduled for Thompson to meet his Maker, [a defense investigator](#) happened across an extraordinary document.

It was a lab report, previously undisclosed to the defense, analyzing the blood found on the pants leg of one of the victims of an attempted armed robbery. This blood, which was indisputably the robber’s, was type “B”. That piqued the investigator’s interest. You see, the robbery, which happened three weeks after the December 1984 murder for which Thompson got the death penalty, had also been pinned on Thompson. In fact, prosecutors took him to trial for the robbery first so that if he was found guilty they could use that conviction to impeach him at his murder trial. (He was, and they did.)

Yet they didn’t use the blood evidence. Instead, they relied on shaky eyewitness testimony. Why? As it turned out [Thompson’s blood type was different](#). It was “O”.

Fourteen years later, as the execution date approached, Thompson’s lawyers presented indisputable evidence that prosecutors knew of the blood-type discrepancy but never let on. Not only was that a clear violation of [Brady v. Maryland](#), which requires that the State share potentially exculpatory material with the defense, but a stunning moral breach as well.

Since Thompson’s bogus robbery conviction was used to get jurors to go for the death penalty, a judge placed the execution on hold. Eventually both convictions were set aside. But prosecutors decided to retry Thompson for murder. This time, though, the defense had reams of exculpatory material, including previously withheld police reports that suggested a third party was the real killer. (This man, who had given officers conflicting accounts about the murder, was later shot and killed by a security guard.)

Jurors were out half an hour. Four years after his close brush with death, and eighteen after getting locked up for two crimes he didn’t commit, Thompson was finally a free man.

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He then sued Orleans Parish for violating his civil rights under [42 USC 1983](#). After winning a \$14 million judgment in Federal District Court, then having it affirmed in the Fifth Circuit, Thompson must have been disappointed when the Supreme Court elected to hear the D.A.'s appeal, a move that is often a harbinger of reversal. (*Connick v. Thompson*, no. 09-571.)

The Court's grant of certiorari was hardly surprising. Three decades earlier, in *Imbler v. Pachtman*, justices unanimously ruled that "the vigorous and fearless performance of the prosecutor's duty that is essential to the proper functioning of the criminal justice system" requires they be absolutely immune, even when a prosecutor's "malicious or dishonest action" leads to a wrongful imprisonment.

Like Thompson, Imbler had been convicted of murder and sentenced to death. He served nearly a decade before a Federal district judge found that the prosecutor, Pachtman, knowingly used false and misleading testimony and withheld evidence of Imbler's innocence. Imbler was released and the murder case was dropped. It was his lawsuit against Pachtman that eventually led the Supreme Court to grant prosecutors a Hail Mary pass so they could do essentially as they pleased.

Knowing full well how the Supreme Court felt about such things, Thompson's legal team sued the office, not the man. Turning to settled law (*Canton v. Harris*) they cited the duty of municipalities to properly train their employees (in this instance, to disclose potentially exculpatory information under *Brady*) and avoid being "deliberately indifferent" to the public welfare.

That wasn't a unique approach. In January 2009 the Supreme Court unanimously turned away Tom Goldstein's civil rights lawsuit against Los Angeles County prosecutors (*Van de Kamp v. Goldstein*, no. 07-854). Exonerated after serving 24 years for murder, Goldstein had been railroaded by the testimony of jailhouse informer Edward Fink (regrettably the man's true name), a notorious liar who sought to earn "discounts" for his own misdeeds.

Goldstein sued the D.A. for keeping derogatory information about Fink secret and for failing to train his staff about informers. But it was no dice: in a relatively brief decision that relied heavily on *Imbler*, the Court turned Goldstein away. (For more on the Goldstein case click [here](#).)

Thompson's lawyers took pain to distinguish their case from Goldstein's. Their [brief](#) emphasizes that their target isn't an individual prosecutor but, as in *Canton*, a "municipality" (p. 51). Oral arguments took place four days ago. Things didn't go particularly well for either side. According to the [AP](#) the Justices were skeptical about

Thompson's training remedy. On the other hand, [an online legal source](#) reported that the Court grilled Louisiana's lawyer about the *Brady* violations, which as one justice pointed out are inherently difficult to detect.

There are good reasons to reconsider *Imbler*. Many prosecutorial shenanigans have been uncovered in recent years. In a notorious 2008 example, a judge set aside the corruption conviction of the late [Senator Ted Stevens](#) when it turned out that the Feds had failed to disclose exculpatory material and apparently coached a witness to lie. DOJ has since embarked on a still-ongoing national probe of Federal prosecutorial practices. (Tragically, a career attorney who was under investigation for his role in the Stevens case [recently committed suicide](#).)

Clearly not all is well in Federalville. "[Misconduct at the Justice Department](#)," a USA Today investigative series, discovered 201 instances since 1999 where judges accused Federal prosecutors of "flagrant" and "outrageous" legal and ethical breaches including hiding evidence, suborning false testimony and lying to courts and juries. Forty-seven defendants were freed or exonerated. But meaningful punishment seemed nonexistent. In a typical example, two Federal lawyers who admitted they purposely failed to turn over exculpatory evidence were suspended – for a day. Another, whose misconduct caused a man to be wrongfully convicted, was ordered to attend an ethics workshop. Reacting to the defendant's exoneration, the prosecutor said "it is of no concern to me."

And that's just the Feds. [A just-released California study](#) identified 707 instances of misconduct by state and county prosecutors between 1997-2009. Twenty percent led courts to apply remedies ranging from excluding evidence to dismissing a conviction. Sixty-seven lawyers were named more than once. Only one is known to have been disciplined by the Bar.

When the Court suggested in *Imbler* that civil lawsuits were overkill and that errant lawyers could be controlled by Bar associations there was no DNA, hence little inkling that wrongful conviction was a serious problem. As the Justices well know, that has changed. Yet thanks to *Imbler*'s safe-conduct pass the Court finds itself in a dilemma. Whether it hides behind its precedential cloak, finesses things to allow limited relief, or breaks free to chart a new course promises to be as consequential a decision for the prosecution function as *Miranda* has proven for policing.

Posted 11/2/16, updated 4/10/18

NO GOOD DEED GOES UNPUNISHED

To avoid anointing Trump, the FBI Director falls into a trap of his own making

By Julius (Jay) Wachtel. “It’s pretty strange to put something like that out with such little information right before an election. In fact, it’s not just strange; it’s unprecedented and it is deeply troubling.” One day after the [FBI Director’s startling reveal](#) about a new trove of emails, [Hillary took a swing at the very same official](#) who, in an equally “unprecedented” move, [had recently exonerated her from criminal liability](#). We’ll know in a few days whether Comey’s letter to Congress was indeed the equivalent of running over Hillary’s quest for the Presidency with an “18-wheeler” (as DNC chair Donna Brazile put it) or simply another annoying distraction in a most annoying Presidential campaign.

Still, there’s little doubt that James Comey’s maneuverings created the perfect storm of a dilemma. We’ll get to that in a moment. For now, let’s address the email scandal of which so much hash has been made.

When Hillary was anointed Secretary of State she turned up her nose at the thought (horrors!) of a State.gov email address. Instead, America’s chief diplomat continued to use her beloved Blackberry and a personal email account that routed messages through a private server installed at her home. Despite her repeated denials, she used this process for conveying and receiving classified information. Here’s an extract from Director Comey’s initial press release that describes the security status of *thirty-thousand* work-related emails that Hillary’s lawyers reluctantly turned over to the FBI:

From the group of 30,000 e-mails returned to the State Department, 110 e-mails in 52 e-mail chains have been determined by the owning agency to contain classified information at the time they were sent or received. Eight of those chains contained information that was Top Secret at the time they were sent; 36 chains contained Secret information at the time; and eight contained Confidential information, which is the lowest level of classification. Separate from those, about 2,000 additional e-mails were “up-classified” to make them Confidential; the information in those had not been classified at the time the e-mails were sent.

Alas, when the scandal erupted Hillary ordered the purge of all “personal” correspondence from the server, so the true extent of the imbroglio will never be known.

It's not that our would-be Prez was ignorant of the rules. First ladies and Secretaries of State are extensively briefed about handling classified materials and the techniques used by America's antagonists to gain unauthorized access (Russians are reportedly terrific at such things.) As a lowly ATF agent and first-line supervisor your blogger was cleared for "top secret" (the scale actually goes well beyond that) but in practice never came across anything marked higher than "confidential," the lowest rung on the ladder. Even these materials required special handling, and one can only imagine what's required to safeguard the information that routinely crosses the desk of our nation's top diplomat.

Whatever her reasons – a forthcoming Presidential campaign, past experience battling the fires that nearly drove her husband from office, or more simply, a matter of temperament – Hillary clearly sought to keep her trove of official correspondence private. Yet no Government employee is entitled to create a secret stash of official correspondence. Despite her protestations, [there is no evidence](#) that she ever officially asked to use a personal email account, nor that doing so was approved. *Update 4/10/18: In fact, [an extensive May 2016 report](#) by the State Department's Office of Inspector General found that she had not:*

Secretary Clinton used mobile devices to conduct official business using the personal email account on her private server extensively, as illustrated by the 55,000 pages of material making up the approximately 30,000 emails she provided to the Department in December 2014. Throughout Secretary Clinton's tenure, the FAM [official Foreign Affairs Manual] stated that normal day-to-day operations should be conducted on an authorized AIS [automated information system], yet OIG found no evidence that the Secretary requested or obtained guidance or approval to conduct official business via a personal email account on her private server. According to the current CIO and Assistant Secretary for Diplomatic Security, Secretary Clinton had an obligation to discuss using her personal email account to conduct official business with their offices, who in turn would have attempted to provide her with approved and secured means that met her business needs. However, according to these officials, DS and IRM did not—and would not—approve her exclusive reliance on a personal email account to conduct Department business, because of the restrictions in the FAM and the security risks in doing so.

Of course, as a lawyer, Hillary knew better than to request permission that would surely be denied, lest the inevitable rebuke become, if ignored, evidence of criminal intent.

But didn't Comey clear her? We'll let the reader be the judge:

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Although there is evidence of potential violations of the statutes regarding the handling of classified information, our judgment is that no reasonable prosecutor would bring such a case. Prosecutors necessarily weigh a number of factors before bringing charges...In looking back at our investigations into mishandling or removal of classified information, we cannot find a case that would support bringing criminal charges on these facts. All the cases prosecuted involved some combination of: clearly intentional and willful mishandling of classified information; or vast quantities of materials exposed in such a way as to support an inference of intentional misconduct; or indications of disloyalty to the United States; or efforts to obstruct justice. We do not see those things here.

Hillary's conduct potentially fell within the purview of two Federal criminal statutes, 18 USC 1924, a misdemeanor, and 18 USC 793(f), a felony:

[Title 18 United States Code, sec. 1924](#): (a) Whoever, being an officer, employee, contractor, or consultant of the United States, and, by virtue of his office, employment, position, or contract, becomes possessed of documents or materials containing classified information of the United States, knowingly removes such documents or materials without authority and with the intent to retain such documents or materials at an unauthorized location shall be fined under this title or imprisoned for not more than one year, or both.

[Title 18, United States Code, sec. 793\(f\)](#): (f) Whoever, being entrusted with or having lawful possession or control of any document...relating to the national defense, (1) through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed....Shall be fined under this title or imprisoned not more than ten years, or both.

Director Comey mitigated the seriousness of Clinton's seemingly slam-dunk "mishandling of classified information" by pointing out that her actions weren't "clearly intentional and willful." Exactly what does this legal-speak mean? According to the [U.S. Attorney's Manual](#), "an act is done 'willfully' if done voluntarily and intentionally and with the specific intent to do something the law forbids." As we pointed out, Hillary dodged that trap by simply not asking, then playing dumb. What's more, neither statute requires proof of willfulness. For example, 18 USC 1924 hews to the far less demanding "knowing" standard, which requires evidence that an accused acted with "knowledge or awareness of the facts or situation, and not because of mistake, accident or some other innocent reason." In other words, did Hillary really mean to store her Government emails on a private server, or not?

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Hillary's absolution doesn't rest on the cold, hard facts. It's based, instead, on Comey's belief that her acts, while perhaps technically illegal, didn't rise to the level where a "reasonable" prosecutor would feel compelled to press charges. But to our best recollection there has never been anything even remotely comparable to what she did. What other *Secretary of State*, for reasons of pure selfishness, purposefully circumvented accepted communications protocols, not on a case-by-case basis but for years, keeping critical deliberations out of Government archives while potentially exposing a wealth of highly sensitive material to our nation's adversaries?

Separating law enforcement and prosecution accomplishes two things. On the one hand, it insulates cops from political pressure; on the other, it assures that liberty interests are protected by officials who are answerable to the courts and [whose duty is to bring justice, not merely convict](#). Accordingly, charging decisions are typically made and announced by prosecutors. But Comey, a former United States Attorney and Deputy Attorney General, is no longer a prosecutor but the executive of our nation's premier law enforcement organization. In other words, he's a top cop. When he stepped out of that role to proclaim that Clinton would not be charged his comments were as stunning for their source as for their content.

This former Fed – he's probably not the only one – believes there was abundant evidence to convict Hillary of the misdemeanor. Of course, merely bringing charges would have in effect anointed Trump as our next Commander-in-Chief. That's presumably something that neither FBI Director Comey nor his boss, Attorney General Loretta Lynch, nor any other senior member of the administration, nor at least half the public could easily stomach. So something *had* to be done. But the A.G. couldn't step in. Had Loretta Lynch given Hillary a pass her decision would have been roundly condemned as politically driven, and particularly after the furor raised by her [June tête-à-tête with Hillary's husband](#). (Lynch insisted that her chat with Bill had nothing to do with the emails.)

To be sure, Comey is also an appointee. As FBI Director, though, he carries far less political baggage than the A.G. He also enjoys an unimpeachable reputation (check out, for example, [his sterling role](#) in keeping White House weasels from strong-arming a bedridden John Ashcroft.) Your blogger can't be positive that Lynch personally beseeched Comey to clear Hillary. Maybe it was a little bird. But whoever or whatever did it, it probably wasn't a hard sell.

Then the other shoe dropped. When more e-mails surfaced, Comey was instantly caught in a dilemma of his own making. Having inappropriately assumed the prosecutorial mantle in "[l'affaire qui plombe Hillary Clinton](#)" (thanks, *Le Monde*,) the nation's top cop owned the imbroglio, hook, line and sinker. [Comey had already testified](#)

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[about the matter](#) before the House Judiciary Committee. He knew full well that not everyone at Justice and the FBI was pleased with his decision to let Hillary off, and undoubtedly worried that word about the new batch would leak. Keeping Congress in the dark, even for an instant, was out of the question. It could make it seem as though he wasn't an impartial public servant but just another political hack. So of course the man blabbed.

As one might expect, [that badly upset the applecart](#). Critics quickly accused Comey of purposely meddling in an election, even (horrors!) of favoring Trump. What they missed were the struggles of a proud Government servant straining to protect his reputation after a fundamental misstep. Had Comey kept quiet and stuck to his official role from the very start, responsible for overseeing investigations but not for implementing their findings, he could have simply directed a review of the new stash and, in due course, submitted his agents' conclusions, leaving further decisions to Loretta Lynch, where they properly belong.

But Comey had already put on her hat. Imagine the reaction if he and the A.G. managed to suppress word of the emails until after Hillary's election. Imagine the consequences if the new batch proved significant. Comey was indeed caught between a rock and a hard place. And now, by extension, so is everyone else but Trump.

“NUMBERS” RULE – EVERYWHERE

Production pressures degrade what’s “produced” – and not just in policing



For Police Issues by Julius “Jay” Wachtel. Yes, the aircraft pictured above is Boeing’s notorious 737 “Max”. [Two crashes](#) – one in October 2018, soon after its introduction into service, then another in March 2019 – killed a total of 346 passengers. These accidents, which led to the planets worldwide grounding, were ultimately attributed to its newfangled flight stabilization program, MCAS. And it’s not as though Boeing wasn’t forewarned. [According to former engineer Curtis Ewbank](#), his employer rejected requests to add a backup system that could have prevented the tragedies:

...Ray Craig, a chief test pilot of the 737, and other engineers wanted to study the possibility of adding the synthetic airspeed system to the Max. But a Boeing executive decided not to look into the matter because of its potential cost and effect on training requirements for pilots. “I was willing to stand up for safety and quality,” Mr. Ewbank said in the complaint, “but was unable to actually have an effect in those areas. Boeing management was more concerned with cost and schedule than safety or quality.”

At the time, America’s leading maker of commercial aircraft [was being severely challenged](#) by Europe’s Airbus. Boeing executives insisted “we need something now”. That, said an engineer who worked on the project, created “a much more intense pressure cooker than I’ve ever been in.”

It wasn’t until November 2020 that the Max returned to service. Things seemed fine for about three years. [Misfortune then struck again](#). On January 5, 1924, a factory-installed plug for an unused passenger exit blew out during an Alaska Airlines flight. While this caused instant decompression and forced an emergency landing, there were fortunately no injuries or loss of life. But unlike the earlier catastrophes, which involved foreign carriers and took place overseas, this mishap happened to a domestic carrier (Alaska Airlines) on a domestic flight, and blowback was severe. And as in the earlier, highly lethal failure, preventing it would have required that Boeing resist the urge to

crank things out. [Here's what a retired engineer had to say](#) about why the plug was improperly secured:

...I would argue that the most like scenario is that the employees felt rushed, and employees were feeling rushed because the corporation is pressuring the factories to produce these planes and pump them out the door.

On October 21, 2021 cinematographer Halyna Hutchins was killed and director Joel Souza was wounded when actor/co-producer Alec Baldwin [unintentionally fired a live bullet](#) during a rehearsal on the New Mexico set of “Rust”. Although accounts vary, the gun was apparently placed in a prop cart by the armorer, Hannah Gutierrez-Reed, then picked up by Assistant Director David Halls, who handed it to Baldwin.



Halls and Gutierrez-Reed were both responsible for assuring that prop guns were harmless. Prosecutors, though, attributed a far lesser measure of culpability to Halls, from whom they accepted a guilty plea to a misdemeanor. Gutierrez-Reed, on the other hand, was recently tried and convicted of felony involuntary manslaughter and sentenced to 18 months’ imprisonment (that’s her being led away after the verdict). Baldwin’s trial on that charge is pending.

How did a live round come to be in the gun? To us, and likely to Baldwin’s jurors, that would seem to be the most pressing question. [In a recent filing](#), New Mexico Special Prosecutors Kari T. Morrissey and Erlinda O. Johnson announced they would address this issue with examples from Baldwin’s past conduct:

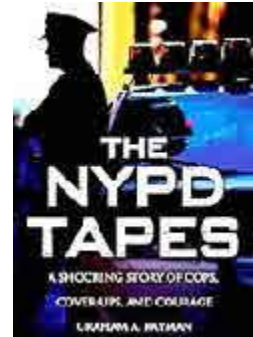
In this case, evidence of acts committed by the defendant between October 12 and 21, 2021, such as, inter alia, using the firearm to point at people on set, putting his finger on the trigger when handling the firearm, pressuring crew members to get things done quickly [emphasis ours] are admissible to show lack of accident or mistake (p. 11).

Video clips from the production, which prosecutors intend to use at trial, allegedly depict Mr. Baldwin “rushing the armorer to reload the gun and rushing other crew members to hurry” (p. 3). According to Spencer Parsons, an educator and film industry professional, [“rushing” is common on film sets](#) and makes accidents more likely to happen:

In some cases they can put people through even longer hours, and the need for speed is even greater. That can be very, very dangerous. The need for speed on any set incentives behaviour that’s not always the best for safety.

So, how about policing? Anti-crime strategies such as “[hot spots](#),” “[focused deterrence](#)” and “[problem-oriented policing](#)” can help tamp down crime and disorder. But as we’ve repeatedly cautioned, (see, for example, “[Driven to Fail](#)”) even the best-intentioned anti-crime campaigns must be carefully monitored so that “production” doesn’t become the objective.

- In 2012 “[The Numbers Game](#)” recounted the daunting experiences of veteran cop NYPD cop Adrian Schoolcraft. Resisting a “pressure-cooker atmosphere” that emphasized making as many stop-and-frisks and writing as many tickets as possible earned him a string of unsatisfactory evaluations. Schoolcraft was ultimately stripped of his gun and badge, and a dispute with a supervisor landed him in a psychiatric ward. Graham A. Rayman’s “[The NYPD Tapes](#)” points out that [pressures to produce beset every officer](#). Here’s what another retired NYPD detective had to say:



...the police department is using these numbers to portray themselves as being effective. In portraying that illusion, they have pushed these illegal quotas which force police officers to engage in illegal acts...

- In 2016, one year after the death of “suspicious” bicyclist [Freddie Gray](#), who perished while being transported, handcuffed but unbuckled, in a bouncing police van, DOJ launched a probe of Baltimore PD. Here’s an excerpt from its [detailed report](#):

...many supervisors who were inculcated in the era of zero tolerance continue to focus on the raw number of officers’ stops and arrests, rather than more nuanced measures of performance...The continued emphasis on these types of “stats” drives BPD’s tendency to stop, search, and arrest significant numbers of individuals on Baltimore streets—often without requisite legal justification and in situations that put officers in adversarial encounters that have little connection to public safety...(p. 17)

- In 2019 LAPD’s Inspector General [issued a report](#) that blasted the agency’s aggressive stop-and-frisk and chronic offender campaigns for, among (many) other things, detaining persons without clear legal cause. LAPD was urged to develop guidelines to prevent “unwarranted intrusions”. Facing deep backlash from the community, which accused his officers of habitual racial profiling, then-Chief Michel Moore soon suspended the programs.
- Our wrongful conviction posts are replete with examples that reflect an unholy urgency to satisfactorily (and speedily) resolve major cases. In [Damn the](#)

[Evidence – Full Speed Ahead!](#) we discussed the case of Joseph Carter, who was granted “an absolute pardon” after serving 25 years for a 1989 murder that [authorities ultimately conceded he did not commit](#). According to Virginia Governor Ralph Northam, “Mr. Carter was an unfortunate victim of Norfolk Detective Glenn Ford, who used his official capacity to extort witnesses in order to yield high solvability percentages”:

Instead of taking time to sufficiently investigate the murder, or critically evaluate witness testimony, the Commonwealth permitted Detective Ford to elicit false witness testimony that wrongfully implicated Mr. Carter...In 2010, after successfully “closing” nearly 200 homicide investigations during a span of nearly three decades, Ford was Federally convicted of “shaking down” criminal defendants.

After gaining Mr. Carter’s conviction Detective Ford went on to persecute (and prosecute) the

“[Norfolk Four](#),” a notorious case that in time sealed his reputation.

So, have things changed? Perhaps not. On September 7, 2023 a civil jury working in Riverside, California’s historic courthouse [returned a stunning \\$2.8 million-dollar verdict](#) in favor of retired Riverside police officer Shawn Casteel. Here’s a verbatim extract from the [court record](#):



**RIC1906046: Casteel v. City of Riverside
9/7/2023 Jury Verdict**

Question 1: Did Shawn Casteel disclose that there was a citation quota at the Riverside Police Department? **Answer: Yes**

Question 2: Did Shawn Casteel refuse to participate in issuing citations to meet the citation quota at the Riverside Police Department? **Answer: Yes**

Question 3: Did Shawn Casteel have reasonable cause to believe that the information disclosed a violation of state law, or would Shawn Casteel's participation in issuing citations to meet the citation quota result in a violation of

state law? **Answer: Yes**

Question 4: Did the Riverside Police Department subject Shawn Casteel to adverse employment action? **Answer: Yes**

Question 5: Was Shawn Casteel's disclosure of the quota or his refusal to participate in the quota a contributing factor in the Riverside Police Department's decision to subject him to adverse employment action? **Answer: Yes**

Question 6: Was the Riverside Police Department conduct a substantial factor in causing Shawn Casteel's harm? **Answer: Yes**

Question 7: Did the Riverside Police Department prove by clear and convincing evidence that the Riverside Police Department would have subjected Shawn Casteel to adverse employment action anyway at that time for legitimate, independent reasons? **Answer: No**

Question 8: What are Shawn Casteel's damages?

a. Past non-economic losses, including physical pain, mental suffering, emotional distress, inconvenience, grief, anxiety, humiliation: **\$1,250,000.00**

b. Future non-economic losses, including physical pain, mental suffering, emotional distress, inconvenience, grief, anxiety, humiliation: **\$1,600,000.00**

Total Damages: \$2,850,000.00

Mr. Casteel had been a motorcycle officer. He testified that supervisors had long pushed ticket quotas, and that when he objected, they retaliated. But Riverside police chief Larry Gonzalez staunchly disagreed. Taking the stand, [he steadfastly denied](#) that quotas existed or that retaliation took place. But line cops "lined up" behind the plaintiff. Here's an extract from the testimony of another former motor officer:

During a roll-call briefing session, [a Lieutenant who commanded the traffic bureau] told everyone in attendance that the traffic bureau wrote 18,000 tickets the previous year and that he expected us to reach the 20,000 mark this year.

What's more, the Lieutenant capped it all off by passing around a tally of the number of tickets written by each of his subordinates. His lapse of judgment likely helped jurors reach theirs.

Mr. Casteel retired in 2022.

Numbers aren't just a problem in California. A member of Ohio's state patrolmen's association [recently estimated](#) that as many as twenty-five percent of the Buckeye State's cops "are told to produce certain numbers or there will be some sort of consequence." In 2022 former Independence, Ohio Police Lieutenant Leonard Mazzola was awarded *nearly a million bucks* because his superiors retaliated against him for complaining about ticket quotas (click [here](#) for his lawyers' account). Here's how the now-retired command officer characterized the issue:



No police department blatantly calls their enforcement efforts quotas. They're presented as goals, standards, minimum performance, performance standards, production expectations, etc. They exist in most departments and are driven by revenue...

Quotas for arrests and traffic tickets are clearly a bad idea. And in California, they've been illegal for at least two decades. [Here's an extract](#) from the Golden State's Motor Vehicle Code:

Section 41602 - Arrest quota prohibited. No state or local agency employing peace officers or parking enforcement employees engaged in the enforcement of this code or any local ordinance adopted pursuant to this code, may establish any policy requiring any peace officer or parking enforcement employees to meet an arrest quota.

Stung by the fracas in Independence, members of the Ohio House introduced a [bill](#) that prohibits agencies from using numbers to evaluate officer performance. It's drawn support from citizens and police groups. Opponents, if any, have so far held their fire.



During his service in Federal and local law enforcement as both a worker bee and first-level supervisor, your blogger found a pervasive preoccupation with "making numbers". That's not to say that "quality" didn't matter. Solving major crimes, arresting worthy targets and hauling in dangerous contraband was definitely a plus. But number-crunchers always lurked in the shadows. Arrest counts mattered a lot to higher-ups, who used the crude measure as a way to secure (and, if possible, *increase*) funding. Inevitably, the pressure trickled down:

Make cases, put people in jail, numbers. Our department right now is heavily into numbers. It's not so much the quality of the case but it's how many cases you do...because there are stat's being taken through the chain of command.

That quote is from one of the many interviews that your blogger conducted with police narcotics detectives while gathering data for his PhD dissertation. Click [here](#) for the journal article version of “Production and Craftsmanship in Police Narcotics Enforcement”.

And let us know what you think!

Posted 11/6/11

N.Y.P.D. BLUE

Allegations of misconduct and corruption beset the nation's largest police force

By Julius (Jay) Wachtel. Less than a year after a fellow officer (and jilted lover) [aimed her pistol and pulled the trigger](#), leaving him with bullet holes in the arm and shoulder, officer Jose Ramos wound up in yet another bull's-eye.

In December 1998 [a tip that Ramos and a helpmate were peddling drugs](#) led internal affairs detectives to tap telephones at two barbershops that Ramos acquired as gifts from his father. One undercover officer hired on as a barber. Others posed as drug dealers and gained Ramos' confidence. During the next three years they paid him to help rip off a pretend marijuana operation and to haul loads of pretend heroin in his police cruiser. Ramos was delighted. "I could drive a dead body in the trunk of my car where I want and no one would stop me," he bragged.

There was a reason why IA spent so much time and money. Soon after opening the drug case detectives overheard Ramos talk on the phone about fixing traffic tickets. They discovered that the Bronx branch of the patrol officers' union was running a massive, long-standing scheme to fix tickets issued to officers' families and friends. Upon request, union rep's (Ramos was one for two years) [tracked down and destroyed citations](#) before they hit the courts and the motor vehicle bureau.

It was an unpaid service. It was also audacious and completely illegal. Each instance of a fixed ticket entangled violators, requesting officers, union go-betweens and the officers who actually destroyed the paperwork in a host of crimes that deprived the city of revenue and potentially imperiled public safety.

In 2011 a grand jury reviewed a sample 800 episodes of ticket fixing, representing thousands of criminal violations and financial losses of up to \$2 million. Jurors may have thought that they were working in secret, [but investigators knew that details of the case had been leaked](#) to union officials by one of their colleagues more than a year earlier.

The long-awaited [indictment](#) was unsealed last week. Two Sergeants and twelve officers stood accused of destroying 300 citations. Each was charged with multiple counts of official misconduct, obstruction, conspiracy, criminal solicitation and grand

larceny. In addition, a well-regarded former Internal Affairs lieutenant was accused of leaking information about the inquiry. All were released except Ramos, who was charged with multiple drug counts and held on \$500,000 bail.

Dozens of officers with lesser involvement received departmental discipline. Some were forced to retire. Others got immunity in exchange for promising to testify against those indicted. One [tried to commit suicide](#).

The blame game is well underway. It's not just about fixing tickets. A spate of recent messes including [the conviction of an officer who planted drug evidence](#) and [the arrest of eight cops for smuggling guns](#) into New York (they fell prey to an FBI sting) suggests that some of the city's "finest" have fallen well short of that ideal. [Internal Affairs has taken the brunt of the criticism](#). Some question whether it's professionally up to the task. Others say that it's too small to be effective or so procedurally hidebound that its investigators have no opportunity to be proactive.

Criticisms have also been voiced about the lack of external oversight. The one agency charged with that function, "[The Mayor's Commission to Combat Police Corruption](#)," has a small staff and limited authority. Alarmed by the turn of events, [politicians in Albany recently demanded](#) that Mayor Bloomberg either convene a special panel to investigate the NYPD or the state would do it for him. But so far Hizzoner (speaking through a rep) has said "no."

We'll put the integrity of the N.Y.P.D. up against that of any police force in the world. But for the rare instances they are needed, we already have five district attorneys, two U.S. attorneys and the Civilian Complaint Review Board in New York City, plus an extremely aggressive Internal Affairs Bureau. There is absolutely no need to creating another layer of government here.

There are other concerns. NYPD's low entry salary is said to discourage better-qualified applicants. Excluding allowances and overtime, [an academy recruit earns \\$41,975](#). After 1½ years the base increases to only \$43,644, [nearly \\$20,000 less](#) than what LAPD officers earn at that point in their careers. (After five years the gaps narrow considerably.) Still, it's a big jump to conclude that lousy starting pay makes Gotham's warriors more likely to stray. Thanks to the financial meltdown NYPD has enjoyed [a surge of well-educated applicants](#). Between 1999 and 2009 the proportion of officers with 4-year degree jumped from 17 to 24 percent. It's now commonplace for recruits to have baccalaureates. New York City's cops may be fewer in number, but in terms of formal education they're getting smarter.

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What else can explain the department's perceived moral decline? For a clue we return to the example of the drug-planting cop. At his trial [an officer who pled guilty to like charges](#) testified that the practice, known as "flaking," was how some kept their numbers up. "As a detective, you still have a number to reach while you are in the narcotics division...Tavarez [the officer he was trying to help] was worried about getting sent back [to patrol] and, you know, the supervisors getting on his case." And yes, there was a ready neutralizer. "It's almost like you have no emotion with it...they're going to be out of jail tomorrow anyway; nothing is going to happen to them anyway."

Of course, there will always be rogues. Absent a resistant culture they can and will contaminate others. That's not just a theory. "It's a Courtesy, Not a Crime" [read a sign](#) held up by one of the 350 police union members who turned out to support the Bronx ticket-fixers when they were arraigned. Their president's speech drew wild applause. "Taking care of your family," he intoned, pausing for dramatic effect. "Taking care of your friends. Taking care of those who support New York City police officers and law enforcement..is...not...a...crime."

Right. So let's "take care" of everyone!

In "[The Crime Numbers Game](#)" criminal justice professors John Eterno and Eli B. Silverman assert that NYPD's vaunted Compstat program created a culture of deception in which beleaguered superiors routinely downgraded crimes to create an illusion of effectiveness. They later [expanded their argument](#) to encompass ticket-fixing, laying blame on a management culture so obsessed with productivity that it ignored quality.

There were clear signs of trouble as early as 2005. That's when the then-chairman of the Mayor's police corruption panel [resigned in protest](#) of its toothlessness. One of his concerns was that crimes were routinely downgraded in severity to make the police look good. He was brushed off by NYPD officials. They insisted that fudging stat's (something to which they didn't admit) wasn't really corruption, thus none of the panel's business.

Five years later, in February 2010, the *New York Times* reported the results of [a survey](#) by professors Eterno and Silverman. Of nearly 500 NYPD officers who retired at the rank of captain and above, more than one-hundred reported that statistics had been manipulated so that New York City would compare favorably with other areas.

Natch, police officials said that the professors got it wrong. Three months later the *Village Voice* ran the [first in a series of investigative pieces](#) about the NYPD. Drawing heavily from tapes secretly recorded by a whistle-blowing cop in Brooklyn, it concluded

that officers were under pressure to record a lot of activity while reporting as little crime as possible:

[The tapes] reveal that precinct bosses threaten street cops if they don't make their quotas of arrests and stop-and-frisks, but also tell them not to take certain robbery reports in order to manipulate crime statistics. The tapes also refer to command officers calling crime victims directly to intimidate them about their complaints. As a result, the tapes show, the rank-and-file NYPD street cop experiences enormous pressure in a strange catch-22: He or she is expected to maintain high "activity" – including stop-and-frisks – but, paradoxically, to record fewer actual crimes.

Then another whistle-blower surfaced, this time [in the Bronx](#). He too had tapes. They confirmed that officers were being pressured in countervailing directions. On the one hand they had to make lots of "chickenshit" arrests, tickets and stop-and-frisks. On the other they had to avoid taking crime reports or downgrade what was passed on. "It happened all the time. The reason was CompStat. They [supervisors] know what they are going to be asked for in CompStat, and they have to have a lower number – but not too low."

This time NYPD couldn't deny everything – after all, there were tapes of roll calls and such. Police Commissioner Ray Kelly ordered an investigation. [Five heads promptly rolled in Brooklyn](#), including a Commander's. But that wasn't the end of it. Only three weeks later [two memos from Brooklyn's 77th. precinct](#) landed on the pages of the *Daily News*: "For the week of 10/18-10/24 we need 25 double-parkers, 15 bus stops, 50 seat belts, 75 cell phones...Thank you."

In January 2011 Commissioner Kelly [anointed three former prosecutors](#) to investigate the integrity of NYPD's crime statistics. Questions were promptly raised about how the panel would work. As we await its findings the department's controversial stop and frisk policy, [on which we've extensively reported](#), has come under renewed criticism. Three weeks ago a Federal grand jury [returned a civil rights indictment](#) against a Brooklyn cop who stopped a black man and allegedly arrested him without cause.

