

COMPLIANCE AND FORCE ESSAYS

By

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As originally published in
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Posted 2/19/12

A DEAD MARINE, AND A LOT OF QUESTIONS

***Failure to properly contain a situation
can leave deadly force as the only option***

By Julius (Jay) Wachtel. Why do cops mistakenly shoot and kill? Sometimes the reason is simple. Fear and haste can lead them to confuse a cell phone for a gun, or to interpret an innocent motion as someone reaching for a weapon. Intoxicated and mentally disturbed persons often fail to follow directions and may behave inappropriately, increasing the risk that their behavior will be interpreted as hostile.

Such tragedies are often avoidable. In “[First, Do No Harm](#)” and in “[Making Time](#)” we emphasized that officers need not always intercede. Sometimes it’s best to do nothing. When they decide to act, even a slight delay can help clarify things and keep them from needlessly taking what might be an irreversible step.

Risk tolerance is an intrinsic aspect of policing. Cops take chances every hour of every day, from walking up to cars during a traffic stop, to wrestling with drunks and the mentally ill, to tracking a citizen’s hands to make sure that they’re pulling out a wallet instead of a gun. If cops insisted on absolute safety they’d be leaving behind a trail of dead civilians at the end of every watch.

Often the decision-making calculus is very complex.

About 4:30 am on February 7th., Marine Corps Sergeant Manuel Loggins, Jr. [drove his personal SUV](#) onto the grounds of San Clemente High School, a public secondary school in coastal Southern California. His two daughters, ages 9 and 14, were sitting in the back. An Orange County deputy sheriff happened to be parked nearby doing paperwork. According to the officer, the SUV was speeding and crashed through a locked gate. Its driver then exited and walked away. More deputies arrived. Several minutes later, Loggins returned. Ignoring the deputies’ commands, he got in the SUV and tried to drive away. A deputy then fatally shot him.

Sheriff’s officials defended the officer’s actions. They accused Loggins of “acting irrationally” and placing the girls at risk. Drugs and alcohol, they conceded, were not involved. Colleagues described Loggins as deeply religious and a “poster boy” for the Marines. A former military superior said that Loggins routinely took his daughters to the high school in the early morning to exercise and read the bible.

As one can imagine, the shooting drew a lot of flack in the blogosphere. It left especially bad feelings with the Marines, where Loggins was deeply admired. Criticism led the Orange County deputies' union to [issue a statement relating their version of events](#). Loggins, it said, ignored the deputy's commands to stop and walked away. The deputy followed for a short distance but returned to the SUV when he heard the girls screaming. He also heard Loggins "yelling irrational statements" from the field. Other deputies arrived and comforted the girls. Loggins then unexpectedly returned, climbed back in the vehicle against deputies' orders and began driving away. That's when a deputy fired, an action that "clearly prevented serious harm from coming to Loggins' two children and anyone else on the road that morning." AOCSD's report concludes by describing the deputy as a USMC veteran with 15 years of service in the sheriff's department.

Colonel Nicholas Marano, Camp Pendleton's commander, was dismayed. [In an unusual public statement](#) he expressed dissatisfaction "with the official response from the city of San Clemente and Orange County" and anger over suggestions by the sheriff's department and the deputies' union that Loggins, who was unarmed, posed a threat to either the officers or his daughters: "Many of the statements made concerning Manny Loggins' character over the past few days are incorrect and deeply hurtful to an already grieving family." Colonel Marano was especially steamed over AOCSD's account, which "did not shed any light on the decision-making process that deputy went through on the scene."

There is no question that speeding in a high school parking lot and smashing through a gate are sufficient cause for a stop. It's also beyond dispute that such actions cannot justify a shooting even should children be onboard. Cops would otherwise be opening fire on reckless drivers every day. On the other hand, the sequence of unusual events, Loggins' indisputably odd behavior, and his alleged noncompliance are such that one can understand, without necessarily agreeing, why a deputy might reasonably feel that the girls were at risk.

Whether that risk was sufficient to justify using deadly force we'll leave to the lawyers. Here we're more interested in why Loggins wasn't kept from reentering the vehicle, a move that many commentators thought obvious. Our suspicion – and at this point that's all it can be – is that after checking on the girls the deputies repositioned themselves too far away. We say so because of a remark in the AOCSD's statement to the effect that Loggins "unexpectedly and quickly returned to his Yukon."

Lacking more facts one cannot grasp the rationale of a decision that left occupants in the vehicle. Whatever the deputies' reason for leaving them – [a sheriff's spokesperson](#)

said they set up a “perimeter” – if the girls were at risk they should have been removed. Perhaps the deputies were in a hurry or didn’t want more tears and screaming. Maybe they were certain that Loggins couldn’t get past them.

But he did.

In “[Sometimes a Drunk is Just That](#)” and in “[Making Time](#)” we pointed out that once cops leave the academy they learn that the complexities of the real world go far and beyond what’s possible during simulation exercises. That’s why many agencies require that officers participate in ride-alongs during initial training. It’s also, we think, a compelling reason for creating rich training scenarios with open-ended conclusions.

Unfortunately, much police training continues to be dominated by the military “stress” model, which emphasizes obedience and following orders and, at least in this writer’s opinion, discourages critical thinking and innovation. Both the [Los Angeles County](#) and Orange County sheriff’s academies are of this type. But the issues go far beyond that. Academy tactical training tends to be preoccupied with the minutiae of containment and clearing, emphasizing fixed, choreographed responses and ignoring the complexities of incidents, such as in San Clemente, where concepts such as “perimeter” seem absurdly beyond the point.

Training issues aside, why a deputy didn’t grab the kids while the others, say, jammed the SUV with their patrol cars we’ll never know. If Loggins was considered too dangerous to approach they could have Tased him, then if necessary apologized later.

But they didn’t.

Even good people can behave poorly. We expect officers to keep the peace and secure compliance while using as little force as possible. When they fail to contain a situation, allowing it to escalate to the point where the only available solution is to kill, we really must go back to the drawing board. It’s not to condemn the police. It’s to keep fallible citizens alive, and to help make cops better.

Posted 2/15/19

A NOT-SO-MAGNIFICENT OBSESSION

Lapses in policing lead to chronic rulemaking. Does it hit the mark?

For Police Issues by Julius (Jay) Wachtel. How to make police chiefs shudder? Until recently all that was necessary was to utter “pattern or practice.” That dreaded phase is at the heart of a [1994 Federal statute](#) that authorizes the U.S. Justice Department to sue law enforcement agencies in Federal court when it reasonably believes that they have engaged in a pattern or practice “that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.”

These investigations were conducted by the [DOJ’s Civil Rights Division](#). And going to court they did. A January 2017 report tallied seventy pattern or practice cases since the dreaded statute’s inception, with a full forty leading to judge-monitored consent decrees (for a list of the more recent cases, click [here](#).)

Spurred by the April 2015 in-custody death of [Freddie Gray](#), DOJ’s investigation of Baltimore PD is perhaps the most notable recent example. Filed in August 2016, [the comprehensive, 150-plus page assessment](#) (summary [here](#)) blamed “systemic deficiencies in BPD’s policies, training, supervision, and accountability structures” for the litany of illegal arrests, excessive force and other unconstitutional measures that were directed mostly at African Americans. In January 2017 Baltimore and the Feds signed off on a [200-plus page consent decree](#) that specifies precisely what’s required for the department to reclaim its good standing. Alas, [an October 2018 news article](#) reported that the judge overseeing the process felt that Baltimore was falling short and that attaining compliance was very much a work in progress.

DOJ’s assessment touched on a number of factors that can drive misconduct. Among them is [a preoccupation with productivity](#):

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....[According to the Fraternal Order of Police] numbers drive everything in the BPD, which has led to misplaced priorities. As a result, officers

in the BPD feel pressure to achieve numbers for perception's sake...(p. 17. Also see pp. 41 and 65)

Despite their agency's avowed intention to "move away from zero tolerance policing", officers remained convinced that making numbers remained very much in fashion:

Many officers believe that the path to promotions and favorable treatment, as well as the best way to avoid discipline, is to increase their number of stops and make arrests for [gun and drug] offenses. By frequently stopping and searching people they believe might possess contraband, with or without requisite reasonable suspicion, officers aim to improve their statistical output, which will in turn reflect favorably in their performance reviews. (p. 42)

Detailed accounts of citizen-officer interactions gone horribly wrong form the core of the review (for a truly mind-boggling example see the 2014 incident discussed on p. 94.) Clearly, repeat violators were a serious problem. Yet identifying them seemed hit-and-miss:

...in the past five years, 25 BPD officers were separately sued four or more times for Fourth Amendment violations. BPD has likewise failed to identify officers in need of support through its EIS [early intervention system]. For example, one of the officer-involved shooting files we reviewed revealed that the involved officer—who unloaded his entire magazine at a car driving toward him—had been previously involved in two other officer-involved shootings in the past five years, in addition to a long history of complaints for harassment and excessive force. (p. 136)

However one might feel about the Civil Rights Division's take-no-prisoners approach, its recognition of the underlying factors that drive officer misconduct lends a weight and authority to its conclusions that a less organic examination couldn't begin to match.

Pattern and practice inquiries placed the Feds at odds with local police. Expensive and highly intrusive, they were by their nature a last resort. In 2012 the Obama administration broadened DOJ's reach with an ostensibly voluntary program entitled "[collaborative reform](#)." Run from the COPS (community policing) office, it offered multi-year clinical partnerships to troubled agencies that feared becoming fodder for the pattern and practices mill. Within five years sixteen departments took up the offer (the sixteenth was St. Anthony, Minnesota, whose officer shot and killed [Philando Castile](#)).

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Baltimore joined in 2014 but got kicked out when Freddie Gray happened and the Civil Rights baddies took over.)

Collaborative reform assessments focused on several areas, including the use of force, officer accountability, disparities in enforcement, and community “engagement.” To find out if minority groups were more harshly treated, data was also often collected on stops, field interviews and uses of force (click for [Spokane](#); [Philadelphia](#); [Fayetteville](#); [San Francisco](#).)

Here, for example, were the objectives for Spokane’s review:

- Examine departmental use of force policies and procedures in comparison to national best practices and existing research, identify areas for improvement, and provide recommendations
- Analyze a sample of use of force investigation files from 2009-2012 and identify trends, strengths, and weaknesses
- Examine the role of the ombudsman in use of force investigations in comparison to national best practices and existing research
- Improve SPD organizational culture as it relates to use of force to build trust with the community

However, unlike Baltimore’s pattern and practices investigation, the collaborative reports we examined didn’t drill down to individual factors such as officer impulsivity, or organizational forces such as pressures to produce arrests. About as close as the Spokane report came was in the appendix. Its “culture” section proposed asking, among other things, “what gets measured in this organization?” and “what measures are the most important?” As one might have expected, the answers were nowhere to be found.

Still, the agencies that went through the process got nailed with all manners of criticism. For the new, more police-friendly Administration, that was perhaps a bit much. In fact, shortly after his appointment, [the new A.G. tried to pull](#) the Baltimore pattern-and-practice consent decree from Federal court, arguing that it contained “clear departures from many proven principles of good policing that we fear will result in more crime.” Ultimately [he didn’t succeed](#) (new pattern-and-practice casework, though, seems clearly out.)

Collaborative reform, though, is fully within the A.G.’s control. In September 2017, as existing collaborative projects came to their conclusion, [he ordered a kinder and gentler approach](#). According to [the program’s fact sheet](#) and the A.G.’s [official announcement](#), the adjustments reflect a determination to help rather than hinder police:

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Changes to this program will fulfill my commitment to respect local control and accountability, while still delivering important tailored resources to local law enforcement to fight violent crime. This is a course correction to ensure that resources go to agencies that require assistance rather than expensive wide-ranging investigative assessments that go beyond the scope of technical assistance and support.

About the same time, [DOJ released a review](#) of the collaborative reform approach. While the self-evaluation was in large part complementary, concerns were expressed that the Feds were insufficiently attentive to local needs. Did “collaboration” fade away? Had it become “pattern and practices” without a judge?

...a number of people also noted that the meaning of collaboration has shifted since the Initiative’s formal launch in early 2012. The extent of collaboration between the TA team and the site representatives was generally deemed strong at the earlier sites, but some felt it has been decreasing at the later sites.

DOJ’s IG would in time release [a massive critique](#) of the agency’s police reform work. We’ll let our brave readers sort through that one.

On March 18, 2018, six months after DOJ’s retrenchment, tragedy struck California’s capital city. After chasing and cornering a black man who was reportedly trying to break into cars, two Sacramento PD officers (one black, one white) apparently mistook a cellphone for a gun. Their gunfire killed [Stephon Clark](#), 22.