Making tickets disappear, planting evidence, needlessly stopping people and downgrading crimes strip policing of all meaning. How could officers be so base and self-serving? How could they so thoroughly devalue their work? While it's not the only answer, NYPD's preoccupation with numbers must rank near the top. Instead of promoting a passion for excellence – the "quality" orientation that professors Eterno

and Silverman mention, and which your blogger has long championed – managers substituted measures for goals. Compstat helped transform the exercise of coercive power, a tinderbox in any democracy, into an elaborate insider's game. It's no surprise that some officers turned into moral entrepreneurs.

NYPD has plenty of smart, highly skilled cops. All they require is an opportunity to practice their craft at the level it deserves. If only their superiors would let them.

Posted 5/7/16

ORANGE IS THE NEW BROWN

L.A.'s past sheriff and undersheriff pack their bags for Hotel Fed.

By Julius (Jay) Wachtel. There was a good reason why it only took two hours to find Paul Tanaka guilty. While jurors listened transfixed, [an underling recounted](#), in profane detail, how L.A. County's former undersheriff reacted when he learned, in summer 2011, that an inmate had been secretly collecting evidence for the FBI:

He slammed his hands on the table and said, "Those mother-f-----! Who do they think they are? F--- them!"

Everyone knew that the department's number two considered the lockups his personal fiefdom. Even if prisoners were being abused, how dare the FBI intrude! Tanaka and his boss, Sheriff Lee Baca, promptly assigned a team of six deputies to foil the Feds' dastardly plot. In a scheme dubbed "Operation Pandora's Box," [they sequestered the stoolie in another jail](#) under an assumed name and placed him on around-the-clock watch.

No matter. Word that the Feds were investigating jail conditions soon leaked to the media. Then the real bombshell struck. It turned out that the FBI's inside man had been communicating with his handlers in real time, using a cell phone. Worse yet, [the device was smuggled in](#) by a corrupt deputy who was paid \$1,500 by an undercover agent.

Sheriff Baca was furious at the breach of etiquette. He insisted that his department made the snitch unavailable for his own protection. Moreover, it was the Feds who broke the law; after all, giving an inmate a cellphone is a crime! That, indeed, [is what the deputy team told the FBI agent](#) running the case when they went to her home and threatened her with arrest.

Your blogger was with ATF, not the FBI. But a Fed is a Fed. In that world, what the deputies did was unforgivable. Suddenly the investigation wasn't just about prisoner abuse. It took a while, but three years after hiding the stoolie and trying to intimidate the FBI agent, Baca's magnificent six went on trial for obstruction. "[Following orders](#)" [proved a poor defense](#). All were convicted and received Federal sentences ranging from 21 to 41 months.

Baca promptly retired. But the Federal locomotive was picking up steam. On February 10, 2016, the lawman who presided over the largest Sheriff's office in the U.S.

for one and one-half decades [pled guilty in Federal court to lying](#) about his knowledge of the intimidation attempt. He had little choice, as at least one of the deputies was blabbing. That became obvious two months later, when the officer's graphic testimony, quoted above, [led to Tanaka's conviction](#) for conspiracy and obstruction of justice.

According to the plea agreement, Baca is expected to get six months. Tanaka will be sentenced in June. Unlike his one-time boss, who cashed in his chips and said he was sorry, the undersheriff played hardball and lost. A stiff term is likely.

What did the harebrained scheme accomplish? Beyond fitting two big-shots and a handful of deputies with orange jumpsuits, very little. It certainly didn't discourage the hounds baying at the jailhouse doors. Reports by the [ACLU](#) and the [L.A. County Office of Independent Review](#) (the county's top civilian investigative body) revealed a distressing deputy culture in the jails. Confirmed accounts of inmate abuse and maltreatment led to the formation of an official Citizen's Commission on Jail Violence (click [here](#) for their report), [a class-action lawsuit](#) (settled with a consent decree in 2014) and, beginning in 2015, monitoring by the [U.S. Justice Department](#). It's a legacy for which Baca, Tanaka and their cronies will be long (and not fondly) remembered.

L.A. County wasn't the first political jurisdiction in Southern California to drag its Sheriff's department through the mud. That distinction belongs to its southern neighbor, the County of Orange. In 2009 Sheriff Mike Carona, then in his third term, [was found guilty on Federal witness tampering](#). He was released in 2015 after serving 52 months. His conviction stemmed from a meeting with Don Haidl, a wealthy businessman whom Carona had placed in charge of the Sheriff's reserves. What Carona didn't know was that Haidl and George Jaramillo, the Sheriff's former Chief of Operations, had been secretly indicted on Federal tax charges, and were seeking leniency by ratting on Carona, whom the Feds suspected of granting favors in exchange for campaign contributions. Haidl wore a wire and secretly recorded the sheriff advising him to be evasive with the Grand Jury. (For a full account of the improbable case see ["Carona Five, Feds One."](#))

Of course, police departments have also had their share of corruption and misconduct. One notorious Southern California example is LAPD's ["Rampart Scandal"](#) of the nineties. But Sheriff's offices may be particularly vulnerable. Police chiefs are civil servants with a "real" boss, a Mayor or City Manager, and are usually appointed through a competitive process. Sheriffs, on the other hand, are typically elected. While that makes them theoretically answerable to the public, [in actual practice that can mean no one](#).

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Prolonged tenures can make things worse. Baca was appointed an L.A. County deputy in 1965. He was elected Sheriff in 1998 and re-elected four times. Carona became Orange County Marshal in 1988 and was elected sheriff ten years later. He was re-elected twice and served another decade before resigning. Proponents of term limits believe [that long terms in office can be “intoxicating.”](#) fostering a sense of impunity and creating an ideal setting for corruption. Even where limits are in effect, sheriffs aren’t usually affected, so self-serving climates can form with impunity.

Earlier posts (see below) commented extensively on the problems of controlling the conduct of elected leaders, so we won’t belabor them here. Happily, there is some good news to report. [Jim McDonnell](#) was elected L.A. County Sheriff in 2014. (He was opposed by none other than Tanaka, who thankfully lost.) A career cop who rose to become LAPD’s number two, then served five years as chief in Long Beach, [McDonnell was praised](#) by the editorial board of the *L.A. Times* for “de-Tanakafying” his troubled agency. Most deputies, who presumably want nothing more than the opportunity to do a good job, would likely say “amen.” If there is a problem it may lie in McDonnell’s excessive loyalty to subordinates. Only the other day Tom Angel, his chief of staff, resigned after admitting that [he sent emails mocking women and minorities](#) while in his previous role as deputy chief for the Burbank Police Department. McDonnell’s reluctance to censure Angel, supposedly because the incidents didn’t happen on his watch, drew rebukes from community leaders, and one hopes that a lesson was learned.

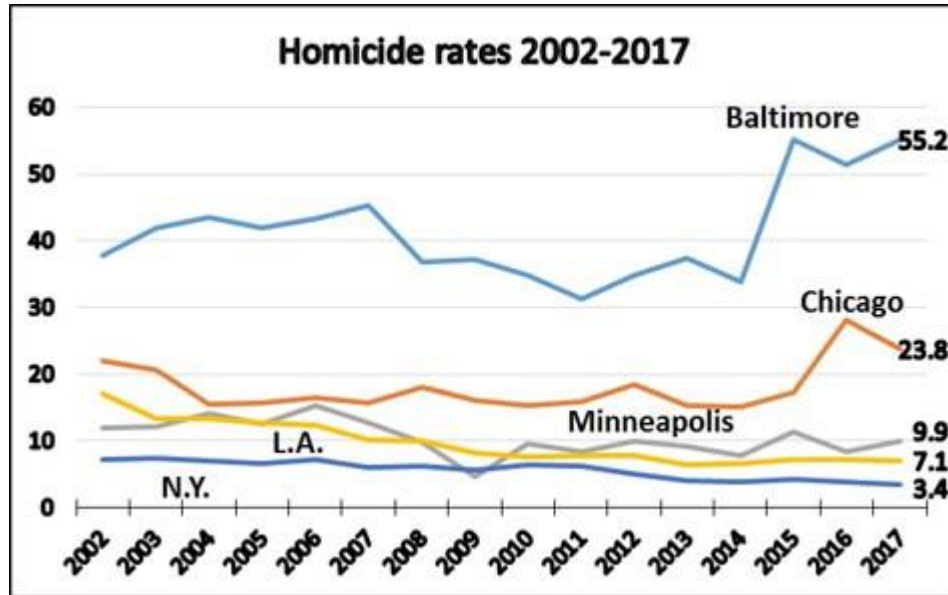
Meanwhile, Sandra Hutchens, a retired L.A. County Sheriff’s division chief, is in her first elected term as Orange County Sheriff (she was appointed in 2014 after Carona left.) Hutchens has faced a few controversies, most notably [about concealed carry permits](#), but otherwise manages to keep invisible. Hutchens’ leadership team also received high praise in a [2015 deputy poll](#), which commended Undersheriff Don Barnes, formerly chief of police services for a suburban community, for his integrity. This suggests that the Hutchens-Barnes team is unlikely to reprise the mistakes of the Carona-Jaramillo-Haidl era.

Here’s hoping that we’re not proven wrong.

Posted 7/22/18

POLICE SLOWDOWNS (PART I)

Bedeviled by scolding, cops hold back. What happens then?



By Julius (Jay) Wachtel. Here's a headline from the July 12, 2018 edition of [USA Today](#): "Baltimore police stopped noticing crime after Freddie Gray's death. A wave of killings followed." As our readers know, [Freddie Gray](#) was the 25-year old Baltimore man who died bouncing around the interior of a prisoner transport van in April 2015. His death led to waves of protests and, most unusually, the prompt (and ultimately unsuccessful) prosecution of the six cops involved. It also spurred DOJ to [open an investigation](#) into Baltimore PD, and particularly of "pedestrian stops, vehicle stops, and arrests from January 2010 to May 2015." Baltimore ultimately entered into a [consent decree](#) requiring, among other things, "robust supervisory review...to ensure that officers apply proper standards when taking these actions."

Our purpose here is to examine how police respond to public slapdowns. And it seems that in Baltimore, and elsewhere, cops reacted in a way that may have further compromised public safety. [USA Today's review](#) of Baltimore police records reveal that self-initiated officer activity – "car stops, drug stops and street encounters" – fell sharply right after the officers were charged, then stayed down:

Where once it was common for officers to conduct hundreds of car stops, drug stops and street encounters every day, on May 4, 2015, three days after city

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prosecutors announced that they had filed charges against six officers over Gray's death, the number fell to just 79. The average number of incidents police reported themselves dropped from an average of 460 a day in March to 225 a day in June of that year....By the end of last year, it was lower still.

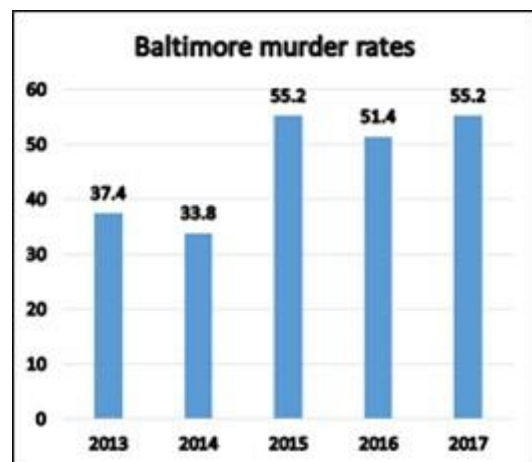
Baltimore's interim chief, Gary Tuggle, readily acknowledged the downturn in activity. "In all candor, officers are not as aggressive as they once were, pre-2015." But he tried to give his department's less enthusiastic approach a positive spin:

We don't want officers going out, grabbing people out of corners, beating them up and putting them in jail. We want officers engaging folks at every level. And if somebody needs to be arrested, arrest them. But we also want officers to be smart about how they do that.

Commissioner Tuggle's comments (they neatly summarize DOJ's recommendations) were apparently taken to heart by his employees. And as they began carefully picking their fights, violence soared. According to the [UCR](#), Baltimore's 2014 violent crime rate was 1338.5 per 100,000 pop., an improvement of about four and one-half percent over the 2013 rate of 1401.2. But in 2015 the rate increased fifteen percent, ending at 1535.9. In 2016 it jumped another sixteen percent, to 1780.4.

Full stop. Our confidence in the accuracy of the violent crime index is low. As we discussed in "[Liars Figure](#)," police departments [including Baltimore](#) have often finagled the numbers. Murder, though, seems less subject to manipulation. And in Baltimore, its trend proved similar. Between 2013 and 2014 killings declined from 233 to 211, a rate decrease of ten percent.

But 2015, the year of the incident, closed out with 344 homicides; the rate, 55.2, was sixty-three percent higher than in 2014. In 2016 the raw number (318) and rate receded a bit. But then things got intolerable. 2017's toll of 343 killings not only [set a local record](#) but confirmed Baltimore as the [second most murderous community](#) above 250,000 population in the U.S.



Did the less vigorous, post-Gray approach "cause" murder to increase? Your blogger's only a half-baked methodologist, so he's reluctant to opine. As they say, correlation is not (necessarily) causation. Was the coincidence between police vigor and crime just a

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quirk? No, said emeritus professor of public policy [Donald Norris](#), formerly of the University of Maryland's Baltimore campus:

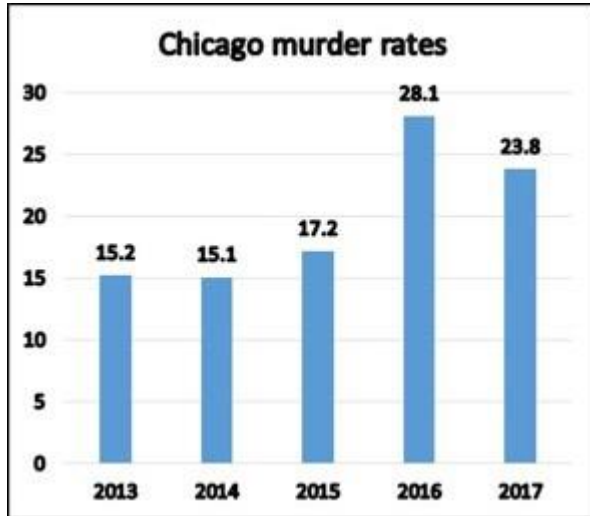
Immediately upon the riot, policing changed in Baltimore, and it changed very dramatically. The outcome of that change in policing has been a lot more crime in Baltimore, especially murders, and people are getting away with those murders.

On October 20, 2014 Chicago PD officer Jason Van Dyke [shot and killed Laquan McDonald](#), a mentally troubled 17-year old black youth who had been wielding a knife. Van Dyke said the youth had threatened him with the weapon, and his account was supported by colleagues. One year later the other shoe dropped. In November 2015, after much cajoling, Chicago finally released the police video. It depicted a stunning scene; far from menacing the cops, McDonald was actually walking away when he was repeatedly shot. Protests quickly engulfed the city, and officer Van Dyke, who as it turns out had been the subject of many complaints, was charged with murder. In 2016 [seven other officers](#) were recommended for firing, and one year after that [three were criminally charged](#) with obstructing justice.

Chicago officials had little choice. As soon as the video came out, [they asked DOJ to step in](#). Instantly, yet another “pattern and practices” investigation was underway. Its [final report](#), issued in January 2017, concluded that Chicago officers “use unnecessary and unreasonable force in violation of the Constitution with frequency, and that unconstitutional force has been historically tolerated by CPD.” Among the many observations was that aggressive tactics had led citizens in higher-crime districts to view police as an “occupying force”:

At one COMPSTAT meeting we observed, officers were told to go out and make a lot of car stops because vehicles are involved in shootings. There was no discussion about, or apparent consideration of, whether such a tactic was an effective use of police resources to identify possible shooters, or of the negative impact it could have on police-community relations.

City officials [expressed deep support](#) for the report's conclusions. Mayor Rahm Emanuel called it “[a moment of truth for the city](#).” Lori E. Lightfoot, president of the Chicago Police Board, promised to demand “that the reforms happen.” One can imagine how cops felt. But how did they respond?



This graph, which depicts UCR data, indicates that Chicago's murder rate jumped sixty-three percent in 2016. Slowdown believers would attribute that to the video's release in late 2015. ABC News' data-rich website [FiveThirtyEight](#) took a close look. Published five months after the video came out, its rich, extensive analysis of Chicago crime and police activity data revealed that between December 2015 (the month following the video's release) and March 2016 there were 175 murders and about 675 shootings not resulting in death, forty-eight

and seventy-three percent more than during the same period a year earlier. This "severe spike in gun violence" was accompanied by significant declines in arrest rates for homicide (down forty-eight percent) and nonfatal shootings (down sixty-nine percent.) *FiveThirtyEight* concluded that clearly supported the notion of cause and effect:

Even though crime statistics can see a good amount of variation from year to year and from month to month, this spike in gun violence is statistically significant, and the falling arrest numbers suggest real changes in the process of policing in Chicago since the video's release.

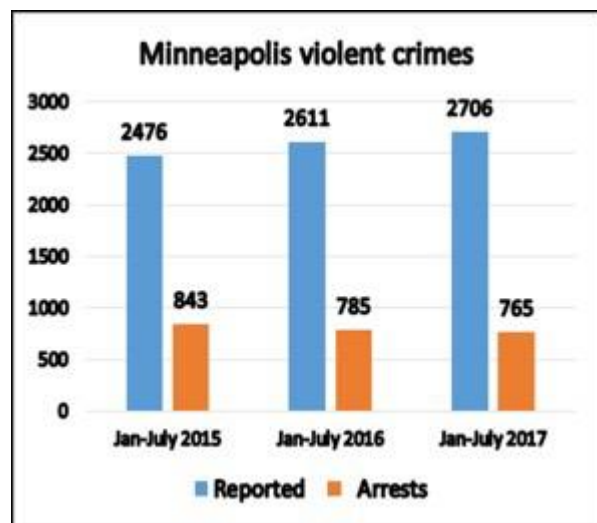
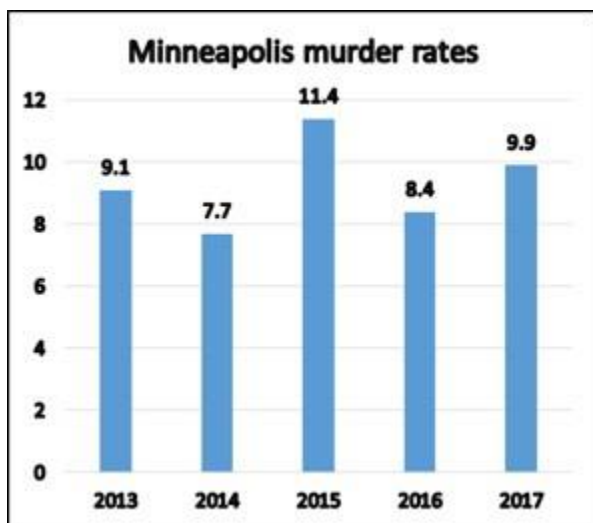
So what changed? Roseanna Ander, of the University of Chicago Crime Lab, suggested that the post-video release atmosphere made officers hesitant about exercising discretion, thus less likely to act proactively. "Certainly they'll respond to 911 calls...but if you have a group of guys on the corner and you think you have probable cause to stop them and see if one of them has a gun, you're probably not going to do that." On the other hand, while a Chicago PD spokesperson agreed that proactivity took a hit, he blamed the downturn on increased paperwork.

Paperwork? [A recently released study](#), "What Caused the 2016 Chicago Homicide Spike? An Empirical Examination of the 'ACLU Effect' and the Role of Stop and Frisks in Preventing Gun Violence," assessed the impact of various factors that could have led to Chicago's surge in violence. It ultimately blamed changes in stop-and-frisk practices. In late 2015, to settle an ACLU lawsuit, Chicago began requiring that officers thoroughly

document each stop-and-frisk on elaborate, highly time-consuming forms. As one might expect, the encounters promptly declined by eighty percent, and the slowdown continued at least through 2016. According to the authors, onerous paperwork was at the root of the steep decrease. As one might expect, [the ACLU sharply disagreed](#) (it called the study “junk science.”)

Baltimore and Chicago are two of the better documented examples of the supposedly criminogenic effects of a police “slowdown.” But cops have slowed down elsewhere. Consider Minneapolis, which occupies the next position on our introductory graph. During a roll call two years ago a police inspector [reportedly “erupted”](#) and accused officers of being “cowards” for participating in a slowdown. To be sure, some things *had* slowed. During January-May 2016, citywide arrests were off by twenty-eight percent, and stop-and-frisks by thirty-two percent compared to the same period in 2015. [Shootings, though, skyrocketed](#), increasing from forty to seventy-four, a deplorable eighty-five percent.

Why had Minneapolis’ finest slowed down? Observers point to several factors, most importantly the severe public reaction to the [November 2015 police killing of Jamar Clark](#), an unarmed black man who allegedly reached for a Minneapolis cop’s gun during a struggle. Months later police were back on the hot seat, this time over the detention at gunpoint of a citizen driving through an area where shots were reportedly fired. (He turned out to be a department store executive and was eventually let go.)



Minneapolis’ murder rates don’t clearly support the notion that a police slowdown

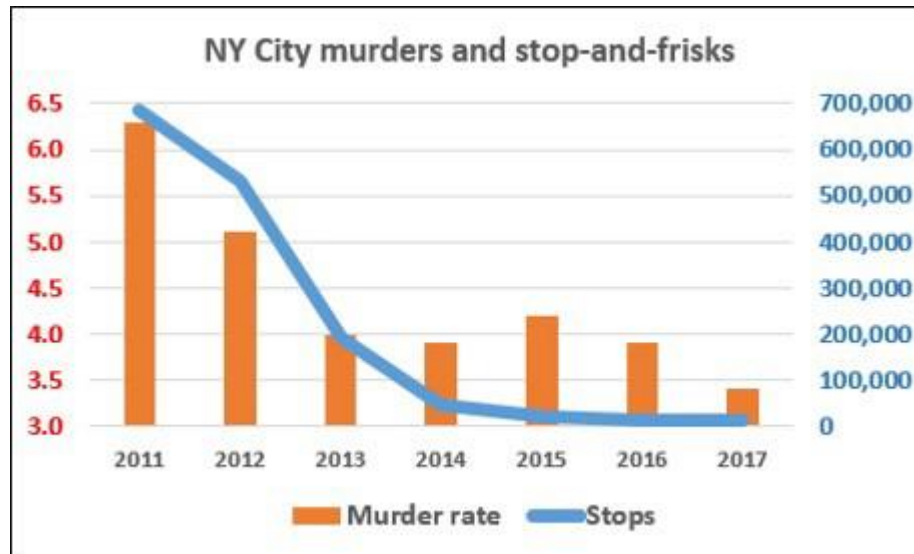
directly increased violence. While the homicide rate jumped fifty-four percent between 2014-2015, it receded somewhat in 2016, the year following Jamar Clark's killing. (Murder then went up again.) So we broadened the inquiry to include incidence and arrest data for Part I violent crime: murder, aggravated assault, forcible rape and robbery. Equivalent January – July periods for 2015, 2016 and 2017 were compared with [online Minneapolis PD data](#). (These were selected because second-half 2017 numbers are not yet in. Also keep in mind that they report raw numbers, not rates.) What we found supports the Inspector's concern that the slowdown fostered crime: As violence increased, arrests consistently dropped. Coincidentally – or not – both trends came in at 9.3 percent.

Well, time has come for your blogger to “slow down.” Part II will discuss what happened in two supposedly safer places, Los Angeles and New York City, which also experienced slowdowns. We'll bring in confounding factors such as variations in police staffing, and discuss what happens when police get too “enthusiastic.” Then throwing caution to the wind, we'll offer our own, startling recommendations. And as always, stay tuned!

Posted 8/4/18

POLICE SLOWDOWNS (PART II)

Cops can't fix what ails America's inner cities – and shouldn't try



By Julius (Jay) Wachtel. [Part I](#) concluded that sharp, purposeful reductions in discretionary police-citizen encounters probably increased violent crime in Baltimore, Chicago and Minneapolis. Here we'll start by considering the effects of work actions in two supposedly safer places: New York City and Los Angeles.

There are few better laboratories for assessing the effects of reducing officer activity than New York City, whose famous stop-and-frisk campaign [dates back to the early 2000's](#). As we reported in "[Location, Location, Location](#)" its lifespan coincided with a plunge in the city's murder rate, which fell from 7.3 in 2002 to 3.9 in 2014.

Glance at the chart, which displays data from [NYPD](#) and the UCR. Clearly, stop-and-frisk had become a *very* big part of being a cop. Officers made more than *six-hundred eight-five thousand* stops in 2011 (685,724, to be exact). We picked that year as a starting point because that's when adverse court decisions started coming in (for an in-depth account grab a coffee and click [here](#).) Still, the program continued, and there were a robust 532,911 stops in 2012. But in August 2013 a Federal judge ruled that NYPD's stop-and-frisk program [violated citizens' constitutional rights](#). Activity instantly plunged, and the year ended with "only" 191,851 stops. Then the bottom fell out. Stop-and-frisks receded to 45,787 in 2014, 22,563 in 2015, 12,404 in 2016 and 11,629 in 2017.

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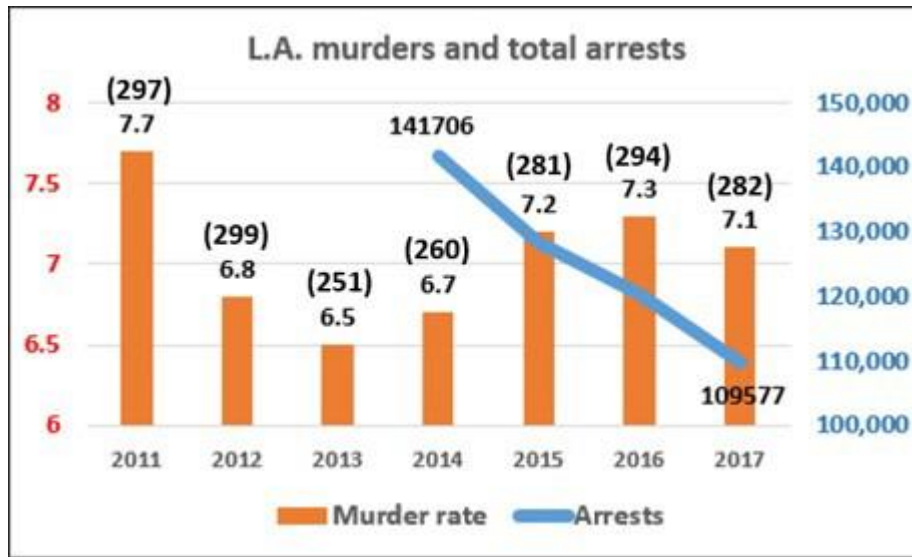
It wasn't just stop-and-frisks. Productivity was being impacted by other issues, most notably officer displeasure with Mayor Bill de Blasio, who openly blamed cops for the serious rift with the minority community caused by the tragic [July 2014 police killing of Eric Garner](#). Then things got worse. That December an angry ex-con [shot and killed](#) NYPD officers Rafael Ramos and Wenjian Liu as they sat in their patrol car. Officers quickly attributed his deranged act to the [hostile anti-cop atmosphere](#) supposedly being fostered by City Hall, then expressed their displeasure by going on a modified "strike". According to [NYPD statistics reviewed by the New York Post](#), arrests during December 2014 were down by sixty-six percent when compared to a year earlier, while tickets and the like plunged more than ninety percent. Although the magnitude of the slowdown soon receded, its effects reportedly persisted well into 2015.

On the whole, did less vigorous policing cause crime to increase? Look at the chart again. During 2011-2013 murders and stops declined at about the same rate. On its face that seems consistent with views expressed by some of the more "liberal" outlets, which concluded that doing less actually *reduced* crime – at least, of the reported kind (click [here](#) and [here](#)). But in 2014 the downtrend in killings markedly slowed, and in 2015, with stop-and-frisk on the ropes and officers angry at Hizzoner, murders increased. A study recently summarized on the NIJ [Crime Solutions](#) website concluded that, all in all, stop-and-frisk did play a role in reducing crime:

Overall, Weisburd and colleagues (2015)* found that Stop, Question, and Frisk (SQF) was associated with statistically significant decreases in the probability of nontraffic-related crime (including assault, drug-related crimes, weapon-related crimes, and theft) occurring at the street segment level in the Bronx, Brooklyn, and Staten Island...SQFs did not have a statistically significant impact on nontraffic-related crime in Manhattan or Queens."

* David Weisburd, Alese Wooditch, Sarit Weisburd and Sue-Ming Yang, "Do Stop, Question, and Frisk Practices Deter Crime?" *Criminology and Public Policy*, 15(1):31–55 (2015).

Stop-and-frisk campaigns reportedly reduced crime in other places. For example, check out [Lowell, Mass.](#) and [Philadelphia](#). However, [our views on the practice](#) are mixed, and we'll have more to say about it later. For now let's move on to our last city, El Pueblo de Nuestra Senora, La Reina de Los Angeles:



L.A.'s murder rate initially followed the New York pattern, [plunging from 17.1 in 2002 to 6.5 in 2013](#). But L.A.'s tick-up has been considerably more substantial. That concerned the [Los Angeles Times](#), which reported that arrests paradoxically decreased by twenty-five percent between 2013 and 2015. "Field interviews" (the term includes stop-and-frisks) also supposedly dropped, and 154,000 fewer citations were written in 2015 than in 2014. Unfortunately, the *Times* didn't post its actual numbers on the web. Our tally, which uses data from the UCR and the [LAPD website](#), indicates that arrests declined 23 percent between 2014-2017, a period during which murders increased about six percent.

According to the *Times*, officers conceded that they had slowed down on purpose. Their reasons included public criticism of police overreach, lower staffing levels, and the enactment of [Proposition 47](#), which reduced many crimes to misdemeanors. And while the lessened activity led some public officials to fret, some observers thought that doing less might be a good thing:

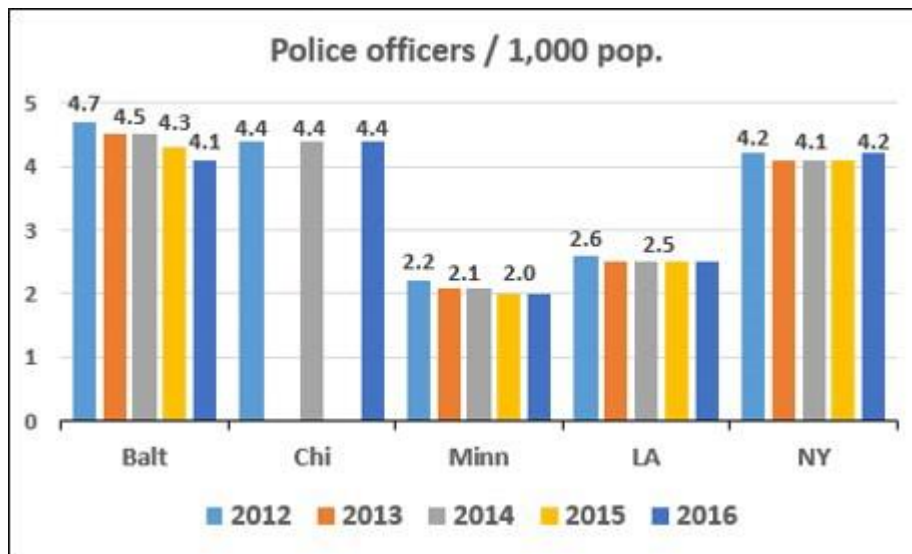
If police are more cautious about making arrests that might be controversial, making arrests that might elicit protests, then that is a victory. We want them to begin to check themselves.

Contrasting his vision of "modern policing" with the bad old days, when doing a good job was all about making lots of stops, searches and arrests, then-Chief Charlie Beck heartily agreed:

The only thing we cared about was how many arrests we made. I don't want them to care about that. I want them to care about how safe their community is and how healthy it is.

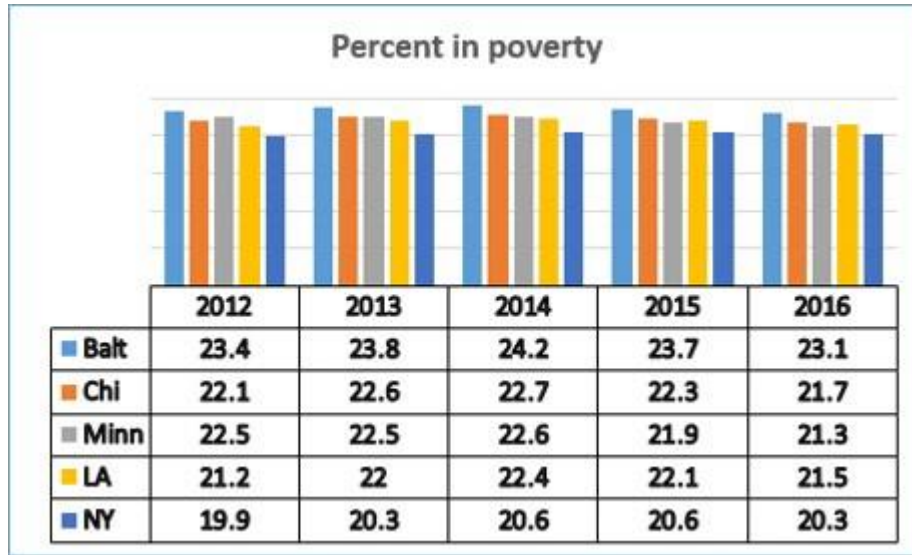
Well, that's fine. But it doesn't address the fact that twenty-one more human beings were murdered in 2015 than in 2014. Was the slowdown (or whatever one chooses to call it) responsible? While a definitive answer is out of reach, concerns that holding back might have cost innocent lives can't be easily dismissed.

Other than police activity, what enforcement-related variables can affect the incidence of crime? A frequently mentioned factor is police staffing, usually measured as number of officers per 1,000 population. Here is a chart based on data from the UCR:



LAPD staffing has always been on the low end. Its officer rate per thousand, though, held steady during the period in question. So did the rate for every other community in our example except Baltimore, where the officer rate steadily declined while homicides went *way* up (see [Part I](#)).

Forget cops. What about the economy?

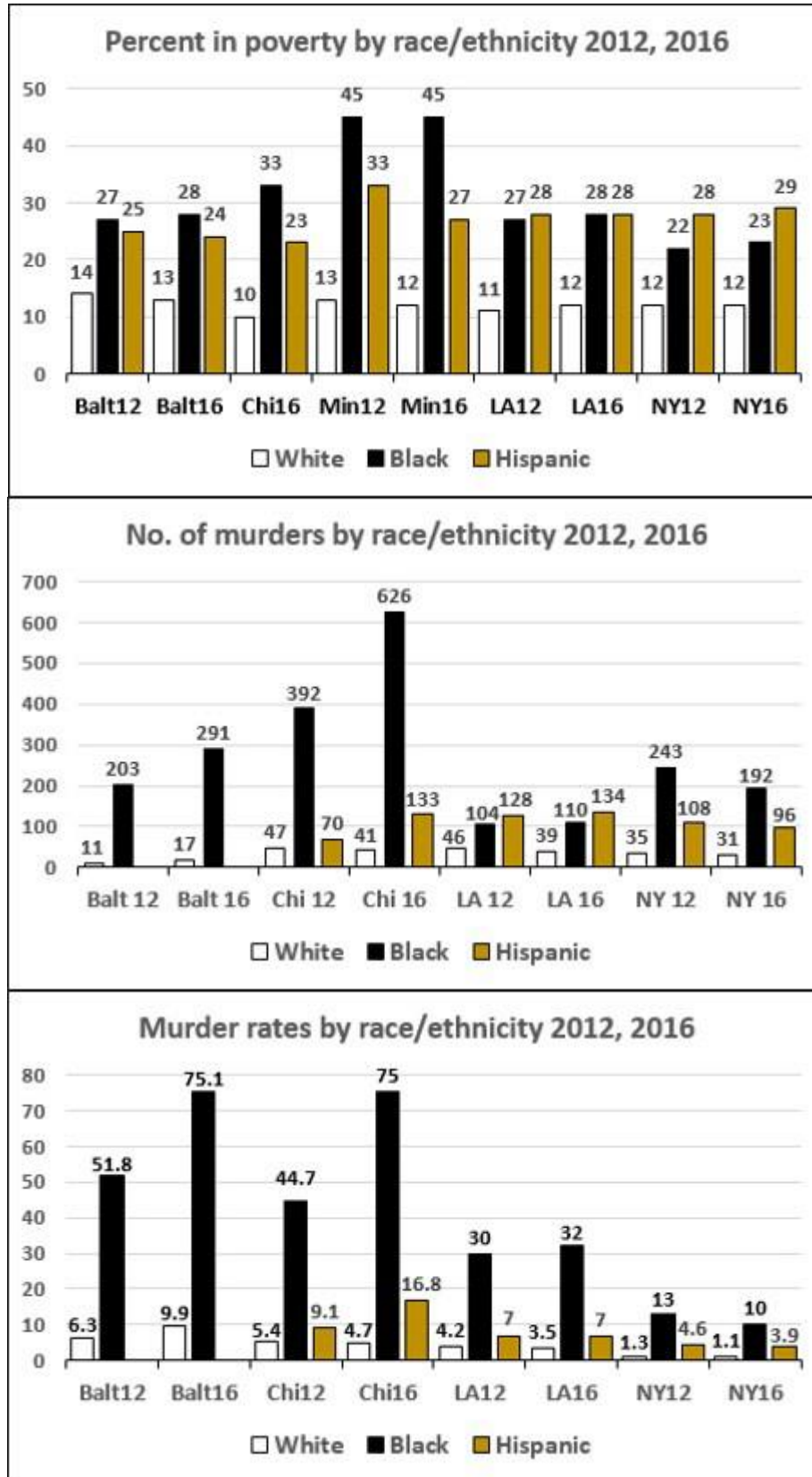


This graph, which uses [poverty data from the Census](#), indicate that the three high-crime burg's from [Part I](#) – Baltimore, Chicago and Minneapolis – have more poverty than the lower-crime communities of Los Angeles and New York. That's consistent with the poverty > crime hypothesis. On the other hand, within-city differences during the observed period seem slight. So blaming these fluctuations for observable changes in crime is probably out of reach.

Back to stop-and-frisk. Is aggressive policing a good thing? Not even *Crime Solutions* would go that far. After all, it's well known that New York City's stop-and-frisk debacle, which we explored in "[Too Much of a Good Thing?](#)" and "[Good Guy, Bad Guy, Black Guy \(Part II\)](#)", was brought on by a wildly overzealous program that wound up generating [massive numbers of "false positives"](#):

[During 2003-2013] NYPD stopped nearly six times as many blacks (2,885,857) as whites (492,391). Officers frisked 1,644,938 blacks (57 percent) and 211,728 whites (43 percent). About 49,348 blacks (3 percent) and 8,469 whites (4 percent) were caught with weapons or contraband. In other words, more than one and one-half million blacks were searched and caught with...nothing.

Keep in mind that aggressive policing doesn't happen in Beverly Hills. It happens in poor areas, because that's where violent crime takes its worst toll. NYPD officers most often frisked persons of color because they tended to reside in the economically deprived, high-crime areas that the well-intentioned but ill-fated policing campaign was meant to transform. These graphs illustrate the conundrum:



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In the end, turning to police for solutions to festering social problems is lose-lose. There are legal, practical and moral limits to what cops can or should be asked to accomplish. Saying that it's a "matter of balance" is too glib. Given the uncertainties of street encounters and variabilities in resources, skills and officer and citizen temperament, calibrating aggressive practices so that they avoid causing offense or serious harm is out of reach. It can't be done.

Correcting fundamental social problems isn't up to the police: it's a job for society. *Police Issues* is neither Red nor Blue, but when President Trump offered Charlotte's denizens a "[New Deal for Black America](#)" that would sharply increase public investment in the inner cities, [we cheered](#). Here's an extract from his speech:

Our job is to make life more comfortable for the African-American parent who wants their kids to be able to safely walk the streets. Or the senior citizen waiting for a bus, or the young child walking home from school. For every one violent protester, there are a hundred moms and dads and kids on the same city block who just want to be able to sleep safely at night.

Those beautiful sentiments – that *promise* – was conveyed nearly two years ago. America's neglected inner-city residents are still waiting. And so are we.

Posted 2/20/23

PUNISHMENT ISN'T A COPS JOB (II)

In Memphis, unrelenting violence helps sabotage the craft



For Police Issues by Julius (Jay) Wachtel. During the evening hours of January 7, Memphis Police Department's "Scorpion" anti-crime unit set the stage for yet another memorial to police abuse. A few days later, after Tyre Nichols died from his injuries, residents adorned the spot of his final encounter, transforming a residential streetcorner into an ode for a twenty-nine year old California transplant whom few had really known.

That place, the intersection of Castlegate and Bear Creek lanes, was where officers intercepted Mr. Nichols after he fled from their colleagues. His first encounter, at Baines and Ross Roads, where authorities say they stopped him for reckless driving, was captured by a pole-mounted camera and the bodycam of a late-arriving cop. (Click [here](#) for our condensed version of the video.)

Unfortunately, that's the only video that's been released of that first stop. So we can't tell whether there really was a pressing, let alone legitimate reason to make the stop. Nor whether Mr. Nichols, who is depicted being dragged out of his car by an angry, cursing cop, had *really* refused to peacefully exit the vehicle.



All along, Mr. Nichols speaks calmly. But he evidently offered some physical resistance, and the officers used pepper-spray and a Taser (third image). Even so, Mr. Nichols quickly managed to break free and run off (fourth image).



As members of a special team, the officers who made the stop were in an unmarked car. That could have worried Mr. Nichols from the start. Their aggressiveness and crude language may have also come as a shock. We don't know whether Mr. Nichols was under the influence of drugs, leading him to be uncooperative and combative, such as what's been attributed to persons in the throes of "[excited delirium](#)." Police later [asked Mr. Nichols' mother](#) if her son was on drugs, as he had displayed "superhuman strength" when they tried to apply handcuffs. But she said that the tall, skinny man suffered from [Crohn's disease](#). That's a substantial disability. And during the struggle at the first stop location, one of the cops got accidentally hit with pepper-spray (click [here](#) for a brief clip that depicts the officer's partner rinsing out his eyes.) That dousing might have relaxed the cops' grip on Mr. Nichols.

Whatever enabled the man's escape, the initial encounter demonstrates a lack of tactical aptitude. Contrast that with what happened at the start of the disastrous incident after which this essay is entitled, [the murder of George Floyd](#), when a rookie cop got the drug-addled man out of his car, in handcuffs and on the sidewalk without causing him any harm. Floyd's supposedly drug-induced "superhuman strength" came later, when he violently resisted being seated in a police car. ([See the testimony](#) of MPD Lt. Johnny Mercil and MPD medical support coordinator Officer Nicole Mackenzie during Chauvin's trial.).

Once he broke free, Mr. Nichols hot-footed it to his mother's house. It's located in one of Memphis' nicer areas, about a half-mile away. Alas, another Scorpion crew caught up with him as he entered the neighborhood. That encounter, which involved twice as many cops as the first, was grotesquely violent



from the start, with officers mercilessly kicking and pummeling Mr. Nichols (left image) and repeatedly dousing him with pepper spray (right image). About six minutes later, once Mr. Nichols was virtually unresponsive, they dragged him away (left image) and



propped him against one of their cars (right image.) (Click [here](#) for our condensed version of the polecam video, and [here](#) and [here](#) for our condensed versions of officer bodycam videos.)

Most of our information came from the videos and the veritable flood of news coverage. (Click [here](#) for the *Associated Press* Nichols “hub”, with links to each of their stories.) Other than the videos, little has been officially released. On January 20, two weeks after the encounter, Memphis PD Chief Cerelyn “CJ” Davis posted [a brief notice](#) announcing the firing, earlier that day, of the five officers who encountered Mr. Nichols at the streetcorner. One week later she delivered [a video address](#). Her remarks (click [here](#) for a transcript) implicitly attributed their “egregious” behavior for his death. Calling her cops’ conduct “heinous, reckless and inhumane”, a violation of “basic human rights” and “the opposite” of what they were sworn to do, she promised “a complete and independent review...on all of the Memphis Police Department's specialized units.” ([According to the AP](#), as of February 7 six Memphis officers have been fired over the incident and a seventh was removed from duty.)



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Still, the Chief didn't say that police were *solely* to blame for the horrific outcome:

I promise full and complete cooperation from the Memphis Police Department with the Department of Justice, the FBI, the Tennessee Bureau of Investigation, and the Shelby County District Attorney's office to determine the entire scope of facts that contributed to Tyree Nichols death.

So far, none of these agencies have released their reports. Shelby County's Coroner is also yet to publicly weigh in. However, [according to a lawyer retained by the Nichols family](#), "preliminary findings" issued by "a highly regarded, nationally renowned forensic pathologist" revealed that Mr. Nichols "suffered extensive bleeding caused by a severe beating." Whether drugs or a prior medical condition might played a role in his death is yet to be announced.

Medical issues aside, did Mr. Nichols' behavior during the initial stop make things worse? [A police report](#) filed by the "Scorpions" supposedly stated that Nichols was a suspect in an aggravated assault, that he was "sweating profusely and irate" when he got out of the car, that he grabbed for an officer's gun, and that he pulled on the cops' belts (ostensibly, to get a gun). But nothing was said about the officers' use of force. Really, given the horrific police conduct captured on the videos, Mr. Nichols' physical condition and behavior now seem beside the point. Fundamentally, we have a replay of another shameful saga. Had Derek Chauvin not forcibly held him down for those infamous six minutes, a man who *had* committed a (minor) crime, who *did* have drugs in his system, and who *did* exhibit seemingly "superhuman strength" would have come out alive.

Had the Memphis cops not savagely beat Mr. Nichols, he, too would have unquestionably survived. But they did. So were they rogues from the start? Demetrius Haley, the officer who pulled Mr. Nichols from his car, was a former prison guard. Three years before becoming a cop [he reportedly participated in a "savage beating"](#) that led to a Federal lawsuit. Yet Memphis hired him anyway.

["Three \(In?\)explicable Shootings"](#) and ["Black on Black"](#) discuss other encounters between Black cops and Black citizens that ended poorly. But our essays are cluttered with examples of "easily rattled, risk-intolerant, impulsive or aggressive" White cops as well. And their deficiencies were often no secret. Consider the Minneapolis cop who [shot and killed a 9-1-1 caller](#) for the "crime" of walking up to his car. Not only did he stack up serious complaints during his first two years on the job, but his fitness to be a cop was questioned by psychiatrists when he was hired. And there's the tragic November 2014 [shooting of Tamir Rice](#), a 12-year old Cleveland boy. He was gunned down by a rookie who had been pressed to resign by his former agency. Here's what that department's deputy chief said:

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He could not follow simple directions, could not communicate clear thoughts nor recollections, and his handgun performance was dismal...I do not believe time, nor training, will be able to change or correct the deficiencies...

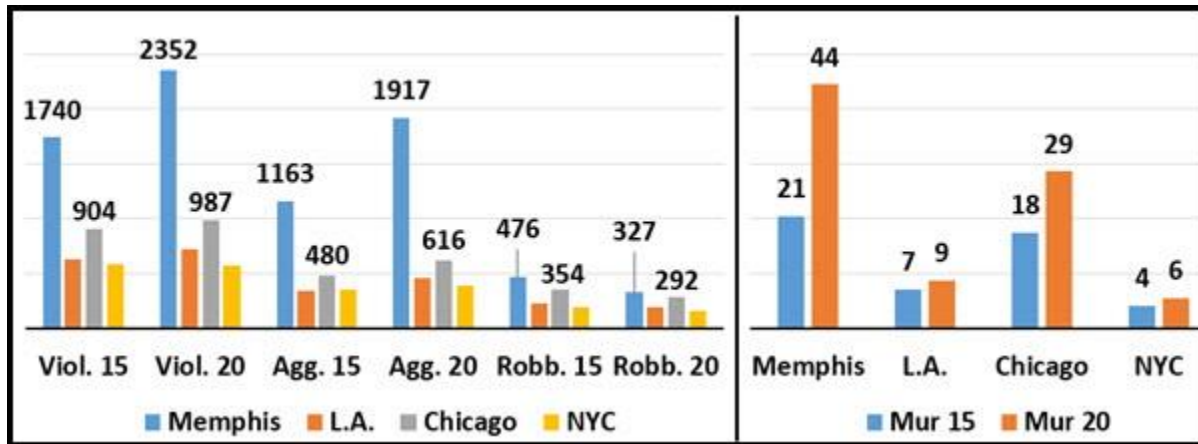
How did “the craft of policing” sink to the level displayed by the “Scorpions”? Let’s start by assessing a central feature of the police workplace: crime. According to [a recent survey](#) by the Major Cities Chiefs Association, here’s where Memphis sat, violent crime-wise, during the first six months of last year:



(MCCA reported data for seventy agencies, but we only calculated crime rates per 100,000 pop. for the sixty metropolitan police departments whose [population base](#) could be readily determined. Also remember that these are *six-month* rates).

Memphis’ violent crime problem is nothing new. Turning to the [UCR](#), here’s how its 2015 and 2020 *full-year* crime rates compared with our “usual suspects” (L.A., Chicago and New York City):

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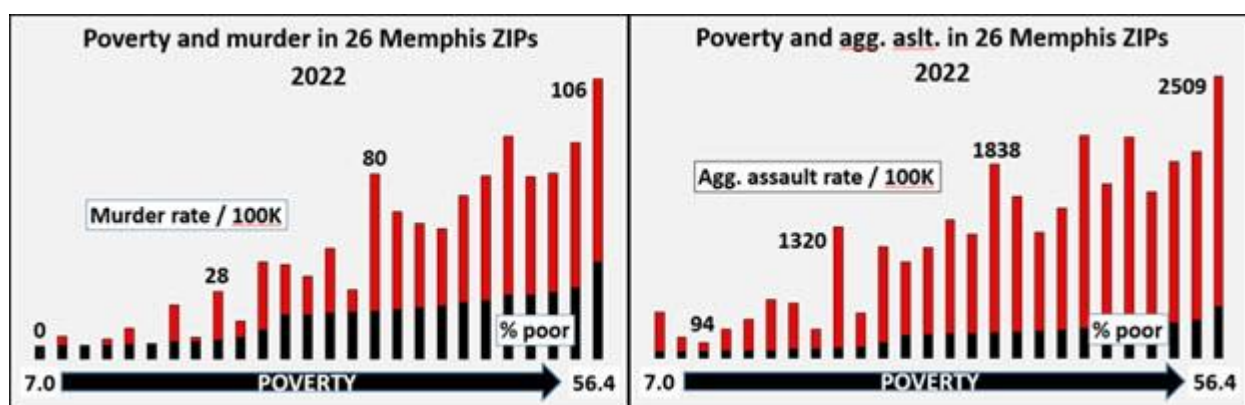


Again, these are rates per 100,000 population. Their underlying frequencies are also very revealing. For example, Memphis (pop. 657,936) reported 135 murders and 11,449 violent crimes in 2015. Los Angeles (pop. 3,962,726), a city six times in population, suffered *twice* as many murders (282) and *a bit more than twice* as many violent crimes (25,156).

And it gets worse *within*. Drawing violent crime data from the [Memphis hub](#), and poverty data from the [Census](#), we calculated full-year, per/100,000 rates for murder, aggravated assault and robbery for each of the city's twenty-six unique ZIP codes. We used correlation (the "r" statistic) to assess the relationships between poverty and crime ("r" ranges from zero to one: zero means no relationship, one denotes a lock-step association):

<i>r</i>	Murder	Agg aslt	Robb
Poverty	0.91	0.9	0.59

These *r*'s suggest that poverty, murder and aggravated assault are essentially two sides of the same coin. And robbery isn't far behind. These sobering messages are also conveyed by the graphs and the table (both list Zip's by poverty, from low to high):



Prior essays, most recently [“What’s Up? Violence”](#) and [“Woke Up, America!”](#), emphasized the criminogenic effects of poverty. [“Fix Those Neighborhoods!”](#) pointed out that cities need lots of “prosperous neighborhoods” to keep their overall violence stat’s down. With nearly one in four residents in poverty, that’s where Memphis falls decidedly short. Its 2022 citywide murder rate, a nasty 33, is higher than the rates of LAPD’s notoriously violent [77th. Street Division](#) (pop. 175,000), which came in at 30, and NYPD’s chronically beset [73rd. precinct](#) (pop. 86,000), which scored an extreme (by Big Apple standards) 26. Indeed, the 37 per 100,000 rate where Mr. Nichols’ first encounter with police took place – Raines & Ross roads, Zip 38115 – is one of eleven that exceed the city’s overall 33; and most, by comfortable margins (38126, where more than half live in poverty, scored a soul-churning 106.)

So what’s our point? Prosperity can give cops a relatively peaceful environment in which to ply their craft. But there’s precious little prosperity *or* peace in Memphis, a city literally awash in violence. It’s that carnage that in November 2021 led the police chief [to deploy teams](#) – they were impolitically named “Scorpion” – to conduct what are essentially stop-and-frisk campaigns. As one might have expected, their aggressive posture quickly generated blowback. That’s not unlike what similar projects encountered elsewhere. [“A Recipe for Disaster”](#) and

[“Turning Cops Into Liars”](#) described the travails of LAPD’s Metro teams, which focused on violence-ridden “hot spots”. Its members were repeatedly accused of making needless stops, using excessive force, and justifying their unseemly behavior by lying on reports. Like issues long plagued the L.A. County Sheriff’s Dept., which continues struggling with [“deputy gangs.”](#) Similar problems have beset anti-crime campaigns in Chicago, New York City and elsewhere. Some of these programs were disbanded, but surges in violence that accompanied the pandemic brought many back.

What happened in Memphis may not be unique. Its exhaustive visual documentation, though, is one for the record books. What’s more, it wasn’t just one or two cops, who could be blamed as outliers. So far, *more than a dozen officers* (including two Shelby

Memphis 2022 rates				
Zip	Pov	Murd	Ag Aslt	Robb
38120	7	0	428	48
38018	8	5	152	44
38125	8	0	94	19
38117	8	4	237	135
38133	8	9	346	46
38119	9	0	554	117
38141	10	21	506	69
38016	10	2	217	60
38103	11	28	1320	513
38134	13	9	366	93
38104	17	39	1048	450
38111	25	29	794	408
38128	26	22	947	177
38115	27	37	1241	372
38122	27	13	1084	414
38107	28	80	1838	458
38116	29	56	1474	272
38112	30	49	1077	189
38109	31	45	1330	200
38114	33	62	2099	399
38118	34	72	1559	809
38105	37	92	2042	717
38127	37	69	1448	206
38108	38	69	1763	318
38106	41	84	1840	337
38126	56	106	2509	406
City	23	33	954	249

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County deputies) have been implicated in the brutal episode. Their “job done” nonchalance after pummeling Mr. Nichols – they mill about exchanging casual talk – fits that “[culture of violence and bravado](#)” which the head of Memphis’ NAACP chapter, Van Turner, believes has infected policing throughout the U.S. As we watched the videos, the thrashing conveyed an angry fusion reminiscent of how George Floyd was treated after he fought the cops. Punishing someone with a merciless beating, as in Memphis, or by relentlessly pinning them to the ground and ignoring their pleas, as in Minneapolis, really *is* “two sides of the same coin.”

What’s to be done? As usual, police executives have taken to rulemaking. [A recently enacted LAPD regulation](#) prohibits pretextual stops unless officers have “articulable information” that a citizen’s behavior could lead to serious injury or death. And there’s Chicago PD’s [5,777 word foot-chase policy](#), whose complexities led the police union to (justifiably, we think) characterize it as a “no-foot-chase” policy.

Of course, limiting stops and chases *will* keep some terrible things from happening. Perhaps a balance can be struck so that imposing limits won’t encourage evildoers and compromise public safety. Still, having worked in policing, we’re skeptical that rules alone will keep cops from responding emotionally, and particularly in highly charged, violence-laden environments such as Memphis. What’s needed? We could start by frankly discussing such things in the academy and at all levels of police organizations. How can the craft of policing – it *is* an art form, by the way – be practiced so that it resists the unholy influences of the workplace? And we mean the *whole* environment: both citizens *and* cops.

Give it a whirl. And if you do, let us know how it pans out!

Posted 6/3/20

PUNISHMENT ISN'T A COP'S JOB

*An officer metes out his brand of discipline.
He then faces society's version.*

For Police Issues by Julius (Jay) Wachtel. It's impossible to not be repulsed by the [horrific scene](#). A bystander video depicts Derek Chauvin, a veteran Minneapolis cop, relentlessly pressing his knee against George Floyd's neck. Even as Mr. Floyd protests he can't breathe and bystanders implore the now ex-cop to stop, Chauvin doesn't relent.

Public fury propelled an unusually swift official reaction. It took only one day for Minneapolis Mayor Jacob Frey to fire Chauvin and the three colleagues who participated in Mr. Floyd's arrest. Only two days after that state prosecutors [charged Chauvin](#) with [third-degree murder](#) ("perpetrating evidently dangerous act and evincing depraved mind") and [second-degree manslaughter](#) ("culpable negligence creating unreasonable risk"). As of yet, charges have not been filed against his colleagues.

"Depraved" is an obviously challenging standard. How "depraved" were Chauvin's actions? Here's how Mayor Frey described the episode:

For five minutes we watched as a white officer pressed his knee into the neck of a black man who was helpless. For five whole minutes. *This was not a matter of a split-second poor decision.* (Emphasis ours.)

While the mayor intimated that Chauvin acted maliciously, he didn't say what it was a "matter" of. What *were* Chauvin's motives? First, let's examine what's known.

According to the complaint, it all began with a [9-1-1 call](#) from a nearby convenience store. Here's an excerpt:

9-1-1: How can I help you?

Caller: Um someone comes our store and give us fake bills [a counterfeit \$20] and we realize it before he left the store, and we ran back outside, they was sitting on their car. We tell them to give us their phone, put their (inaudible) thing back and everything and he was also drunk and everything and return to give us our cigarettes back and so he can, so he can go home but he doesn't want to do that,

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and he's sitting on his car cause he is awfully drunk and he's not in control of himself.



MPD (ex-)officers Thomas Lane and J.A. Kueng went to the store. They were directed to a vehicle parked across the street. Inside were Mr. Floyd and two companions, a man and a woman. A nearby security camera [captured much of what took place](#).

George Floyd, who occupied the driver's seat, was the officers' first objective. Once handcuffs were applied – according to the complaint, Mr. Floyd resisted – Lane took charge of him while his partner concerned himself with the others. Mr. Floyd was 6-6, over 200 lbs. and uncooperative. With some difficulty the cop walked him to the sidewalk and had him sit down. They argued throughout, with the officer reprimanding and Mr. Lloyd protesting. While the cop grew exasperated and eventually launched into a lecture, the interaction didn't seem (from this ex-l.e.o.'s point of view) especially heated. Neither did it portend violence, particularly as Mr. Floyd was well restrained. (Had he not been securely handcuffed, there's no question that he would have bolted.)

Soon, the officer brought Mr. Lloyd to his feet and, together with his partner, marched the reluctant man across the street. At that point the episode seemed like just another low-level, no-big-deal arrest, one of the innumerable such events that take place every day, on every shift, and nearly always end



without serious consequence. Once the trio observably reaches the other side it really does seem like “game over.” Mr. Lloyd's pockets had already been searched, and all that was left was to put him in the back of a patrol car and head for the station.

That's where this video ends. And where the real problems begin. According to the [murder complaint](#), and as partly depicted on some shaky video footage included in a [montage assembled by the New York](#)

[Times](#), on reaching the patrol car “Mr. Floyd stiffened up, fell to the ground, and told the officers he was claustrophobic.” Chauvin and the fourth officer, Tou Thoa, arrived and tried to help get Mr. Floyd into the car. But he continued resisting:

“The officers made several attempts to get Mr. Floyd in the backseat of squad 320 from the driver’s side. Mr. Floyd did not voluntarily get in the car and struggled with the officers by intentionally falling down, saying he was not going in the car, and refusing to stand still.”

Mr. Floyd was partly in the car and still struggling when Chauvin – he was the senior officer on scene – gave up. He pulled Mr. Floyd out, pushed him to the ground and held him there. Officers Kueng and Lane assisted by holding the man’s back and legs. That’s when that infamous, final video takes over. It depicts Chauvin pressing his left knee against the right side of Floyd’s neck.

What’s Chauvin trying to do? We saved the online use of force section of the Minneapolis PD manual and posted it [here](#). It authorizes two control techniques that involve the neck:

- Choke Hold: Deadly force option. Defined as applying direct pressure on a person’s trachea or airway (front of the neck), blocking or obstructing the airway...
- Neck Restraint: Non-deadly force option. Defined as compressing one or both sides of a person’s neck with an arm or leg, without applying direct pressure to the trachea or airway (front of the neck)...

Conscious Neck Restraint: The subject is placed in a neck restraint with intent to control, and not to render the subject unconscious, by only applying light to moderate pressure...

Unconscious Neck Restraint: The subject is placed in a neck restraint with the intention of rendering the person unconscious by applying adequate pressure...

“Choke holds” cut off oxygen and can kill so are considered a last resort. But supposedly safer “[vascular control](#)” techniques remain in widespread use. “Carotid restraints,” applied by pressing on the sides of a neck, can supposedly more safely render a person unconscious by sharply reducing blood flow to the cerebral cortex.



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While not without controversy, these holds remain widely accepted by the policing community and continue to be taught in academies (click [here](#) for the California POST manual section).

Officers are well aware of the risks posed by chokeholds and usually avoid them. Chauvin is depicted applying a carotid restraint, the so-called “[conscious neck restraint](#)” described in the M.P.D. manual. However, even this lesser form is only supposed to be used “against a subject who is actively resisting” (M.P.D. section 5-311, emphasis ours). Here’s how that’s defined (sec. 5-302):

Active Resistance: A response to police efforts to bring a person into custody or control for detainment or arrest. A subject engages in active resistance when engaging in physical actions (or verbal behavior reflecting an intention) to make it more difficult for officers to achieve actual physical control. (10/01/10)
(04/16/12)

And here’s its lesser cousin:

Passive Resistance: A response to police efforts to bring a person into custody or control for detainment or arrest. This is behavior initiated by a subject, when the subject does not comply with verbal or physical control efforts, yet the subject does not attempt to defeat an officer’s control efforts. (10/01/10) (04/16/12)

Well, we’re stumped. Passivity requires that one “not attempt to defeat” control efforts. But even “verbal behavior reflecting an intention” constitutes “active” resistance. So as far as M.P.D. rules go, “passive” resistance doesn’t really exist. Chauvin apparently capitalized on that ambiguity to apply a neck restraint to a physically immobilized person literally to his heart’s content.

In our view, why he did so was obvious: as punishment, and as a public shaming. That his motive was impure seems evident from his impassivity, his “[look of indifference](#)” in the face of Mr. Floyd’s obvious distress. According to the criminal complaint, Mr. Floyd complained “he could not breathe” before being taken to the ground. And once he was down, his pleas persisted. Their obvious authenticity didn’t just worry spectators. Lane, the officer who brought Mr. Floyd from his car, also expressed concern. But Chauvin, the late-comer, overruled him. Here’s another outtake from the [charging document](#):

The defendant placed his left knee in the area of Mr. Floyd’s head and neck. Mr. Floyd said, “I can’t breathe” multiple times and repeatedly said, “Mama” and

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“please,” as well. The defendant and the other two officers stayed in their positions. The officers said, “You are talking fine” to Mr. Floyd as he continued to move back and forth. Lane asked, “should we roll him on his side?” and the defendant said, “No, staying put where we got him.” Officer Lane said, “I am worried about excited delirium or whatever.” The defendant said, “That’s why we have him on his stomach.” None of the three officers moved from their positions.

Cause of death was initially attributed to a combination of factors. According to the [complaint](#), the medical examiner reported “no physical findings that support a diagnosis of traumatic asphyxia or strangulation.” Instead, Floyd’s death was attributed to forceful restraint by police, existing health problems including “coronary artery disease” and “hypertensive heart disease,” and the possible presence of intoxicants.

That soon changed. On June 1st. the Hennepin County Medical Examiner [released an “update”](#) that directly blames use of force for causing Mr. Floyd’s heart to stop beating:

Cause of death: Cardiopulmonary arrest complicating law enforcement subdual, restraint, and neck compression

Manner of death: Homicide

How injury occurred: Decedent experienced a cardiopulmonary arrest while being restrained by law enforcement officer(s)

Other significant conditions: Arteriosclerotic and hypertensive heart disease; fentanyl intoxication; recent methamphetamine use

While factors other than force were present, the examiner concluded that they alone would not have caused Mr. Floyd to suffer the episode. It took force to cross the lethal threshold.

As the report explains, “homicide” doesn’t ascribe blame. Indeed, should officers encounter a lethal threat, homicide can be justifiable. That, of course, isn’t what they faced here. Chauvin must argue that the death was accidental, and had he believed that Mr. Floyd was having problems breathing or had he known about those “other significant conditions” he would have stopped using force and summoned an ambulance.

But an autopsy performed by doctors hired by Mr. Floyd’s family reached a [dramatically different conclusion](#). According to one of the physicians, Dr. Allecia

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Wilson, “there is evidence in this case of mechanical or traumatic asphyxia.” In other words, that substantial direct pressure was applied to Mr. Floyd’s neck and deprived him of oxygen. If her account holds up, Chauvin’s good-faith defense crumbles, as even M.P.D.’s loosey-goosey policy defines pressing on someone’s neck to restrict oxygen intake – a chokehold – as deadly force. And there was clearly no reason to apply lethal force here.

We’ll leave the legal dispute for lawyers and courts to hash out. Let’s address the human factors that determine how policing gets done. With ex-cop Chauvin and Mr. Floyd we have two very hard heads. Neither seemed the type to be overly concerned with what others want. Beginning with Mr. Floyd, a search of court files revealed that he had accumulated an extensive criminal record while living in Houston. Here’s an abbreviated version of the summary from the Harris County court:

114323001010	The State of Texas vs. FLOYD, GEORGE (SPN: 01610509) (DOB: 10/14/1973)	11/27/2007	AGG ROBBERY- DEADLY WPN (F)
105047301010	The State of Texas vs. FLOYD, GEORGE PERRY (SPN: 01610509) (DOB: 10/14/1973)	12/15/2005	POSS W / INT DEL / MAN 1 >=4<200G (F)
097658901010	The State of Texas vs. FLOYD, GEORGE PERRY (SPN: 01610509) (DOB: 10/14/1973)	2/6/2004	MAN / DEL CS PG I <1GRAM (F)
115177701010	The State of Texas vs. FLOYD, GEORGE (SPN: 01610509) (DOB: 10/14/1973)	1/3/2003	TRESPASS PROP / BLDG-(M)
092886901010	The State of Texas vs. FLOYD, GEORGE LEE (SPN: 01610509) (DOB: 10/14/1973)	10/29/2002	POSS CS PG 1 <1G (F)
107577801010	The State of Texas vs. PERRY, FLOYD (SPN: 01610509) (DOB: 10/14/1973)	8/29/2001	FAIL IDENT TO P-O- FUGITIVE (M)
984955901010	The State of Texas vs. FLOYD, GEORGE (SPN: 01610509) (DOB: 10/14/1973)	12/9/1998	THEFT - \$50-\$500 (M)
079379601010	The State of Texas vs. FLOYD, GEORGE (SPN: 01610509) (DOB: 10/14/1973)	9/25/1998	THEFT FROM PERSON (F)
075978001010	The State of Texas vs. FLOYD, GEORGE (SPN: 01610509) (DOB: 10/14/1973)	8/3/1997	MAN / DEL CS PG I <1GRAM (F)

Mr. Floyd’s most serious conviction, for aggravated robbery with a deadly weapon, stemmed from a November 2007 incident in which he reportedly invaded a home [and pointed a handgun at its occupant](#). Mr. Floyd pled guilty in 2009 and drew a five-year prison sentence. After his release he relocated to Minneapolis. A Hennepin County record search turned up two misdemeanor convictions, both for no driver license, one in 2017 (27-VB-17-250861) and another in 2018 (27-VB-18-128822). Then came May 25th. and the bogus \$20 bill.

Chauvin was [a nineteen-year veteran of the Minneapolis force](#), which he joined in 2001. A search at the [“police conduct resources”](#) page of the Minneapolis Dept. of Civil

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Rights website revealed that he was the subject of twelve formal citizen complaints, all filed between 2003 and 2015. Each was marked as closed without discipline, and the details are recorded as non-public.

Office of Police Conduct Review Complaints				
OPCR Focus..	Matternumber	Case Status	Discipline Im..	Public Allegation
Chauvin, Derek	12-3244	Closed	No Discipline	Non-Public
	13-09814	Closed	No Discipline	Non-Public
	13-10527	Closed	No Discipline	Non-Public
	13-32189	Closed	No Discipline	Non-Public
	14-14106	Closed	No Discipline	Non-Public
	14-23776	Closed	No Discipline	Non-Public
	15-12394	Closed	No Discipline	Non-Public

Civilian Review Authority Complaints (Prior to 9/23/2012)				
CRA Focus ..	Matternumber	Status Descr..	Chief S Actio..	Allegation (group)
Chauvin, Derek	03-1999	Closed	No Discipline	Non-Public
	04-2100	Closed	No Discipline	Non-Public
	05-2306	Closed	No Discipline	Non-Public
	09-2643	Closed	No Discipline	Non-Public
	09-2680	Closed	No Discipline	Non-Public

However, [a CNN investigation](#) found eighteen complaints, with two leading to discipline, in both cases written reprimands for using demeaning language. A [deeply detailed NBC News piece](#) notes that Chauvin was present during several encounters over the years when suspects were shot. But the only occasion in which he shot someone was in 2008, when he wounded a man who allegedly went for Chauvin's gun. Chauvin was awarded a medal for valor. Most recently, in 2011, he and other officers were praised for resolving an incident involving an armed man.