This tragic event, which spawned massive protests, would have normally led the Feds to open a “pattern and practices” investigation. But these were no more. Ostensibly at the request of local authorities, [the State stepped in](#). California’s Department of Justice announced it would monitor the city’s criminal inquiry into the shooting. It also committed to examining Sacramento PD policies, practices and training methods “to help identify possible ways to achieve safer outcomes for community members and officers alike.”

Crafted by a team of consultants, lawyers and academics, the [massive, highly detailed report](#) was released earlier this year. Its structure closely resembles the Fed’s collaborative approach. Based on eighteen officer-involved shootings between April 2013 and March 2018 (excluding, for legal reasons, Stephon Clark) the near-100 page missive advances forty-nine recommendations in six areas: use of force policies, use of

force reporting and investigation, use of force training, officer-involved shootings, community engagement, and transparency.

We'll concentrate on shootings. That section produced three recommendations as to tactics (pp. 65-67):

- SPD should ensure its officers are effectively employing cover, distance, and time tactics to minimize the need for deadly force.
- SPD should assess its practices and provide officers with guidance on the discharge of firearms in situations that may endanger bystanders and other officers.
- SPD should ensure its training prepares officers to encounter and detain individuals in a manner that decreases the need for deadly force applications.

The first suggestion was inspired by a brief account of an unspecified shooting in which a late-arriving officer intruded into what seemed to be a contained situation and, instead of taking cover, promptly used lethal force. The second was based on “several” otherwise unspecified prior incidents in which “the backdrop to the discharge of firearms by officers was extremely high risk, including instances of crossfire.” And the third reflected a “significant number” of otherwise unspecified incidents in which “the individual upon whom lethal force was used was perceived (by the officer) as suffering from mental illness.”

This approach was characteristic of the report. Where prior incidents are mentioned – and the accounts are either summaries or otherwise exceedingly brief – they are used to propose rules that reflect practices in use elsewhere or endorsed by recognized sources such as [PERF's “Guiding Principles on Use of Force.”](#) For example, Sacramento's [Discharge of Firearm policy](#) is criticized for making no mention of time, cover and distance and for not warning officers that opening fire carries risks to innocents:

No officer can control the environment in which he or she is forced to discharge a firearm. However, officers can be provided with clear guidance on how to determine whether or not a discharge is reasonable, given the potential risks to bystanders that may exist... (p. 66)

To be sure, keeping one's distance, fire discipline and so on are commonplace in everyday policing. Considering the often chaotic nature of street encounters, if cops didn't typically exercise restraint poor outcomes would be far more frequent. [As we've often emphasized](#) and as Cal DOJ's report concedes, the wide variety of circumstances and personalities officers routinely face makes “controlling the environment”

exceedingly difficult. So providing “clear guidance” is at best an encyclopedic task. That’s why major police departments [have resisted adopting](#) PERF’s guidance. They prefer to deal with this complex and thorny area in other ways, as they fear that going substantially beyond the legal minimum – that lethal force be used only in defense of life – might confuse officers and create a nightmare of civil liability.

Several days ago, on February 12, seven NYPD officers unleashed a barrage of gunfire – forty-two rounds in eleven seconds – at an armed robber. [Two veteran officers were caught in crossfire](#): one, Brian Simonsen, 42, died; the other, Matthew Gorman, 34, was wounded. The 27-year old suspect, a chronic offender, was also wounded. His gun turned out to be a hyper-realistic toy.

As we mentioned in “[Speed Kills](#),” lapses in the use of lethal force keep happening with regrettable frequency. And it’s not just suspects who are being hurt. What’s to be done? What *can* be done? We’ve frequently [cautioned against campaigns](#) to get tough on crime, which can drive officer decisions in the wrong direction. Most recently, “[Cops Aren’t Free Agents](#)” argued against measuring policing with numbers. Yet other than Baltimore’s, which was done by the Feds under the apparently extinct “pattern or practice” banner, the assessments we reviewed ignored pressures to produce. Could it be that cops (outside Baltimore) are immune to the powerful force that affects every other craft and profession? (For your blogger’s paper on point, click [here](#).)

Yet the NYPD officers weren’t victimized by pressures to produce. They fell prey to decisions other cops made while under stress. A man robbing an occupied store after dark who walks towards officers, gun raised, can definitely provoke a lot of anxiety. But while there is a retinue of prescriptions for dealing with fraught situations (see, for example, “[Routinely Chaotic](#)” and “[Speed Kills](#)”) far less attention has been directed to differences in how officers respond to stressful events.

Like other humans, cops differ. Some are less risk-tolerant, others more impulsive or aggressive (see, for example, “[Three \[In?\]explicable Shootings](#)”). Perhaps if someone hadn’t fired that first shot, one cop might still be alive. Are there ways to improve how officers react under stress? “[A training method to improve police use of force decision making: a randomized controlled trial](#)” (J. Andersen, H. Gustafsberg, 2016) probed the psychological and physiological factors that affect officer response. It identified three effects of stress: perceptual distortions (e.g. tunnel vision), motor deficits (e.g., loss of fine motor skills) and cognitive deficits (e.g., loss of memory and stored knowledge.) These were addressed through an elaborately devised training program. Results seemed

promising: at post-test, trained officers performed significantly better and made significantly better use-of-force decisions than non-trained officers. However, there was no significant post-test difference in physiological arousal.

A key limitation of Andersen & Gustafsborg was that everything happened in a lab. In contrast, [“Can You Build a Better Cop? Experimental Evidence on Supervision, Training, and Policing in the Community”](#) (E. Owens, D. Weisburd, K. Amendola, G. Alpert, 2018) compared post-treatment outcomes in the field. Their intervention was a “supervisory meeting” in which officers working relatively “high-risk” geographical areas were probed in depth, in a “non-authoritarian manner,” about a recent officer-citizen interaction. According to the findings, these cops remained as active as comparable cops who didn’t receive the treatment. However, they became “less likely to resolve incidents with an arrest and less likely to be involved in use-of-force incidents.” That effect was most noticeable in less-troubled locations, where the “probability of being in a risky circumstance” was only moderate.

It’s an interesting finding. However, arrests that don’t happen because cops become less inquisitive are not necessarily a good thing. While the authors insist that officers “appeared generally indifferent to the meetings,” our personal, practitioner experience suggests that at least a few of the experimental subjects may have formed a not-necessarily-complementary opinion of the get-together and shared it with their peers. What’s more, precisely how “cause” translated into an “effect” was only vaguely specified. Officers were advised that the meeting’s purpose “was to discuss how the officer used procedural justice during the incident in question.” This approach, which seems a tad loosey-goosey, supposedly encouraged cops to slow down so they would “incorporate new information about [an] event as it unfolded” instead of going on “autopilot.

Well, maybe it did. A previous meta-analysis, though, wasn’t optimistic. [“Stress management interventions for police officers and recruits: a meta-analysis”](#) (G. Patterson, I. Chung, P. Swan, 2014) evaluated twelve programs that used techniques ranging from weight training to psychotherapy to improve officer coping skills. While specific goals varied, each study measured physiologic (e.g. heart rate) and/or psychological (e.g. anxiety) and/or behavioral (e.g. drinking alcohol) outcomes. Unfortunately, none of the categories, once aggregated, yielded statistically significant results. However, the physiological and behavioral interventions did demonstrate “clinically meaningful” improvements. So there is some hope.

Which finally (mercifully!) brings us to our parting shot. Changing a production-driven culture is no easy task. Neither is moderating the sympathetic nervous system,

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which controls the “fight or flight” response. That doesn’t mean that we need be endlessly stuck devising rules for police behavior. After all, we know just how far rulemaking takes us in everyday life. Perhaps we can begin by acknowledging the salience of workplace pressures and individual physiological and psychological factors. By making them an accepted topic of discussion and inquiry in law enforcement and academic circles. And by sharing these insights with the greater community, with whom they are certain to resonate.

Posted 4/5/18

A REASON? OR JUST AN EXCUSE?

Figuring out why officers kill persons “armed” with a cell phone

By Julius (Jay) Wachtel. “As soon as they did the command, they started shooting. They said ‘put your hands up, gun’ and then they just let loose on my nephew.” That’s how [Stephon Clark’s aunt](#) reacted to body-cam footage depicting two Sacramento officers – one white, the other black – as they unleash a barrage of twenty rounds at a 22-year old black man whom they encountered at the rear porch of what turned out to be his grandmother’s house, where he was staying.

Why did the officers fire? According to [an official news release](#), they thought Clark was threatening them with a gun:

Officers pursued the suspect and located him in the backyard of the residence. The suspect turned and advanced towards the officers while holding an object which was extended in front of him. The officers believed the suspect was pointing a firearm at them. Fearing for their safety, the officers fired their duty weapons striking the suspect multiple times.

Clark was struck eight times. [According to the medical examiner](#) hired by his family, he was probably first hit on the side. That impact likely spun him around, explaining why he wound up with six entrance wounds in the back and (as he fell) one on the leg.

Problem is, Clark wasn’t armed. Once officers approached his body and rolled him over they found a cell phone on the ground.

Police became involved when a resident called 911 to complain that someone was going into back yards and breaking the windows of parked cars. (A series of broken car windows were later found in the area.) Deputies in a helicopter reportedly observed Clark break the rear glass door of a residence. Their video depicts Clark peering into the back of a car parked in a driveway. He then jumped a fence and entered the yard of the home where he was cornered.

As often happens, officers didn’t know whom they were chasing. Had they been informed, their concerns would have likely been elevated. In 2014, one year after graduating from high school, [Clark was convicted of robbery](#) and received five years probation. An estranged father of two, he had also collected convictions for a misdemeanor prostitution-related offense and “battery of a cohabitant.”

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California penal law (click [here](#) and [here](#)) lets peace officers use “reasonable force,” including lethal force, to arrest persons whom they have “reasonable cause to believe” committed a crime, or when necessary to discharge “any other legal duty.” Because of its centrality to the [Fourth Amendment](#), the parameters of “reasonable” police conduct have been left for the Federal courts to define. In [Graham v. Connor](#) the Supreme Court held that “the ‘reasonableness’ of a particular use of force must be judged from the perspective of a “reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” What’s more, “the calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.” (For a recent decision that emphasizes the slack cops might need see [Kisela v. Hughes](#), summarized [here](#).)

Considering the complexities of what the officers faced – which, not incidentally, were greatly exacerbated by Clark’s conduct and flight – it seems highly unlikely they will be held legally accountable. But concerns that a life might have been spared had they exercised better judgment or deployed better tactics are not easily dismissed.

Use of force experts have offered a variety of opinions, mostly in support. In interviews with the [Sacramento Bee](#) and the [Los Angeles Times](#) a current cop and legal advisor found the shooting reasonable, as both officers made contemporaneous, recorded comments reflecting their belief that Clark was armed. Emphasizing the split-second nature of what took place, he favored giving the cops a complete pass: “If you don’t give officers that benefit of the doubt, if you don’t give them that shield, you’re not going to have any officers out there.” [Another expert who viewed the video agreed](#) that the officers “appear to legitimately believe they were in danger.”

At the same time, precisely *why* they thought so troubled Geoffrey Alpert, a well-known academic. [In one interview](#) he pointed out that the helicopter crew mentioned that Clark only had a toolbar. [In another](#) he suggested that the officers brought on the shooting by “the yelling of the word ‘gun’.”

Officer tactics drew less comment. A law professor and former cop [said he was troubled](#) by the final moments of the encounter, when the officers darted to and from positions of cover while yelling to each other and at Clark. “The question is how well did officers see Mr. Clark? Another question is whether officers who had some cover could have maintained their position of relative safety until they could assess the situation.”

Your blogger thinks that’s a valid point. Had the officers paused to gather information (say, by getting back-up units to surround the house while the helicopter brightly illuminates the patio) they might have discovered that Clark was only “packing” an I-

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Phone. Of course, one could speculate endlessly. A key decision-maker, Sacramento's mayor, [hedged his bets](#). "Based on the videos alone, I cannot second guess the split-second decisions of our officers and I'm not going to do that." He said he's waiting for more information, and one can't really blame him. After all, anyone who busts windows and prowls backyards poses an obvious risk, and the officers didn't know that the occupants of the residence where they cornered Clark were his relatives.