To this observer, a dozen formal complaints seems like a lot, even over nineteen years. A retired Minneapolis officer and college educator conceded that it does appear [“a little bit higher than normal.”](#) But Chauvin was never a desk cop. He obviously liked to mix it up. In fact, [he held a long-time second job](#) as a weekend bouncer at a local dance club. A former owner praised Chauvin and said they had been friends. But her “main guy” had a temperamental side. “I’ve seen him in action and I’ve seen him lose it and

I've called him out on it before. I've told him it's unnecessary and unjustified some of the ways that he behaves. He just loses it."

Chauvin [was by far the most senior officer on scene](#). His partner, Tou Thao, had about eight years on the job, while Lane and Kueng were both rookies. We speculate that Chauvin's temperament and seniority led him to take charge of the encounter and to do it *his* way, unorthodox as it may have been. Actually, in the policing business, unwelcome intrusions from experienced cops who think they've got all the answers aren't uncommon. And the consequences [have occasionally proven devastating](#). For example:

- [In October 2014](#) Chicago cop Jason Van Dyke, a 14-year veteran, butted in on officers as they actively contained a youth who had been prowling parked cars and was waving a knife. He emptied his pistol within six seconds, killing 17-year old Laquan McDonald. (Van Dyke's partner reportedly kept him from reloading.) Van Dyke was eventually convicted of second-degree murder.
- [Two years later](#), NYPD Sgt. Hugh Barry arrived at a residence where patrol officers were carefully managing Deborah Danner, a mentally ill 66-year old woman who had gone berserk. Sgt. Barry instantly moved to grab Danner, leading her to flee into a bedroom and grab a baseball bat. He promptly followed and, as she took a swing, shot her dead. Tried for 2nd. degree murder, Sgt. Barry was acquitted by a judge. New York settled a lawsuit with the family for \$2 million. What to do? Here's some self-plagiarism from [our post about Danner](#):

Police protocols should place those most familiar with a situation – typically, the first officer(s) on scene – in charge, at least until things have sufficiently stabilized for a safe hand-off. Officer Rosario and his colleagues had been monitoring the disturbed woman and waiting her out. Had Sgt. Barry taken on a supportive role, as supervisors routinely do, and let her alone, a heart-warming Hollywood ending might have been far more likely.

Mr. Floyd's killing has propelled yet another drive to devise newfangled controls and elaborate systemic solutions. That's likely unstoppable. But from this former practitioner's eye, the real "solution" lies in the craft of policing. It's in the workplace, in the everyday working relationships that influence nearly everything cops do. For example, there's not an officer out there who hasn't had a peer or superior step in and "mess things up," nor one who's never worried about a temperamental colleague, say, "Joe," that unpredictable, annoying officer on swing shift.

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Officers successfully handle difficult characters like Mr. Floyd every hour of every day. Alas, these triumphs always seem to fly “under the radar.” What makes them possible? How do they come about? That’s what we should be examining at roll call.

Posted 8/1/23

PUNISHMENT ISN'T A COP'S JOB (III)

Some citizens misbehave. Some cops answer in kind.



For Police Issues by Julius (Jay) Wachtel. “Hi, um, I’m being followed by a police car.” According to the [Los Angeles Times](#), those were the first words spoken by Emmett Brock when 9-1-1 answered his call. February 10 had turned out to be “a miserable day” for the high-school substitute teacher. A colleague harassed him for being transgender, and he left work early. On the way home Mr. Brock drove by a traffic stop. An L.A. sheriff’s deputy was being rude to a motorist. So he flipped him off.

Things turned decidedly sour. A sheriff’s patrol car promptly got on his tail. Mr. Brock said it was the same officer, [but the deputy’s lawyer \(yes, he now has one\) denies it](#). Either way, the patrol car followed Mr. Brock turn by turn, though without activating warning lights or sounding its siren. Mr. Brock noticed its presence. Concerns over the deputy’s intentions supposedly led him to call 9-1-1 and convey what was happening. But the operator offered no help. And when Mr. Brock pulled into his intended destination, a 7-11, purportedly to buy a soft drink before going to his therapy appointment, so did the deputy. What happened was captured by the store’s external camera. (Audio from the deputy’s bodycam was subsequently inserted. Click [here](#) for the full video and [here](#) for our edited, captioned version with some slow-mo thrown in.)



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Mr. Brock parked his vehicle and the deputy pulled in behind, blocking his exit. As Mr. Brock began to step out the deputy quickly walked up and got in his face. Their conversation isn't perfectly clear, but the deputy apparently mentioned stopping Mr. Brock, and Mr. Brock countered "no, you didn't." Things moved so quickly that even in slow-mo it's impossible to say whether Mr. Brock tried to walk off. Or, as the deputy later claimed, made a fist. Nearly instantly, the deputy grabbed Mr. Brock's left arm (see top sequence). Mr. Brock protested ("hands off of me") and tried to free himself. But the deputy took him to the ground. And the fight was on. During the struggle Mr. Brock repeatedly complained that he was being hurt. But the deputy kept exerting force until he got his man in handcuffs. That took a couple of minutes.



Throughout, the officer clearly kept the upper hand. And fist. His report, which Mr. Brock's lawyer provided to *CNN*, openly admits the use of considerable force: "I punched S/Brock face and head, using both of my fists, approximately 8 times in rapid succession."

There's no evidence that Mr. Brock committed a moving traffic violation, nor that he was ever signaled to pull over. So we can't call what happened a "traffic stop." But that's how the officer characterized it, albeit after-the-fact. His purported justification was that an object (a deodorizer) hanging from Mr. Brock's rear-view mirror [obstructed his view of the roadway](#) (see California Vehicle Code [section 26708](#)).

And no, we're not making it up.

What happened near Circleville, Ohio on July 4th. was most definitely a traffic stop. And its justification seems clear. A highway inspector [tried to stop a semitruck with a missing mudflap](#), but the vehicle's operator, Jadarrius Rose, a 23-year old Memphis man, kept going. So the highway patrol stepped in. Mr. Rose pulled over for the troopers. An officer's bodycam shows what then happened (for the full set of released bodycam videos, click [here](#). For our edited, captioned version click [here](#).)



That's right: weapons were drawn and pointed at the truck. That, Mr. Rose told *CNN*, scared him. So, just like Mr. Brock, he dialed 9-1-1. And just like Mr. Brock, he didn't find the operator's comments sufficiently comforting. So he drove off.

Then things got a bit, um, *complicated*. According to Mr. Rose, the 9-1-1 operator eventually convinced him it was o.k. to pull over. So he did. But watch the video. During round #2 a veritable legion of squad cars joined what ultimately turned into a "three-county pursuit." In his account to *CNN*, Mr. Rose said reassurances by 9-1-1 that he would be treated peacefully led him to stop. But an [ABC News release](#), which is supposedly based on the official incident report, indicates that "troopers placed stop-sticks, or spike strips, in the roadway ahead of the chase and blew out Rose's tires, forcing him to pull over."



That's not an inconsequential difference. Still, Mr. Rose voluntarily stepped out of the cab and put his hands up (left image). But he apparently hesitated when ordered to get on his knees. A Circleville K-9 officer who had joined the chase walked up with his dog and ordered Mr. Rose to comply (second image). "You're going to get the f***g dog. Get on the ground or you'll get bit."



From a distance, a bullhorn-equipped trooper saw what was happening. [He repeatedly ordered the handler to not release his dog](#), as the suspect's hands were up. Whether the handler heard him we don't know. Either way, he promptly released the pooch. It initially ran off in the opposite direction, away from Mr. Rose (third image). It

then stopped and turned. Although Mr. Rose had by then fallen to his knees, the handler nonetheless waved it back in (fourth image). The K-9 charged and grabbed Mr. Rose with its jaws. “I gave you three warnings, did I not?” the K-9 cop later scolded. “Did I not say *final* warning? Well, you didn’t comply, so you got the dog.”

Fortunately, Mr. Rose wasn’t seriously hurt. He faces felony charges for failure to comply with the troopers. As for the handler, he’s been fired.

Mr. Brock, a substitute high-school teacher, and Mr. Rose, a truck driver, were gainfully employed. Neither had a known criminal record. Yet both wound up losing their jobs. Their legal scars and unsought notoriety could also impair their future prospects. Of course, neither is fully blameless. “Flipping off” a cop and refusing to pull over are risky gambits, predictably laden with consequences. And we don’t just mean of the legal kind. In the “real” world where imperfect humans reside, rude challenges – including challenges to authority – often draw rude responses. “And the fight is on” isn’t just a catchphrase: it’s an accurate depiction of what one can expect when they disrespect the limits of human nature.

But officers are trained to keep their cool, right? After all, it’s hardly a secret that keeping the peace, enforcing the law and gathering evidence in chaotic, often hostile environments is no picnic. But the George Floyd imbroglio was a powerful reminder that techniques which are intended to keep the pot from boiling over (e.g., “de-escalation”) can’t always keep cops from getting emotionally caught up in the turmoil. And, as [“Punishment \(I\)”](#) and [“Punishment \(II\)”](#) warned, turn at least some into punishers.

So, what’s available? A solution that quickly comes to mind is to simply keep cops and citizens apart. Indeed, policymakers around the U.S. have moved to minimize the frequency of these encounters. Many jurisdictions abandoned aggressive enforcement practices such as stop-and-frisk. Others have prohibited cops from stopping cars for “technical” violations. In 2020, shortly after the George Floyd debacle, [Virginia enacted a law](#) that barred car stops for minor violations such as “dangling objects from rear view mirrors that obstruct a driver’s view”. In April, Minneapolis, the community at the epicenter of the troubles, [signed a “court-enforceable agreement”](#) with the Minnesota Dept. of Human Rights that severely circumscribes pretextual stops. Consent searches during such stops are prohibited. Use of force is also limited, and officers must not use it to punish or retaliate. What’s more,



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they will no longer be trained on “[excited delirium](#)”, a medically-recognized syndrome that’s caught blame for encouraging cops to physically (and needlessly) intervene.

That shift in tone, which we discussed in “[Backing Off](#)”, “[Regulate. Don’t “Obfuscate”](#)” and “[Full Stop Ahead](#)”, has supposedly led to some unintended consequences. Police, law enforcement groups and more than a few local and state officials have warned that throttling back emboldens evildoers. Concerns that Virginia’s move made “roadways more dangerous” and “increased crime” recently [led its legislators to introduce a bill](#) that would return traffic laws to their former intrusiveness.

In the end, we’re reluctant to endorse un-craftsmanlike approaches to policing. Such as letting cops manufacture reasons for stopping persons whose behavior stirs misgivings. So what *should* be the watchwords? “Articulate” and “reasonable.” When an officer’s suspicion that something is criminally amiss rises to that level, by all means, make the stop. If not, move on. Our personal experiences suggest that’s how most cops go about their jobs, every hour of every day. Unseemly digressions (e.g., Mr. Brock and Mr. Rose) are the exceptions. In fact, three years ago, our *Police Chief* magazine essay, “[Why Do Officers Succeed?](#)” suggested that successful episodes of policing could serve as excellent templates for doing it right. Here’s an outtake:

Officers are frequently involved in encounters that, had they not been adroitly handled, would have likely turned out poorly. They regularly meet substantial challenges when gathering evidence of serious crimes. These obstacles and others are overcome almost as a matter of course. Imagine the potential benefits to the practice of policing should we probe these happy outcomes to find out why officers succeed.

Still seems like a good idea.

Posted 4/12/09

REVERSAL OF FORTUNE

***No longer a Senator or felon, Ted Stevens chuckles
as prosecutors feel the heat***

By Julius Wachtel, (c) 2010

Why was [Ted Stevens](#) smiling? Known until his recent electoral defeat as the grumpy old man of the Senate, the 40-year veteran could hardly contain himself as the judge who presided over his trial appointed a special investigator to determine if Government lawyers up to and including the chief of DOJ's Public Integrity Section should be held criminally accountable. Granting an unprecedented request by Attorney General Eric Holder, the judge also set aside Stevens' October 2008 conviction for failing to disclose \$250,000 worth of gifts.

This surprise, extra-innings ending to what most assumed was a slam-and-dunk case is the latest twist in a pay-for-play scandal that has roiled Alaska politics and sent a handful of bribe-taking Alaska legislators to the Federal slammer. Two, former House Speaker Pete Kott and former Representative Vic Kohring are currently serving six and three and one-half years respectively. Stevens' son Ben, a former president of the Alaska Senate is also under investigation but has not been charged.

Stevens had been in the Feds' cross-hairs for a long time. As the longest-serving Republican member of the United States Senate, and until 2005 chair of the all-important appropriations committee, he was the go-to guy for politicians looking to finance their pet causes and for lobbyists seeking to advance their clients' interests. To make their case the Feds turned to William J. Allen, one of Stevens' Alaska businessman friends and the same guy whose testimony sunk the others. An oil millionaire whose cash reserves set politicians' hearts aflutter, Allen had pled guilty to bribery and was awaiting sentencing. Notably, the [plea bargain](#) stipulated that the Government would leave his children and assets alone.

In July 2008 Stevens was [indicted](#) on seven counts of the general Federal lying statute, Title 18, U.S. Code, section 1001, for submitting Senate disclosure forms that left out gifts of a vehicle, home improvements and furniture amounting to \$250,000. To demonstrate that these weren't innocent omissions the indictment mentioned that Allen had asked Stevens to help on matters ranging from a National Science Foundation grant to building an oil pipeline. Defense attorneys vigorously objected, as Stevens had not

been charged with bribery. But in the first of a series of timid rulings, the judge allowed the material in to demonstrate the defendant's motive.

Indeed, allusions to favors were critical to the case. As a [Washington insider](#) aptly put it, "no one is going to convict [Stevens] for just failing to file his financial reports." Suggesting that there had been a quid-pro-quo was Job #1.

As the trial got underway one of Allen's former employees flew in from Alaska (against the wish of defense attorneys, the trial wasn't held there but in Washington D.C.) Summoned by prosecutors, he was [summarily sent home](#) without taking the stand. Stevens' lawyers, who were eager to question the man, were angry. They later found out that the witness would have testified, if asked, that Allen's remodeling bills had been inflated to benefit another client. Stevens, everyone agreed, contributed \$160,000 to a renovation that prosecutors argued was worth another \$188,000. But how much of that had been padded?

The defense moved for a mistrial. After scolding prosecutors, the judge accepted that dismissing the witness was an innocent mistake and let the trial proceed.

Defense lawyers then homed in on Allen. If there was a balance, why didn't he press Stevens for payment? Hadn't the senator sent notes asking that he submit all bills? Well, yes, Allen conceded, but Stevens' close friend, Bob Parsons, told him to ignore the messages.

Then the other shoe dropped. After the first faux-pas the judge reminded prosecutors of their obligations under [Brady v. Maryland](#), which requires that the Government turn over all potentially exculpatory information to the defense. Defense lawyers were given an FBI agent's notes. Allen told him that had Stevens been billed, he would have probably paid.

How did the judge react? With another scolding.

On the next day Allen's account of his conversation with Parsons was more detailed. Stevens was only *pretending* that he wanted to be billed to cover his back. These devastating remarks totally surprised the defense. During trial both sides are supposed to exchange their witnesses' statements in advance. By tailoring their star witness's testimony on an ongoing basis prosecutors were making it impossible for the defense to prepare let alone investigate. Each time that Allen took the stand promised another got'cha. Stevens' lawyers again moved for a mistrial.

Again it was denied. In this court three times was *not* a charm.

At trial's end the judge told the jurors that they could consider the government's misconduct while deliberating. Whatever good that did was probably outweighed by the [poor performances](#) of Stevens and his wife on the stand (she came off as haughty and he kept losing his temper.) No one was surprised when Stevens was found guilty on each count. And that would have been that except for a remarkable event. One of the FBI agents on the case, [Chad Joy](#), filed a Federal whistleblower complaint alleging that the prosecutors' inadvertent "mistakes" (e.g., sending the witness away, concealing exculpatory evidence) were very much on purpose. Joy also accused other FBI agents of accepting gifts from Allen, and a female agent of having an inappropriate relationship with Allen, visiting him alone and purposely wearing a skirt when he testified, a gesture that she called a "present."

The judge had finally heard enough. Realizing that he had been made the fool, he promptly held the entire prosecution team in contempt. The wheels of accountability finally began spinning. More withheld documents surfaced, *including* [prosecutor notes that said Allen didn't remember speaking with Parsons about why Stevens asked for the bills](#). It's entirely possible that before this is over several prosecutors and FBI agents may find themselves without a job, perhaps even their liberty.

On April 3, five and one-half months after America's newspaper of record demanded that Stevens resign his seat, an opinion piece on the trial entitled "[Prosecutors Gone Wild](#)" graced the *New York Times* op-ed pages. In an eloquent essay, former New Jersey attorney general John Farmer reiterated what every first-year law student knows: a prosecutor's ultimate job isn't to convict but to seek justice. (For an earlier post on this subject, see "[Justice Was His Client](#).") Still, after bad-mouthing Stevens for the better part of two years the *Times* couldn't just let it go. On the same date that Farmer's article appeared [the Times editorialized](#) that however grievous the Government's behavior, "the prosecutor's bad acts do not necessarily mean that Mr. Stevens was innocent of misusing his office."

In an adversarial system there are no "ties": one side must by definition lose. When careers depend on winning, truth can suffer. High-profile investigations like the Stevens case are particularly likely to provoke agents and prosecutors to cross the line. With their futures and their agencies' reputations at stake, one can only imagine the pressures they must have felt to make sure that Stevens was convicted.

There's a greater point to be made, and it's not about Stevens, who hardly cuts a sympathetic figure. It's about defendants who don't have the resources to battle teams

of Federal gumshoes. Consider a case that you've probably never heard of. In 1980 [Tom Goldstein](#), a down-and-out California man was convicted of murder. Evidence against him included an eyewitness and a jailhouse informant who swore that Goldstein confessed to the killing. It later turned out that the eyewitness had been coached by detectives and that the informant, who denied getting a "deal" for testifying, in fact had a long string of such deals, a key point that prosecutors never disclosed. Goldstein served 24 years before he was exonerated.

Our vaunted adversarial system is responsible for many such goofs. Yet we're so convinced that it's the best way to get at the truth that contrarians are likely to get a scolding. As the trial wound to its conclusion, a [Times](#) writer, in an example of baiting worthy of Walter Duranty, accused Brendan Sullivan, Stevens' principal lawyer, of cynically exploiting Government missteps:

The principal tactic used by Mr. Sullivan has been to present a surplus of outrage after finding examples where prosecutors failed to live up to their obligations, first laid out in a 1963 Supreme Court opinion, to disclose to defense lawyers any information that could help disprove the charges. Discovering one such instance of withheld information, Mr. Sullivan threw down his papers on the lectern. "I can't do my job," he complained, assuming the expression of someone whose recent meal of bad oysters had just made itself known.

Justice isn't a game where you're supposed to hide your hand. Yet thanks to human nature that's often how it's played. Let's hope that exposing the system's dark underbelly spurs some long-needed reform. Perhaps it's fortuitous that Stevens was a rich guy. This could be that one time when benefits really *do* trickle down.

Posted 4/24/16

ROLE REVERSAL

Chicago's falling apart. Who can make the violence stop?

By Julius (Jay) Wachtel. Tyshawn Lee was only nine years old when he was viciously gunned down. It wasn't a stray round. Several weeks ago police arrested Dwright Boone-Doty, a member of the Black P-Stones. He was identified as the triggerman for a three-hoodlum team that lured the child into a South Side alley and executed him last November. One of the killer's alleged helpmates, Corey Morgan, was previously arrested, and the other is being sought. Boone-Doty was also charged in the unrelated October killing of a woman and the wounding of her companion.

In the mean streets of Chicago, arrests often mark the beginning of another cycle of violence. Soon after learning of Boone-Doty's arrest, the dead boy's father, Pierre Stokes, reportedly tracked down Corey Morgan's girlfriend and her two nephews. He unleashed a barrage of gunfire; fortunately his aim was poor and no one was struck. Stokes, a member of the rival Gangster Disciples gang and a convicted robber, is now also in jail.

Why was the child murdered? That, too was reportedly in retaliation, for the gunning down of Corey Morgan's brother and the wounding of his grandmother a month earlier. In our brave new world of smartphones, robots and space exploration, Chicago seems determined to hang on to the code of the homies. This year, the Windy City recorded 161 murders by April 17, a 64% increase over the comparable period in 2015 and 115% more than in 2014. Shootings have also soared, from 482 to 803, an increase of sixty-seven percent. Days with multiple victims are common, and three or four slain is unexceptional. So far the record was on February 4, when a staggering ten persons were killed, four by bullets and six with knives.

It's not a new problem. Last year Chicago topped the thirty largest cities in violent crime. Its rate, 2,377.3 violent crimes per 100,000 population, is more than 50% higher than its closest competitors, Baltimore (1550.6) and Detroit (1508.8). Chicago seems well on track to shatter more records this year.

Chicago PD has long struggled to earn the confidence of the minority community. Things sank to a new low last November when police were ordered to release a video depicting, in graphic detail, the apparently needless gunning down of Laquan McDonald, a black youth, by officer Jason Van Dyke more than a year earlier. That was the "tipping point" that led to the firing of chief Garry McCarthy and the appointment,

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by Mayor Rahm Emanuel, of a citizen commission, the “Police Accountability Task Force,” that was charged with studying the troubled agency in depth.

Its report was just released. In a scathing, no-holds-barred account, it offers four reasons to explain why trust was lost:

We arrived at this point in part because of racism.

We arrived at this point because of a mentality in CPD that the ends justify the means.

We arrived at this point because of a failure to make accountability a core value and imperative within CPD.

We arrived at this point because of a significant underinvestment in human capital.

According to the task force, the department’s own data “gives validity” to “the widely held belief the police have no regard for the sanctity of life when it comes to people of color.” What are the numbers? In a city with approximately equal proportions of whites, blacks and Hispanics, 74% of the 404 persons shot by police between 2008-2015 were black, 14% were Hispanic and 8% were white. “Significant racial disparities” were also found for lesser uses of force, car stops and field interviews. (Nothing was said about the distribution of violent crime, but it is known to be far higher in minority areas.)

There was other bad news. Reviewers discovered that complaints against officers are perfunctorily investigated by employees who are “under-resourced, lack true independence and are not held accountable for their work.” Even when they recommend discipline, in nearly three out of every four cases arbitrators reverse the decision or mitigate its severity. That’s no surprise. Years ago, in a review of Chicago PD’s disciplinary practices, we reported that the Chicago Police Board – nine citizens who to this day hold the final say on who gets punished – upheld the termination of only twenty-one out of eighty cops recommended for firing by the Superintendent between 2003-2007. Then-chief Jody Weis, a retired FBI executive who had been brought in to clean up the department, lamented that his cops were in effect answerable to no one.

Apparently the struggle over accountability has continued. A database of complaints against Chicago’s finest paints a distressing picture. Investigators seldom recommend discipline, while officers are rarely punished despite amassing dozens of citizen complaints. One cop accumulated sixty-eight in eighteen years; none were sustained. Scrolling through the entries reveals that this was the norm.

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What can be done? As one might expect, the task force recommended that supervision be greatly enhanced. Reviewers called for the early identification of problem officers, prompt intervention and effective discipline, meaning a process with real teeth. There were suggestions for improvements in community relations and officer training in de-escalation, and a recommendation that external oversight be provided by independent panels that are not dominated, as has been the practice, by former cops. Naturally, taking such steps will require the cooperation of the police union, whose contractual demands have supposedly “turned the code of silence into official policy.”

[Click here for the complete collection of conduct and ethics essays](#)

Even if labor climbs on board, there’s a huge fly in the ointment. Revamping the social compact between cops and citizens doesn’t address flaws in the compact among the citizens, who are gunning each other down with abandon. As we’ve repeatedly pointed out, police behavior is inextricably linked to the environment. Violence, and the threat of violence, inevitably beget the police use of force, justifiable and otherwise. Improvements in hiring, training and supervision are great, but when communities are as violent and socially disorganized as Chicago’s South Side, or Los Angeles’ Rampart Division, simply “fixing the cops” is no solution:

So-called “aggressive” policing could not have taken place in New York City in the absence of a demand to stem street crime. Abuses at Rampart did not start with a conspiracy between rogue officers. They began with a problem of crime and violence that beset Pico-Union. Into this web of fear and disorder we dispatched officers – members of the ineptly named CRASH – whose mission it was to reclaim the streets for the good folks.

Did we supply officers with special tools to help them accomplish their task? Of course not, since none exist. Yet our expectations remained high. Police officers gain satisfaction from success. Their work is also judged by superiors, who are more interested in numbers of arrests than in narrative expositions, the latter being difficult to pass up the chain of command and virtually impossible to use in budget fights at City Hall.

Officers aren’t interested in being occupiers. Most enjoy exercising discretion and making distinctions between the naughty and the nice. But when gangsters rule the streets, restraint – that valuable commodity that cops in more favorable climes exercise every day – goes out patrol car windows. We can threaten, train and reorganize until the cows come home, but reform can’t take hold in an atmosphere of unrequited violence. When officers are enveloped by disorder, the craft of policing is a lost cause.

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Ironically, Chicago's long-standing crime problems have made the city a laboratory for innovation. Over the years its police have experimented with various of initiatives, from predictive policing to the well-known Project Ceasefire. Four years ago the city announced an extensive set of violence-reduction strategies. Some were cops-only, others involved partnerships with citizens (for the most recent incarnation [click here](#).) Naturally, not everything has worked out. One promising approach, which used former gang members to "interrupt" violence, was reportedly dropped because a few "interrupters" apparently returned to their bad old ways.

Despite its many efforts, Chicago faces levels of violence not seen since the crack epidemic of the eighties and early nineties. It's obvious that police are an imperfect solution. Perhaps they shouldn't try to do it all. What the South Side (and reportedly, the West Side) need is a homegrown remedy, organized and run by residents, that could tamp down the violence wrecking their communities. Something peaceful yet emphatic, perhaps along the lines of Black Lives Matter but aimed within. Recommending what amounts to a role reversal might seem odd, but until Chicago's embattled residents help secure their own streets, they'll be safe for no one, including the police.

Posted 7/8/11

RUSH TO JUDGMENT

***Did cops and prosecutors in L.A. and New York act too hastily?
And if so, why?***

By Julius (Jay) Wachtel. By all measures, [Giovanni Ramirez](#) is *not* a nice guy. Sporting a tattoo-encrusted neck and a con's teardrop under his left eye, the 25-year old parolee has amassed convictions for attempted robbery, robbery and discharging a firearm. But hard as he tried, until recently he's been known only to his homies, his victims and the cops.

No longer. Giovanni's finally hit the big time.

On March 31 two men savagely beat San Francisco Giants fan Bryan Stow after the season opener at Dodger Stadium. The episode captured the nation's attention. During the nearly two months that passed without an arrest, a constant stream of media coverage built public outrage to fever pitch. Then one day a parole agent approached detectives, who had incidentally just cleared another parolee as a suspect in Stow's beating. Ramirez, the agent pointed out, closely resembled an artist sketch of one of the assailants. What's more, he had recently tried to alter some tattoos. Surveillance quickly confirmed that Ramirez had changed residences without giving notice. Was he trying to avoid notice? Was he lying low? Officers learned that Ramirez's ex-girlfriend was at the game. According to witnesses, one of the suspects left in a car driven by a woman. Could she have been the getaway driver?

Within a week LAPD served search warrants and arrested Ramirez, not on a prosecutor's signed complaint but on probable cause. At least one eyewitness reportedly identified him from a photo lineup. But the D.A. declined to file charges. There was no other proof of Ramirez's guilt or presence at the game, and friends and family members swore that he had been at home.

Even after Chief Charlie Beck [proclaimed](#) that LAPD "absolutely" had the right man the D.A. did nothing. Actually, there's no rush. Detectives found a gun hidden in the apartment where Ramirez was staying, so [he's now locked up, doing ten months](#) for parole violation. That delay should help the fabled Robbery-Homicide Division, which took over the investigation, put together a case that will earn the D.A.'s approval.

Or not. Additional evidence has surfaced in Ramirez's favor. [A video taken during the game](#) depicts a bulky Dodgers fan (not Ramirez) confronting the beating victim. It seems that Bryan Stow [had been loudly profaning the home team](#), going so far as to compare Dodger (hot) dogs to excrement. At some point he realized that he was courting trouble and text-messaged friends about feeling unsafe. Police reportedly interviewed the big guy who accosted Stow and eliminated him as a suspect. How many other suspects Stow's loutish behavior may have generated is anyone's guess.

May 14 was shaping up to be just another globe-trotting day for Dominique Strauss-Kahn, the patrician, white-haired 62-year old chief of the International Monetary Fund. Married to a wealthy woman with whom he shares a \$4 million Georgetown home (they also own fabulous residences in France and Morocco), the man who many assumed would be France's next president was in a plane about to depart for Paris [when two NYPD detectives boarded the aircraft](#) and bid him to follow.

Within hours Strauss-Kahn stood charged with sexually assaulting the maid who had cleaned his hotel suite hours earlier. As related [in a long string of articles in the New York Times](#), there is little doubt that a sexual encounter took place. Strauss-Kahn's ejaculate was reportedly found on the maid's clothes and in the room, and his lawyers have not denied that their client and the maid had sex. But they insist that if anything happened it was consensual. Fiddlesticks, says the maid, whose name is yet to be released. She told police that when she entered the suite Strauss-Kahn emerged from the bathroom in his birthday suit, tried to rape her, then forced her to perform oral sex.

Oddly, officers didn't question Strauss-Kahn for hours. Once they began he told them that he would have spoken earlier, but that his lawyer cautioned him to say nothing.

After spending five days in jail Strauss-Kahn was [indicted by a Manhattan Grand Jury](#) for sexual abuse, attempted rape and forced oral copulation, charges that carry up to twenty-five years in prison. He was released under conditions that he wear an ankle bracelet and remain inside an apartment under watch by security guards (they're on his dime.)

Strauss-Kahn resigned from the IMF. His candidacy for France's top post went on the back-back burner. His alleged crime and checkered sexual past – on hearing of the arrest, a French writer said he tried to rape her years earlier – led to a fierce media campaign to bring down the uppity Frenchman. It started with [a fawning New York Times piece](#) portraying the maid, a Guinean immigrant, as “an unassuming and hard-

working single mother” who was trying to make a better life for herself and her teenage daughter.

How she was going about it has become the big question. A tip from an Arizona jail, apparently from an inmate, revealed that on the day following the alleged assault [the maid had spoken by phone](#) with a prisoner facing charges for trafficking 400 pounds of marijuana. During the conversation, which was conducted in an unusual African dialect and recorded as a matter of routine, the maid allegedly said, “Don’t worry, this guy has a lot of money. I know what I’m doing.”

D.A. investigators determined that she placed the call using a cell phone [whose existence had been kept secret](#). Scrambling to learn more about their star witness, they discovered that she was quite the liar. Key facts in her asylum application were untrue, including alleged beatings by soldiers, her husband’s jailhouse death and a gang rape. She had withheld her true income from public housing authorities. A child listed as a dependent on her tax return wasn’t hers. And for the real shocker, she held bank accounts in several states through which tens of thousands of dollars had flowed.

None of these “oversights” directly relate to the assault. But lying about hiding in a hallway does. When confronted the maid admitted that, as hotel key card records prove, she resumed her cleaning rounds right after the encounter. And at last notice things have gotten even curiously. A lawyer she assumedly hired to pursue a civil case against Strauss-Kahn [just filed a libel suit against the New York Post](#) on her behalf. Why? Because the notorious tabloid [accused her of being a prostitute](#), and even of turning tricks while being sequestered by the D.A.

As for Strauss-Khan, he’s out on his own recognizance, *sans* passport and facing uncertain futures in the U.S. and in his homeland, where authorities have opened an inquiry into the female writer’s allegations. It’s enough to drive a Frenchman sober.

The Dodger Stadium beating and, on the opposite coast, the arrest of Strauss-Kahn quickly morphed into good old-fashioned American media circuses, creating enormous pressures on police and prosecutors. Although it’s well known that going on appearance is exceedingly chancy, that’s how Ramirez was targeted. (Considering the number of gang members who are bald and have neck tattoos, the chances of randomly finding several who otherwise resemble the suspect must be close to one-hundred percent.) Of course, as an ex-con without two nickels to rub together Ramirez would be ill-equipped

to do battle with determined prosecutors. If nothing else he would certainly be impeached over his criminal record should he choose to face a jury.

As we pointed out, L.A. prosecutors have yet to file charges. Thanks to the arrest, though, the investigation faces a serious dilemma. If a case can't be made against Ramirez, forget about picking on someone else. Unless they confess or something drops from the sky, all a defense lawyer needs argue is that police had it right the first time: it really was Ramirez all along.

Let's move on to Strauss-Kahn. Yes, he and the maid apparently had a sexual encounter. But was it forced? Unlike their counterparts in Los Angeles, who held their fire pending further investigation, the eager-beaver New York prosecutors must live with an indictment that's based in part on proven untruths. Really, there's only one thing about the case that we know for sure. Had the phone call between the maid and the jailbird gone undiscovered, there's little doubt that the train of American justice would have long left the station, with the maid riding first-class and Strauss-Kahn in the caboose. Considering the circumstances, even a rich, innocent guy might not have been able to get out of that fix.

Decisions to arrest and charge should be made dispassionately and with great care. Ramirez and Strauss-Kahn are examples of the mischief that can befall the system when cops and prosecutors allow a hang 'em high atmosphere to distract them from doing a quality job. If Giovanni Ramirez and Dominique Strauss-Kahn are guilty, let's prove it fair and square. And if we can't and must let them go, remember that's a victory, too.

Posted 12/20/20

SELECT – DON'T “ELECT”

When top cops are elected, controls fly out the window



For Police Issues by Julius (Jay) Wachtel. Forgive us for claiming prophecy, but [one of our very first posts](#) concluded that electing Sheriffs virtually guarantees poor endings. So [a recent news account](#) about the seemingly irreparable riff between Los Angeles Sheriff Alex Villanueva and several members of the County Board of Supervisors, [who vociferously demand that he resign](#), comes as little surprise.

It's not the first time that the L.A.S.D.'s executives have come under fire. [Remember that catchy](#) “those mother-f-----! Who do they think they are? F--- them!”? As we mentioned in “[Orange is the New Brown](#),” these memorable words were uttered in 2011 by then-Undersheriff Paul Tanaka. You see, he and his boss, Sheriff Lee Baca, had just discovered that an inmate was using a [secretly acquired cell phone](#) to convey, in real time, the dastardly behavior of “abusive and corrupt” jail deputies to his pals at the FBI.

It's not as though the Feds were on to something new. As we pointed out in “[LASD Blue](#),” problems at the L.A. County Jail had festered openly for years. What the ACLU termed a “[Savage Gang of Deputies](#)” ran rampant, dispensing serious beatings and, when challenged, lying about what happened. [Reports by the County's oversight agency](#) had also repeatedly warned of serious lapses in jailer performance and conduct.

Baca promised to tighten things up and implement reforms. But when he and Tanaka found out what the Feds were up to they orchestrated a massive cover-up. Deputies hid away the jailed snitch, openly discouraged other prisoners from becoming involved, and [even tried to intimidate an FBI agent](#) by popping in at her home. Those ham-handed attempts ultimately led to the 2014 Federal conviction of six deputies, including a Lieutenant.

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Sheriff Baca resigned. But once his former underlings found themselves on the wrong side of those nasty bars they predictably turned on their bosses. Baca and Tanaka were in an impossible fix. In 2016 [Baca pled guilty](#) to lying to Federal agents. His original deal for a six-month prison term fell through, and [it took a couple trials](#) before he was finally convicted. (He began serving his three-year stretch earlier this year.) Tanaka, who admitted nothing, was tried and convicted of obstruction. He drew a stern five years and reported to Federal prison in 2017.

But let's not just pick on L.A. Its next-door neighbor, Orange County, has had plenty of troubles with its cops as well. Two of our earliest essays – “[Accountability? Not if You're a Sheriff](#)” and “[Carona Five, Feds One](#)” – described the inglorious, troubled tenure of Orange County Sheriff Mike Carona. In 1998, after a decade-long stint as county marshal, responsible for court security and such, Carona was elected Sheriff. He actually became quite popular, and his re-election in 2002 led TV Host Larry King to proclaim him “[America's Sheriff](#).” Carona was re-elected in 2006.

And just like his L.A. counterpart, he didn't mess up all by himself. Carona had brought in two buds from the start: George Jaramillo, a lawyer and ex-cop, and [Don Haidl](#), a wealthy businessman with no law enforcement experience. Both were promptly appointed Assistant Sheriffs; in effect, Carona's number two's. All seemed peachy until twin disasters hit in 2014. State agents nailed Jaramillo for using County resources to promote a private business (taking bribes to peddle a car immobilizer) while police arrested Haidl's son for a rape that he and his friends allegedly committed at daddy's home.

Carona kept out of it. He fired Jaramillo. Haidl, embittered by his boss's lack of support, promptly resigned.

Payback came three years later. Facing Federal tax charges, Jaramillo and Haidl testified that they laundered gifts and cash that campaign contributors gave Carona in exchange for reserve badges and gun permits. Although that case mostly fell apart, Carona was ultimately convicted of witness tampering. The evidence? [Secret recordings](#) of conversations between FBI stoolie Haidl and Carona, in which the beleaguered Sheriff begged his once good bud to lie to the Feds.

Carona got five and one-half years. Reportedly battling Alzheimer's, [he was released in May 2015](#), about a year early.

It's not only about jails. “Los Angeles” is a mix of incorporated areas patrolled by LAPD and unincorporated communities watched over by the Sheriff. Both officers and deputies must deal with low-income neighborhoods beset by street gangs. Over time,

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their unforgiving atmosphere rubbed off on more than a few lawkeepers. “[Two Sides of the Same Coin](#)” described the nefarious activities of long-standing deputy cliques, among them the East L.A. station’s “[Little Devils](#),” the Lynwood station’s “Vikings,” and a special enforcement team that dubbed itself “The Jump Out Boys” and whose members sported tattoos depicting human skulls.

LASD’s badge-carrying deputy/gangsters tried to live up to their evocative monikers, glorifying the use of force, celebrating killings as “rites of passage” and harrasing pesky superiors by tying dead dogs to their cars. Falsifying reports and “making things up” were also on the plate. That last approach was also favored by some members of LAPD’s elite “Metro” unit, who boosted their “numbers” [by falsely claiming](#) that nearly everyone they stopped was a gang member.

To be sure, cops and deputies have both engaged in some serious mischief. Still, it matters whether their leaders are appointed chiefs or elected sheriffs. LAPD Chief Michel Moore reports to a [Police Commission](#) and a Mayor. When aggrieved citizens and interest groups grouched about his underlings, he had little option but to investigate. His inquiry has so far yielded [the indictment](#) of three Metro officers and [the tossing of many cases](#) against citizens they arrested while on patrol.

On the other hand, L.A. Sheriff Alex Villanueva – you know, the one ostensibly in charge of the Little Devils, the Vikings and the Jump Out Boys – [has steadfastly resisted efforts](#) to clean house. And something seems called for, as lawsuits over his deputies’ excessive use of force and other misdeeds have sucked a tidy \$149 million from the County’s coffers over the last five years.

But Sheriff Villanueva’s fellow elected officials lack a ready lever to pull. Unless Los Angeles County [amends its Charter](#) to institute a procedure for removing the Sheriff, his or her tenure will continue to be decided by the voters. Given such constraints, several flustered members of the L.A. County Board of Supervisors [recently demanded that Villanueva resign](#):

With a sheriff that is unwilling to demand accountability for deputy misbehavior, lawsuits will continue to be filed against the sheriff, and it is the county’s taxpayers who will continue to pay for the consequences.

Well, good luck with that. Interestingly, unlike defrocked O.C. Sheriff Mike Carona, whose actual experience was reportedly limited to guarding courthouses, Sheriff Villanueva [sports extensive creds](#) as a patrol deputy and field supervisor. So when he was first elected in 2018 (on the Democratic ticket, no less) law enforcement professionals cheered. Finally, here’s someone who knows full well what can happen

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when fallible humans pin on a badge. Alas, the new Sheriff may have turned out to be more of a pushover than one might have hoped for. He also faces hordes of strong-willed deputies and their union. So the impasse continues.

How might it be resolved? There is one possibility. [California Government Code sec. 12560](#) stipulates that “The Attorney General has direct supervision over the sheriffs of the several counties of the State.” Nothing in the text, though, defines “supervision” or how it can be exercised. But Sheriff Villanueva’s intransigence recently led California to [enact a law](#) that lets counties create civilian “sheriff oversight boards.” Los Angeles County supervisors promptly took advantage. And only last month, [a judge ordered Sheriff Villanueva](#), who refused to appear voluntarily, to honor the new board’s subpoena. So we’ll see.

Meanwhile, as we wait for *all* of La-La land’s cops and managers to take the high road, is there a *real, permanent* fix? Of course. Change State laws and Constitutions so that Sheriffs are appointed officials and report to County executives. [Given that nearly all are presently elected](#), though, doing so would require a national reassessment. But nothing good comes easy, right?

So keep wearing those masks and we’ll see you in 2021. Happy New Year!

Posted 3/11/12

THE NUMBERS GAME

A leaked NYPD internal report confirms that crime stat's were fudged

By Julius (Jay) Wachtel. It's been thirteen months since NYPD Commissioner Ray Kelly [created a panel](#) to investigate charges that the department systematically underreported serious crime. While it's yet to issue findings, it turns out that there has actually been a report all along. [As revealed days ago in the Village Voice](#), NYPD investigators submitted a damning 95-page report six months before Kelly's panel was formed. It concluded that the commander of the 81st. precinct, Deputy Inspector Steven Mauriello, had ordered officers to keep victims from filing crime reports or, if that wasn't possible, to downgrade incidents below the Part I threshold so that they would not be included in yearly crime statistics.

When viewed in their totality, a disturbing pattern is prevalent and gives credence to the allegation that crimes are being improperly reported in order to avoid index-crime classifications. This trend is indicative of a concerted effort to deliberately underreport crime in the 81st Precinct.

Flashback to 2008. NYPD officer Adrian Schoolcraft, an eight-year veteran assigned to Brooklyn's tough 81st. precinct, was getting unsatisfactory performance evaluations, [he says for resisting](#) the pressure-cooker atmosphere created by Inspector Mauriello. Preoccupied with looking good at CompStat meetings, the precinct commander was exhorting cops to make as many stop-and-frisks and write as many tickets as possible while minimizing the number of reports taken for serious crimes.

Schoolcraft complained about things to a police therapist. That soon landed him on a desk, stripped of his badge and gun. Then things got worse. A dispute with his superior on Halloween night, October 31, 2009, landed him in a psychiatric ward, where he was held for six days. NYPD then placed him on leave without pay, a status that remains in effect through the present day.

Schoolcraft sued (click [here](#) for his website.) In February 2010 [he told it all](#) to the *New York Daily News*. Its reporters confirmed instances where 81st. precinct cops made it difficult if not impossible to file crime reports. Then in May the *Village Voice* ran the first of an explosive series entitled "[The NYPD Tapes](#)." It turns out that for the sixteen months preceding that fateful Halloween day, Schoolcraft had been wearing a hidden recorder.

His tapes depict a department consumed with the imperative to satisfy the Gods of CompStat. One roll-call features a sergeant instructing officers to write “three seat belts, one cell phone and 11 others.” Another stars the Inspector, in his radiantly profane self:

I see eight fucking summonses for a 20-day period or a month. If you mess up, how the hell do you want me to do the right thing by you? You come in, five parkers, three A’s [minor infraction], no C’s [serious infraction], and the only 250 [stop-and-frisk] you do is when I force you to do overtime? I mean it’s a two-way street out here.

Officers kept property crimes under the Part I threshold by demanding receipts for stolen goods and by minimizing the amount of a loss. A cop who thought he was speaking in confidence said that the same trick had been used to downgrade robberies. “If it’s a robbery, they’ll make it a petty larceny...a civilian punched in the face, menaced with a gun, and his wallet was removed, and they wrote ‘lost property’.” A Lieutenant eventually came up with an even neater solution, ordering that robbery reports not be taken unless victims immediately accompanied officers to the station to speak with detectives.

Once the cat was out of the bag NYPD internal affairs descended on Schoolcraft. He secretly taped that interview, too. Here’s what an investigator said when leaving:

The mayor’s looking for it [lower crime stat’s], the police commissioner’s looking for it . . . every commanding officer wants to show it. So there’s motivation not to classify the reports for the seven major crimes. Sometimes, people get agendas and try to do what they can to avoid taking the seven major crimes.

Other officers came out with similar tales. It turns out that Schoolcraft wasn’t the only running around with a hidden tape recorder. Adil Polanco, a cop in the Bronx, [recorded supervisors and union rep’s](#) pressuring officers to make “chickenshit” arrests and avoid taking reports.

NYPD could no longer pass it off as the ramblings of a disgruntled cop. In October 2010, apparently as result of the internal investigation just disclosed by the Voice, [NYPD formally accused](#) Mauriello and four subordinates at the 81st. with suppressing crime reports. Mauriello was transferred out of the precinct. He remains on full duty, and the accusations are still unresolved.

Recent events suggest that little has been settled:

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- 02/26/12 A cop's lawsuit claims that the 42nd. precinct [uses a quota system](#) that requires cops to issue fifteen tickets, conduct two stop-and-frisks and make one arrest each month, on pain of various forms of discipline.
- 01/23/12 In response to concerns that crime reductions may be a "mirage" caused by underreporting, [NYPD issued a memo](#) requiring that officers take reports even when victims can't identify suspects or provide receipts for allegedly stolen goods. (NYPD insists that the memo simply reminds cops of correct procedures.)
- 01/18/12 CRC Press publishes "[The Crime Numbers Game: Management by Manipulation](#)," by criminologists John Eterno (a retired NYPD Captain) and Eli Silverman, "exposing the truth about crime statistics manipulation in the NYPD and the repercussions suffered by crime victims and those who blew the whistle on this corrupt practice."
- 01/08/12 NYPD [credits heavy-handed transit enforcement](#), including ticketing and arresting passengers for nuisance violations such as hogging seats, for a sharp drop of crime in the subways. But an officer contends that pressures from superiors to make at least one "collar" a month is a factor.
- 12/31/11 Crime victims complain that [NYPD officers are refusing to take reports](#). Some cops say it helps keep stat's low, with one commander calling it "the newest evolution in this numbers game."

Whether NYPD has really learned anything from this mess is hard to say. After a consistent downtrend – they reportedly fell 16 percent between 2008-09 – [robbery reports ticked up](#) 5 percent in 2010. But it's not just NYPD. News reports suggest that playing fast and loose with crime statistics (click [here](#) for Baltimore and [here](#) for Cleveland) and pressing officers to fulfill ticket and arrest quotas (click [here](#) for Los Angeles and [here](#) for Cincinnati) are common.

Fudging statistics and treating cops like assembly-line workers has profound implications for the practice of policing. Tools such as CompStat have turned measures into goals, pushing aside issues such quality and making cops into liars. There's an urgent need to reexamine the craft of policing and figure out what really "counts." It may have little to do with numbers.

Posted 1/4/21

THIRD, FOURTH AND FIFTH CHANCES

***Some cops repeatedly avoid meaningful sanctions.
Then disaster strikes.***



For Police Issues by Julius (Jay) Wachtel. Let's begin with [a colorful quote](#):

Lots of times some skell [a mope] is fighting a cop tooth and nail, then a cop loses control, which is easy to do, and then you lose your temper and somebody videotapes you, and the next thing you know you're losing your job.

Retired NYPD sergeant Mike Bosak's words aptly describe the potentially career-busting perils his former colleagues faced on the morning of April 10, 2009 when a horde of student protesters [burst through the doors](#) of The New School, a local university. Video footage taken inside the institution [depicted officers going about their business calmly](#) as students staged a sit-in. But what happened in the chaos of the streets was something else, with [officers chasing protesters](#) in a helter-skelter fashion reminiscent of the Keystone Cops.



That's what worried the former sergeant. Watch as that angry cop aggressively approaches a student who's yelling "shame on you!" and shoves him to the ground. Fortunately the shovee [was not seriously hurt](#). But imagine the consequences had the young man's head forcefully struck the



pavement. Such as what happened to the senior citizen protester in “[Gold Badges](#)”.

Your writer can personally attest that officers habitually shrug off taunts and worse. Yet many cops are burdened with colleagues who repeatedly manifest poor self-control. As headlines regularly remind us, when armed humans lose their cool the consequences can be dreadful. In [a recent investigative piece](#), “The Bad Cops: How Minneapolis protects its worst police officers until it’s too late,” the *Minnesota Reformer* reviewed records of citizen complaints against Minneapolis officers between 2013-2019. It found 1,924. Sixty percent were closed without action. Thirty-five percent led to “coaching”; two percent to “mediation.” Discipline was imposed in three percent of cases. Those 53 included 24 suspensions, 22 letters of reprimand, one demotion, and a relatively measly six firings.

Over the years Minnesota news outlets have chronicled the saga of a certain veteran officer and police union functionary. We’ll refer to him as MPD1. [According to Minnesota Public Radio](#) MPD1 was the subject of “more than 30” complaint investigations between 2000-2016. While most were apparently closed without action, he received two letters of reprimand in 2012 and was suspended twice in 2013.

MPD1’s first incident of note happened in 2011, when he and another officer severely kicked a man whom they suspected had a gun. Their target, whom they rendered unconscious, turned out to be unarmed. He sued, and the city eventually paid out \$85,000. Yet that didn’t slow the officer down. One year later [an online video](#) shows MPD1 choking one activist and dousing others with pepper spray. Those scenes are followed by a clip that depicts his rough handling of a news photographer during an earlier encounter.



Fast-forward to December 2013. That’s when MPD1 [allegedly kicked a handcuffed prisoner](#) in the face as he sat in a patrol car, breaking the eighteen-year old’s nose and jaw and knocking out his two front teeth. Again there was litigation. And again officer MPD1 remained on active duty. Eight months later, in August 2014, he and a partner responded to a domestic disturbance call. [A video of the encounter](#) shows MPD1 pushing a woman to the ground right after she opens the front door, then again once he’s inside (top photo). He also allegedly [called her a profanity](#).

That proved too much for Chief Janee Harteau. She placed MPD1 on leave. Her words clearly foretold her intentions:

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Public trust and procedural justice is vital in our ability to effectively protect and serve, and as a result I have lost all confidence in [MPD1's] ability to serve the citizens of Minneapolis due to his poor judgment and his lack of integrity.

MPD1's behavior does seem awfully heavy-handed, and he was fired. But in October 2016 an arbitrator decided that his conduct, while out of line, didn't warrant termination. Punishment was reduced to a week's suspension and MPD1 was awarded back pay. Chief Harteau promptly communicated her displeasure:

I am disappointed in the arbitrator's decision. These rulings hinder my ability, as a Police Chief, to create an effective culture of accountability within the Department.

So she took another tack. Minneapolis had paid \$360,000 to the victim of the 2013 kick-in-the-face. But its internal investigation of MPD1 was set aside when he was fired for pushing the woman. Keeping MPD1 on paid leave, Chief Harteau reopened the earlier case, and in February 2019 fired him again. This time the arbitrator (same one as before) [saw things differently](#):

This amounts to six serious use of force violations in the period from 2012 to 2015. This pattern of continued use of force violations poses a significant problem for the MPD. This conduct damages police-community relations and subjects the City to the potential of significant civil liability.

MPD1's termination [was final in November 2019](#). But he's not the reason why Chief Harteau lost her job. That can be blamed on another officer. We'll refer to him as MPD2. In July 2017 he [shot and killed Justine Damond Ruszczyk](#) as she walked up to his idling patrol car. MPD2 didn't realize that Ms. Ruszczyk was the 9-1-1 caller and [found her unexpected approach frightening](#). At the time MPD was already in the hot seat over a series of incidents, including [the killing of Jamar Clark](#) two years earlier. So after promptly agreeing that "Justine didn't have to die" [Chief Harteau resigned](#). State agents assembled a case against MPD2. He was convicted of murder and manslaughter in 2019 [and sentenced to 12½ years](#). Minneapolis [settled the family's wrongful death lawsuit](#) for \$20 million.

MPD2 had only two years on the job when he killed Ms. Ruszczyk. During that time [he amassed three complaints](#): one led to a lawsuit, and two remained under investigation. If that doesn't seem like much, consider keeping up that pace for, say, nineteen years. That's how long former MPD officer [Derek Chauvin](#) had served when he was filmed kneeling on George Floyd's neck. By then [he had accumulated eighteen complaints](#). But "only" two led to discipline!

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It's not just Minneapolis. Troubled officers have been linked to tragic events across the U.S. "[Should Every Town Field Its Own Cops?](#)" offered several examples. Among them is the well-known 2014 episode where a rookie Cleveland cop shot and killed Tamir Rice, a 12-year old boy who was playing with a toy gun. Cleveland hired the officer even though his former agency [asked him to leave](#) after only one month for behavioral reasons. His applications were rejected by a long string of departments, but [Cleveland took him on anyways](#).

Litigation over police misconduct has bedeviled American cities. Recent pieces in the [Washington Post](#) and the [Wall Street Journal](#) reveal that local governments have been forking over eye-popping amounts to settle claims of officer abuse:

- [Chicago](#): About \$253 million since 2015
- [Dallas](#): \$3.7 million since 2015
- [Detroit](#): \$28.5 million since 2015
- [District of Columbia](#): More than \$40 million since 2016
- [New York City](#): More than \$1.1 billion since 2015
- [Los Angeles County](#): More than \$238 million since 2015

Neither article tracks the damage caused by cops with dodgy histories. However, according to the *Washington Post*, [five D.C. settlements since 2015 involve the same cop](#). One payout, for \$25,000, was supported by video that "shows [the officer] pinning [the complainant's] arms with his knees, pummeling him and showering him in pepper spray." This officer was also twice accused of harassment in 2016. Both complaints were sustained and he got "additional training." And yes, he's still on the job.

Thanks to all the attention, the issue of so-called "bad apple" cops may be gaining more traction. But one well-traveled expert [isn't holding his breath](#). "The review process," says former police chief Daniel Oates, "is staggeringly favorable to bad cops." Mr. Oates, a lawyer who commanded NYPD intelligence and led the Ann Arbor, Aurora and Miami Beach police departments blames chiefs' powerlessness on "a combination of state and local laws, union contracts, and past labor precedents." State peace officer "bill of rights," as in Florida, and civil service commissions that seem eager to reverse disciplinary decisions only add to the difficulties.

On the other hand, strict controls have reportedly led to officer "[slowdowns](#)." It's not just about rogue cops. Citizen fears about overly passive officers can erode a chief's standing as well. In fall 2020, as she prepared to assume the prestigious mantle of [IACP President](#), then-Santa Monica police chief Cynthia Renaud [came under withering fire](#) over her alleged failure to unleash the troops so they could effectively counter the

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“widespread looting and vandalism” that beset the coastal enclave. Indeed, the pressure became so pronounced that Chief Renaud reluctantly retired.

So what can be done about “bad apples”? At present, the International Association of Directors of Law Enforcement Standards and Training maintains a [national, non-governmental index](#) that identifies officers who have been decertified by state peace officer licensing authorities. It’s for agency use only. In June 2020 President Trump [issued an executive order](#) directing DOJ to develop a database that, in addition to decertifications, includes on-duty criminal convictions “and civil judgments against law enforcement officers for improper use of force.” That remains a work in progress.

USA Today [has also stepped in](#). Working with the [Citizens Police Data Project](#), which focuses on Chicago cops, it has assembled information on “at least 200,000 incidents of alleged misconduct” involving about 85,000 law enforcement officers across the U.S. At present, searches are [limited to decertified officers](#).

According to the *Los Angeles Times*, a national registry of officer misconduct was first proposed in the 1994 Federal crime bill. However, we found that the enacted provision [restricts using data](#) to “research or statistical purposes” and prohibits including “any information that may reveal the identity of the victim or any law enforcement officer.” So its utility in controlling rogue cops seems nil.

Policing is a craft whose proper exercise requires a great deal of skill and courage. Good cops – and they’re the vast majority – don’t want to work with thoughtless, impulsive colleagues. No doubt there are many officers, managers and chiefs who would very much like to improve things. But given our deeply polarized sociopolitical environment, substantial improvement may have to wait. For the foreseeable future, third, fourth and fifth chances will in many places remain the norm.

Posted 9/7/08

TROUBLES AT THE TOP

Saying “no” costs Alaska’s top cop his job

In his second year as Alaska’s public safety commissioner, [Walt Monegan](#) thought that his meeting with Governor Sarah Palin’s chief of staff would be about security for her forthcoming picnics. Instead he was asked to take over the Alcoholic Beverage Control board. When he politely declined -- after all, he already had his dream job -- he found out that, no, he didn’t.

Monegan, a former Anchorage police chief, was hired by the new Governor shortly after her 2006 election. By all appearances he took to his duties well, even earning plaudits from the police union. So what happened? [According to Palin’s flacks](#) she just wanted to move the department “in a new direction.” But within days the *Anchorage Daily News* was reporting another reason: Monegan was let go because he refused to fire the Governor’s ex-brother in law, a State Trooper who was going through a nasty custody battle with Palin’s sister.

Palin instantly denied it. “To allege that I, or any member of my family, requested, received or released confidential personnel information on an Alaska State Trooper, or directed disciplinary action be taken against any employee of the Department of Public Safety, is, quite simply, outrageous.” Skeptical journalists began looking into the story. In a [series of eye-popping exposes](#), reporters discovered evidence of a vendetta against the trooper dating back to the days when Sarah Palin was a small-town mayor.

A year before her election to Governor she, her husband and family had accused the trooper of misdeeds ranging from drunken driving (a crime that Palin’s hubby was once convicted of) to zapping a son with a Taser. In March 2006, following an [inquiry](#) that the *Daily News* characterized as befitting a homicide investigation, the trooper was suspended for ten days, later reduced to five. As for the trooper, he remains on the job. His only [public comment](#) came recently, when he told a CNN news crew that he doesn’t harbor Palin any ill will but feels “extremely stressed” that confidential personnel actions were revealed and that his past is now fodder for gossip.

Evidence of shenanigans continues to mount. Palin was [recently forced](#) to place one of her top aides on leave for pressuring a Trooper lieutenant to move against her ex-brother in law (she denies being the instigator.) Palin, now a vice-presidential candidate, doesn’t seem worried. Deferring to the demands imposed by her new status, the Alaska

legislative body investigating Monegan's firing [decided not to subpoena](#) Palin, leaving her to be questioned by investigators. Even that seems uncertain, as the private lawyer the State hired to defend the Governor [has challenged](#) the legislature's authority to look into her conduct, claiming that it's only a personnel squabble.

Meanwhile Alaska still lacks a permanent top cop. Monegan's replacement, former Kenai police chief Charles Kopp only lasted two weeks, when revelations of an alleged past incident of sexual harassment forced him to resign. At this writing Palin's appointed a panel to search for her third public safety commissioner in three months.

Whomever they select, the underlying problem won't go away. To Governors and their staffs top cops are just like any other political appointees, who are expected to cooperate and do what's asked. An excellent example of what can happen when State police chiefs "go along to get along" is last year's [Troopergate](#) imbroglio, where disgraced former New York Governor Eliot Spitzer got former State Police Superintendent [Preston Felton](#) to use his officers to try to dig up embarrassing information against Spitzer's arch-nemesis, Senate majority leader Joseph Bruno.

Although Troopergate wasn't what led Spitzer to resign from office this past March (his downfall was a big bucks call girl), it precipitated a wide-ranging investigation by the State Commission on Public Integrity, resulting in heavy fines and the end of several careers, among them Superintendent Felton's, who retired.

Lest one think that the West is above such problems, consider the travails of the celebrated California Highway Patrol. In 2008, following a three-year tenure charitably described as "troubled," Commissioner [Mike Brown](#) resigned. He had replaced Dwight "Spike" Helmick, whom Governor Schwarzenegger elbowed aside amidst allegations that command officers were taking unearned medical retirements. Brown was then done in by [scandals](#) involving conflicts of interest and the improper awarding of millions of dollars in contracts. After bringing in the failed leader's deputy, Joseph Farrow, to run the CHP, Schwarzenegger promoted Brown to be deputy secretary for public safety of California's Business, Transportation and Housing agency, which oversees the CHP. Naturally, Brown got a raise.

Hubert Acevedo must be laughing his head off. Now police chief in Austin, Texas, Acevedo recently [settled a lawsuit](#) against the State of California for \$995,000. Who authorized the payment? Shwarzenegger. He had little choice, as an [investigation](#) by the State Personnel Board confirmed that Acevedo, once the CHP's number two man in Los Angeles, had been mercilessly harassed for blowing the whistle on the shenanigans

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that forced Hemlick to resign. Among those cited for acting “to cause maximum stress, embarrassment and damage to [Acevedo’s] reputation” was Helmick.

One could go on, but the point’s been made. Most of the academic attention on police misconduct and corruption has been focused on local cops. But it seems that there may be equal reasons to be concerned about supposedly more “professional” State agencies, and particularly at the top, where political considerations can nurture corruption and self-dealing. Just how far this problem extends is an issue that needs to be addressed.

Full disclosure: this writer contributed \$200 to Senator Obama’s presidential campaign.

Posted 10/25/09

TRUTH OR CONSEQUENCES

*A Sheriff needlessly entangles himself, and his agency,
in a web of deceit*

As the balloon came to a surprisingly soft landing on the high plains of Colorado a transfixed nation held its breath. Was six-year old Falcon Heene alive? *Could* he be? Had the boy succumbed to hypothermia or, God forbid, suffocated from helium? Moments later, as authorities pounced on the disabled craft, a breathless reporter made the most startling announcement of all: there was no one on board.

What do you mean, no one? Look harder!

After hours of speculation about a missing basket that it turns out the balloon never had, Falcon magically appeared. None the worse for wear, he had supposedly been hiding because he was [frightened of being punished](#) for untethering the balloon.

That's when attention turned to his parents, unemployed actors Richard and Mayumi Heene, veterans of a March 2009 appearance on the "Wife Swap" reality program. An amateur scientist with a high-school education, Richard Heene had been unsuccessfully peddling a show entitled "The Science Detectives." Then Thursday, October 15 happened. With the family occupying center stage on every network, it was the opportunity of a lifetime. Who knows what might have come their way except for Falcon's explanation of why he hid, made to his dad during a live interview with CNN's Wolf Blitzer:

["You guys said...we did this for the show."](#)

Larimer County Sheriff Jim Alderden, the only other participant in this fiasco who's received as much TV exposure as the Heenes, endorsed their truthfulness from the start. Conceding at a [news conference](#) one day later that the boy's comments "raised everybody's level of skepticism," he [nonetheless stuck to the view](#) that the parents' "non-verbal communications, body language, and emotions during this event were entirely consistent with the events that were taking place." Still, he promised to re-interview the family to "see if we can put that issue [the alleged hoax] to rest."

That was Friday. One day later Richard Heene's wife, Mayumi, [confessed to an investigator](#) that they faked the whole thing to promote "media interest." That Monday Sheriff Alderden's tune abruptly changed. While not mentioning her statement (he later said that Colorado law forbids it) he not only declared that the incident was a hoax, but that he had known so since the [Blitzer interview](#), when the children's "nonverbal responses" and "verbal cues" indicated that they were lying. "Needless to say, they [had] put on a very good show for us, and we bought it," the Sheriff said. He then supposedly decided to put on his own little show and let the parents think that he still believed in them so that they kept cooperating.

Sheriff Alderden's mea culpa came one day later. At another news conference [he told reporters](#) "I think we came close to misleading the media. I apologize." Sheriff Alderden explained that his only motive in misstating his support of the Heenes was "to make them believe we were still on their side."

But was the alleged deception necessary? Hardly anyone thought so. "He could have just said nothing," [an expert pointed out](#). "If he wanted to send a message to the family, he could have said it to them personally and not used the media and engaged in misleading the public."

To this observer the Sheriff's explanation seems nearly as implausible as the balloon caper. When he pooh-poohed the boy's comments and said that his parents' conduct was consistent with the truth (opinions that he now disavows), his own "non-verbal communications" and "body language" seemed unexceptional. He spoke with conviction and was to all appearances telling the truth. Indeed, Sheriff Alderden didn't publicly turn against the parents until after Heene's wife confessed and deputies [served a search warrant](#) at the parents' residence. He then claimed that his real conversion took place during Blitzer's interview three days earlier, when the children's behavior convinced him that the balloon episode was a hoax.

Sheriff Alderden's "confession" that his support for the Heenes had been insincere opened a Pandora's box that forced him to apologize to the press the very next day. But could his *apology* be the real deceit? Had he really believed in the Heenes and was now simply trying to cover up his naiveté? We'll probably never know.

There are other issues. Professional law enforcers know that it's a bad idea to publicly discuss the strength and nature of evidence or the methods used to acquire it while an investigation is in progress. Mentioning such things, if at all,

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should come only after consulting prosecutors, not as ad-libbed comments during press conferences. And barring the most extreme circumstances, false public disclosures are always out of bounds.

There are many way of inducing persons to cooperate, some less tasteful and more legally problematic than others. Extensive police contact with suspects who don't have lawyers inevitably gives rise to Constitutional concerns. What did deputies tell family members? Were the Heenes coerced in any way; for example, with threats of losing custody of their children? Did they feel compelled to cooperate? Were they free to walk away? By making himself and his deputies out as master manipulators, making the Heenes out as suspects from the Blitzer interview on, and (allegedly) using the media as his proxy, Sheriff Alderden turned the prosecution of two alleged hoaxers into a moral drama, and perhaps a legally problematic one at that.

Interviewed in 2007 about another agency's lies to the press, [Sheriff Alderden said](#) that "all of us in this profession rely on a reputation for truthfulness, and even with best of motives, you can destroy that reputation pretty easily if you're not careful."

Exactly.

"Oh what a tangled web we weave when first we practice to deceive"
(Sir Walter Scott, 1771-1832)

Posted 7/20/20

TURNING COPS INTO LIARS

Keeping score can distort what officers do



Quality is Job 1.

For Police Issues by Julius (Jay) Wachtel. What do “Adrian Flores, Jasean Carter, Dontae Kelly, Juan Garcia, Lamonte Jenkins, Jameis Beatrice, Wilford Jones, Jammeal Quaran, Rapaul Winston, Marquis James, Devon Canzalez, Ramon Gutierrez, Hector Amaya, Wilmer Francisco, Julio Espinosa, Gerald Matthews and Jorge Rodriguez” have in common?

If you guessed “they don’t exist!” give yourself a pat on the back. [A massive complaint](#) filed by the L.A. County D.A. alleges that these seventeen characters were “fictional persons” brought to life by three LAPD officers who during the period March 2018 to January 2019 submitted field interview cards falsely claiming that each had been stopped and duly identified as a gang member.

So what do “Jaron P., Angelo M., Chris C., Kivon W., Alden O., Isiah B., Lawrence J., Antonio M., John S., Gadseel Q., Jose Q., Justin H., Emmanuel B., Bryan G., Jose J., Billi J., Alejandro R. and Andres A.” have in common?

If you guessed “they’re real, but not gang members” have one on us! According to the complaint, these were real people whom the officers falsely labeled as belonging to a street gang. Officers had helpfully supplied each one’s purported moniker (e.g., “Dub Bird”) and, for most, described their gang tattoos.

Natch, once the jig was up each F.I. card became a separate felony count of “Preparing False Documentary Evidence” ([Calif. Penal Code section 134.](#)) Officers also included false gang affiliations in crime reports; each became a felony count of “Filing a False Report” ([P.C. 118.1.](#)) Including conspiracy ([P.C. 182\[a\]\[5\]](#)), the cop who apparently led the enterprise was charged with *fifty-nine* counts. One of his partners was included in thirteen; another in five.

In all, the damage done seems substantial. In addition to influencing enforcement and prosecutorial decisions, the bogus data was entered into the statewide [Cal Gangs database](#), becoming a source of misleading information and saddling dozens with unearned “gang” labels that could, among other things, make them vulnerable to enhanced sentencing should they be convicted of crimes in the future. Concerns about abundant falsehoods recently led the State Attorney General [to strip all LAPD contributions](#) from the database.

As things stand, there won't be any more. In “[Recipe for Disaster](#)” we discussed how the mess first came to light. According to [a January 7 LAPD news release](#), an internal inquiry began when a mother contested the accuracy of an official letter informing her that her son was a gangster. As they compared officer body-cam videos with field interview cards – [the technique that prosecutors say](#) underpinned the charges – internal affairs investigators came to believe that as many as [twenty members](#) of LAPD's elite “Metro” group had been exaggerating their productivity by simply making things up. While some of the inconsistencies were ultimately attributed to errors and such, there was no mistaking a fifty-nine count criminal complaint. And once that lid blew LAPD Chief Michel Moore decided to withdraw his agency from CalGangs altogether.

By this point, complaints from Black citizens that they were being unfairly targeted had led the chief to reorient Metro from stop-and-frisk to other approaches (see [Scapegoat, Part I.](#)) But it's not as though LAPD can simply back off from crime-fighting. Major-city violence has definitely taken a turn for the worse. Through July 11 [LAPD reported](#) 151 homicides compared with 134 during the same period last year. An even sharper increase has beset New York City. [Through July 12](#) its portal reports 203 murders and 634 shootings compared with 165 and 394 during that period in 2019. [Commenting on the spike](#), NYPD Commissioner Dermot Shea blamed areas “overrun by gangs”:

There is a lot of gang activity, a lot of drug activity. It's bad people with guns, and it doesn't get any simpler than that. People settling scores, spraying a crowd.

Ditto Chicago. [Its Compstat pages](#) report 385 murders and 1541 shootings in 2020 through July 12 compared with 260 and 1059 during the same period in 2019. (Click [here](#) for the *Tribune* story.) As [academics occasionally concede](#), intensively policing troubled areas (i.e., “hot spots”) can tamp down violence. So while the Windy City's Black police chief, David Brown, says he's sensitive to the concerns of the post-George Floyd era, the appalling forty-eight percent increase in killings led him [to revisit the](#)

[concept](#) of a citywide violence suppression team that could prevent and if necessary deal with flare-ups. Um, a “Metro” group, so to speak.