Not weighing in may be prudent, but it doesn't make the perplexing issues that beset everyday policing go away. As cops well know, [ill-informed "split-second" decisions](#) are the bane of patrol work. Here are a few cell-phone related examples from prior posts:

- [Two patrol officers](#) heard a loud noise and spotted a 27-year old pedestrian. He seemed to be fiddling with something. The cops pulled up and ordered him to halt. He instead approached them, reached into his waistband and brought something out. An officer shot him dead. All that he had was a cell phone. He was also learning disabled.
- [At the end of a wild freeway chase](#) a youthful driver (he had dialed 911 and warned that he was armed) pointed at officers as though he had a gun. Their gunfire killed him. It turned out that all the troubled nineteen-year old had was a cell phone.
- [Officers chased a drive-by shooting suspect](#) on foot, then shot him multiple times when he suddenly turned towards them. All he had was a cell phone. Left a near-paraplegic, he was eventually convicted of the drive-by. After being paroled he sued and was awarded \$5.7 million.
- [Two deputies looking for robbery suspects](#) approached a pair of candidates. One ran off and a deputy gave chase. At some point the suspect made a motion that the deputy considered threatening. The officer fired three times, fatally wounding the man. All the suspect had was a cell phone and street drugs. No, he wasn't the robber.
- [Deputies responded to a 911 call](#) from a woman who said she had been threatened with a gun. They pulled over a parolee leaving the area. He ran off and was chased on foot. At some point the man allegedly pointed an object at deputies and was shot and killed. That object turned out to be a cell phone. A loaded gun was found in the suspect's car, some distance away.

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Back to the shooting of Mr. Clark. We'd like to offer an observation about the tactical approach. Officers patrolling lower-income, higher-crime areas such as where Clark lived often have good reason to be wary. (For the *Sacramento Bee*'s list of fatal officer-involved incidents since 2016, click [here](#).) As the videos show, officers pursued Clark using pistol-mounted flashlights. When a chase is on and the adrenaline is flowing these combination "tools", which essentially transform suspects into targets, might lead officers to fire impulsively or with insufficient provocation.

Prior posts emphasize that [risk-tolerance](#) is intrinsic to policing:

Cops take chances every hour of every day, from walking up to cars during a traffic stop, to wrestling with drunks and the mentally ill, to tracking a citizen's hands to make sure that they're pulling out a wallet instead of a gun. If cops insisted on absolute safety they'd be leaving behind a trail of dead civilians at the end of every watch.

To prevent tragic misconceptions tacticians suggest that officers strive to [slow things down and make time](#) for supervisors and backup to arrive. The cops who killed Clark are reportedly young, with only a couple of years on the job. Examples in "[Working Scared](#)" illustrate the drawbacks of youth and inexperience. How one wishes that a plodding, experienced old-timer with lots of mistakes under his or her belt (yes, mistakes) had been present during the encounter!

Cops know that the decision-making calculus can be very complex. So complex, in fact, that Sacramento's new police chief [said he was now considering policies](#) that limit when officers can give chase. Yet he worried that such rules would be unavoidably saddled with perplexing implications:

I'm perfectly willing to have that conversation, but we also need to have (discussions about) what are the consequences of not pursuing people, because that is what we have always done. When an officer sees a suspect that runs from them, we chase them. That is what we do.

After all, if the home where Clark wound up was yours or mine we'd feel pretty miffed had police decided to back off. And if he broke in... Still, Clark *was* unarmed. However one might parse the officers' response, that reality is a burden that they as well as their department, community and nation will bear for a very long time.

Finally, we should point out that the issue goes well beyond mistaking cell phones for guns. While phones are the only object of size that one typically carries around, sometimes folks have other things in hand that *aren't* a gun. Like the silver smoking

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pipe that Saheed Vassell, a mentally disturbed 35-year old New York City resident [was pointing at passers-by](#) on the street. Officers shot and killed him yesterday.

Posted 8/30/14

A VERY HOT SUMMER

Five incidents reignite concerns about police use of force

By Julius (Jay) Wachtel. Five recent use-of-force incidents, each involving white officers and black citizens, have reawakened deep concerns about the troubled relationship between America's police forces and members of minority communities.

- On July 1 a motorist's cell phone captured the image of a reportedly disoriented middle-aged woman as she walked along an onramp to a Los Angeles freeway during rush hour. Suddenly a California Highway Patrol officer runs up, tackled Marlene Pinnock, 51, and takes her down. A timely rescue...or was it? As his quarry flails on the ground, the officer, who is straddling the woman, delivers a series of severe blows.
- On July 17 NYPD plainclothesmen confronted a man peddling untaxed cigarettes on a street corner. The suspect, a petty, chronic violator, told the cops to go away. Instead, an officer applied what has been described as a chokehold – prohibited by NYPD regulations – and took the man to the ground. Eric Garner, 43, obese and in poor health, soon complained that he couldn't breathe. He then died.
- On August 9, in Ferguson, Missouri, an 18-year old man who shoplifted a package of smokes from a convenience store and roughly pushed aside a protesting clerk was confronted by a patrol officer who either knew of the incident, or didn't. Either way, onlookers and police agree that the youth leaned into the driver's side of the police car. Shots rang out. At least several were apparently fired by the officer while he was still seated, and he may have fired more after stepping out. Michael Brown was riddled with bullets. One, which struck the top front of his head, proved fatal.
- On August 11 two LAPD gang officers confronted a 25-year old pedestrian at night in a high-crime area. What happened next is in dispute. While some onlookers disagree, police insist that the youth assaulted an officer and went for his gun. Family members knew Ezell Ford to be seriously mentally ill. But not the officer who shot and killed him.
- On August 19 a 25-year old man shoplifted food and drinks from a St. Louis, Missouri convenience store. He was followed outside by a clerk. Witnesses say that Kajieme Powell had a knife, was acting "erratically" and talking to himself. When police arrived he brandished the knife. Ignoring commands, he advanced on the officers and asked to be shot. Ultimately, they did, killing him. Coming

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only 10 days after the events in nearby Ferguson, authorities promptly released details of the incident and did their best to defuse things.

One could play the race card, but we won't. Who's to know what's in men's hearts? But these incidents had commonalities beyond race. Each suspect was at most a petty offender. At least three suffered from mental illness. And whatever offending did take place was minor. Had officers not shown up, no one would have died, and victims could have reported their losses in the conventional way.

But the cops *did* show up. As your blogger learned early in his law enforcement career, even the most inconsequential contact can go "high order," and that's especially true when dealing with young males and the emotionally disturbed. It's for such reasons that rookies are urged to apply the *Is it worth it?* test before taking action. Say an officer runs across a gaggle of graffiti artists. Instead of heeding orders to stay put, they scatter. Should they be chased? Imagine what citizens would say should a youngster be seriously hurt. "For goodness sakes, he was only a kid!" And they'd be right!

In an aggressive Broken Windows/Compstat era, with cops being encouraged to go after every infraction no matter how minor, stepping back may seem like an atavistic throwback to Timmy & Lassie. Yet, as we have often suggested (e.g., "First, Do No Harm"), doing nothing is sometimes the wisest option. Policing happens in unpredictable environments populated by fallible humans, and nearly one-hundred years after the establishment of the country's first criminal justice training program at UC Berkeley, interactions between cops and citizens remain frozen at the Cro-Magnon stage. No, we can't be certain that warning the cigarette peddler "don't be here when we come back" would have had much of an effect. But anything would have been far better than what happened.

Even when something *must* be done, it can make sense to do it in a more neutral environment (i.e., at someone's residence, instead of the street) or to wait until additional units are on scene. Perhaps officers could have delayed acting against the knife-wielder until someone got in position with a Taser. Unfortunately, most agencies now field single-officer cars, so teamwork has suffered. To properly take hold, group tactics must be regularly practiced and used.

Beat officers are, and should rightly remain, a department's first line of contact. "Making Time" described the shooting of an unarmed autistic youth by LAPD gang enforcement officer. Four years later, we're chronicling a disturbingly similar situation. Both episodes might have been more peaceably resolved had cops known the young men. That's why it's so important to integrate patrol into all enforcement activities, to assure that someone familiar with the territory and its inhabitants is always present.

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In this imperfect world, the emphasis properly lies on preventing the need to use force in the first place. First, by placing strict limits on when to intervene (good-riddance, Broken Windows.) And secondly, by carefully attending to the interventions that *do* occur. Pulling back may be a hard pill for some cops to swallow – after all, they’re the ones we ask to step in – but should policing lead to a tragedy, one can be sure that society will rightfully apply a very strict cost/benefit analysis to what officers did.

In retrospect, was Ferguson “worth it”?

Posted 8/27/19

A WORKPLACE WITHOUT PITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Posted 1/29/17

AN ILLUSORY “CONSENSUS” (Part I)

America’s police leaders agree on the use of force. Or do they?

By Julius (Jay) Wachtel. You might have missed it, but [about two weeks ago, on January 17](#), eleven of the nation’s major law enforcement organizations, including the IACP, FOP and NOBLE, issued a “[National Consensus Policy on Use of Force](#).” Intended for adoption by all law enforcement agencies, the model policy provides a comprehensive set of guidelines for the use of force, and in an economical three pages, to boot.

We’ll get to its contents momentarily. But while skimming the policy’s impressive list of sponsors, we noticed the absence of two key organizations, the Police Foundation and the Police Executive Research Forum (PERF). Interestingly, right about the time that the National Consensus team got started, PERF released its own “[Guiding Principles on Use of Force](#).” Drawing from police practices and experiences in the U.S. and the U.K., the comprehensive (100-page plus) report offered thirty principles to “guide” virtually everything related to the use of force, from agency policy to the actual tactics that officers employ in the field.

As regular readers know, we commented on that document in some detail (see “[More Rules, Less Force?](#)”). Its lukewarm reception by the more practically-minded members of the law enforcement community was seconded by none other than the mighty IACP, which was particularly distraught with the Principles’ criticism of the Supreme Court’s cornerstone decision on use of force, [Graham v. Connor](#), for supposedly giving officers too much leeway in deciding when to use force, and how much.

Indeed, it’s precisely that perceived need for “wiggle room” that lies at the core of the shiny, new “National Consensus” report. Here is about two-thirds of its introductory section on police policy:

The decision to use force “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” In addition, “the ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight...the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them.”

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Incidentally, everything in quotes is from *Graham*.

In essence, PERF and the Police Foundation are pressing for more stringent and precisely articulated controls on officer use of force, while the IACP and its partners (including NOBLE, the National Organization of Black Law Enforcement Executives) insist the Supremes had it right all along. So how have these competing views affected police rulemaking? Part I compares recommendations from PERF and the National Consensus to rules in Los Angeles, Chicago and New York City in two key areas: proportionality and de-escalation.

Proportionality

[PERF](#): Principle number 3, the “test of proportionality,” requires that officers use the least amount of force required, taking into account “less injurious options,” the “severity of the threat and totality of the circumstances” and whether their actions “will be viewed as appropriate by their department and the public.

[National Consensus](#): Use of force must meet the requirements of *Graham*, interpreted as “only the force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of the officer and others.” Proportionality and what others might consider appropriate aren’t discussed.

[LAPD](#): Essentially the same as National Consensus. According to vol. 1, sec. 240.10 of the LAPD Manual, when “reasonable alternatives” are absent, officers may employ “whatever force that is reasonable and necessary to protect others or themselves from bodily harm.” There is no mention of proportionality or of any concerns about what citizens may think.

[Chicago \(draft policy\)](#): Adopts *Graham* and takes it a step further, requiring that deadly force be “objectively reasonable, necessary, *and proportional*” (draft manual, section GO3-02 IIE – emphasis ours). But the practical effect of “proportional” is somewhat muted, as officers need not deploy “the same type or amount of force” as their antagonist, and “a greater level of force” is acceptable when a threat “is immediate and likely to result in death or serious physical injury.”

[NYPD](#): Does not mention “proportionality.” However, its policy manual incorporates actions such as slowing things down and giving time for help to arrive within the rubric of de-escalation (see discussion below). NYPD’s explicit force policy, however, seems like a succinct version of *Graham*: “Apply no more than the reasonable force necessary to gain control.” (Procedure 221-02, #11.)

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De-escalation

For a recent Police Issues post on point see “[More Rules, Less Force?](#)”

[PERF](#): Principles #4 and #17 identify de-escalation as a central, indispensable component of police policy and practice. As a comprehensive approach to defuse encounters, it incorporates a variety of concepts and strategies including proportionality, “slowing things down,” distance and cover, and proper communications.

[National Consensus](#): Defines de-escalation as a collection of techniques (command presence, advisements, warnings, verbal persuasion and tactical repositioning) that can reduce or minimize the use of force. While de-escalation (or at least, considering it) is required, officers have wide latitude in deciding whether to use de-escalation techniques. For example, section IV B-1 directs that de-escalation “shall” be used “when consistent with training whenever possible and appropriate.” Section B-2 instructs that persons be given time to obey directions if the delay “will not compromise the safety of the officer or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime.”