New York City, Los Angeles and Chicago maintain public Compstat portals that offer detailed statistics on crimes including murder, sexual assault, robbery, aggravated battery, burglary, theft and motor vehicle theft. Data is aggregated weekly, and the manner of its display enables ready comparisons over periods as long as four years. Bottom line: these are the numbers, and numbers don’t lie! Although aggregate crime statistics obscure the fact that many neighborhoods remain disproportionately impacted by violence (see, for example, [“Place Matters”](#)) New York and Los Angeles are fond of bragging about their [“crime drops.”](#) Police brass inevitably feel judged (and undoubtedly *are* judged) by crime numbers, their change over time, and how their cities compare with other places. Should they feel discontent, subtle and not-so-subtle pressures to assign serious crimes to lesser categories can flow through the ranks (see, for example [“Cooking the Books”](#)). Transforming “aggravated” assaults into “simple” assaults – or, even better, not reporting them altogether – can help everyone’s prospects, from a lowly precinct Captain all the way to the chief. And, come election time, even the mayor!

Such tricks have their limits. It’s a lot tougher to ignore bodies as they pile up. So even in today’s atmosphere, when calls for the police to back off seem pervasive, the “bluest” of the media will jump on the cops should things spin murderously astray. Consider, for example, this July 16 piece in the *New York Times*: [“Shootings Have Soared. Is the N.Y.P.D. Pulling Back?”](#) Here’s a small slice of its pan:

Arrests have declined drastically this summer, falling 62 percent across the board for the last four weeks compared with the same period last year, police data show...Gun arrests have dropped 67 percent during the same four weeks compared with last year, even as shootings have continued to spiral upward.

Despite its reputation as a police scold, the *Times* is sparing no effort to disparage officers for supposedly doing less. For a bit of whiplash, keep in mind that it was criticism from the “blues” [that drove NYPD to disband](#) a citywide anti-crime unit that focused on getting guns off the street. A mere month later, the same commissioner who pulled the plug is [planning to reverse course](#).

He’ll discover what police well know. To have a *real* effect on violence requires more than filling out cards. It calls for smartly targeted stops that yield [a substantial increase in desirable outcomes](#) such as gun seizures and arrests. But making more such stops legally – that is, with adequate justification – can prove challenging under the best of

circumstances. Now consider the [charged, production-oriented environment](#) officers faced in Metro:

Multiple law enforcement sources told NBCLA's I-Team that Metro Division officers had been pressured by their commanders to show that their patrols were productive. Officers assembled daily statistics about the number of people they stopped and questioned, the number of contacts with gang members, the number of arrests, and other metrics.

While the LAPD hierarchy “denied there was pressure to produce any particular type of statistics,” the potentials for abuse are obvious. Your blogger was well aware of pressures to produce throughout his law enforcement career. Indeed, they became fodder for his doctoral dissertation, “Production and Craftsmanship in Police Narcotics Enforcement” (for an article based on this work click [here](#).) What he discovered wasn't exactly new: doing a “quality” job in policing is like doing “quality” work [in any other craft](#). Say, woodworking. It requires attention to detail and a commitment to do one's best without cheating or taking shortcuts. Should outcomes prove less than perfect good cops own up to their mistakes, do what they can to fix things, and hopefully use what they learned to prevent flub-ups in the future.

Where to start? We must define precisely what “quality” means for each task, from patrol to the chief. If counting has a place – after all, for duties such as traffic enforcement, numbers can be useful – its role must be clearly articulated. One could use the process your blogger recently articulated in *Police Chief* magazine (“Why do Officers Succeed?” Click [here](#) and scroll to p. 26. Or [contact](#) the writer and ask for a .pdf).

In this numbers-obsessed, Compstat-driven era, “productivity metrics” have reached absurdist heights (for an example click [here](#).) They've provided officers so inclined an impetus for out-and-out lying, as exemplified in the accusations against LAPD Metro's “three bad apples.” More broadly, society's obsession with counting, [which we've traced](#) to a late defense secretary's obsession with counting “bombs dropped, acres deforested and enemy killed” during the Vietnam war has displaced other, far more worthy objectives. Like [building safe planes](#). And [dispensing the right drugs](#). And, in policing, properly arresting the truly deserving. Let's quote one of the narcotics detectives we interviewed for that long-ago dissertation ([article, p. 269](#)):

Make cases, put people in jail, numbers. Our department right now is heavily into numbers. It's not so much the quality of the case but it's how many cases you do...because there are stat's being taken through the chain of command.

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Imploring officers to do quality work while our fingers are crossed behind our backs can only contribute to the cynicism. Management's commitment to do "well" instead of "more" must be genuine. As that old Ford ditty goes, let's truly make quality "Job #1"!

Posted 7/20/19

TWO SIDES OF THE SAME COIN

Street gangs and officer cliques have a lot in common

For Police Issues by Julius (Jay) Wachtel. How and why street gangs form has long been a fertile stomping ground for social theorists. Over the years they have proposed a range of causes, from individual temperament to the hogging of resources by a selfish elite. Your blogger's past observations as a law enforcement officer make him particularly fond of the work of [Dr. Elijah Anderson](#), Sterling Professor of Sociology and African American Studies at Yale University. According to Dr. Anderson, gang violence is a cultural adaptation to declining circumstances. Poverty and a lack of legitimate opportunities help generate a "code of the streets," promoting toxic concepts such as "manhood" and "respect" and legitimizing violence as an appropriate response to perceived slights.

That gang violence is, first and foremost, about settling scores comes as no surprise to readers of the *L.A. Times*. For a noteworthy example there's the [March 31st. murder](#) of celebrated L.A. gangster-cum-rapper [Nipsey Hussle](#), shot "at least 10 times" by a gang member with whom he supposedly argued about "snitching" (just who "snitched" isn't clear.) As we write the *Times*' website features a [brand-new story](#) about the Federal indictment of twenty-two Los Angeles gang members who "hacked to death seven people in the last two years, including a rival gang member who was dismembered and had his heart cut out by six MS-13 soldiers in the Angeles National Forest for defacing the gang's graffiti."

Not all gang violence is expressive. Some has a decidedly utilitarian bent. Consider, for example, the March 10 slaying of University of Southern California student [Victor McElhaney](#), a perfectly innocent youth whom gang members gunned down during a robbery. His mother is active in gun violence prevention efforts in Oakland, where she serves on the city council. Here is her statement:

My husband and I want to express our gratitude to the public for their cooperation and to the LAPD for their diligent work to bring those responsible for Victor's death to justice. But this gratitude brings little comfort. The young man arrested also represents a loss of life and human potential.

According to the *Los Angeles Times*, [which tracks](#) neighborhood crime, "[University Park](#)" (pop. 25,181), the disadvantaged area where the USC student was murdered, had 79 violent crimes (including one murder) during the past six months. Its violent crime

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rate of 313.7 per 100,000 pop. was thirty-fifth highest of L.A.'s approx. 209 communities. Two years ago in "[Location, Location, Location](#)" we settled on L.A.'s affluent burg of [Westwood](#) (pop. 52,041) as our model of an acceptably safe place. According to the *Times*, Westwood suffered twenty-nine violent crimes (including one murder) during the past six months, yielding a violent crime rate of 55.7 per 100,000 pop., 133rd. in the sweepstakes. Bottom line: violence in University Park was nearly six times worse.

"[Location](#)" found that citizens living in L.A.'s economically better-off districts were, as one might expect, also far better-off, crime-wise. Last year "[Be Careful What You Brag About \(Part II\)](#)" reached the same conclusion about the relationship between crime and wealth in New York City. Indeed, as the current surge of gang shootings in [Northern Brooklyn](#) suggests, the Big Apple's disparity seems to be worsening. That would of course be no news to Chicagoans, where an astounding [sixty-six persons were shot](#), at least five fatally during the recent July 4th. weekend. Poor, violence-ridden neighborhoods including [Englewood](#), where thirteen fell to bullets, and historically gang infested [Austin](#) (meaning Austin, Chicago) took the brunt of it. Here's Chicago Mayor Lori Lightfoot's reaction:

Austin...it's got high unemployment rates, it's got high poverty rates, it's got high concentration of people that are on public assistance, and...there's not a lot of economic activity that's going on. That is something that as a city we have to take on...Because I can send 10,000 officers to the West Side, if we don't address those underlying challenges, which we must, we're not going to solve the problem.

As obvious as the roots of the scourge may be, some city leaders remain surprisingly tone deaf. Consider L.A. Mayor Eric Garcetti's [January comments](#) about L.A.'s supposedly successful fight against crime. His boasts neglected to mention that violence in poor areas continues to be unacceptably high, and that the benefits of the much-ballyhooed "great crime drop" following the crack-addled nineties haven't been equally shared by rich and poor. It's not even close.

Those who live in downtrodden areas aren't the only who suffer. Policing economically deprived neighborhoods is no picnic. Thanks to the relentless, [profit-driven churning out](#) of ever-more-lethal hardware, criminals [have ready access](#) to guns every bit the equal – if not superior – to what cops lug on patrol. That's had an unquestionable effect on officer tactics, propelling an unending stream of split-second decisions (click [here](#) and [here](#)) whose consequences seem all too predictable.

Of course, all cops aren't alike. One of our very first posts, "[When Cops Kill](#)," emphasized that personality traits were key to understanding why some act impulsively

or use excessive force. That concept was elaborated in “[Working Scared](#),” which emphasized the centrality of risk tolerance to police work. Among other things it cautioned that initial training can instill excessive apprehension about the uncertain environment that officers face:

What experienced cops well know, but for reasons of decorum rarely articulate, is that the real world isn't the academy: on the mean streets officers must accept risks that instructors warn against, and doing so occasionally gets cops hurt or killed. Your blogger is unaware of any tolerable approach to policing a democratic society that resolves this dilemma, but if he learns of such a thing he will certainly pass it on.

Well, we're still looking. One obstacle is that violent street gangs continue to exert an insidious effect on policing. Under relentless pressure to tamp down crime in the inexorably hostile environment of the inner city, some officers have formed their own version of that “code of the streets,” (and here we self-plagiarize) “promoting toxic concepts such as “manhood” and “respect” and legitimizing violence as an appropriate response to perceived slights.” For an excellent historical example of a lawless police clique we need to turn no farther than [LAPD Rampart Division's scandal](#) of the nineties, when members of its elite CRASH (“community resources against street hoodlums”) gang unit engaged in [every form of misconduct imaginable](#), from excessive force to out-and-out corruption. And while CRASH and the Federal oversight it brought on are long-gone, the toxic social conditions that helped spawn the crisis remain. During the past six months, Rampart's ground zero, the economically-deprived [Pico-Union](#) district (pop. 44,664) of central Los Angeles, suffered 176 violent crimes, including three murders. Its violent crime rate of 394.1, twenty-five percent higher than University Park and about seven times that of Westwood, earned Pico-Union 30th. place in the violence sweepstakes.

But things were even worse in L.A.'s chronically poverty-stricken South side. For example, the congenially-named “[Green Meadows](#)” area (pop. 30,558) suffered a staggering 344 violent crimes, including four murders. That sorry performance translates into a violent crime rate of 1,126, nearly three times Pico-Union's and more than twenty times Westwood's. (Green Meadows placed third in the violence sweepstakes. That's third *worst*, mind you. First went to “[Chesterfield Square](#),” pop. 6382, 109 violent crimes, rate 1,708.)

South L.A.'s crime problems are not new. As we discussed in “[Driven To Fail](#),” about a decade ago they led LAPD to devise data-driven programs (LASER and Predpol) to identify chronic offenders and select areas most impacted by violence for special

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attention. Resources, including specialized anti-crime teams, were allocated accordingly (as one might expect, the Southside got much of the attention.) While LAPD touted the supposed benefits of this approach, [a recent review](#) was decidedly skeptical. Targeting strategies had proven grossly inexact. Like what happened in [New York City](#), aggressive policing produced lots of “false positives” and ultimately caused a public revolt. So things have supposedly been substantially toned down. And that’s not necessarily a bad thing.

LAPD isn’t the only police agency in the mix. For example, in [South Los Angeles](#) several unincorporated communities that adjoin LAPD areas are patrolled by Los Angeles sheriff’s deputies. These include Athens (violent crime rank 24 highest of 209), Florence-Firestone (65/209), Willowbrook (75/209) and Westmont (32/209). While LASD hasn’t suffered an exact duplicate of Rampart, [abusive deputy cliques in the jails](#) and on the streets have plagued it as far back as 1971, when East L.A. station deputies formed the “[Little Devils](#).” Over the next decades more such “secret societies” popped up in black and Hispanic areas. In 1996 the unholy tendency for cops to mimic street gangsters came to a head when L.A. County paid \$9 million to settle a Federal lawsuit that accused deputies who belonged to the Lynwood station’s “Vikings” clique of “racially motivated hostility.”

Still, the urge to form cliques persisted. In 2013 the LASD [fired seven members](#) of an elite anti-gang unit that branded itself “The Jump Out Boys,” wore matching tattoos, and rewarded its members for shootings. An in-house pamphlet succinctly conveyed their credo: “We are alpha dogs who think and act like the wolf, but never become the wolf.”

That problem has apparently persisted. In 2018 the Los Angeles Times [wrote about](#) “secretive cliques of deputies who bonded over aggressive, often violent police work and branded themselves with matching tattoos.” And only days ago [the Times revealed](#) that the FBI is presently investigating tattooed, “gang-like groups” of L.A. Sheriff’s deputies who violate citizen rights and harass colleagues who don’t go along. These badge-wearers include the East L.A. station’s “Banditoes,” the Century station’s “Spartans” and “Regulators” and the South L.A. station’s “Reapers.”

In “[Mission Impossible](#)” we cited examples in Chicago, New York City and Los Angeles to conclude that police are not the ultimate solution to the problems that beset America’s inner cities. Still, the urge to deploy cops to that end runs deep. As [a current NIJ effort](#) demonstrates, the urge to use increasingly sophisticated, data-driven techniques to redirect and fine-tune the police response will not be denied. Alas, as appealing as applying a “scientific” approach might seem, saddling officers with what

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are essentially “mission impossibles” will inevitably continue stirring up the same aspects of that old “human nature” that produce street gangs.

That, too, seems inevitable.

Posted 4/8/13

WANTED: DEAD OR ALIVE

A reward was offered: now all that's left is to pay

By Julius (Jay) Wachtel. In February the bodies of a 28-year old woman and her fiancée were discovered in a car in Irvine, a tony suburb of Orange County, California. They had been shot dead. Police soon identified their killer as Christopher Dorner, 28, a troubled ex-LAPD cop who was fired in 2007 for erratic behavior. It turned out that the female victim was the daughter of the retired LAPD captain who represented Dorner at his termination hearing.

A highly publicized manhunt ensued. During his escape Dorner, who was armed with an assault-type rifle, engaged in several shootouts with police officers and sheriff's deputies, killing two and wounding three. He also stole two vehicles from private citizens at gunpoint. Police finally cornered Dorner at a mountain cabin. He committed suicide when tear gas canisters fired by SWAT officers set the structure on fire.

During the manhunt the City of Los Angeles assembled \$1 million in pledges as a reward for information leading to Dorner's "capture and conviction." Like conditions were attached to other reward offers, including \$100,000 each from the Los Angeles City Council, the L.A. County Board of Supervisors and the City of Riverside, and \$50,000 from the Peace Officers Research Association (PORAC), a California police organization.

Once Dorner's death was confirmed three citizens stepped forward to claim the loot. They include a retired couple whom Dorner surprised and tied up, and a man whom Dorner carjacked at gunpoint after crashing the car he stole from the couple. All feel that they deserve the million-plus for promptly notifying police.

Whether they'll collect, and how much, is up to question. For his part, LAPD Chief Charlie Beck seems eager to distribute the cash. According to news reports the deputy chief coordinating the reward said it would be "disingenuous" to welsh because the fugitive never made it to the courthouse. PORAC, though, has withdrawn its offer. "We made a pledge based on very specific information and criteria," said a representative. "Now everything has changed. It is not what our board of directors voted on." Like sentiments have been voiced by the City of Riverside.

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You see, while Dorner was arguably “captured,” his death prevented an arrest and conviction. What’s more, no citizen did anything beyond calling the cops. Officers spotted the second stolen vehicle and engaged Dorner in a gunfight in which a San Bernardino County deputy lost his life.

At last word Chief Beck decided to dump the mess on three retired judges and let them decide. So here’s some fodder for them to consider.

First, there’s the propriety of offering a reward in the first place. While the tagline “Dead or Alive” is found only in the movies, if a reward is paid we might as well go back to the Wild West. Enough “usual suspects” have been wrongfully imprisoned in past years without encouraging vigilantism. Even when motives are pure, witness misidentification is a chronic problem. Although Dorner’s guilt seems obvious, ignoring pesky conditions such as “arrest and conviction” could set terrible precedent for the next time around.

Rewards are a problematic concept for other reasons. Remember the social contract? Conditioning citizens to expect a pile of cash for what they ought to do as a matter of course seems a very bad idea. Electronic signs on California freeways display the descriptions and, when available, the license plate numbers of vehicles wanted in connection with child abductions and cop killings. Should they specify what, if anything, the information might be worth in dollars?

There’s also the niggling issue of equity. There are plenty of cold cases, each with grief-stricken parents and spouses anxious to see the killers of their loved ones brought to justice. Offering cash rewards could help. Family and friends of one victim recently doubled a \$50,000 offer to a cool \$100,000. It’s a luxury that few could afford.

Some suggestions are in order. First, criminal justice is the state’s business to dispense. It’s not something that should be put up for sale. Accordingly, rewards should be strictly regulated and paid from the public trough, thus assuring fairness and reducing the temptation to ignore the rules whenever money is “free.” What’s more, if offering rewards is to continue – and we’re not warm to the notion – they should be administered by a disinterested entity without a direct stake in the outcome. Cities and counties seem precisely the wrong venues, as they’re far too close to the action. State governments are usually better positioned to decide when to offer rewards and to determine if, when and to whom they should be paid.

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As it turned out, no reward was necessary. There's no question but that Dorner's citizen victims would have alerted the authorities even without dollar signs dancing in their heads. All the imbroglio accomplished is to demean the process and raise questions about the integrity and motives of all involved. One hopes it's a lesson that will come to mind the next time authorities are tempted to turn to extralegal measures to accomplish their undeniably tough job.

Posted 6/30/23; edited 7/1/23

WATCHING THE WATCHERS

Will sanctioning its cops bring Minneapolis back?



For Police Issues by Julius (Jay) Wachtel. Not long before their Third District colleagues tangled with George Floyd, a couple of officers from Minneapolis PD’s Fourth District [festooned the Christmas tree that graced their precinct's lobby](#) with some unusual ornaments: “a pack of menthol cigarettes, a can of Steel Reserve malt liquor, police tape, a bag of Takis snacks and a cup from Popeyes Louisiana Kitchen.” [Described as “super racist stuff”](#) by Mayor Jacob Frey, these unusual decorations upset more than a few citizens. And ultimately led to the suspension of one of the cops, the retirement of his partner, and the demotion of two of their bosses.

As one might expect, the incident was juicy fodder for the media. But it didn’t hold a candle to the tragedy that came five months later. And one year after *that*, on the day following the conviction of ex-MPD cop Derek Chauvin for murdering Mr. Floyd, the Department of Justice launched a “patterns or practices” investigation of Minneapolis P.D. [Its recently released report](#) paints a grim picture of how MPD officers treated citizens, and particularly members of racial and ethnic minorities. [According to Attorney General Merrick Garland](#), MPD officers “routinely disregard the safety of people in their custody” and “fail to intervene to prevent unreasonable use of force by other officers.” They reportedly mistreat persons suffering from behavioral disorders, violate free-speech rights, and discriminate against Black and Native American persons. (And yes, those Christmas ornaments get prominent mention. See pg. 46.) Here’s an extract from the report’s opening page:



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For years, MPD used dangerous techniques and weapons against people who committed at most a petty offense and sometimes no offense at all. MPD used force to punish people who made officers angry or criticized the police. MPD patrolled neighborhoods differently based on their racial composition and discriminated based on race when searching, handcuffing, or using force against people during stops.

George Floyd was murdered on May 25, 2020. Our initial account, "[Punishment Isn't a Cop's Job](#)," was posted on June 3rd. Three weeks later we followed up with an [in-depth assessment](#) of poverty and crime in Minneapolis. Focused on the year preceding the tragic encounter, our analysis revealed a profound relationship between income, race and violence. A comparo between four neighborhoods at each end of the violent crime continuum reflected what we've found elsewhere: as prosperity increases, so does the proportion of White residents. Meanwhile violence goes down.

Of course, the link between poverty and violence is well known. Our [neighborhoods essays](#) frequently roll out data illustrating that relationship throughout urban America. And cops must deal with the consequences every day. Minneapolis' economic disparities were no secret to the authors of DOJ's report (pp. 3-4):

The metropolitan area that includes Minneapolis and neighboring St. Paul known as the Twin Cities has some of the nation's starkest racial disparities on economic measures, including income, homeownership, poverty, unemployment, and educational attainment... The median Black family in the Twin Cities earns just 44% as much as the median white family, and the poverty rate among Black households is nearly five times higher than the rate among white households...

According to DOJ, Black and Native Americans aren't simply poorer. They're also far more likely to be stopped by police. A graph shows that MPD makes proportionally fewer traffic enforcement stops as the proportion of White residents increases (pg. 34). Neighborhoods "with fewer white people" are reportedly beset by pretextual stops that MPD uses to find guns and combat violence. Searches of Black persons are disproportionately frequent. Race and ethnicity aside, the role of place doesn't come up until page 40, when it's reported that officers in two of the city's five police precincts use far more force against Blacks and Native Americans than against Whites during stops:

Compared to white people behaving similarly, Black people stopped by MPD are subjected to:

- 22% more searches
- 37% more vehicle searches
- 24% more uses of force

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For example, from May 25, 2020, to August 9, 2022, in the Third Precinct where many Native Americans live and where supervisors told us the cowboys want to work MPD used force 49% more often during stops involving Black people and 69% more often during stops involving Native American people than they did during similar stops involving white people. And during that same period, officers in the predominantly white Fifth Precinct used force against Black people 44% more often than against white people during similar stops.

Still, other than noting that “MPD has often used a strategy known as ‘pretext’ stops to address crime,” (p. 34), the report was mum about what that “crime” actually looks like. Offending and its distribution across the city get no mention. In a report that ostensibly seeks to assess why Minneapolis’ cops act as they do, the quantity and nature of the criminal incidents to which they respond would seem pertinent. But they’re ignored.

A thorough reckoning of the environment in which Minneapolis cops labor was clearly not part of DOJ’s game plan. But it’s what we set out to do. Minneapolis’ five police precincts (“Districts”) service eighty-seven neighborhoods. Leaving aside the University of Minnesota and three industrial areas, we collected data on eighty-three. Demographics are from the city’s official [demographics dashboard](#). Crime data is from the [crime dashboard](#). We downloaded data on all crimes between January 1, 2019 and June 15, 2023 that were coded as murder/non-negligent manslaughter, aggravated assault, robbery, and kidnapping. Our process produced unofficial violence rates per 10,000 population. This table summarizes the findings:

Precincts					Neighborhoods		
Precinct no.	Pop	Pct. poverty	Pct. non-White	Viol/10K 2022 rate	# per precinct	Poverty range	Viol rate 2022 range
1	43304	26	42	774	6	9-50	106.5-413.1
2	70014	26	30	418	17	4-47	8.7-240.1
3	126743	15	42	1395	26	1-38	0-356.3
4	71106	24	70	1439	14	3-33	27.6-466.5
5	106584	10	26	854	20	2-25	2.7-269

Minneapolis’ five precincts exhibit dramatic differences in economics and violent crime. The First, Second and Fourth have overall poverty rates that are more than twice those of the privileged Fifth. Yet the Fifth nonetheless sports a substantial violence rate. Looking within, it turns out that three of its neighborhoods (Lyndale, Steven’s Square and Whittier) are burdened with poverty scores in the twenties. These and other within-precinct differences led us to set them aside and focus on neighborhoods.

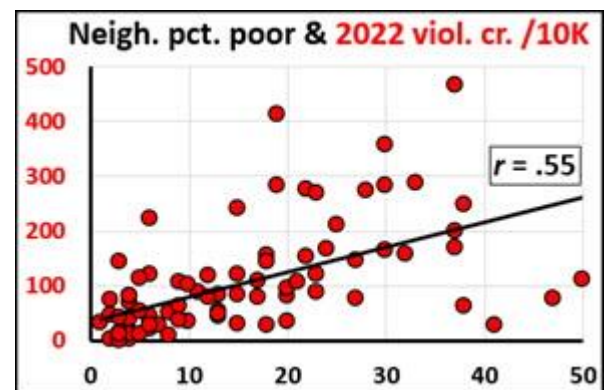
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Our present inquiry covers the period between 2019 and June, 2023. We begin with yearly comparisons of five neighborhoods at each end of the violence spectrum. (For 2023 that's a part-year rate). Lowest-violence neighborhoods are depicted in the top table, and highest-violence neighborhoods are in the bottom table. Each is coded for violence rate and percent of residents in poverty. Their differences - and its consistency - is truly astounding. Violence and poverty are literally locked in an embrace. (According to the [2021 ACS](#), Minneapolis' citywide poverty rate was 15%).

MPLS. NEIGHS WITH 5 LOWEST VIOL CR RATES/10K – PCT. IN POVERTY														
2019	Rate	Pov	2020	Rate	Pov	2021	Rate	Pov	2022	Rate	Pov	Part 2023	Rate	Pov
Page	5	3	Kenny	5	2	Kenny	5	2	Page	0	3	Beltrami	0	13
Hale	6	4	Lynnhurst	6	3	Lynnhurst	6	3	Kenny	3	2	Page	0	3
Lynnhurst	6	3	Fulton	10	4	Fulton	9	4	Fulton	3	4	Lynnhurst	2	3
Fulton	7	4	Armatage	11	4	Hale	12	4	Lynnhurst	3	3	Kenny	3	2
Field	8	6	St. Anth E	13	13	Linden Hil	14	3	Diamd Lk	6	4	Ericsson	3	4
Average	7	4		9	5		9	3		3	3		1	5

MPLS. NEIGHS WITH 5 HIGHEST VIOL CR RATES/10K – PCT. IN POVERTY														
2019	Rate	Pov	2020	Rate	Pov	2021	Rate	Pov	2022	Rate	Pov	Part 2023	Rate	Pov
McKinley	258	22	Downtn W	317	19	McKinley	336	22	Folwell	282	19	Downtn W	115	19
Folwell	270	19	E Phillips	344	30	Jordan	341	30	Near North	287	33	Stv Square	123	23
E Phillips	278	30	McKinley	350	22	Downtn W	403	19	E Phillips	356	30	Midtn Phill	136	28
Downtn W	467	19	Jordan	351	30	E Phillips	418	30	Downtn W	413	19	E Phillips	171	30
Hawthorn	476	37	Hawthorn	591	37	Hawthorn	518	37	Hawthorn	467	37	Hawthorn	175	37
Average	350	25		391	28		403	28		361	28		144	27

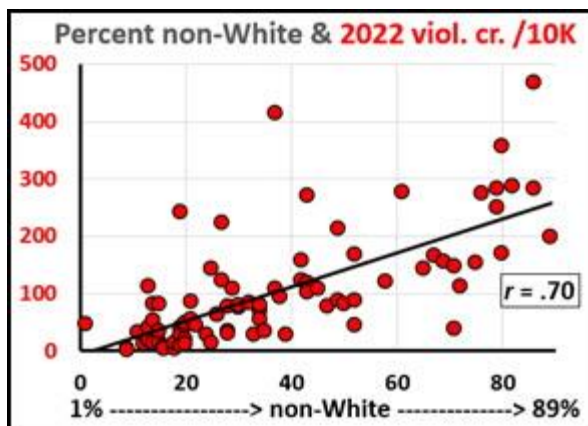
This scattergram depicts the relationship between percent in poverty (horiz. axis) and 2022 violent crime rate (vert. axis) for the 83 neighborhoods under study (each is represented with a red dot). The “r” statistic ranges from zero, meaning no relationship, to one, which means that the variables (percent poor and the violent crime rate) are in perfect sync. While there are outliers, that *r* of .55 reflects a pronounced tendency for poverty and violence to go up and down together.



DOJ's report complains that MPD officers unjustly pick on non-Whites. But could other factors be contributing? Say, higher rates of violence in lower-income neighborhoods? Below are repeat comparos between low and high-violence neighborhoods, but with percentage of non-White residents instead of poverty rates.

MPLS. NEIGHS WITH 5 LOWEST VIOL CR RATES/10K – PCT. NON-WHITE (NW)														
2019	Rate	NW	2020	Rate	NW	2021	Rate	NW	2022	Rate	NW	Part 2023	Rate	NW
Page	5	9	Kenny	5	18	Kenny	5	18	Page	0	9	Beltrami	0	52
Hale	6	14	Lynnhurst	6	16	Lynnhurst	6	16	Kenny	3	18	Page	0	9
Lynnhurst	6	16	Fulton	10	9	Fulton	9	9	Fulton	3	9	Lynnhurst	2	16
Fulton	7	9	Armatage	11	15	Hale	12	14	Lynnhurst	3	16	Kenny	3	18
Field	8	22	St. Anth E	13	34	Linden Hil	14	18	Diamd Lk	6	16	Ericsson	3	13
Average	7	14		9	18		9	15		3	14		1	22

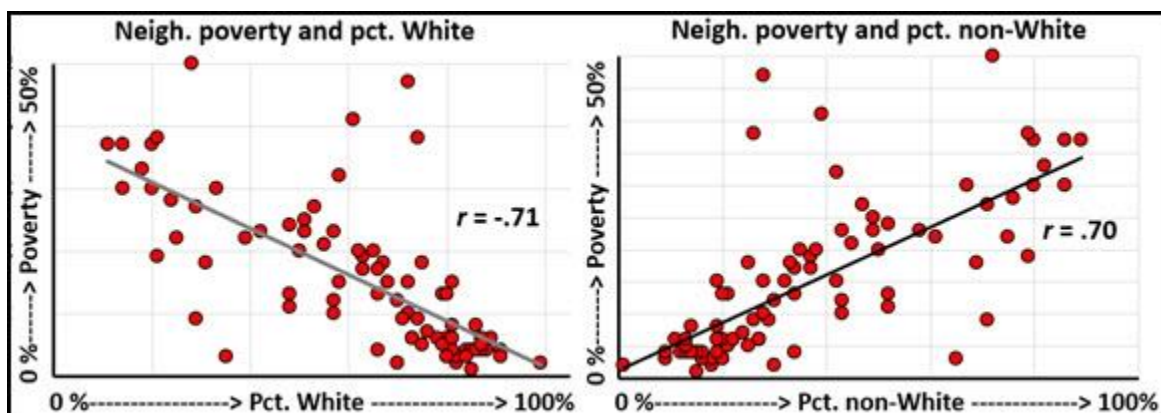
MPLS. NEIGHS WITH 5 HIGHEST VIOL CR RATES/10K – PCT. NON-WHITE (NW)														
2019	Rate	NW	2020	Rate	NW	2021	Rate	NW	2022	Rate	NW	Part 2023	Rate	NW
McKinley	258	61	Downtn W	317	37	McKinley	336	61	Folwell	282	79	Downtn W	115	37
Folwell	270	79	E Phillips	344	80	Jordan	341	86	Near North	287	82	Stv Square	123	43
E Phillips	278	80	McKinley	350	61	Downtn W	403	37	E Phillips	356	80	Midtn Phill	136	76
Downtn W	467	37	Jordan	351	86	E Phillips	418	80	Downtn W	413	37	E Phillips	171	80
Hawthorn	476	86	Hawthorn	591	86	Hawthorn	518	86	Hawthorn	467	86	Hawthorn	175	86
Average	350	69		391	70		403	70		361	73		144	64



Again, there are exceptions. Note, for example, Beltrami's zero violence score in 2023. But violent crime rates clearly trend high where non-Whites abound. Check out the scattergram. At $r = .70$ the relationship between violence and percent non-White is undeniably pronounced.

We don't argue that some Minneapolis officers shouldn't be wearing a badge. There's a reason why our original post about

George Floyd, which came out one week after the incident, was entitled "[Punishment Isn't a Cop's Job](#)." Yet considering poverty's relationship with violence, ignoring its role does no one any favors. And in Minneapolis, the economic circumstances of many non-Whites are indeed bleak:



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Not-so-incidentally, that intimate connection between poverty and violence, which the Feds ignored, is no secret to Minneapolis' residents. We regularly update "[Don't Divest' – Invest!](#)", our follow-on essay about George Floyd, with relevant news clips about the troubled city. Here's a sampling (most recent first):

- **5/5/23** Violence-ridden Minneapolis [is beset by three street gangs](#): the "Lows," the "Highs", and the "Bloods". On May 3 DOJ unsealed indictments charging thirty members of the "Highs" and the "Bloods" with a RICO conspiracy to commit murder and robbery and to traffic in drugs. Fifteen additional members are charged with Federal gun and drug violations. A like indictment naming the "Lows" is anticipated
- **12/22/22** Residents of a subsidized apartment complex in Minneapolis' working-class Cedar-Riverside neighborhood [blame an "explosion of Fentanyl"](#) and a profusion of homeless encampments for break-ins and shootings that have made life unpleasant and all-too-often, treacherous. Despite hiring a security guard and adding more cameras, "I'm just not sure we're making up any ground," says a property manager. "Every night there's something new."
- **8/27/22** Black people account for about 19 percent of Minneapolis residents. [Yet 83 percent of shooting victims so far this year](#) have been Black, as have 89 percent of known shooters. "That makes sense," said City Council member LaTrisha Vetaw, who is Black, as the shootings are taking place in "underserved communities" predominantly inhabited by Black persons.
- **8/5/22** Minneapolis' "Downtown West," a busy district with concert venues and official buildings, enjoyed a reprieve from crime as activity decreased during the pandemic. But as things get back to "normal," [crime and violence have returned](#) with a vengeance. So far this year violent crime is 25 percent higher than in 2021, gunfire is up 40 percent, and property crimes have soared 65 percent. Police staffing, though, is way down; the downtown precinct has 49 only cops on patrol versus 81 in 2020.

Full stop. As that May 5, 2023 update suggests, not everyone in DOJ has focused their angst on the cops. Check out its [recent announcement](#) about the Federal indictment of dozens of Minneapolis gang members who wreaked havoc in the city's impoverished neighborhoods: "The most vulnerable in our communities are often those most impacted by gun violence and criminal gang activity. Our most vulnerable residents are entitled to the same protections and safety as everyone else in society."

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Still, whether it's police or the Feds, law enforcement is inevitably after-the-fact. Even when well done it's often too little, too late. What's really necessary is what we've called on for the last decade-and-a-half. Here's our favorite outtake from "[Fix Those Neighborhoods!](#)":

Yet no matter how well it's done, policing is clearly not the ultimate solution. Preventing violence is a task for society. As we've repeatedly pitched, a concerted effort to provide poverty-stricken individuals and families with child care, tutoring, educational opportunities, language skills, job training, summer jobs, apprenticeships, health services and – yes – adequate housing could yield vast benefits.

That's an issue that cuts across national boundaries. Consider the current turmoil in France, which is beset by riots and looting that were sparked by the [July 27 police shooting death](#) of a 17-year old who tried to drive off after a traffic stop. His killing, in a poverty-stricken area of the Paris suburb of Nanterre, was "the lighter that ignited the gas. Hopeless young people were waiting for it. We lack housing and jobs, and when we have (jobs), our wages are too low." Those were the words of a resident of nearby Clichy, where [a notorious 2005 police encounter](#) led to the deaths of two poor youths and set off weeks of rioting. A decade-plus later, France would break out in riots sparked by the murder of George Floyd. [According to the New York Times](#), "France is fractured between its affluent metropolitan elites...and low-income communities in blighted, racially mixed suburbs where schools tend to be poor and prospects dim." French police killed 13 motorists in 2022 and three including the youth this year; the officer who shot him was promptly arrested and charged with homicide.

To be sure, cops differ. "[Third, Fourth and Fifth Chances](#)" emphasized that troubled officers require prompt attention. (Derek Chauvin isn't the first MPD officer whose dodgy conduct was overlooked until it was too late. Check out "[A Risky and Informed Decision](#)", our 2021 piece about ex-cop Mohamed Noor.) So by all means, don't abandon sincere efforts at police reform. But keep in mind that they're no substitute for the funding and hard work that are urgently needed to restore sanity to low-income neighborhoods.

And we don't just mean in Minneapolis.

WE GET THE COPS WE DESERVE

There's a big difference between working mistakes and willful misconduct

By Julius (Jay) Wachtel. Crime is up, arrests are down. While Feds bay at the door, Mitzi Grasso, president of the police union, calls for citizens to take charge of LAPD's disciplinary process. Joe Domanick cites Rodney King, Rampart and Commissioner Chalef's firing as evidence that neither the Chief nor the Mayor support institutional change. What's going on?

- The Union. As Mitzi replays the rhetoric of civilian review, stressing its benefit of increased public confidence, she also mentions another goal: "fairer decisions for our officers". But civilian review did not grow from a concern about abused cops. Its primary goal was always to redress abuses against citizens. Do her remarks indicate that she and her peers have undergone an epiphany? Or is this just another shot across the Chief's bow, reflecting the anger that officers feel about his seemingly rigid and heavy-handed approach to discipline? Many cops - perhaps a majority - want Parks administratively handcuffed, and if civilian review is what it takes, so much the better.
- Reform. Although Domanick agrees that crime fighting and adding more officers is important, he feels that neither "can even be remotely considered police reform." Joe dismisses the department's and the Independent Commission's reports as insubstantive. In his view, "fixing a broken culture" and "getting the troops to respect the public and the Constitution" is a "battle" that can only be won by throwing the rascals out and "democratizing" departmental oversight.

What both leave out, though, is any mention of the police workplace. As Mitzi, Joe and all the lawyers on all the commissions fiddle with the control side of the equation, no one seems particularly interested in what police actually do. In fractured Los Angeles, reeling from economic disparity, a large, restless underclass, a decaying infrastructure and grossly underfunded schools and public services, cops face inordinate challenges. And the demands keep piling on. When our City threw Rampart CRASH into the cauldron of Pico-Union, did they know the risks of asking police to solve crimes when options (such as cooperating witnesses) are unavailable?

At a political fundraiser weeks ago, my family listened to an enraged father complain that his daughter was hit with a rubber bullet during protests at the Democratic convention. His view - that police should carefully calibrate their every response so that only optimal results are achieved - is an integral part of the progressive agenda. But

given the realities of urban policing, imagine the confusion that such demands provoke. L.A.'s allegedly demoralized cops were widely criticized for letting rampaging fans bum vehicles at Staples Center. Had the out-numbered officers stepped in and been forced to shoot a few temporarily crazed Laker boosters, would they have received our support?

Unreasonable demands set up cops to fail. They also ignore the fact that in most cases it is citizen behavior that needs to be "reformed". Spend a few months on the street taking calls, and you will be convinced that we might carry Palm-Pilots in our pockets, but we are Cro-Magnons at heart. If we want kinder and gentler cops, we need kinder and gentler citizens. Achieving that difficult end calls for a dynamic social and economic agenda, which is hopefully where L.A.'s new leadership - once it stops obsessing over the cops - will go.

Of course, adequate oversight over the police is necessary. But it cannot be accomplished by simply cranking up controls. We must learn enough about police work to distinguish between working mistakes and willful misconduct. As Mitzi Grasso knows, police who work under civilian review boards quickly discover that once citizens learn about policing, they are more likely than managers to come down on the side of the cops. Reacting disproportionately to errors causes officers to lie. It also breaks bonds between the line and supervisors, further eroding management control. A preoccupation with avoiding controversy can even encourage officers to adopt the passive, "drive by and wave" style of policing that has supposedly overtaken our formerly proactive LAPD.

Communities ultimately get the law enforcement they deserve. If we work towards an economically and intellectually vibrant, inclusive Los Angeles, the best police force will come. Or we can continue to ignore the disparity and hopelessness and suffer the consequences. Here is a promise - and a warning - that we cannot afford to ignore.

Posted 9/14/08

WHAT DOES IT TAKE TO GET FIRED?

When citizen review panels overrule the Chief, discipline suffers

In a busy hospital emergency room in August 2005, a [60-year old stabbing victim](#) sat in a wheelchair, yelling and cursing. Maybe he didn't think that he was being treated quickly enough. Nurses asked police to intervene. A uniformed officer obliged, handcuffing the man to his wheelchair and then whaling on him with a sap. It was all caught on videotape.

After an internal investigation the Chief fired the officer and referred the matter to city prosecutors. In time the cop pled guilty to misdemeanor battery and got eighteen months probation. Case closed? Hardly. In Chicago, where the incident occurred, a panel of nine citizens known as the [Police Board](#) has the last say on police discipline. Despite the officer's on-duty assault conviction it [set aside his discharge](#), instead suspending him for a mind-boggling *two years*. Why? The Board wouldn't say - by law, it doesn't have to. However, the officer had thirteen years of experience and until this dreadful incident his record was supposedly "unblemished."

Earlier this year the cop's record acquired another blemish when the [Feds charged him](#) with civil rights violations for beating the handcuffed man. That case is pending. Meanwhile the officer remains suspended.

It's not the first time that the Chicago Police Board overruled a firing decision. According to the [Chicago Sun-Times](#), between 2003 and 2007 only twenty-one out of eighty officers canned by the Superintendent were actually let go. Put another way, a bunch of amateurs overruled the "Sup" three times out of four. Cops whose jobs they saved include a diagnosed "[alcoholic and manic-depressive](#)" who returned to duty from a suspension drunk and belligerent (his original offense was to handcuff a bartender who refused to serve him); an [officer](#) who gave a friend photographs of a woman from a police database (the friend then tried to kill her); a [cop](#) who ignored a bank robbery in progress while buying bottled water in a convenience store (she did say she dialed 911); and a [Lieutenant](#) with a recent misdemeanor conviction for harassment who hounded a woman whose particulars he got from a police report, then reportedly lied about it.

Citizen review panels are byproducts of the sixties and seventies, when episodes of unimaginable corruption (think [Serpico](#)) and repeated tangles between officers and

minorities led the Justice Department to use civil rights and other laws to fight police brutality and misconduct. Federal policing of the police continues to the present. (One recent example, the [Rampart scandal](#), led to [Federal oversight](#) of the Los Angeles Police Department, which is still in effect.)

Yet something odd happened on the way to the Forum. Injecting citizens into the disciplinary process was intended to counter the “take care of our own” mentality prevalent in policing. It was meant to stiffen discipline, not relax it. But to the glee of those who bitterly fought civilian review, it turns out that many citizens are disinclined to mete out harsh sanctions to police officers, even when they grievously overstep.

Why is that so? Citizen reviewers are normally appointed by politicians, giving local power structures, including powerful police unions, great influence over the authority and composition of the panels. Lacking personal knowledge of the police workplace, citizens may be unduly influenced by the accounts of men and women who do an often unpleasant and risky job. What happens on the streets is complex and nuanced, and over time a Stockholm-like syndrome may set in, transforming board members (even those who didn’t begin as “pro-police”) into champions of the accused. Deciding whether a cop should be fired is also a sobering task. So it’s no surprise that when given a choice Chicago’s panel invoked punishments of as long as *three years* suspension in lieu of termination

What does Chicago’s top cop think? [Jody Weis](#) was brought in to clean up a department racked by abuse and misconduct. A retired FBI official, he’s clearly no fan of the Board, whose second-guessing he says [undercuts his authority](#) and hurts morale, in effect making officers accountable to no one: “At the end of the day it is the department which is often looked at as accountable for our personnel. We have to make sure we can discipline our folks in a manner that is fair and consistent. I can’t overstate how seriously we take separation cases....I should be the final decision-maker.”

Chicago’s example may be extreme, but it has a parallel in the West. [In Los Angeles](#) allegations of serious police misconduct are heard by an awkwardly named “Board of Rights” (guess *whose* rights that means) comprised of two command officers and, since Rampart, a private citizen. Their punishment decisions can be modified by the Chief, but in only one direction: *down*. What’s worse, California law keeps police disciplinary matters (but not criminal cases) private, meaning that even the most serious accusations are handled in secret. Only days ago the Orange County (Calif.) Sheriff’s Department [refused to say](#) whether a Deputy who left after a widely-publicized jail fiasco resigned or was fired.

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In Federal law enforcement agencies and in most State and local police departments decisions whether to retain or fire an employee rest with their chief executives. (External appeals, say, with a city personnel commission or the courts are always possible.) Not in Chicago and Los Angeles, where Chiefs are denied the equivalent of a last word. There's no doubt that in practice these arrangements reduce the respect and -- let's face it -- the fear that officers have of their Chiefs.

And as every parent knows, a little bit of fear can be a very good thing.

Posted 12/23/21

WHAT'S UP WITH *POLICING*?

After one and one-half decades it seems that everything's changed. And nothing.



For Police Issues by Julius (Jay) Wachtel. Would *you* accept candy from this cop? *Sans* the holiday treat, this perhaps forgettable image was the centerpiece of our banner for “Liberal Pig,” the blog’s name when we kicked things off in 2007. Alas, in academia-land (teaching was our then-gig) the oinker got little respect, so we promptly renamed the site. But our indifference to the ideological winds remains. So you can expect that this essay will as usual be rough on everyone, including the cops.

Incidentally, it’s also our *four-hundredth* post. Pop a cork!

So where have our peace-keepers landed? For a hint, let’s consider [Torrance](#). Located in the southwest corner of the Los Angeles metropolitan area, the city of 143,592 residents ([2019 ACS](#)) seems a prosperous place. It boasts a robust household median income (\$93,492) and a low poverty level (6.9 percent) that have its immense neighbor (HMI \$62,142, pov. 18 percent) decidedly beat. Its crime rate is also comparatively modest. According to the FBI Crime Data Explorer’s “[offenses known to law enforcement](#)” download, Torrance had 2,935 property crimes and 274 violent crimes during 2020. Its property crime rate of 20.5/1,000 seems well in line with the [nation’s 19.6](#) and [L.A.’s 21.5](#). And its violent crime rate, 1.9, literally sparkles: it’s only *half* the national 4.0 and *less than one-third* L.A.’s eye-popping 7.2.

Thanks to Torrance’s favorable situation, its cops wouldn’t be expected to repeatedly come under Federal watch. Yet grab a look at that recent [searing editorial](#) in the *L.A. Times*. A “rot in the police culture” is how the blunt piece assesses things. And it’s not

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just about a single foul-up. Indeed, Torrance has been under the gun for more than *two decades*.

Torrance P.D.'s current predicament dates back to 1993, when the U.S. Justice Department [filed a lawsuit](#) alleging that the city's hiring process for police and firefighters unlawfully discriminated against Blacks, Hispanics and Asians. Torrance P.D.'s then-233 officer force had [three Blacks \(1.3%\), six Asians and fifteen Latinos \(6.4%\)](#). Fire department ranks were also minority-thin. What's more, the Feds alleged that this wasn't for a lack of candidates, but on purpose. Two aspects of the police hiring process were said to unfairly exclude minorities: the writing literacy exam and the background investigation. More ominously, the department was also accused of tolerating "a racially hostile environment" within its ranks.

It wasn't just Torrance. [DOJ had advanced similar allegations](#) against three other L.A.-area communities: El Monte, Alhambra and Pomona. Each ultimately settled with the Feds and paid damages to unsuccessful minority applicants. But although only one year had passed since the [1992 Los Angeles riots](#) highlighted the sorry state of police-minority relations, Torrance said "no" and dug in for a fight.

Promptly more stuff happened. [On May 27, 1994](#) three 17-year old boys from L.A. were in a car on their way home after celebrating graduation. Two, both Black, were in front, and the third, who was White, was lying down in the back. Their path took them through Torrance. Suddenly a police car began to follow. After a time, a pair of White officers stopped the teens for "defective taillight" and "seat belt" violations. According to the youths, the cops ordered them out at gunpoint and brutally searched them. (And we mean, *brutally*.) Their car was also searched but nothing was found, and ultimately all were let go.

What the cops didn't know was that one of the kids' parents was an assistant city attorney. A Federal lawsuit was promptly filed. It claimed that the stop and search were illegal and the force used was completely unnecessary. And as one pores through [the appellate decision](#), a strong whiff of racial animus is clearly evident:

...when the officers first decided to make a U-turn and follow the plaintiffs' car, all they had seen were two young African American males driving down a major boulevard in an unremarkable manner...The officer asked [the White teen] whether he knew the two black teens, whether they were actually his friends, and how long he had known them...No comparable questions were asked of the black plaintiffs. Instead, [the officer] asked [the Black teens] "What are you doing out here?" The officer also told [one of the Black teens] "You're not supposed to be here."

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That brought back the Department of Justice for another look. [And what they discovered wasn't pretty](#). Many Blacks were indeed leery of Torrance's cops. According to a local NAACP head, Torrance police had "one of the worst" reputations for "harassing minorities." Activists and civil libertarians considered the city's cops as "among the most racially biased and militaristic in Southern California." But Torrance officials disputed those assertions. Instead, they pointed to their community's relatively low crime rate and bragged about residents' "exceptionally high" support for the police. Mayor Dee Hardison agreed that good police departments do get "some heat from time to time." But she insisted that her cops made it all work. "We catch 'em, and the community likes that."

Perhaps so. But some former officers, including minority group members who failed probation, offered troubling observations. Racial epithets were supposedly in common use. Training officers spoke of the difference between "street (epithet)" and "upstanding black citizens." And so forth.

Even so, the Feds apparently didn't find enough to open a "pattern or practice" investigation. And three years later, in September 1998, the judge overseeing DOJ's hiring practices lawsuit [fully absolved Torrance of wrongdoing](#). Not only that, but he ordered the Feds to fork over \$1,714,727.50 to cover the city's litigation expenses. His actions [were affirmed on appeal](#).

On the other hand, the youths' lawsuit against the cops yielded a \$245,000 judgment in favor of the plaintiffs. [It, too, was upheld on appeal](#).

According to the *Washington Post's* "[Fatal Force database](#)," five persons have been shot and killed by Torrance police officers since January 1, 2015. Except for the most recent episode, which appears to remain under investigation, each is linked to the [OIS investigative report](#) prepared by the L.A. County D.A.:

- October 31, 2016: [Michelle Lee Shirley](#) (Black, 39, resident of Los Angeles). Ms. Shirley, a law school graduate, [suffered from severe mental problems](#). Police opened fire after a prolonged encounter in which Shirley purposely crashed into other vehicles, including police cars, then allegedly tried to run down officers who intervened. The D.A. concluded there was insufficient evidence to prove beyond a reasonable doubt that officers used unreasonable force.
- October 14, 2017: [Michael David Lopez](#) (Hispanic, 44, resident of San Gabriel Valley). Mr. Lopez had reportedly served two prison terms: one for assault with a deadly weapon, and another for "[felony reckless evading](#)." Torrance police began to pursue Mr. Lopez, who was thought to be drunk, after he evaded officers in an

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adjoining city. Mr. Lopez sped through multiple intersections and against traffic signals but was ultimately stopped with “PIT” maneuvers. As officers approached on foot, he reached down as though going for a weapon, then revved his pickup. Two officers opened fire as the vehicle lurched towards them. According to the D.A. they acted in lawful self-defense. Three other officers also fired; the D.A. concluded they also acted legally, in defense of their colleagues.

- June 1, 2018: [Juan Carlos Perez-Victor](#) (Hispanic, 38, residence unknown). Police were called to a commercial area where Mr. Perez-Victor was reportedly [acting bizarrely and flaunting a knife](#). He had supposedly run up to a car and placed the knife to the driver’s window. When officers arrived Mr. Perez-Victor was uncooperative and aggressive, and they responded with pepper spray and impact munitions. Neither stopped him, and he soon charged at them with a knife. They responded with gunfire. Meth and a second knife were found in his pockets. The D.A. concluded that the officers acted lawfully, in self-defense and in defense of their colleagues. (Mr. Perez-Victor’s entry lacks his name and incorrectly identifies him as White in the *Washington Post* database.)
- December 9, 2018: [Christopher Deandre Mitchell](#) (Black, 23, resident of Los Angeles). [Mr. Mitchell was approached by two officers](#) as he sat at the wheel of a parked car that a citizen had just reported stolen. Mr. Mitchell, who wore gang-like tattoos on his face, had what seemed to be a firearm on his lap. During the encounter he allegedly reached for it and persisted even when told to stop. Both officers fired their guns. It turned out that Mr. Mitchell had an air rifle whose stock had been cut into a hand grip. The D.A. concluded that the officers “acted lawfully in self-defense.”
- March 8, 2020: **Desiree Nicole Garza** (Hispanic, 28, resident of Torrance). In this incident, which apparently remains under D.A. review, [police were summoned by “multiple” neighbors](#) who reported “a person was breaking items inside a home and refusing to let go of a knife.” Exactly what happened when they arrived is unknown.

Mr. Mitchell’s killing caught fire with the Black community. Termed “[The South Bay’s Biggest Story of the Decade](#)” by Black Lives Matter, the tragic episode sparked demonstrations and [prompted demands](#) that the officers who shot him be fired and prosecuted. During his recent election campaign, L.A.’s new D.A., George Gascon, [pledged to reopen his office’s inquiry](#). In June 2021 he formed [a special team](#) to “re-examine” this incident and other past uses of force. Its progress is unknown.

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Dug in or not, Torrance's lid soon blew, big-time. On January 27, 2020 the owner of a vehicle that had been impounded by the city's cops [discovered, to his horror](#), that "a happy face had been spray painted on the front passenger seat and a swastika symbol on the rear seat." To the department's credit, an internal investigation was promptly launched. Within a few months, two officers, including one who had shot Mr. Lopez, were no longer on the force. Both have been referred for prosecution.

After [reporting on the vandalized car](#), the *Los Angeles Times* came in for a closer look. What it uncovered (we assume, with help from a friendly insider) was appalling. It seems that during the investigation of Mr. Lopez's death, police detectives and D.A. investigators came across [years of online chatter](#) among thirteen Torrance officers and a cop from nearby Long Beach. It featured numerous messages and images that "championed violence against Black people and members of the LGBTQ community, joked about beating up suspects and mocked the idea of internal affairs investigations into racial profiling."

That finally proved too much. Fifteen Torrance officers whom the *Times* connected to "at least seven serious or fatal uses of force against Black or Latino men since 2013" have been placed on leave. In addition, "at least 85" criminal cases in which they participated have been dismissed, and literally [hundreds of prosecutions are in peril](#).

After all, would *you* trust the truthfulness and accuracy of these officers' reports?

On December 8, 2021, California Attorney General Rob Bonta announced that his office has [opened a formal investigation](#) of Torrance P.D.:

California Attorney General Rob Bonta today announced launching an independent review of the Torrance Police Department (TPD) as part of an effort to identify and correct potential systemic failures in the department's policies and practices. The review comes amidst deeply concerning allegations of excessive force, racist text messages, and other discriminatory misconduct, and follows a request for assistance by the Torrance Chief of Police. More broadly, the review will aim to promote public safety and rebuild trust between TPD and the community it serves.

City police chief Jay Hart is supposedly onboard. So a full reckoning seems on the horizon.

One and one-half decades ago, when our oinker came to be, cops weren't running around wearing body cameras. Text messaging and such was a distant dream. So just when Torrance PD's culture began to rot we'll never know. In any event, simply blaming

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cops feels like a sell-out. Torrance has more than two-hundred officers in uniform. Should all be labeled “racists”?

As we’ve emphasized over the years, police personalities differ. When it comes to explaining officer behavior, such differences really, *really* matter. Let’s self-plagiarize from a couple of prior posts:

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. (“[Three Inexplicable Shootings](#)”)

When it comes to shaping outcomes, officer personalities and skill sets, the availability of human and material resources, and the quantity and quality of information are clearly important. And that’s not all. We’ve often mentioned “confirmation bias,” the all-too-human tendency to interpret things in a way that’s consistent with one’s pre-existing understandings and beliefs. That can affect what both cops and citizens do. (“[Want Happy Endings? Don’t Chase](#)”)



On December 18, long-serving *L.A. Times* columnist Steve Lopez [likened Torrance’s police scandal](#) to L.A.’s history of racial discrimination. His piece drew a letter from Torrance High School District’s first-ever Black principal. Mr. Sidney Morrison wrote that he received “outstanding support” from the police over the years. And both times that he was pulled over, he “quickly mentioned my relationship to the school district” and was treated cordially. But he pointed out that “those perceived as outsiders were treated differently.”

Who might these “outsiders” be? Torrance sits next to [LAPD’s Harbor Division](#), which serves about 171,000 residents in the communities of Harbor Gateway, Wilmington, Harbor City, San Pedro and Terminal Island. Between January 1, 2020 and December 18, 2020 – not quite a full year – this area logged [1,149 violent crimes](#). That produced a violent crime rate of 6.7/1,000, *more than three times* Torrance’s full-year rate of 1.9. Just Northeast of Torrance lies LAPD’s South Bureau. As every cop in Southern California knows, it’s been besieged by

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violence for decades (for a detailed account see “[Location, Location, Location.](#)”) Consider, for example, the violence-prone [77th. Street Division](#). Serving a population of about 175,000, it [logged 3,369 violent crimes](#) between January 1 and December 18, 2020. That yields an astronomical per/1,000 rate of 19.3, *more than ten times* Torrance’s.

Switch to murder. For that we turn to the *L.A. Times*’ “[The Homicide Report](#),” which tracks deaths reported by the Los Angeles County coroner. During the twelve months preceding this essay – more or less the year 2021 – [Torrance suffered two murders](#) – one by gunshot, the other by stabbing. In contrast, the largest community served by Harbor Division, [San Pedro \(pop. 78,900\)](#), reported [four homicides](#), each from gunfire. During the same period Watts (pop. 175,000) [lost twenty-three of its citizens to murder](#); twenty-one from gunfire and two by a knife.

Below is a chart with this data. Violence is per/1,000 pop., and homicide is per/100,000 pop. Demographics are from the [Statistical Atlas of the U.S.](#) (its numbers for Torrance vary slightly from the Census.)

	Pop	Pct White	Pct Black	Pct <u>Hisp.</u>	Pct Asian	Median income	Viol rate	Hom rate
Torrance	147,307	40.3	2.6	17	34.3	80.9	1.9	1.4
San Pedro	78,900	35.8	6.8	47	5.9	64.5	6.7	5.1
Watts	175,000	0.6	24.0	73.6	0.7	29.6	19.3	13.1

Let’s return to the ex-principal’s observation that “outsiders” were more likely to catch heat from the cops. Torrance’s officers work in a tranquil city whose residents are primarily White or of Asian descent. They know there are less peaceful communities nearby. They’re fully aware that these places, which are populated by substantially larger proportions of Blacks and Hispanics, are far less prosperous if not outright poor. Torrance’s good cops – and we’re convinced they’re in the vast majority – understand that, as our “[Neighborhoods](#)” essays repeatedly emphasize, it’s not race but economic conditions that drive crime. So when danger lurks they set aside any biases or preconceptions they might have formed and strive to avoid acting on impulse. That’s what the craft of policing is all about.

Alas, thanks to text messaging and such, we’ve learned that some Torrance cops can’t possibly meet that standard. What’s most concerning is that their hideous notions could easily affect the complex decision-making calculus that good policing requires, distorting the response to everyday incidents and placing both cops and citizens at needless risk.

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In “[Third, Fourth and Fifth Chances](#)” we discussed the consequences of ignoring officer misconduct. Here they are in money terms:

- Chicago: About \$253 million since 2015
- Dallas: \$3.7 million since 2015
- Detroit: \$28.5 million since 2015
- District of Columbia: More than \$40 million since 2016
- Los Angeles County: More than \$238 million since 2015
- New York City: More than \$1.1 billion since 2015
- Minneapolis: Incalculable

But it's not *all* bad news. Torrance now has the opportunity – yes, *opportunity* – to fix its cop shop before...well, scan the list. Second chances don't come around real often. They ought not be missed.

Posted 3/26/20

WHEN *SHOULD* COPS LIE?

NYPD detectives tweak an old approach. But lying is still lying.

For Police Issues by Julius (Jay) Wachtel. When it comes to the human costs of violent crime it doesn't get much worse than what happened in a Harlem-area park during the evening hours of December 11, 2019. Three young hoodlums – one only thirteen, his accomplices a mere fourteen – [approached a college freshman](#), Tessa Majors, 18, and demanded she give up her cell phone. And when she refused, one of the 14-year olds stabbed her to death.

Park video images depict three boys trailing a man, and, later, running off. Using additional videos [detectives tracked the suspects](#) to their homes. Officers subsequently spotted the youngest on the street, and when he tried to elude them by darting into a nearby building they arrested him for trespassing. After consulting with prosecutors, police summoned the boy's uncle. In his presence they questioned the teen on video.

[He initially denied everything.](#) "I don't know about the stabbing. I don't know about the stabbing," the youth protested. So the detective told some fibs:

Then Detective Wilfredo Acevedo leans over and says the police have video footage and other evidence that puts the boy and two middle school friends at the park when Ms. Majors was killed. "I'm going to be asking questions," Detective Acevedo says. "I already know the answers."

Detective Acevedo didn't simply act the tough guy. He reassured the boy that he didn't consider him "a bad kid" and asked whether his uncle had taught him right from wrong. Lying to police, he cautioned, would bring on "a lot, a lot of trouble."

In time the artfulness paid off and the boy talked. He and two classmates, both fourteen, went to the park to rob someone. But he didn't stab the victim: one of the fourteen-year olds did that. Throughout, his confession was directed at the uncle. That, as Detective Acevedo later testified, was reassuring. "His response was to his uncle, not to me. I felt it was more forthcoming, more truthful." That proved of scant comfort to the boy's public defender, who protested that the uncle was ill-suited to oversee the interrogation, as he couldn't be expected to know that the detective could legally lie. But the officer brushed concerns about the voluntariness of the statement and the child's credibility aside. "I just wanted him to tell me what occurred in the park. That's all. We can lie, yes."

After two months of accumulating a veritable “trove of evidence,” including the murder weapon, a DNA match, and of course, an evildoers’ own words, prosecutors charged the three boys with robbery and murder: the 13-year old, as a juvenile, and his 14-year old companions as adults, as New York law allows in exceptional cases. Trials are pending.

This isn’t the first time that New York’s finest lied to kids to get them to fess up. A particularly notorious episode, the “[Central Park Five](#),” took place in 1989. In the end, five teens ranging in age from fourteen to sixteen were convicted of assaulting and brutally raping a woman who had been jogging through the landmark Manhattan park. [We reported on the fiasco](#) nearly six years ago, on the same day that the [City of New York awarded](#) the five wrongfully convicted boys a total of \$41 million, “about \$1 million for each year of their imprisonment.”

No, the five weren’t total innocents. They were among several dozen young miscreants who were roaming the park that evening, assaulting and robbing innocent persons. Several of the five were also convicted in a couple of those crimes. But none were involved in the woman’s brutal rape and beating. As it turns out, the real culprit remained unmolested and went on to commit other rapes and a murder. It was only years later, after he was caught, convicted and sentenced to life on those crimes, that a guilty conscience led him to admit he alone committed the Central Park rape. He had no connection with any of the five boys, and his confession was confirmed through DNA.

Given the lack of witnesses or physical evidence tying them to the crime, how were the five convicted? By their own false admissions, in which they falsely pointed fingers at each other. Interrogators exerted subtle and not-so-subtle pressures to fess up. [One boy was told](#) that his cooperation might bring on leniency or even transform him from a defendant into a witness. Raymond Santana, the youngest, was told that police “had evidence” against fifteen-year old Kevin Richardson. But they wanted more, and if Santana “just helped them build a case against Richardson by placing himself into the crime scene, he’d get to go home.”

[Officers also flat-out lied](#) about the evidence they had. During the trial of Yusef Salaam, NYPD Det. Thomas McKenna testified that when the youth was first questioned he repeatedly denied having been in the park. So Det. McKenna warned him that if the “satiny and smooth” fingerprints found on the jogger’s pants matched his, “you’re going for rape.” That lie – in fact, no fingerprints were found – changed Salaam’s tune. “Yes, I was there but I didn’t rape her,” the fifteen-year old said.

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Over the years, psychological methods of interrogation have become increasingly sophisticated, employing ever-more subtle forms of manipulation, deception, and coercion. It's no longer as apparent why innocent persons may falsely confess to crimes that carry the possibility of lengthy prison sentences or execution. New York's detectives took an approach that closely resembles [the popular "Reid" interrogation technique](#) that we wrote about in ["False Confessions Don't Just Happen."](#) Among other things, Reid encourages officers to suggest "themes or reasons" that allow suspects to retain a sense of self-worth as they confess. Far removed from the nasty, old-fashioned "third degree" of T.V. and the movies, [this method's subtlety](#) helps further the belief that the confessions it produces must be true.

As one might expect, detectives investigating the more recent Harlem attack [quickly tried to distance their case](#) from the Central Park fiasco. Prosecutors were promptly called in, and interrogators didn't wait for arrestees to change their tune before they turned on the tapes. So we should feel better about this case. Right?

Perhaps. This time, jurors will actually hear the police lies and blandishments and have a better basis for considering any possible ill effects. There is also a lot of other evidence suggestive of the boys' guilt. On the one hand, that's a relief. On the other, it complicates things, as the corroborative effects of other evidence could distract jurors from considering the possible ill effects of manipulative questioning.

What does the *law* have to say about lying to suspects? According to the Supreme Court, deceptive questioning may not by itself be enough to render an otherwise admissible confession involuntary. In a leading case on point, the Court affirmed a murder conviction even though police "falsely told petitioner, who was reluctant to talk, that Rawls [his cousin] had confessed." ([Frazier v. Cupp](#), 394 U.S. 731, 1969). According to the Court, voluntariness isn't determined by a single factor but by the "totality of the circumstances" ([Schneckloth v. Bustamonte](#), 412 U.S. 218, 1973):

In determining whether a defendant's will was overborne in a particular case, the Court has assessed the totality of all the surrounding circumstances -- both the characteristics of the accused and the details of the interrogation [such as] youth of the accused...low intelligence...lack of any advice to the accused of his constitutional rights...length of detention...repeated and prolonged nature of the questioning...use of physical punishment such as the deprivation of food or sleep.

States are of course free to adopt stricter standards. In [State v. Eskeu](#) (207 MT 36, 2017) the Montana Supreme Court reviewed the conviction of a mother who allegedly

shook her infant to death. During a protracted interrogation, detectives got her to mimic shaking a baby after suggesting it was the only way she could help her child, whom they knew was no longer alive. Setting aside the conviction, the justices ruled that “confessions or admissions like the ones in this case, induced by deliberate psychological coercion, lies, and material misrepresentations to the suspect are not voluntary and should be excluded from evidence.” (Click [here](#) for the National Registry of Exonerations entry.)

Confronting an eerily similar set of facts, New York’s high court ruled in 2014 that local police went too far when they told a father that he could save his son by confessing. Their opinion in part reflected a state law that defines as involuntary “any promise or statement of fact [which] creates a substantial risk that the defendant might falsely incriminate himself.” Well, that seems pretty stern. We’ll have to see how it plays out in the Harlem case.

On the opposite coast, legal controls seem substantially weaker. California follows the Federal “totality of the circumstances” standard.” Here’s an extract from the California Supreme Court decision in *People v. Farnam* (28 Cal.4th., 2002):

Defendant...contends the following circumstances established the involuntariness of his confession: he was young; he had a low intelligence; he was left overnight in a cell; he was distraught; he had been smoking marijuana; and the police psychologically coerced his confession by falsely telling him his fingerprints were found on Mr. N.'s wallet...That [detective] Huff and his partner falsely informed defendant his fingerprints had been found on Mr. N.'s wallet did not render defendant's subsequent confession to the N. and Griswold crimes involuntary... Viewing the totality of the circumstances, we are satisfied that defendant's confession was the product of a rational intellect and a free will.

What’s the problem with that? “[Your Lying Eyes](#),” one of the very first posts in our “[Wrongful Conviction](#)” section, recounts the exoneration of David Allen Jones (for his National Registry entry, click [here](#)):

A mentally retarded man with an IQ of 62, [Jones] was talked by LAPD detectives into confessing to murdering four prostitutes in 1992. Although DNA recovered from the victims was not his, Jones was nonetheless tried and convicted....Nine years later, an LAPD detective working cold cases matched the four rape/murders attributed to Jones plus six more to another man already in prison for rape.

And for a real head-shaker check out “[Lying: the Gift That Keeps on Giving](#),” an early post in our “[Conduct and Ethics](#)” series. In 2003, LAPD homicide detectives used a purposely altered photospread to convince a murder suspect – he wasn’t in custody – that one of his acquaintances identified him as the killer. (She hadn’t.) [So he killed her](#).

Switching gears, let’s leave the law behind and take an ethical perspective. Ought law enforcement officers *ever* lie? *Ever* manipulate? *Ever* bluff? Your blogger, who spent two decades as a Fed, can offer no easy solution. His post-arrest interrogation style – and that of most his colleagues – was factual and direct. But we didn’t lie, use the “Reid” technique or employ any other special approaches; for example, such as [the FBI says it uses](#) with “high value detainees.” Our work, though, was mostly about gun trafficking. We didn’t investigate murders. It wasn’t our job to catch rapists and killers before they struck again.

Still, it seems best to not lie. And especially, to avoid pressuring individuals most likely to falsely confess, such as children and the grief-stricken. On the other hand, if someone’s safety is at risk, such as a kidnap victim who’s still missing, then lie and cheat to your heart’s content.

Police lying doesn’t just happen during interrogations. Your blogger spent a couple years working undercover, posing as a buyer of stolen property, including guns. (He was known as “Jay,” and the nickname stuck.) Jay’s job was intrinsically as a deceiver, and the better his lies, the better the results. If there was a saving grace ethics-wise, it lay in the inducements. Instead of wielding the interrogator’s hammer of the state, Jay was offering a reward – cash – to persons who were ostensibly exercising free will.