[LAPD](#): De-escalation is not mentioned in its manual. However, officers [receive instruction on de-escalation techniques](#) during in-service training. Still, [a move last year](#) by the Police Commission to incorporate de-escalation into official policy met stiff resistance. Chief Charlie Beck conveyed his reservations diplomatically: “We absolutely believe in de-escalation. But we also recognize the difficulties of police work.” A police union official expressed his views more brusquely: “Every second counts, and hesitation will kill you. Your proposed revamping of the use-of-force policy will get officers killed, plain and simple.”

[Chicago \(draft policy\)](#): Chicago’s comprehensive draft rules on use of force identify a variety of de-escalation techniques (e.g., making time, keeping one’s distance) and mandate their use when doing so is possible. Again, there is abundant wiggle room. Rule II-G, for example, requires de-escalation “as soon as practicable.” Surprisingly, that apparently means *after* things settle down:

2. [Officers must] de-escalate as soon as practicable. *Once control of the subject has been obtained and the threat or resistance no longer exists (emphasis ours),*
Department members will:
 - a. de-escalate immediately.
 - b. avoid the continued use of force.

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c. maintain control and be alert to any conditions that may compromise the security or safety of the subject.

NYPD: Its use of force rules (click [here](#) and [here](#)) offer detailed guidance. For example, Procedure 221-02 defines and distinguishes between “active” resistance, “passive” resistance and “active aggression.” Officers are repeatedly urged to seek help from supervisors and specialized units (NYPD is well-known for its Emergency Response Teams) when encountering difficult persons. That is where de-escalation fits in:

DE-ESCALATION – Taking action to stabilize the situation and reduce the immediacy of the threat so that more time, options, and/or resources become available (e.g., tactical communication, requesting a supervisor, additional MOS and/or resources such as Emergency Service Unit or Hostage Negotiation Team, etc.) (221-02, pg. 1)

Officers nonetheless retain abundant leeway, with de-escalation required only “when appropriate and consistent with personal safety” (221-01 and 221-02, #2).

In Part II we’ll compare rules governing the use of lethal force, including shooting at vehicles and fleeing suspects, as well as guidelines for dealing with the mentally ill. We will also have something hopefully useful to say about information practices (a seldom-mentioned issue addressed by PERF) and the difficulty of translating good intentions into good policy. Stay tuned!

Posted 2/11/17

AN ILLUSORY “CONSENSUS” (Part II)

Good intentions don’t always translate into good policy

By Julius (Jay) Wachtel. This series compares use of force guidelines promulgated by PERF and the National Consensus to police regulations in Los Angeles, Chicago and New York City. Part I covered two key concepts: proportionality and de-escalation. In Part II we analyze specific rules that govern the use of lethal force, including shooting at vehicles and at fleeing suspects, and discuss agency guidelines for dealing with the mentally ill.

Lethal force

[Graham v. Connor](#), the Supreme Court’s landmark decision on use of force, makes no special distinction as to deadly force. According to Graham, “whether officers’ actions are objectively reasonable” must be analyzed “in light of the facts and circumstances confronting them,” using “the perspective of a reasonable officer on the scene.” These “facts and circumstances” include “the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.”

[PERF](#): Principle 3 is a commonsensical rule that prohibits using deadly force against persons who only pose a threat to themselves. PERF does not otherwise distinguish as to lethal force. Throughout, its emphasis is on de-escalation and other strategies that can help avert the need to use force against persons not armed with a firearm.

[National Consensus](#): Adopts *Graham*. Allows officers to use deadly force to protect themselves and others from an imminent threat of death or serious bodily injury. (See below for circumstances involving fleeing persons.)

[LAPD](#): Its basic rule does not distinguish between deadly and non-deadly force and sets the threshold for using force as the need to protect oneself or others from “bodily harm.”

While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers are permitted to use whatever force that is reasonable and necessary to protect others or themselves from bodily harm.
(240.10)

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[Chicago \(draft policy\)](#): Similar to LAPD rule but specifically refers to “proportionality” (see Part I of this series):

Consistent with the Department's commitment to the sanctity of life, the Department member's use of deadly force must be objectively reasonable, necessary, and proportional. During all use of force incidents, Department members will apply the force mitigation principles and use the least amount of force required under the circumstances. (sec. II-F-2).

[Chicago's standing policy](#) on the use of deadly force, which apparently remains in effect, stipulates that officers “will not unreasonably endanger themselves or another person to conform to the procedures in this directive” (Order GO3-02-03, sec. IV). No such reference appears in the newer, draft policy.

[NYPD](#): https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations_pdf/pg221-01-force-guidelines.pdf Encourages de-escalation but otherwise parallels the language of the National Consensus:

In situations in which [using de-escalation techniques] is not safe and/or appropriate, MOS [member of the service] will use only the reasonable force necessary to gain control or custody of a subject. The use of deadly physical force against a person can only be used to protect MOS and/or the public from imminent serious physical injury or death (pg. 1).

Shooting at vehicles

[PERF](#): Rule#8 prohibits shooting at vehicles unless an occupant is “using or threatening deadly force by means other than the vehicle itself.”

[National Consensus](#): Permissible if an occupant of the vehicle is threatening with deadly force “other than the vehicle” (sec. D-3-c-1) or if the vehicle is being used as a weapon and officers lack other “present or practical” means to avoid being struck (sec. D-3-c-2).

[LAPD](#): Follows the PERF model but opens the possibility of permissible departures with a note that concedes “this policy may not cover every situation that may arise.” In such cases factors such as the level of peril and whether officers had other means to avoid being harmed will be considered, but deviations “shall be examined rigorously” (sec. 556.40).

[Chicago \(draft policy\)](#): Essentially adopts the National Consensus approach. No firing at vehicles if they are the only force being used unless doing so is “reasonably necessary” to

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prevent death or great bodily injury to officers or other persons (order G03-02, sec. II-F-6-f).

[NYPD](#): Its highly restrictive rule, apparently a model for PERF, has been in place for years:

Members of the service SHALL NOT (f) Discharge their firearms at or from a moving vehicle unless deadly physical force is being used against the member of the service or another person present, by means other than a moving vehicle (proc. 221-01, page 3, sec. 1-f).

NYPD's [2013](#) firearms discharge report notes that state law is more forgiving, allowing officers "to shoot at the driver of a vehicle who is using the vehicle so that it poses an imminent threat of deadly physical force" (pg. 3). But whether NYPD actually enforces its own, strict rule is open to question. This report - they are issued yearly - lists four ID-AC ("intentional discharge-adversarial conflict") incidents in which officers were assaulted with moving vehicles classified as "blunt instruments" (pg. 22.) None of these events appear on that year's list of unauthorized firearm discharges (pp. 43-44). NYPD's discharge reports for [2012](#), [2014](#) and [2015](#) paint a similar picture.

Shooting at fleeing suspects

[PERF](#): Not mentioned.

[National Consensus](#): Allows it to prevent flight (need not be a felon) "when the officer has probable cause to believe that the person has committed, or intends to commit a felony involving serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to the officer or another if the subject is not immediately apprehended" (sec. IV-D-1b)

[LAPD](#): More restrictive than National Consensus, requiring both an imminent risk and that the person fleeing is a felon "for a crime involving serious bodily injury or the use of deadly force" (sec. 556.40).

[Chicago \(draft policy\)](#): More permissive than the National Consensus or LAPD. Requires only that "the sworn member reasonably believes that the person to be arrested poses an immediate threat of death or great bodily harm to a sworn member or another person unless arrested without delay" (order G03-02, sec. II-F-4-b).

[NYPD](#): Similar to LAPD – fleeing suspect must be a felon (offense not specified) and present an imminent threat of "death or serious physical injury to the MOS [member of

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the service] or another person present” (proc. 221-01, page 3, sec. 1-c). A foreword notes that this and other rules are more restrictive than what the law requires:

Uniformed members of the service are authorized under New York State law to discharge a firearm to prevent or terminate the unlawful use of force that may cause death or serious physical injury, taking into account the below prohibitions imposed by the Department...(proc. 221-01, page 2, sec. 1)

Dealing with the mentally ill

[PERF](#): Extensive discussion of the need for officer training and specialized responders. Officers are encouraged to dialog with mentally ill, take the time to call in specialists, and to avoid deploying Tasers against mentally ill persons armed only with a knife unless the instrument is being wielded “in an aggressive, offensive manner” (p. 19).

[National Consensus](#): Not mentioned.

[LAPD](#): Rules mention a commitment to fair, compassionate treatment (sec. 240.30). LAPD deploys [mental illness response teams](#) staffed by officers and clinicians.

[Chicago \(draft policy\)](#): Officers are required to communicate calmly, de-escalate, establish a “zone of safety” and call for a supervisor. When mentally ill persons are armed “Department members will not attempt to take the subject into custody without the specific direction of a supervisor unless there is an immediate threat of physical harm to the subject, Department members, or others” (order SO4-20-01, sec. II-B-1). As in L.A. and New York, specialized mental health response units are on call.

[NYPD](#): Extensive stand-alone policy similar to Chicago’s. Stipulates that deadly force can only be used “as a last resort to protect the life of the uniformed member of the service assigned or any other person present.” Extensive tactical advice with emphasis on slowing things down, establishing a “zone of safety” and, when persons are uncooperative or armed, waiting for a supervisor unless there is an imminent threat of serious physical injury or death (proc. 221-13, sec. 1, pg. 1).

As we mentioned in Part I, PERF’s well-articulated intentions to restrict the use of force well beyond Graham’s “objectively reasonable” standard [dismayed the IACP](#). Indeed, honorable intentions don’t always translate into good policy. Consider PERF’s criticism of officers who used a Taser to dislodge a schizophrenic clinging to a signpost ([Guiding Principles, pg. 18](#)). The man died, likely from the effects of being shocked five

times in quick succession. In prior posts (click [here](#) and [here](#)) we cited warnings about the possibly lethal effects of administering repeated ECW doses in close succession. [PERF's 2011 report on electronic control weapons](#) carries a similar warning. What's interesting here is that [a Federal appeals court ruled](#) in a lawsuit filed by the schizophrenic man's survivors that the officers violated *Graham* for too hastily deploying the device in the first place. In its full-page spread on the matter, PERF prominently agreed. (The cops were nonetheless granted qualified immunity.)

Yet one must wonder. In "[Is it Always About Race?](#)" we suggested that delaying a Taser's deployment could lead to something far worse:

Incidentally, our vision of Tasers and bean-bags as preventive tools probably clashes with some agency guidelines. Bringing down an uncooperative someone with a less-than-lethal weapon is best done the instant it's possible. Waiting for additional justification can turn into a death warrant. So reworking the rules governing the use of less-than-lethal force may be called for.

Had the officers dealing with the mentally ill man succeeded after administering a single dose, their actions would have been applauded. Yet who catalogs successful outcomes?

The "real world" is sloppy in other ways. Point in case: shooting at vehicles. Imagine being a cop on foot as an uncooperative bad guy sits in a car nearby with the engine idling. Always avoid placing oneself in a vulnerable position? Then by all means avoid law enforcement. Agencies write in endless "imminent risk" exceptions so that use of force rules can bend to the exigencies of the real world. Or, as may be the case in New York City, they look the other way when cops fire at vehicles.

Of course, rules have value. Yet the ultimate cure is prevention. In "[A Stitch in Time](#)" we urged that officers be kept informed about persons in mental distress. [PERF Principle number 29](#) deems well trained, informed call-takers and dispatchers indispensable (pg. 68):

A number of controversial uses of force by police have stemmed from failures of call-takers and dispatchers to obtain, or relay to responding officers, critically important information about the nature of the incident.

[The Center for Problem-Oriented policing](#) recommends that police departments make information about mentally disabled persons available to dispatchers so it can be passed on to patrol. Of course, doing so is potentially intrusive, but as we've said, so is shooting someone, or getting shot.

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We should also be far more curious about successes. Every day cops peacefully resolve countless incidents that could have ended very poorly. Systematically collecting data about these events could prove highly enlightening. How do differences in policy, resources, tactics and officer characteristics influence outcomes? In “[Is it Always About Race?](#)” we suggested that policing requires that officers accept some risk. How much is too much, and how much is not enough? Figuring out why cops succeed seems like a far better approach to improving the practice of policing than simply tweaking the rulebooks.

Posted 6/3/17

ARE CIVILIANS TOO EASY ON THE POLICE?

When attempts are made to sanction cops, citizens often get in the way

By Julius (Jay) Wachtel. In [“Is it Always About Race?”](#) we commented on the tragic encounter between a Tulsa cop and [Terence Crutcher](#) last November 16th. Crutcher, 40, had abandoned his truck in the middle of the road and was walking around disoriented. He ignored the first officer on the scene, Betty Jo Shelby, and as backup arrived he returned to his vehicle and reportedly reached in. Officer Shelby, who is white, fired her pistol and another cop discharged his Taser. Crutcher, who was black, was fatally wounded. No gun was found.