Yes, that too is morally complicated. (For more about this, check out “[From Morals to Practice](#),” Jay’s article about the ethical dilemmas of undercover policing.) But don’t just take his word for it. Three years ago, in “[You Can’t Handle the Truth: A Primer on False Confessions](#),” Craig J. Torcino warned, eloquently and in great detail, about the consequences of police manipulations:

There are measures to be taken to stem the tide of false confession in American courts and they are well documented. From mandatory videotaping of all interrogations to more enlightened means of interrogation beyond the Reid Technique. The causes of false confessions and their damage are known. Now is the time to stimulate efforts for remedial action.

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Well, that's it for this round. From our home in Orange County, California, where Linda and I have hunkered down against that implacable microscopic foe, we send our best wishes. Stay well!

Posted 7/26/09

WHEN (VERY) HARD HEADS COLLIDE

A professor and a cop revive the race debate. But was it really about that?

It's about a quarter to one in the afternoon of a sunny spring day in Cambridge, Massachusetts. Police sergeant James Crowley is driving an unmarked car near Harvard Square. No, he's not on patrol or a stakeout. Crowley's an administrator who normally oversees functions like the property room. He probably just had lunch.

Not far away Harvard Professor Henry Louis Gates Jr. is struggling to get into his house. A renowned black scholar who specializes in issues of race, Gates has just returned from an overseas trip. His front door is badly stuck and he asks the cab driver to help get it open.

Watching from a short distance away, Lucia Whalen, 40, a white Harvard professor, grabs her cell phone and dials 911.

Sgt. Crowley hears the call go out. Since he's close by he grabs the mike and announces he'll respond. Finally, a chance to do some real police work! Quickly arriving, he talks with Ms. Whalen. According to the [police report](#) she says that two black men with backpacks were trying to get in a house, and that one shouldered the door "as if he was trying to force entry." (According to her lawyer, Ms. Whalen has [supposedly denied](#) saying the men were black.)

When I arrived at █ Ware Street I radioed ECC and asked that they have the caller meet me at the front door to this residence. I was told that the caller was already outside. As I was getting this information, I climbed the porch stairs toward the front door. As I reached the door, a female voice called out to me. I turned and looked in the direction of the voice and observed a white female, later identified as █, who was standing on the sidewalk in front of the residence, held a wireless telephone in her hand and told me that it was she who called. She went on to tell me that she observed what appeared to be two black males with backpacks on the porch of █ Ware Street. She told me that her suspicions were aroused when she observed one of the men wedging his shoulder into the door as if he was trying to force entry. Since I was the only police officer on location and had my back to the front door as I spoke with her, I asked that she wait for other responding officers while I investigated further.

Not a patrol cop, Sgt. Crowley is unfamiliar with the rhythms of the neighborhood. But there is a credible witness. Residential burg's, he knows, usually happen during the day, when folks are at work. And there's always a whiff of danger. It hasn't been that long since three [Pittsburgh \(Penn.\) police officers](#) were shot dead responding to a domestic disturbance.

From a distance Sgt. Crowley spots a black man through a window. Sure enough, at least one got in!

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Tired from the trip, irritated with the balky door, Dr. Gates gets off the phone with the Harvard fix-it crew just in time to hear someone in a police uniform yelling. A cop -- a *white* cop -- is ordering him to step outside. The professor's temper flares.

[What happened next](#) is in some dispute. Everyone agrees that Sgt. Crowley announced he was there to investigate a break-in and asked Dr. Gates to step out, and that Dr. Gates replied it was his house and he wasn't coming out. (According to the police report, the professor's response was "Why? Because I'm a black man in America?" Dr. Gates conceded that he brought up race but denied doing so offensively.)

By the time that Sgt. Crowley entered the home other officers had arrived, including the beat cop, officer Carlos Figueroa. Sgt. Crowley asked Dr. Gates for ID. But the sergeant says Dr. Gates only gave him his Harvard ID, which doesn't include residence information, while the professor insists he also gave up his driver license, which does. Either way, as Sgt. Crowley concedes, it was soon apparent that Dr. Gates was the bonafide resident. Instead of snaring a burglar Sgt. Crowley was facing an infuriated man who seemed convinced that police were picking on him because he was black ("This is what happens to black men in America" is what [officer Figueroa](#) reportedly heard.)

Sgt. Crowley thought he was done. But Dr. Gates followed him outside, ranting about his treatment and attracting attention from curious neighbors and a small armada of police. That's when a once-obscure officer in a once-obscure agency made a very bad decision. Instead of fleeing to Starbucks, Sgt. Crowley chose to engage. He warned Dr. Gates that if he kept it up he would be arrested for disturbing the peace. It didn't work. Having driven himself into a self-righteous tantrum, the scholar hollered all the louder.

Might either have backed down had there been no audience? It's possible. But there was, and they didn't. As they say, the rest is history. (Dr. Gates was booked, and the charges were quickly dismissed.)

Many years ago, when your blogger was an ATF agent in Helena (Mont.) he got word that members of a film crew near the Canadian border had a local resident buy them handguns that they intended to take to their homes in New York City. It was irritating to travel on a Friday to tidy up the situation, and when the producer refused to have the guilty parties come in your blogger threatened to shut down the set and get a search warrant. Fortunately, his partner (who was only in training!) calmed things down and got the producer to collect the guns himself and turn them over. And there was still time to enjoy the weekend!

Every minute of every day hard heads of assorted colors and ethnicities collide. Regrettably, some of these skulls belong to cops. Officers aren't superhuman

and occasionally fall prey to provocation. That's when we depend on their peers and superiors to step in, and they almost always do. So here's a question: where were Sgt. Crowley's colleagues when he tangled with an irate Harvard prof?

Here's the answer: at the police station, where administrators normally roost. In the field, Sgt. Crowley from the property room was the Lone Ranger, and without Tonto. According to his [report](#) he alone decided to arrest Dr. Gates. There's no indication that he consulted beat officers, on whose shoulders such decisions normally fall. Once he slapped on the handcuffs they might well have decided that keeping their distance was the wisest approach.

Dr. Gates is preoccupied with matters of race so it's not surprising that he detected racial animus from the very start. Race may indeed have had a lot to do with how he behaved. But the outcome seems much more the product of two very hard heads knocking, compounded by the absence of safety nets for Dr. Gates, whose family wasn't around, and for an overheated cop who was well outside his normal comfort zone. Considering all the rhetoric that the episode has spawned let's hope that these simple factors aren't overlooked.

Posted 2/10/18

WHY DO COPS LIE?

Often, for the same reasons as their managers

By Julius (Jay) Wachtel. As a retired Fed who investigated gun trafficking, your blogger was dismayed to learn about the implosion of Baltimore PD's Gun Trace Task Force. After pleading guilty to racketeering charges, three former members of that once-celebrated team [were recently back in Federal court](#), testifying against colleagues who deny being involved in a years-long scheme that involved lying about probable cause, extorting suspects and stealing large sums of cash.

Meanwhile a once-promising law enforcement career unraveled in a New York courtroom. In a stunning verdict, jurors unanimously agreed that NYPD Detective Kevin Desormeau [lied to a grand jury](#) when he testified that he and his partner observed someone selling drugs. That falsehood, which was used to justify a body search that did turn up contraband, was exposed by a surveillance camera that faithfully recorded how the cops really encountered the man. Desormeau and his colleague – she was convicted of a lesser crime but acquitted by the judge – aren't done; both are pending trial for lying in a case about illegal gun possession.

This isn't the first time that NYPD's finest have been accused of fudging. In its 1995 [report on police corruption](#), the city's Mollen Commission warned that police lying was leading judges and jurors to hold "skeptical views of police testimony, which potentially could result in the dismissal of those criminal cases where police officers were the sole prosecution witnesses." (p. 68)

Nearly two decades later, little had apparently changed. A New York judge who presided at the bench trial of a detective who allegedly planted drugs [admitted he was unnerved](#) by evidence of widespread police wrongdoing: "I thought I was not naïve. But even this court was shocked, not only by the seeming pervasive scope of misconduct but even more distressingly by the seeming casualness by which such conduct is employed."

Yes, he found the cop guilty. And that too seemed quickly forgotten. Three years later, [a report](#) by NYC's Civilian Complaint Review Board concluded that false statements by police were on the increase. Their findings became gist for [a major story](#) by New York Public Radio. It was troublingly entitled "The Hard Truth About Cops Who Lie."

What's been called "testilying" brings us to the front door of yet another NYPD sleuth, Detective Louis Scarcella. An acclaimed long-time homicide investigator with a once-

enviable track record, his “[propensity to embellish or fabricate statements](#)” (that’s what a judge said in 2015) has so far led to the reversal of eight convictions, most recently last July, when prosecutors accused him of lying about what a witness said. Scarcella’s reputation first took a turn for the worse in 2013 when a man he helped convict was freed after serving twenty-three years. “What’s important to me is that this fellow should not be in prison one day longer,” said the Brooklyn D.A., [whose investigators had concluded](#) that the exoneree’s protests that he was “framed” by police might actually be true. Now [there’s even talk of vacating a conviction](#) not because of what Scarcella did in a case, but simply because his reputation for being loose with the facts wasn’t disclosed to the defense.

According to the [Knapp Commission](#), police corruption comes in two flavors. “Meat Eaters” aggressively use their badge to line their pockets, while “grass eaters” confine themselves to lesser sins, say, accepting a tenner to forego writing a ticket. Still, one could hope that after the twentieth century’s deplorable legacy of police misconduct – New York, Chicago, Detroit and Los Angeles come to mind – America’s cops finally turned the corner. Indeed, Baltimore-like episodes of out-and-out, self-serving venality, which seem an integral part of old-time policing, are now relatively rare. Neither Detective Desormeau nor his partner reportedly extorted anyone. As for Detective Scarcella, he’s not been accused of any crimes, only of doing shoddy work.

Taking the long view, things seem a lot better. Most cops now make a pretty decent living, and hiring standards have definitely been upgraded. Still, given the many examples of serious misconduct, there’s obviously reason to worry. Selfishness, after all, is embedded in the human DNA. Maybe we don’t recognize much of “the new police corruption” because the causes and forms have transformed. Maybe we simply don’t want to know.

Let’s return to the [New York Times account](#) about Detective Desormeau:

At his trial, prosecutors suggested that Detective Desormeau had decided that making lots of arrests was the route to glory in the New York Police Department, which was why he decided to falsify evidence.

Desormeau’s lawyer was clearly hoping that his client’s untruths, which he characterized during closing arguments as “just a little white lie,” would be justified by the arrestee’s unsavory past, which reportedly includes prison time for killing two men. But the implication that the partners were pursuing a greater social good was challenged by prosecutors, who accused the pair of being “only interested in advancing their careers by getting high arrest statistics and getting promoted.”

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Before that pesky surveillance camera intervened, Desormeau had a decidedly bright future. In the [Compstat-besotted, number-counting NYPD](#), a department where officers are expected to meet arrest quotas (and, until the Feds intervened, [make as many stop-and-frisks as possible](#)), and detectives are expected to [make lots of arrests](#), a medal of valor holder with more than 350 career arrests would definitely be on track for big things.

Let's not just pick on NYPD. In November 2012 two LAPD partners, both in the middle of promising careers, [were convicted](#) of planting drugs and lying about it in court. Again, a surveillance video saved the day, catching the pair as they allegedly manipulated evidence while engaged in a telling verbal exchange. "Be creative in your writing," said one. "Oh yeah, don't worry" replied the other.

We're not arguing that all cops are potentially evil. For most, public service is undoubtedly the main motivator. On the other hand, officers *are* people. Offering temptations such as favored assignments or promotions will inevitably encourage some to take shortcuts. "[Confirmation bias](#)," that all-too-human tendency to quickly resolve ambiguities in a way that furthers one's own interests and beliefs, has led to everything from the needless use of force [to "helping" witnesses identify the person](#) whom a cop "knows" must have done it.

In every line of work incentives must be carefully managed so that employee "wants" don't steer the ship. That's especially true in policing, where the consequences of reckless, hasty or ill-informed decisions can easily prove catastrophic. But we can't expect officers to toe the line when their agency's foundation has been compromised by morally unsound practices such as ticket and arrest quotas. This unfortunate but well-known management approach, which is intended to raise "productivity," once [drove an angry New York City cop](#) to secretly tape his superiors, with predictable consequences. And consider the seemingly contradictory but equally entrenched practice of [downgrading serious crimes](#) – say, by pressuring officers to reclassify aggravated assaults to simple assaults – so that departments can take credit for falling crime rates. (For a recent take check out the "Be Careful What You Brag About" two-parter, below.)

Why set arrest quotas? Why fudge crime statistics? Chiefs also have bosses. Mayors and city managers control department purse strings and select their chiefs. If manipulating stat's can make things look good for everybody, well...

As law enforcement professionals (that's what your blogger, retired or not, still considers himself) we like to think that we're different. Yet the picture we've laid out seems like it came straight out of "[Three Billboards](#)." (If you haven't seen it, go!) What's more, it's not just the cops. Deception is an integral aspect of our legal system, where

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advantage is everything and truth-telling is considered hopelessly naive. Imagine how long a civil attorney would last if she was always fully transparent with opposing parties. Or what would happen to a defense lawyer who demanded that his clients tell police the whole truth, and nothing but.

Ah, back to policing. Being a cop is, at heart, a *craft*. Craftspersons are supposed to pay exquisite attention to detail and be committed to the excellence of their product. Yet as the painter Robert Williams once lamented, “you’ve got legions of people who have lost craftsmanship. They’ve lost the romance of what they’re doing. The virtuosity.” (*Los Angeles Times Magazine*, June 5, 2005, p. 7.) How can we get law enforcement back on track? Let’s skip over controls. Here’s an approach that usually goes unconsidered: craftsmanship. To honor their true and only “client” – the public – police executives must forget about numbers and get back to emphasizing *quality*. Offering unwavering support for doing things as they *ought* to be done would go a long way towards helping officers navigate the moral dilemmas and resist the unholy pressures that have tarnished their highly demanding vocation. Their *craft*.

By the way, if you’re hankering for an in-depth assessment of the quantity/quality conundrum (it likens police work to, of all things, woodcarving) click [here](#). Also let us know what you think. Use the “contact” link and we’ll post your comments. And thanks!

Posted 4/13/17

WHY DO COPS SUCCEED?

Shifting resources from finding fault to studying success

By Julius (Jay) Wachtel. It didn't take long for current political struggles to spill over into policing. Despite [a last-minute appeal](#) by the new A.G., Jeff Sessions, to suspend an agreement negotiated by his predecessor, a Federal Judge [approved a consent decree](#) that places Baltimore cops under Federal oversight.

Let's back up a bit. In 1994 the special litigation section of the U.S. Justice Department's civil rights division began conducting "[pattern and practice](#)" [investigations](#) of allegedly ill-behaving police departments in the U.S. When its inquiries develop evidence of serious, chronic misconduct DOJ can negotiate a settlement or, should the opposing party balk, file a lawsuit in Federal court. In the end contested matters are often settled with a consent decree, signed off by a judge, requiring that a department correct underlying problems and assigning a "monitor" to make sure they do.

Overseeing the police has developed into a major aspect of DOJ's mission. [DOJ's website](#) reveals thirty-seven open investigations (many more are being conducted in corrections, juvenile justice and other areas.) Twenty law enforcement agencies [have been released from supervision](#) in past years. Among these is Pittsburgh, whose officers were accused of harassing black residents in the mid-1990's. That controversy led to [the first-ever consent decree](#). Agreed to by both parties and issued in 1997, [it called for a host of improvements](#) in management and supervision, community relations, officer training and the processing and investigation of citizen complaints. Such orders became routine, as did the multi-year terms of Federal supervision that are typically imposed (DOJ's oversight of Pittsburgh PD didn't conclude until June 2005.)

As one might expect, episodes of misconduct litigated by DOJ tend to be particularly notable. One that hit particularly close to your blogger's home was [the Rampart scandal](#) of the late 1990's, when a rogue LAPD team brutally (and, as it turns out, corruptly) set out to reclaim the streets of a violence-plagued area. That debacle led to [a 2001 consent decree](#). DOJ found LAPD's culture and management so wanting that [a "transition agreement"](#) negotiated eight years later, which reassigned monitoring to city investigators, actually prolonged Federal oversight. (It finally came to an end in May 2013. Click [here](#) for the fascinating wrap-up story in the *Los Angeles Times*.)

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Back to Baltimore. In August 2016 [it agreed in principle](#) to a package of reforms that would ostensibly bring its police practices into compliance with Federal law. That plan was an outgrowth of a two-year DOJ inquiry which revealed that some Baltimore cops used excessive force, engaged in biased policing and, among other things, did a shoddy job investigating sexual assaults. However, when Jeff Sessions took the reins at Justice a judge had yet to sign off on the decree. Sessions, [who had promised to reduce DOJ's role](#) in supervising local police, [quickly moved](#) to place the matter on hold. His move proved too late and the agreement went into effect.

According to news reports, [DOJ's new leader worries](#) that Federal meddling has actually made things worse: "We need, so far as we can, in my view, help police departments get better, not diminish their effectiveness. And I'm afraid we've done some of that. So we're going to try to pull back on this, and I don't think it's wrong or mean or insensitive to civil rights or human rights." To back up his concerns, Sessions points to a rise in violence in many cities. In our badly polarized land, though, whether or not an increase has occurred is a matter of debate (for our most recent takes on this click [here](#), [here](#) and [here](#).) Even if one concedes that violence is worse in some areas its implications are in dispute. In the above-cited news story, the AG's opinion that increased violence was "driving a sense that we're in danger" was in effect challenged by the reporter, who pointed out that national crime rates "remain near historic lows."

It's not only minorities and the "liberal media" who support Federal oversight. In Baltimore, police commissioner Ken Davis referred to Sessions' bid to quash the consent agreement as "[a punch in the gut](#)." In Chicago, city leaders have come out strongly in favor of Federal intervention. Faced with [accusations](#) that the Windy City's cops habitually used excessive force while managers looked the other way, Mayor Rahm Emanuel called the findings "[a moment of truth](#)." His sentiment was echoed by police superintendent Eddie Johnson, who said he was "optimistic and hopeful about the direction that we're heading in" but also "realistic about the fact that there is much, much, much more work that needs to be done." Lori E. Lightfoot, president of the Chicago Police Board, promised that would be accomplished: "We are going to demand that the reforms happen."

But if they do, will they last? Federal intervention may have a salutary influence on police conduct in the short run. But in Pittsburgh promised improvements [apparently didn't last](#). Meanwhile [Pittsburgh](#) (and [Chicago](#), and [Baltimore](#)) have experienced disturbing increases in gun violence. Under such circumstances, adopting a kinder and gentler approach may be, as PERF Director Chuck Wexler suggests, like "stepping on the brake and stepping on the accelerator at the same time":

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I do know, having talked to [Pittsburgh PD] Commissioner Davis, that they are intent on taking this consent decree seriously. But they also realize you can't tell a neighborhood group that is complaining about drugs and gang activity, "We'll get to you in a few years once we implement constitutional policing."

Granting DOJ supervisory authority over local law enforcement has given rise to a profitable industry of oversight. [In one reported example](#), the consulting firm that investigated Cleveland PD earned \$4.9 million for its efforts. In addition, each of fifteen "experts" hired to monitor the department's compliance with the consent decree was paid a tidy \$250 per hour; their first month's bill exceeded \$100,000.

DOJ's interventions may also have troubled shelf lives. Good cops (we assume they're in the vast majority) tend to look on the broad slap-downs as uninformed assaults on a demanding craft. And as the experience in Pittsburgh suggests, the fault-finding process may not be the best platform for lasting reform. When police-citizen encounters go seriously wrong, or when enforcement policies or practices seem to discriminate against groups, it's tempting to blame the "usual suspects": say, poor training, lousy hiring, or racial animus. But researchers know that findings from retrospective studies must be generalized with great care. In the complex environment of policing one can speculate about policies and motives and muse about "what-if's" until the cows come home. But the danger of confirmation bias – affirming what's most convenient to believe – always lurks.

Setting out to collect evidence of wrongdoing inevitably focuses on why cops and agencies fail. Resetting behavior and improving things in the long run requires knowing something more: why cops and agencies *succeed*. [As we've often pointed out](#), officers take risks and accomplish great things every day, with little fanfare:

Policing is an imperfect enterprise conducted by fallible humans in unpredictable, often hostile environments. Limited resources, gaps in information, questionable tactics and the personal idiosyncrasies of cops and citizens have conspired to yield horrific outcomes. Still, countless cop-citizen encounters occur every day. Many could have turned out [poorly] but, thanks to very craftsmanlike police work and considerable risk-taking, they're resolved peacefully. Indeed, as we've repeatedly pointed out, if officers were completely risk-averse dead citizens would line the sidewalks at the end of each shift.

Systematically examining examples of good policing could prove very informative. How do agencies and officers get the job done without using excessive force or causing needless offense? By all means, pursue biased and brutal policing with vigor. But if the new Administration is really serious about making lasting improvements, perhaps a few

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of the resources currently allocated to finding fault could be redirected to studying success.

What say you, DOJ?

Posted 9/17/16

WORDS MATTER

***In a conflicted, gun-saturated land, heated rhetoric
threatens cops' effectiveness – and their lives***

By Julius (Jay) Wachtel. It's been another very bad summer.

On Thursday, July 7, Micah Johnson, 25, [opened fire on Dallas police](#) at the end of a demonstration by Black Lives Matter. Johnson, who was armed with an assault-style rifle, shot and killed five officers and wounded nine. He told police negotiators that he was angry about police shootings of black men and was aiming for white officers. A one-time Army private with a checkered service history, Johnson had voiced support on Facebook for the [New Black Panther Party](#), a reportedly anti-white, anti-Semitic hate group. Johnson was ultimately killed by an explosive delivered with a police robot.

Ten days later, on July 17, Gavin Long, 29, [shot and killed three Baton Rouge police officers](#) and wounded three using an assault-style rifle. A former Marine from Kansas City, [Long had posted angry online comments](#) about police shootings of black men. According to his mother, Long thought that he was being followed by the CIA. He was shot and killed by police.

Three days after that, on July 20, unknown persons drove by two NYPD officers on foot patrol, “made a statement about getting them” [and opened fire](#). Neither officer was injured. It was a far better outcome than what took place one and one-half years earlier, when Ismaaiyl Brinsley, 28, walked up to two unsuspecting NYPD officers sitting in a patrol car [and shot them dead with a pistol](#). Brinsley, a mentally troubled man with an extensive arrest record, had posted “I’m Putting Wings on Pigs Today” on Instagram and shot his girlfriend in the stomach. He ultimately committed suicide.

Three days later, on July 23, an unknown assailant walked up to an Oakland police sergeant sitting in her vehicle [and opened fire](#). A bullet struck the police vehicle but the officer was uninjured.

One day after that, on July 24, unknown persons [fired on Kansas City police officers](#) who were out of their vehicles handling an unrelated call. The officers took cover and were unhurt.

Five days later, on July 29, officers in Columbia, a small Pennsylvania town, [were fired on](#) while responding to reports of gunfire at a cemetery. Police arrested two

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cousins, Marquell Rentas, 17, and Trenton Nace, 18, for attempted murder. Rentas reportedly admitted that he tried to shoot the officers. His mother blamed it all on Black Lives Matter:

They are in jail for doing what Black Lives Matter wanted them to do: shoot at cops. The truth is that these are two punk kids following the orders of an irresponsible organization and now they're gonna pay for it.

Her husband agreed. County prosecutor Craig Steadman warned that harsh words directed against the police could encourage violence:

We as a society need to take a look at what's going on in our country. There's a lot of rhetoric demonizing police. It creates greater a chance to have individuals emboldened to take violent actions out on police.

Later that day, unknown assailants [fired on Emeryville, Calif. police officers](#) on foot patrol. One 9mm. bullet lodged in a wall but no one was injured. No arrests were immediately made.

Less than a month later, on August 27, participants in a Black Lives Matter march outside the Minnesota State Fair [chanted "pigs in a blanket, fry 'em like bacon."](#) Their lyrics drew a rebuke from a St. Paul police union official: "I don't think chanting or singing what's basically promoting killing police officers is peaceful." One of the event's organizers disagreed: "It definitely wasn't a threat. I don't know if they would have received it differently if we would have said on a stick. We're there chanting, using our voices."

That "chant" didn't take place in a vacuum. A few hours earlier Harris County, Texas deputy sheriff Darren Goforth [was shot and killed](#) while fueling his patrol vehicle at a commercial gas station. Police soon arrested Shannon Miles, 30, in what Sheriff Ron Hickman called a "calculated cold-blooded assassination." Deputy Goforth's grieving boss laid blame on out-of-control rhetoric:

We've heard Black Lives Matter, All Lives Matter. Well, cops' lives matter, too. So why don't we drop the qualifier and say lives matter. I've been in law enforcement 45 years. I don't recall another incident this cold-blooded and cowardly.

A surveillance video reportedly depicted Miles [running up to the deputy and continuing to shoot](#) even after his victim was on the ground. According to the indictment, Miles was "retaliating" against police. Goforth left behind a wife and two children.

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Intemperate comments offer a rationale for disturbed, impulsive persons with guns – of whom there are regrettably many – to act out their rage. Episodes of real and alleged police misconduct, of which we have written extensively (see related posts below) have become grist for a mill of desensitizing, anti-cop rhetoric that fuels animosity towards cops and has seemingly become a litmus test of group loyalty. How else to explain recent comments by the leader of the [African American Tobacco Control Leadership Council](#) (AATCLC), a public health organization, [who felt compelled to smear police officers](#) while being interviewed about a topic as far removed from police misconduct as one can imagine: a campaign to ban menthol cigarettes:

...Our children deserve protection from the police. They deserve protection from the deadly silent predator: the tobacco industry...

While the group's public letter to President Obama didn't include the "protection from" comment, it nonetheless featured an inflammatory dig against the police:

While our communities are besieged by the more immediate problems of police violence, racism, and unemployment, you can quickly direct the FDA to issue a new proposed rule...The rule will protect us from our most serious silent predator, the tobacco industry, an industry relentlessly working to seduce and addict another generation of our young people.

And the carnage continues. Late last night, Friday, September 16, a 25-year old man with a long arrest record walked up to a Philadelphia patrol car [and inexplicably opened fire](#). By the time the incident was over, two officers lay wounded and the suspect and an innocent citizen (whom the suspect shot as he fled) were dead.

At present, these incidents are, however deplorable, still anecdotes. There is simply insufficient information to tie them to a common cause. Yet there is plenty reason for concern. According to [LEOKA](#), the FBI's yearly compendium of lethal and non-lethal assaults on police, [255 officers were murdered](#) between 2010-2014, including 38 in ambushes and unprovoked attacks. During the same period [533 officers were injured with a weapon](#), 26 in ambushes and unprovoked attacks. Perhaps organizations such as Black Lives Matter and the AATCLC could mount a campaign to discourage citizens from harming police. We could then look at the numbers. Maybe rhetoric could be a force for good.

Cops and citizens have innumerable interactions every day. Most end uneventfully, if not always pleasantly for the bad guys. Labeling officers as a generic threat is a gross distortion that encourages the unhinged and interferes with the public trust and cooperation that officers need to do their job. As we've discussed in prior posts, some

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cops overreact, use excessive force and otherwise treat citizens poorly, and they must be weeded from the ranks. But when supposedly good people promote hostility towards police in general, potentially making the streets even “meaner” and more treacherous, encouraging officers to treat everyone courteously and with care becomes a very tough sell.

Posted 2/8/09

YOU CAN TAKE THE MAN OUT OF CHICAGO...

President Obama's appointments belie his reformist message

Who says that life doesn't afford second chances? With a one-time tax delinquent, [Timothy Geithner](#), installed as Treasury secretary, and [Eric Holder](#), the former Justice official who helped Marc Rich get a pardon confirmed as Attorney General, no one can say that our God-fearing new President doesn't believe in the power of redemption.

Geithner's troubles date back to the period following his service as a Treasury undersecretary in the Clinton administration. In 2006 an I.R.S. audit revealed that Geithner had not remitted required self-employment taxes in 2003 and 2004. To settle things he coughed up more than \$20,000. In fact, Geithner was liable for more, but the I.R.S. couldn't force him to pay because absent proof of fraudulent intent [the law](#) limits imposing back taxes to three years. And as one might expect, Geithner didn't volunteer.

When nominated to Treasury's top spot Geithner experienced a remarkable transformation. Within days a check for \$25,970, covering taxes and penalties for 2001 and 2002 was in the hands of the I.R.S. As one might expect, he explained the lapses -- as well as \$4000-plus he incorrectly claimed in dependent care credits -- as innocent errors of omission. Thanks to a forgiving boss, Geithner now leads a department whose employment standards (as your writer, a former Treasury man well knows) would instantly disqualify any ordinary applicant with delinquencies an iota as serious.

Although the blunder that reddened Eric Holder's face is different, its implications are remarkably similar. For reasons that either did or didn't have anything to do with Marc Rich's contributions to the Democratic Party and the Clinton library, President Clinton was anxious to grant a pardon to the indicted tax cheat, then in his second decade of living it up in Switzerland while thumbing his nose at the Feds. Holder declared himself "neutral, leaning towards favorable" on the question, a sleigh of words that he later explained meant that he had been neither for nor against granting an incalculable benefit under circumstances that would make a Chicago alderman blush.

Or not. Everyone out of diapers knows that Holder's new boss is an experienced hand at Windy City politics. President Obama is also a lawyer, which to some may sound like a frightful combination. To his credit, he came in with a reformist zeal the likes of which we haven't seen since Jerry "Moonbeam" Brown was squiring Linda Ronstadt. Now, though, we're left wondering. Does the President agree that our nation's chief financial

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and law enforcement officers should be held to the highest possible standards? Or does our popular new leader suffer from the same moral blind spot that nearly brought down his Democratic predecessor?

These are important questions. Treasury and Justice are responsible for enforcing the bulk of our nation's laws. If we even half-expect tax sleuths and G-men to follow the straight and narrow their leaders must be men and women of irreproachable integrity, indisposed to draw fatuous, lawyerly distinctions between right and wrong -- distinctions, one might add, without which Secretary Geithner and Attorney General Holder could have never been confirmed.

Maybe the message is finally getting out. Only a day after President Obama declared his wholehearted support for Tom Daschle's confirmation, the ill-starred nominee for Health and Human Services bowed out. Suffering from serious bouts of taxitis and multiple personality (he couldn't make up his mind whether he had been a lobbyist or not) the former Majority Leader apparently concluded that his web was too tangled for even Obama's talented spinners to successfully parse.

Our promising new President's missteps are a shaky start for someone who led the world to believe that in his Administration, "I" wouldn't stand for the selfishness that led to the present crisis but for the integrity that is the cornerstone of American democracy. It's the reason why millions of new voters proudly marched to the polls and why an old white guy gave him two-hundred bucks.

Please, President Obama, don't let us down. You're not in Chicago anymore.

YOU CAN'T "MANAGE" YOUR WAY OUT OF RAMPART

Pressures from above and a drive to succeed can distort officer behavior

By Julius (Jay) Wachtel. New York City. Washington, D.C. New Orleans. Los Angeles. What do these four cities have in common? Police misconduct. Since inception of the first regularized force in the U.S., in New Amsterdam, later New York City, cycles of what criminologist Lawrence Sherman termed "scandal and reform" have plagued the police in urban America.

On each occasion, civilian and police investigating commissions conducted thorough probes. And after much chest-thumping and self-flagellation, each pointed to the same list of "usual suspects": poor hiring practices, lax supervision, ineffective internal inspection mechanisms, the absence of executive leadership, and so on.

Assistant Attorney General Bill Lee's recent ultimatum to the City follows this tradition: "Serious deficiencies in LAPD policies and procedures for training, supervising, and investigating and disciplining police officers foster and perpetuate officer misconduct." Other than for his rankling insistence on external oversight, Mr. Lee's dicta that more management is better management mirrors the conclusions of LAPD's own, exhaustive Board of Inquiry report, at present the mea culpa to beat.

Why is the needle still stuck on the same track? What has been the benefit of extending police training so that rookies now endure academies lasting six months or more? Of spending hundreds of millions to support the National Institute of Justice? Of millions spent on police executive training at the FBI Academy and elsewhere? Of the proliferation of college criminal justice curricula, where it is now possible to earn everything from an A.A. to a Ph.D.? And yes, of raising police salaries from mere subsistence to a level that allows a majority of police to enjoy the perquisites of the middle class?

Adopting ever-more stringent standards seems sensible. Sometimes we need to rearrange the deck chairs. But how far should we go? Install a Sergeant in the back seat of every patrol car? Um, no, he might get co-opted. How about a Lieutenant instead? Better yet, let's clone the Chief and...

As every parent knows, merely tightening the screws cannot, in the long haul, overcome the forces that impel misconduct. This is equally true for policing. Thirty years ago, political scientist James Q. Wilson's landmark study, "Varieties of Police

Behavior" suggested that police work is shaped by the environment. Simply put, we get the style of law enforcement that the community - or at least its politicians and more influential members - expects.

So-called "aggressive" policing could not have taken place in New York City in the absence of a demand to stem street crime. Abuses at Rampart did not start with a conspiracy between rogue officers. They began with a problem of crime and violence that beset Pico-Union. Into this web of fear and disorder we dispatched officers - members of the ineptly named CRASH - whose mission it was to reclaim the streets for the good folks.

Did we supply officers with special tools to help them accomplish their task? Of course not, since none exist. Yet our expectations remained high. Police officers gain satisfaction from success. Their work is also judged by superiors, who are more interested in numbers of arrests than in narrative expositions, the latter being difficult to pass up the chain of command and virtually impossible to use in budget fights at City Hall.

Officers who volunteer for specialized crime-fighting assignments want to do more than take reports - they want to make a difference. For some, the poisonous brew of inadequate tools and pressures to produce can have predictable consequences. Their dilemma is characterized by criminologist Carl Klockars as the "Dirty Harry" problem: given a lack of means, how to achieve good ends. Harry solved this problem by adopting bad means. Real officers on a crusade have rationalized virtually anything that promised to secure the desired outcome, including brutality and planting evidence. As their moral decay progressed, many even justified clearly self-serving behaviors such as stealing money and evidence.

What is to be done? By all means, apply whatever management remedies are available. But for a long-term solution, look to the environment of policing, and particularly to the self-induced and agency-generated pressures that can spur vulnerable practitioners to cross the line.

For example:

- Examine the mission. If it cannot be done - and done well - with the resources at hand, reconsider the approach. Emphasize conventional tactics, particularly uniformed patrol, and lobby forcefully for lasting remedies such as economic, social and educational investment.
- To reduce the pressure to breach ethical boundaries, set realistic objectives. Quantitative measures can corrode officer ethics and distort the nature of their

work. Instead of just counting "numbers" employ qualitative measures of performance. It may be less convenient than checking boxes on a form, but in policing there is no satisfactory alternative.

- Don't exaggerate. Chiefs and command staffs must insure that they and their fellow decision-makers in City government are educated about policing and have realistic expectations about what the police can accomplish.

Yes, critical self-study is a good thing. But failure to attend to the forces that drive police work only promises to deliver an even thicker set of "mea culpas" the next time around.