Prosecutors charged Officer Shelby with first-degree manslaughter. [During an interview](#) with the television show “60 Minutes,” Officer Shelby insisted that in light of her training, Mr. Crutcher’s behavior left her no choice but to shoot him. Meaning, with a gun, not with the Taser that she also carried.

Neither a use of force expert nor any police trainers testified. However, evidence came in that Crutcher, who had done prison time on drug charges, had resisted cops in the past and was high on PCP when he was shot. After deliberating nine hours a jury of nine whites and three blacks acquitted Officer Shelby. In an extraordinary public letter (click [here](#) and [here](#)) the panel’s foreperson explained why jurors voted to acquit. While they wished that Officer Shelby had tried something else to defuse things, Crutcher’s final move placed her in a tight fix, and her reaction – supposedly based on training – seemed justified.

Five years ago NYPD narcotics officers [stormed the apartment](#) of a teen they trailed from a suspected drug deal. One cop, Richard Haste, confronted Ramarley Graham, 18, in a bathroom. Officers thought that Graham was armed, and when he supposedly reached into a pocket [Officer Haste shot him dead](#). No gun was found. A grand jury originally charged Officer Haste for manslaughter. However, that indictment was quashed by a judge, and a second panel refused to indict. Officer Haste contested moves to remove him from the force and remained on the rolls until March 24, 2017, [when he was ultimately fired for cause](#).

Trial jurors have also proven reluctant to bring officers to account. On October 6, 2016 an Albuquerque jury [hung 9-3 in favor of acquitting two former cops](#) accused of

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second-degree murder in the shooting death of a mentally ill homeless man. Although video from helmet cameras didn't depict an imminent threat, the officers testified that they acted in accordance with their training and only fired because the suspect, who held a knife in each hand, seemed "within arm's reach" of another cop (he was really about ten feet away) and was about to attack. Criminal charges were ultimately dropped. One officer retired and the other was fired.

Two months later a white North Charleston, SC officer on trial for murder [drew a hung jury](#) despite a video that clearly depicted him repeatedly shooting an unarmed, fleeing black man in the back. The cop, Michael Slager, avoided retrial by pleading guilty to Federal civil rights charges.

And who can forget that "[Very Rough Ride](#)", when Baltimore police shoved a hog-tied Freddie Gray into a paddy wagon and transported him unrestrained through city streets, causing Gray to suffer fatal injuries as he bounced around the vehicle's interior. Three officers (including a Lieutenant) were ultimately taken to trial. [All were acquitted](#).

Such outcomes shouldn't be surprising. [A recent Frontline investigation](#) concluded that citizen members of civilian review boards "may sometimes be overly deferential to the police because they don't have sufficient background in law enforcement."

It's precisely that "deference" that the LAPD officers' union apparently wishes to exploit. In La-La Land (Los Angeles, to the non-musically inclined) the Chief of Police doesn't have the final word on officer discipline. [City Charter section 1070](#) assigns the responsibility of adjudicating allegations that could lead to suspension, demotion or termination to Boards of Rights. Akin to military courts-martials, they have been comprised of two command officers and one civilian "Hearing Examiner" and decide cases by majority rule.

So how have the "civilians" ruled? [An impartial review](#) of BOR findings between 2011-November 2016 revealed that non-officer members "were consistently more lenient than their sworn officer counterparts." Each time that a cop was found guilty civilians voted for a reduced penalty, and whenever the Chief recommended termination but an officer was acquitted civilians were always on the majority side.

These civilians aren't ordinary folks. Applicants for the paid, part-time position [must have at least seven years of experience](#) in arbitration, mediation, administrative hearing or comparable work. Still, they're not cops, and they know it. That's why the officer union [has long pressed](#) to let officers accused of misconduct be tried by civilians alone.

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To do just that an obliging City Council (after all, they must get campaign funds from somewhere) [inserted Measure “C”](#) on the May 2017 ballot. Outraged members of liberally-minded interest groups, including the ACLU, saw the move as tailor-made to tilt the scales in favor of accused cops and [demanded that the council reverse itself](#). But council president Herb Wesson ([his image graced](#) a “Yes on C” flyer) and his colleagues demurred, and [the measure passed](#) by a comfortable margin. Officers will soon have the choice of being tried by the conventional two-officer, one civilian BOR or one with three civilian members.

Like other complex crafts, police work is probably best evaluated by its practitioners. None of the jurors in Officer Shelby’s case was or presumably had been a cop. Neither did they receive an expert analysis of what took place. As [the foreperson’s letter](#) suggests, had such testimony been heard the outcome might well have been different:

The Jury, without knowledge of the guidelines learned through law enforcement training, believes that a Taser attempt to subdue Mr. Crutcher before he reached his vehicle could have saved his life and that potential scenario was seemingly an option available to her; however, there was no evidence presented that her extensive training allowed such an option. The Jury could not, beyond a reasonable doubt, conclude that she did anything outside her duties and training as a police officer in that situation....

We’re not aware of any protocols that encourage cops to pull the trigger simply because they fear that someone who is *not* suspected of having committed a violent crime and is *not* being assaultive may be reaching for a gun that’s *not* in view. Still, lacking expert advice, the complexities of street encounters might lead even the best-intentioned jurors to endorse actions that most cops would never take. As we’ve repeatedly pointed out, officers routinely resolve even the most problematic encounters in non-lethal ways. Doing so, of course, [may call for taking a calculated risk](#), something that Officer Shelby may have been reluctant to do. She is now back on the job, although [no longer on patrol](#).

Juries’ reluctance to convict cops will be tested in two other cases presently wending their way through the courts. Two years ago a white Ohio campus cop [was indicted on murder and manslaughter charges](#) for the “senseless, asinine shooting” (the prosecutor’s words) of a black driver during a traffic stop. Although the incident, which was captured on the officer’s body cam, began routinely enough, the vehicle’s operator suddenly tried to drive away, throwing the cop off balance and leading him to fire. [The first trial ended with a hung jury, and a retrial is pending](#).

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In “[A Stitch in Time](#)” we wrote about the killing of Deborah Danner, a 66-year old schizophrenic [who took a baseball bat](#) to a NYPD sergeant who entered her bathroom to calm her down. Sgt. Hugh Barry, 31, shot the woman dead. His actions brought forth a wave of citizen protests and condemnation by the Mayor and Police Commissioner, who criticized his failure to deploy a Taser or wait for a mental health unit as [departmental guidelines apparently require](#). Seven months later, on May 31, 2017, a Bronx grand jury [returned a true bill](#) charging Sgt. Barry with murder and manslaughter.

If these (in our measly opinion, clearly inflated) cases proceed as is, their severe tone – remember, we’re talking *murder* – may indeed lead to a conviction, if nothing else by setting the stage for a compromise verdict on manslaughter. That’s not the way we would prefer that justice get done, but in these hyper-political times getting jurors to go against the grain has apparently become two ambitious prosecutors’ Job #1.

Posted 12/18/23

ARE CIVILIANS TOO EASY ON THE POLICE? (II)

Exonerated of murder, but not yet done



For Police Issues by Julius (Jay) Wachtel. On Wednesday evening, December 6, one week after opening arguments and “less than two hours” after getting the case, a Prince George’s County, Maryland criminal jury [acquitted suspended police officer Michael A. Owen, Jr. of all charges](#) over the January 27, 2020 shooting death of William Howard Green (right-side photo). Owen (left side photo) had been in custody since one day after the shooting. And [as the first Prince George’s officer](#) to ever be charged with an on-duty murder, he was denied bail and wound up spending *nearly four years* behind bars awaiting trial. (Shockingly, he may have another one coming. We’ll get to that later.)

Unlike the gnarly circumstances (i.e., pretextual traffic stops) that underlie many of our posts, the tragic encounter with Mr. Green [began as an episode of so-called “routine” policing](#). Owen was dispatched to the scene of a major traffic wreck. Mr. Green’s car had gone out of control, struck several other vehicles and “crashed into a tree”. Passers-by found him unconscious and called police. And when officers arrived they quickly observed that Mr. Green was deeply intoxicated. As Owen’s prosecutor conceded, Mr. Green “did cause several accidents and was high on PCP or at least had PCP in their system”.

After the officers searched and handcuffed Mr. Green (natch, behind his back) they placed him in the front passenger seat of Owen’s cruiser. Mr. Owen’s colleague stepped away to interact with witnesses and victims. Owen took a seat behind the wheel to watch over Mr. Green and await the arrival of a drug testing unit. Its arrival, though, was delayed. After about twenty minutes Mr. Green said he had to urinate, and the ex-officer’s response [supposedly agitated him](#). Mr. Green reportedly turned violent and a struggle ensued. According to the cop, his prisoner had somehow gotten hold of a gun,

and Owen grabbed it and fired in self-defense. Owen insists that he was startled to discover that the pistol was, in fact, his own duty gun. It was fired seven times. Its first shot apparently went astray. But the six bullets that followed struck Mr. Green and inflicted fatal wounds.

Alas, then-cop Owen wasn't assigned a bodycam. None of what happened was captured on video, so all we "know" is what he said. Instead of just relying on media accounts, let's turn to his courtroom testimony. It took place on Monday, December 4 (we paid the court reporter for the transcript).

DIRECT EXAMINATION BY OWEN'S LAWYER

Owen testified that he was dispatched to an accident with injuries. On arrival a witness pointed to the vehicle that caused the collision. As he and Corporal Villaflor approached the car they observed Mr. Green inside, "slumped against like the driver side window" and "nonresponsive." Mr. Green slowly awakened when his partner rubbed his sternum. They physically hauled Mr. Green out of his car and patted him down. It wasn't a "search"; they didn't reach into his pockets. That's when Owen told his partner "I smell PCP."

Owen feared that Mr. Green could turn violent, so he was handcuffed behind his back. Mr. Green noticeably reacted. "Mr. Green is not resisting per se but he's tensing up. He's pulling away. And so we kind of have to use like joint manipulation just to get him in handcuffs." Owen then fetched his car and his partner left. Owen placed Mr. Green in the front passenger seat. Policy required it for "single-officer" cars that lack a cage. He then backed the cruiser into a parking space to get it out of the way.

Owen spent the next twenty minutes "doing paperwork on my computer" while "keeping an eye on Mr. Green". He occasionally asked questions. At first Mr. Green was mostly unresponsive. He dozed on and off. But then things turned in a decidedly negative direction.

Owen: *"...as he began to become more lucid...his behavior deteriorates. He starts using vulgar language and begins to tell me he does what he wants, he wants to go to the bathroom, which my response is give me few minutes, sir, and I'll get you to a bathroom as soon as I can. But he becomes more and more agitated as time goes on..."*

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According to Owen, Mr. Green moved his hands from the side and placed them “behind his back.” He then “begins to reach into the small of his back and it looks like he’s manipulating something”.

Owen: *“I grabbed his hands and pulled them back out from behind him and told him don’t do that, leave your hands to the side.”*

Q: *“And did he comply with that request?”*

Owen: *“For about like five seconds... and then he goes back and continues to look like he's manipulating something. At this point he actually raises up off his seat, kind of presses feet against the floor board.”*

Owen said he reached for the in-car microphone to call for help. But Mr. Green used his left leg to knock it out of his hands.

Owen: *“...immediately after that he began thrashing about. I’m still trying to control his hands. And he’s throwing his body weight around, trying to kind of head-butt me and stuff. I’m trying to control him as best I can, but it’s very obvious that he has like superhuman strength.”*

Owen said he tried to apply “pain compliance” by twisting the handcuffs, but it didn’t work.

Owen: *“...So he's twisting the upper part of his body. His legs are flailing. He's moving from one side to the other. He's generally trying to get away from me...He was calling me all types of names, bitches, pussy ass nigger was one of them...”*

And when Owen tried to use his personal radio, Mr. Green “escapes my grasp”.

Owen: *“...he hits me very forcefully with all of his body weight pressing me, really slamming me into the B pillar driver’s side of the car... causing me excruciating pain in my torso section.”*

Owen then heard “a hollow metallic thud”.

Owen: *“I recognized -- I know it’s a gun hitting the center console. No doubt about that in my mind. I fight through the pain and look down in the center console and there is a gun... Mr. Green had his hands on the gun, saw that the gun was pointed at me...”*

Owen said that he didn’t run off because he could have been shot in the back. So he grabbed at the gun.

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Owen: *"We're struggling over it. He's extremely strong...I reached down, grabbed the gun, struggling over it with Mr. Green, trying to, one, you know, turn the muzzle away from me, and, two, get it from him in general..."*

Q: *"Okay. And what happens next?"*

Owen: *"As we're fighting over the gun, a shot is fired...At that point I was able to retrieve the gun and I fired a quick succession of rounds, stopped, re-accessed Mr. Green's behavior at this point, and then was able to safely exit the car based off of his behavior..."*

Q: *"Okay. And what observations did you make to lead you to the conclusion that he was no longer a threat to you?"*

Owen: *"He wasn't moving anymore."*

According to Owen, he didn't realize that it was his own gun.

Owen: *"I knew that it was a black handgun. During that entire interaction I don't -- I'm not processing these very minute details. And so I look at the gun -- and again this happens extremely quickly -- but I look at the gun, recognize that it is a Smith and Wesson. And when and I look down at my holster, and my jaw just dropped."*

Owen said that Mr. Green's hands on the gun eliminated less-lethal alternatives, such as a Taser.

Q: *"So what I'm talking to you about is when saw the gun, when you looked at it and saw Mr. Green's hand on the gun, was anything in the continuum use of force a possibility aside from deadly force?"*

Owen: *"No, sir."*

Q: *"And is that why you exercised deadly force in this case?"*

Owen: *"Yes."*

CROSS-EXAMINATION BY STATE'S ATTORNEY

Owen agreed that the original pat-down should have detected a concealed weapon. He said that he again patted down Mr. Green before placing him in his car, but said it wasn't as thorough. Owen also testified that he did not feel his gun leave its holster. And he insisted that while Mr. Green was handcuffed behind his back, that's not where his hands wound up:

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Owen: *"I hear [the gun] hit the center console. When I looked back toward Mr. Green he is no longer making contact with me. He's got his hand on the gun."*

Q: *"With his hands still behind his back?"*

Owen: *"His hands are not behind his back, they're off to the side, he's handcuffed behind his back, but his hands are off to the side and kind of turning a little bit away from me...He's got the gun pointed at me with his hands."*

Owen rejected the prosecutor's implied criticism of his gunfire.

Q: *"After firing shot number two, did you reassess the threat?"*

Owen: *"Sir, these shots are happening extremely quickly. I think we heard witnesses testimony say sound like a machine gun. So --"*

Q: *"You have to pull the trigger intentionally each time, correct?"*

Owen: *"Yes, but all of these happened together. There is not -- extremely quickly. There is not a lot of time for -- I think like I'm going to die, sir..."*

But when pressed about why he didn't get out of the car after the first shot, Owen said that Mr. Green might have had another gun and shot him in the back.

Q: *"So, when after -- once you got control of the gun, you fired the other six shots because you believed that he still was in possession of a gun, correct?"*

Owen: *"Yes."*

Q: *"And ultimately you realized that he didn't -- there was no other gun in the vehicle, other than your gun, correct?"*

Owen: *"I believe that if I turned to exit the vehicle that it was possible that Mr. Green, because of his movements, had another weapon and might use it, and might use it against me."*

RE-DIRECT EXAMINATION BY OWEN'S LAWYER

Owen's lawyer promptly honed in on the basics:

Q: *"When you looked and saw the gun on the center console with Mr. Green's hand on it, pointing at you, what did you think?"*

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Owen: *"I thought I was going to die."*

Q: *"Is that why you reacted the way you reacted?"*

Owen: *"Yes."*

STATE'S ATTORNEY: *"I have no officer questions."*

JUDGE: *"You may step down."*

Prince George's County State's Attorney Aisha Braveboy disparaged the suspended officer's testimony as "outrageous" and "certainly implausible". Naturally, [she was gravely disappointed by the verdict](#):

We believe that Cpl. Owen committed a crime that night, and he did in fact murder William Green. However, the burden is on the state, and it is a very high burden. There were only two people in the vehicle that night that could tell us what happened, and unfortunately one of them is no longer with us.

Throughout the trial, she battled the notion that Owen had faced a *real* threat. So what drove him to kill? In her closing remarks, she suggested that the cop got mad because Mr. Green urinated in his patrol car. That's admittedly a big leap. Still, she needed *something*. Local residents (even some judges) had long displayed a reluctance to sanction cops who tangled with misbehaving souls. For example, in 2005 [jurors acquitted a Prince George's cop](#) of assaulting a suspect who had stolen a van "at gunpoint," then crashed it when pursued. Video depicts the officer (like Owen, a corporal) repeatedly kneeling and whacking the man even after he's handcuffed and on the ground. State's attorney Glenn Ivey, who had two years on the job, was disappointed in the outcome. Still, as he well knew, his predecessor had prosecuted *eleven officers* for misconduct in eight years but failed to gain a *single* conviction.



Natch, it's not just Prince George's. In an unforgettable 2015 episode, Baltimore police arrested [Freddie Gray](#). His behavior had drawn the attention of bicycle cops, and in the ensuing struggle they found a switchblade in his pockets. Mr. Gray was arrested, hog-tied and shoved into a paddy wagon. Alas, no one had belted him into a seat, and he suffered fatal injuries while bouncing around during transport. Six officers (including a Lieutenant) were

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charged with murder and manslaughter. Each was acquitted, and the Feds [refused to bring charges](#).

Indeed, as we reported in [Part I](#) and its updates, citizens are reluctant to convict cops who tangle with palpably naughty characters. That's frustrated the progressive, reform-minded prosecutors who came aboard post-George Floyd. Last year, the office of then-San Francisco [D.A. Chesa Boudin](#) (he's since been recalled for being too soft on crime) prosecuted "[the first excessive-force trial for an on-duty officer in the city's history](#)." And as usual, jurors returned a "not guilty" verdict. In your writer's own stomping grounds, [a jury recently acquitted](#) two former Long Beach, Calif. police officers of perjury for accusing the wrong parolee (two were detained) of possessing a gun. In 2018, when the stop occurred, the then-D.A. chalked the cops' faux-pas as an honest (if unfortunate) mistake. But when [reformist D.A. George Gascon](#) took the helm in 2020, things changed.

Cops know that citizens are likely to grant them a "pass". That's why LAPD's rank-and-file championed the 2019 city ordinance that currently [lets officers choose all-civilian panels](#) to rule over the Chief's decisions to fire. Naturally, Chief Michel Moore [thinks that was a very bad move](#). Here's an extract from his December 7, 2022 memorandum to the Police Commission:

The Department has observed that all-civilian Boards are resulting in an increased frequency in which sworn employees who have committed serious misconduct are not being removed from their positions. Similarly, all-civilian Boards are proving substantially more lenient reducing every recommended penalty in each Board completed this year.

Would it have helped Owen's prosecutor if she could have brought up his prior disciplinary record? [According to the Washington Post](#), his ten years on the job were sprinkled with controversy. Here's a summary:

- **[November 11, 2010](#)**: Shortly after graduating from the academy, Owen exchanged gunfire with a would-be mugger while off-duty. No one was struck.
- **[December 17, 2011](#)**: Owen shot and killed an apparently intoxicated man who was lying on the grass and allegedly pointed a gun. A loaded gun was found, and the man's past included firearms charges. Owen applied for and received State compensation for a "permanent partial disability" supposedly brought on by this encounter. He apparently continued receiving treatment for PTSD throughout his career.

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- **2013:** Owen didn't appear in court for the arraignment of a "suspicious" man with whom he tangled. Charges against the suspect were dismissed in exchange for dropping a lawsuit that claimed Owen assaulted him.
- **2016:** Charges in two traffic-related cases were dismissed because Owen failed to show for court. In the first, a woman accused him of grabbing her neck during an argument. In the other, an off-duty college cop disputed that he became combative. These no-shows led Owen to be flagged in the agency's "early warning" system.
- **July 13, 2019:** Owen's alleged use of brute force on an uncooperative suspect apparently led prosecutors to drop charges against the man.
- **July 31, 2019:** Owen accidentally discharged his gun while struggling with a motorcycle thief (no one was struck.) Owen had to take "judgment enhancing shooting training" and meet with the department psychologist. He was again flagged in the early warning system.

[And there was that lawsuit.](#) On Monday, September 28, 2020, eight months after Mr. Green's death and nearly three years before Owen was tried, Prince George's County settled with the victim's family for \$20 million. They had been represented by the same Baltimore law firm ([Murphy Falcon & Murphy](#)) that had obtained a \$6-million-plus payout for the death of Freddie Gray.

No dice there either. As far as the trial judge was concerned, it was all about what happened on that Monday night in 2020. *Everything* else was off-limits. Still, prosecutor Braveboy *did* get a break. While neither the officer's disciplinary history nor the survivor lawsuit could come in, neither would his alleged victim's criminal record.

Docket Information			
↕ Date	Docket Text		
06/16/2003	JUDGE: RETCHIN , JUDITH CONTINUED: 2 BOND STATUS: PERSONAL RECOGNIZANCE	DEFENSE ATTY: BARON	BO
07/11/2003	JUDGE: RETCHIN , JUDITH CONTINUED: 2 BOND STATUS: PERSONAL RECOGNIZANCE	DEFENSE ATTY: BARON	BO
09/17/2003	JUDGE: RETCHIN , JUDITH PLEA GUILTY: 2 JUDGMENT: 2 SENTENCED: 2 BOND STATUS: PERSONAL RECOGNIZANCE COUNT: 2 TYPE:ESS ENTIRELY CONFINEMENT: 180 D / PROBATION: 001	COMMENT:COMMUNITY SERVICE CONF. SUSP: 180 D / TYPE: SUPERVISED	BO
08/03/2004	JUDGE: RETCHIN , JUDITH CONTINUED: 2 BOND STATUS: PERSONAL RECOGNIZANCE	DEFENSE ATTY: BARON	BO
08/06/2004	JUDGE: RETCHIN , JUDITH SENTENCED: 2 BOND STATUS: PERSONAL RECOGNIZANCE COUNT: 2 TYPE:ESS ENTIRELY CONFINEMENT: 180 D / PROBATION: 001	COMMENT:COMMUNITY SERVICE CONF. SUSP: 180 D / TYPE: NO CHANGE IN SENTENCE	BO
08/15/2004	Notice of Filing:		
01/15/2006	**CONVERTED RECEIPT HISTORY AS OF 2006-01-15** 2004-02-09: RECEIPT #: 20619325 AMOUNT: \$50.00 CAN NUM: 4668 TENDER: Cash CHECK #: 0 FROM: GREEN, WILLIAM		

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And one *did* exist. According to [D.C.'s WUSA9](#), Mr. Green had been arrested by D.C. police in 2003 for “buying a single PCP-laced cigarette”. Our [online examination of court files](#) (see above image) revealed that “William Green” was charged with felony possession of PCP on May 30, 2003 (case no. “2003 FEL 003162”). Mr. Green pled guilty that September and drew probation. Apparently things didn’t work out: there was a re-do in 2004, but probation was re-imposed. D.C.’s criminal case website has many other entries for a “William Green”. However, there are no birthdates or other means to readily determine whether any are about our Mr. Green. As for Prince George’s County, only civil cases are accessible online. So our tools for probing the victim’s record were limited.

Still, the suspended cop remains suspended. And it’s over allegations that seem unlikely to draw nearly as much sympathy. In August 2021 [the Feds indicted Owen and five other D.C.-area cops on conspiracy charges](#). According to DOJ, they participated in an elaborate scheme to defraud insurance companies and financial institutions by

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND	
UNITED STATES OF AMERICA	*
v.	*
CONRAD DARWIN D’HAITI, PHILIP JAMES DUPREE, MARK ROSS JOHNSON, JR., MICHAEL ANTHONY OWEN, JR., JARON EARL TAYLOR, and CANDACE DANIELLE TYLER,	*
Defendants	*
	CRIMINAL NO. <i>Px21CR2</i>
	(Conspiracy to Commit Bank Fraud, 18 U.S.C. § 1349; Conspiracy to Commit Mail and Wire Fraud, 18 U.S.C. § 1349; Conspiracy to Commit Wire Fraud, 18 U.S.C. § 1349; Forfeiture, 18 U.S.C. §§ 981(a)(1)(C) and 982(a)(2), 21 U.S.C. § 853, 28 U.S.C. § 2461(c))

falsely reporting the theft of vehicles, debit cards and funds from bank accounts. [Owen recently pled not guilty](#) and was released pending trial. This case, though, was *also* off-limits for prosecutor

Braveboy. After all, imagine how it might have biased the jury’s opinion of the accused’s integrity and truthfulness.

Just imagine.

Whether civilians really *do* “go too easy” on police promises to be a never-ending debate. As we “go to press” Washington state jurors are deliberating the fate of three Tacoma police officers who were charged with murder and manslaughter in the death of [Manuel Ellis](#). During a nine-week trial, officers Christopher Burbank, Matthew Collins and Timothy Rankine were accused of needlessly pummeling, choking and Taser-ing Manuel Ellis during a seemingly minor encounter and [ignoring his protests that he couldn’t breathe](#). Indeed, the Coroner attributed his demise to oxygen

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deprivation caused by forcible restraint. But the defense insisted that Ellis, a meth user, “[created his own death](#)”:

This is a situation where [Ellis] created his own death. It was his behavior that forced the officers to use force against him.”

That was, in effect, Owen’s defense. Will it work for Tacoma’s cops? Check the update!

Posted 11/16/07

ASSISTED SUICIDE IS NOT POLICE WORK!

Less-than-lethal weapons can keep cops from becoming executioners

By Julius Wachtel, (c) 2010

Four nights ago, after menacing family members with knives, an 18-year old New York City psychiatric outpatient with a violent past confronted officers responding to his mother's frantic 9-1-1 call. In the dark, the youth drew an object from his clothing, pointed it in the cops' direction and demanded to be killed. Four uniformed officers and a plainclothesman fired twenty shots. Ten struck and killed the boy.

The item turned out to be a hairbrush. An emergency response team with less-than-lethal weapons had been summoned but was not yet on scene. The shooting continues to be heavily criticized by angry residents but is being staunchly defended by the Police Commissioner, who said that the officers were reasonably in fear of their lives.

After a heavy night of partying, an 18-year old Huntington Beach, California girl stumbled home, slashed at her mother with a knife, inflicting minor cuts, then ran around the neighborhood, brandishing the weapon at passers-by and stabbing a tree. When two officers approached the woman yelled "I'm on drugs, just ... kill me". Ignoring orders to drop the knife, she charged the cops. They fired, striking her fifteen times. Later, the coroner confirmed that the youth had been high on meth.

When the shots rang out a third officer, who had just arrived, was loading a pepper ball launcher; a fourth was on the way with a beanbag shotgun. Citizens protested the killing as senseless but it was ruled justified by the D.A., who said that the officers were caught by surprise and had no alternative.

Occurring at opposite ends of the U.S. fifteen months apart, these remarkably similar incidents are unusual only in their tragic ends. Thanks to the deinstitutionalization movement, a lack of funding and widespread NIMBYism, the streets of our cities are awash with the drug-addled and mentally ill, and guess who gets to be their "counselors"? To their great credit, police routinely defuse potentially violent situations without hurting anyone. Some of the credit goes to a new generation of hardware, from projectile launchers to the ubiquitous Taser. (Forget aerosol sprays, which have a very limited range and immobilizing effect.) Yes, less-than-lethal weapons can be misused (shades of MacArthur Park.) Sometimes they cause serious injury and occasionally even

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kill. But their benefits are on balance so compelling that no modern law enforcement agency should go without them.

So why aren't they available to those who most need them? A few progressive agencies (Irvine, California comes to mind) go so far as to equip every patrol car with a projectile launcher. Others like LAPD and Miami strive to insure that each officer has at least a Taser. But in many agencies, including the colossal NYPD, less-than-lethal hardware is considered too specialized to distribute. Instead, these critical tools of the trade get locked up in SWAT vans and the trunks of Sergeant's vehicles, to sit and rust.

Policing is an unpredictable business, where events can -- and frequently do -- turn on a dime. If officers have nothing at hand other than a baton, a lousy can of pepper spray and a gun, what do you think's going to come out when things get dicey? Look, it's a no-brainer: effective less-than-lethal weapons must be readily available to every street cop.

Either that, or be ready to keep using the police as executioners.

Posted 9/1/20

BLACK ON BLACK

Are Black citizens better off with Black cops?



For Police Issues by Julius (Jay) Wachtel. What first drew our attention to Jackson was [an article in the New York Times](#) about the indictment of three cops for the fatal beating of a 62-year old Black man. And the story became even more compelling when we noticed that each of the accused was Black. As it turns out, so are most of Jackson's cops, including the Chief and his entire command staff.

It began on a Sunday morning, January 13, 2019. That's when passers-by [discovered the body](#) of Anthony Longino, a 62-year old Black pastor, on the steps of his modest church (photo above). He had been shot dead. A few hours later, three officers trolling for his killers spotted 62-year old George Robinson [apparently dealing drugs](#) from his car. Their [official report](#) indicates that an unidentified woman slipped Robinson cash through the window and "scurried" away. They approached and ordered Robinson out. He didn't promptly comply, so they dragged him out. According to [the indictment](#) the force used was clearly excessive, as it included "body slamming George Robinson head first into the roadway pavement as well as striking and kicking George Robinson multiple times in the head and chest."

Robinson, who was recovering from a stroke, collapsed and [police summoned an ambulance](#). Attendants declared Mr. Robinson O.K. After supposedly finding "a large amount of US currency" in the vehicle but no drugs officers cited him for "failure to obey and resisting arrest" and let him go. Robinson returned to a motel room where he had been staying and apparently had several visitors. But within a few hours he was back in the hospital with a brain bleed. He died two days later.

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Officers soon arrested a 22-year old man for the pastor's murder. He confessed, and within a few weeks some good old-fashioned police work led to the arrest of three accomplices, two nineteen and one twenty-three. Within a few weeks an internal investigation by Jackson P.D. and the city's civil service commission (and, supposedly, a review by the FBI) cleared the cops of wrongdoing. One remained on the job at Jackson PD while the two others transferred to the nearby Clinton Police Department. But on August 4, nearly eight months after the incident, as allegations of police abuse beset the U.S., the local D.A. charged the three cops with second-degree murder. Mr. Robinson's family also filed a lawsuit. It alleges that the officers had no reason to act as they did, as "at no time during this event was Mr. Robinson threatening harm to himself or anyone else."

Policing is an inherently messy enterprise with uncertain outcomes. Officer skills vary, and when we throw in the vagaries of cop and citizen temperament and the difficulties of gaining compliance some tragic endings are assured. Still, if Mr. Robinson *was* a criminal, he seems at worst a small-time drug dealer, and the grossly disproportionate outcome left this (thankfully, retired) practitioner's head shaking.

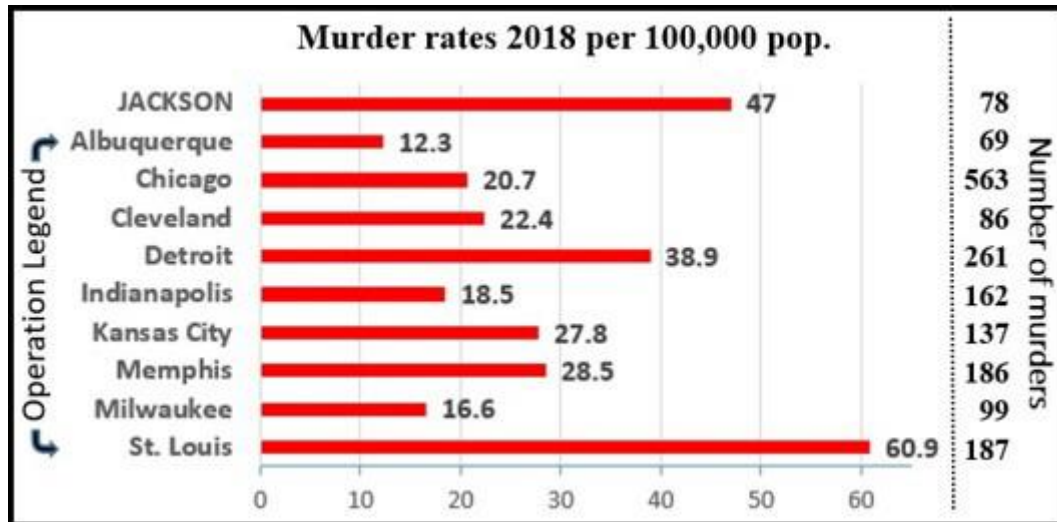
Mr. Robinson was apparently shuttling between a home in the the neighborhood where the encounter took place and a motel room where his girlfriend lived. Other than his being older and frail, we discovered little else of significance. As for the Jackson officers, the *Free Press* (hint: it's not a fan of the police) and other sources reported that the cops were part of a K-9 team that was looking for the pastor's killers. Two were involved in nonfatal shootings in 2017 and 2018 but had been exonerated of wrongdoing. Meanwhile officials in both Jackson and Clinton are steadfastly standing by their servants. "We don't want anything to do with a bad cop and if I thought these guys were bad cops, we wouldn't have hired them," said Clinton's police chief. Its mayor went so far as to suggest that the indictment might have come about because of a sweetheart deal between the Robinson family attorney and the D.A.

What's beyond a doubt is that Jackson is a *very* violent place. Last December, after "nearly two dozen" residents were shot in a single week, a desperate police sergeant lamented that "gun violence is just awful":

Sometimes it is just a way of life...it is definitely something important we need to work on...It is just horrible that people have to live with that...we have to take the steps to change this dramatically!... We certainty need to study this in depth and come up with some decent plans to combat it.

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By any measure, the city's body count is [truly astounding](#). This graph compares Jackson's 2018 murder rates with the nine crime-struck cities participating in DOJ's freshly-hatched "[Operation Legend](#)."



Mr. Robinson's encounter with police, and the pastor's murder that preceded it, took place in a particularly downtrodden neighborhood known as "[The Washington Addition](#)." Located within the 2nd police precinct, [its median household income](#) of \$16,500 is one-quarter the national median (\$60,293.) Jackson as a whole fares little better. At \$37,563, its median household income is only three-fifths of the national median. In fact, nearly twenty-seven percent of Jackson's residents live in poverty, [more than twice the U.S. figure](#) (11.8 percent.)

Jackson Police Precinct	1	2	3	4
*Population (thousands)	70	64	47	45
Murders 2018				
All victims (Black victims)	16 (14)	21 (21)	30 (28)	9 (8)
Mur. rate 2018 /100K pop.	23	33	64	20
Murders 2019				
All victims (Black victims)	22 (13)	23 (22)	25 (22)	8 (6)
Mur. rate 2019 /100K pop.	31	36	53	18
Dominant ZIP (39-)	212	209	213	211
ZIP med. HH inc. (thous)	38	26	23	56
ZIP pct. Black	83	91	98	38
* J.P.D. estimates. 1 st & 2 nd pcts. likely high.				

Full stop. Posts in our blog's "[Neighborhoods](#)" section frequently remark about the relationship between income, race and crime. (See, most recently, our essay about [Portland and Minneapolis](#)). Might these factors also play a role in Jackson? We gathered precinct murder data using [WLBT's homicide tracker](#). Counting the "dots" on its precinct maps yields 76 murders in 2018 (the [UCR](#) reported 78) and 78 in 2019.

[According to the Census](#), eighty-two percent of Jackson's 160,628 residents are Black. Based on the dominant ZIP's, it seems that most Blacks reside in the impoverished 1st, 2nd and 3rd precincts. Most Whites live in the comparatively prosperous 4th precinct, [whose dominant ZIP](#) boasts a median HHI of about \$56,453, only slightly lower than U.S. overall.

Grab a look at the table. Compare murder frequencies and rates between precincts. And within precincts, between Blacks and non-Blacks. (The contrast would have probably been higher but for J.P.D.'s exaggerated population count for the 1st precinct, and possibly the 2nd.) Quibbles about numbers aside, Jackson's Black majority clearly faces appalling odds. Of course, the cops know that.

We approached this incident as we do all: *tabula rasa*. Still, when your author paused while building fancy tables to consider his own experiences carrying a badge, Mr. Robinson didn't strike him as much of a threat. Jackson's cops, though, work in a very unforgiving environment. When the now-indicted officers happened on someone who seemed to be taking advantage of the city's troubles, their exasperation may have led to an overly aggressive response. One that caused an old man to fall and crack his skull. That's not so dissimilar from what happened to [Mr. Martin Gugino](#), the White septuagenarian "peace activist" whose head smashed the pavement after he was pushed aside by a White cop.

Might Jackson's struggle with crime and violence affect how its officers deal with citizens? Could it sometimes lead to poor decisions? Really, how could it *not*?

Normally this would be the place to offer correctives, but we've got another iron in the fire: Kenosha, where most cops and citizens are White. We'll have more to say about Jackson then. Until then, keep safe!

Posted 11/5/22

BLOWS TO THE HEAD WERE *NEVER* O.K.

Cameras are everywhere, yet an abhorrent practice continues



For Police Issues by Julius (Jay) Wachtel. It was Sunday, October 16, 2022. Just outside the “Good Batch Hookah Lounge,” a nightclub in Inglewood, California, two Los Angeles County Sheriff’s deputies wrestle a violently resisting man to the ground. They clearly have the upper hand. But within moments one of the deputies pushes the man’s head to the ground (first and second graphics). He then forcefully punches it (third graphic).



And the cop isn’t done. He promptly jerks the man’s head back up (fourth graphic) and viciously – that’s the word that best fits – slams it to the ground, face-first (fifth graphic). (Click [here](#) for our brief clip and [here](#) for the full bystander video from which it was sourced.)



No, we’re not suggesting that Blake Luran Anderson, the 24-year old victim of this abuse, was harmless. His booking photo (see left) depicts a bevy of gang-related facial tattoos, including a prominent “CK” (Crip Killer) on the left cheek. [According to the Sheriff Department](#), Mr. Anderson was carrying a loaded pistol in a satchel, and that’s something a parolee, as he supposedly is, must not have. In the heat of the tangle,

its discovery was apparently so disconcerting that a deputy drew his pistol and activated its light to check whether their quarry was hiding anything else.

An online review of [L.A. County Superior Court files](#) confirmed that Mr. Anderson is a felon:

- In 2017, Mr. Anderson was convicted of one count of felony carrying a concealed firearm and three counts of misdemeanor resisting arrest (case no. MA 070417). He was sentenced to a prison term of four years and eight months. (His conviction of CCW as a felony may have been due to gang membership or to a prior felony conviction of which we are unaware.)
- In 2021, Mr. Anderson was convicted of possessing drugs in a correctional institution, a felony (case no. MA 082124). No sentencing information was available.

Actually, the deputies' encounter seemed purposeful from the start. An external store video camera depicts a Sheriff's patrol car turning into a commercial strip as Mr. Anderson walks with a female companion (click [here](#) for our brief clip). For reasons that remain undisclosed, a deputy promptly jumps out of the passenger side, runs up to Mr. Anderson and seeks to physically detain him. His quarry resists, and the deputy's partner soon joins the fray.

What initially drew the deputies' interest hasn't been disclosed. [Mr. Anderson's sister](#) claimed that her brother worked as a security guard for the lounge and was chatting with a customer when the deputies piled on for no reason. [She organized a GoFundMe campaign](#) to help cover the cost of medical treatment. Beset by a prior injury, Mr. Anderson's right eye was supposedly on the road to recovery. However, the deputies' brutal attack supposedly caused irreparable damage, and the eye will have to be removed and replaced with a prosthetic. (Note that Mr. Anderson's facial image on the GoFundMe webpage lacks tattoos.)

It's all somewhat puzzling. On the one hand, the Sheriff's Department is yet to explain why Mr. Anderson was stopped. On the other, [California requires that security guards be licensed](#) and [forbids them from having felony convictions](#). State and Federal laws also prohibit felons, such as Mr. Anderson apparently is, from possessing firearms. Curiously, a lawyer who represents Mr. Anderson told a reporter that his client was employed by a security company and "[was given that firearm to do his job](#)."

Whatever Mr. Anderson's legal exposure might be – for the present, he faces charges of being an ex-con with a gun and assaulting a deputy – that inexplicable episode of

head bashing puts the County in bad shape, liability-wise. Mr. Anderson has filed a claim, and more litigation is surely on the way. As another member of his legal team pointed out (click [here](#) for his Twitter feed), “if you can’t get accountability for what we saw on that videotape, what can Black people get accountability for against the Los Angeles Sheriff’s Department?”

In your blogger’s law enforcement experience, punching a suspect – especially, striking their head – was never considered acceptable. Yet both continue to take place with some frequency. Consider the notorious 2020 episode where an LAPD officer delivered a prolonged beating, including a series of head blows, to a homeless trespasser (this still depicts one of several wind-ups). That cop, who’s no longer on the force, recently pled no contest to assault. [He was sentenced to probation](#) and must attend anger management classes. (Click [here](#) for our brief video and [here](#) for the full-length version.)



Punches to the head aren’t just a big-city thing. Last year [Westminster, Calif. police were alerted](#) to an assaultive woman running around the street. Officers encountered 34-year old Ciomara Garcia and arrested her on an outstanding warrant for vandalism (left image). As usual, a passer-by captured everything on a cell phone. Ms. Garcia seemed to be under the influence and medics were called. But she kept resisting even after handcuffs were applied, and officers lowered her to the ground. (Click on the news story for the full video and [here](#) for our edited version.)



This sequence depicts the key moments. It begins as a punch-happy cop (circled, first graphic) helps set the woman down. In the process, he unexpectedly delivers two quick blows to her face (second graphic.) His obviously shocked colleague instantly shoos him

away (third graphic). The third cop then steps in and uses his arm to keep his evil colleague away as the distraught woman is helped to her feet (fourth graphic).

NIJ's [use-of-force continuum](#) has five steps, ordered by severity. Here's an abridged version:

1. Officer Presence: Situation resolved by simply showing up.
2. Verbalization: Situation resolved through “calm, nonthreatening commands” or, if necessary, by issuing orders.
3. Empty-Hand Control: Aggressive persons are restrained with bodily force. A “soft” version involves grabs, holds and joint locks. A “hard” version includes “punches and kicks”.
4. Less-Lethal Methods: Should the above not suffice, officers can use batons, fire projectiles, and deploy chemical sprays and conducted energy devices (i.e., Tasers).
5. Lethal Force: As a last option, and only “if a suspect poses a serious threat to the officer or another individual,” police can turn to lethal weapons, generally meaning firearms.

Note that “punches and kicks” are considered “intermediate measures,” not lethal force. But in our measly opinion, the cranium *is* special. Whether blows to the head are delivered through punches, strikes by a baton, or by causing someone to hit their head against a hard object (e.g., a wall or the ground), they can prove crippling or even lethal. Yet our survey of police use-of-force policies revealed an absence of mention about such things. In fact, neither [LAPD](#) nor [NYPD](#) policies on the use of force mention “punch,” “strike,” “blow” or “head.” Punches to the head are absent from outside guidelines as well. For example, NYU School of Law's “[Police Use of Force Policy Guidelines](#)” only mentions the head when it cautions that striking it with a baton must be limited to circumstances that justify the use of deadly force.

It's not that blows to the head can't occasionally prove effective. Dr. Wayne Fisher, a Rutgers criminal justice professor and use-of-force consultant, [cautions that head punches can cause serious harm](#). But he also feels that they “can be sometimes necessary if an officer is in serious risk of being injured.” Indeed, in the hurly-burly of everyday policing, where cops repeatedly tangle with noncompliant citizens, simple

blows to the face can be useful. Consider, for example, [a recent fracas in New York City](#), where a young woman lunged at uniformed officers who had a murder suspect in tow.



How did one of the cops respond? He “decked” her. (Click [here](#) for the full video and [here](#) for our edited version). [His actions were defended by Mayor Eric Adams](#), a former cop. Citizens lined up on both sides. Our position is a bit nuanced. While we applaud the arrest – the suspect *was* packing a “ghost gun” – the cop who delivered the blow (supposedly, with an “open hand”) had an angry look on his face. That led us to wonder: did he act as he did because he got mad?

That’s why punching is questionable from the start. Making a fist is a conditioned reflex developed in childhood. Even if a “knuckle sandwich” is occasionally useful, decisions to punch are inextricably linked to our emotional selves. That’s a shaky foundation for making good choices about virtually *anything* in policing, and especially the use of force. Check out all that punching of restrained subjects in “[What Were They Thinking? \(Part II\)](#)”. We really, *really* don’t need to transform any more lawbreakers into urban “heroes.” And it’s not just criminal-types who can fall victim. When a riot formation of Buffalo cops roughly pushed a 75-year old intruder aside, he lost his balance and his head sharply struck the ground (“[Gold Badges](#)”).



Martin Gugino [wound up hospitalized](#) in “serious but stable condition.” He *could* have been killed.

So what do we suggest? *No* blows to the head, *period*. And to the extent reasonably possible, no body blows. Officers should also try to avoid causing someone to strike their head against a hard object, such as pavement or a wall. Admittedly, our “rules” fall far short of the highly detailed, paragraphs-long prescriptions that have become *de rigueur* in police rulemaking (see, for example, “[Regulate](#)”). But we’ve already grouched plenty about *that*.

Posted 7/30/24

BRINGING A GUN TO A KNIFE FIGHT

Cops carry guns. Some citizens flaunt knives. Are poor outcomes inevitable?



For *Police Issues* by Julius (Jay) Wachtel. “[Bringing a gun to a knife fight](#).” That provocative (some might say, *incendiary*) idiom is how the *Los Angeles Times* led off its recent analysis of fifty-six episodes since 2018 when LAPD officers fired at “people in crisis” who were flaunting “edged weapons”, killing thirty-five and injuring nineteen.

Two of these events took place only one day apart. We obtained the details from the [LAPD Newsroom](#):

[January 2, 2023](#): Officers responded to a 9-1-1 call that Takar Smith was in an apartment in violation of a restraining order. Smith refused repeated requests to leave, and after a prolonged back-and-forth he grabbed “a large knife” from the kitchen (see right). Officers tasered Smith and doused him with pepper spray. Smith dropped the knife. But he then grabbed it again and “raised it above his head.” Officers shot him dead.



[January 3, 2023](#): Only one day after the fatal encounter with Smith, officers in another beset LAPD Division were alerted that a suspect later identified as Oscar Sanchez threw a metal object at a passing car, then threatened its driver with a knife. When confronted in the abandoned home where he apparently lived, Sanchez quickly “stepped toward” the officers holding a “two-foot-long metal object with an approximate three-inch spike protruding from one end” (see right.) Officers simultaneously fired a gun and a “less lethal” weapon, inflicting a fatal wound.



LAPD reportedly ruled eight of these shootings “out of policy,” meaning that officers violated rules and procedures that are intended to prevent causing needless harm. (In two, police bullets struck aggressors’ intended victim.) As for the above examples, one was declared “in policy”, the other not.

Can you guess which?

[According to the L.A. Times](#), LAPD Chief Michel Moore and the Police Commission agreed that the first shooting, of Takar Smith, was “out of policy”. Less-lethal measures (bodycam image shows him being Tasered) did fail to keep the knife from Mr. Smith’s hands. But he had barricaded himself with bicycles, and reviewers thought that there was enough time to summon a mental evaluation team that could defuse things. Chief Moore felt that the officers should have backed off and come up with a better game plan.

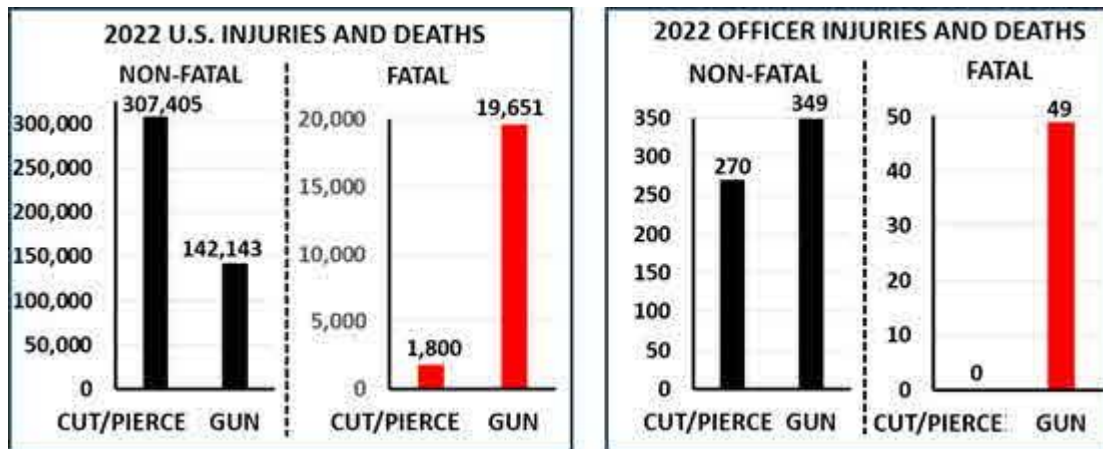


Click on the image for the video (officer interaction with Mr. Smith begins at 1:02). What do *you* think? *Should* the cop have fired?



Now compare that to what happened to Mr. Oscar Sanchez on the very next day. That’s him at the top of the stairs, by the door to his pad (click on the image for the LAPD video.) [According to the Chief and the Commission](#), his shooting, while not the best outcome, was nonetheless “in policy.” There *were* some notable differences from what happened with Mr. Smith on the previous day. Several officers and a supervisor had repeatedly tried to gain Mr. Sanchez’s compliance, but he resisted them all. And when he suddenly wielded that nasty spiked object, there were no bicycles between him and the cops.

In our gun-beset land, shootings are always in the news. Stabbings typically draw far less attention. While knives and other cutting instruments are far less likely than guns to inflict a fatal injury, there’s no denying that they also pose a grave risk. We used the CDC’s [WISQARS database](#) and the UCR’s [Crime Data Explorer](#) to probe injuries and deaths from shootings and stabbings in 2022, the most recent year for which full data is available.



We'll start with the graphs on the left. According to the CDC, 161,794 victims of violence sustained gunshot wounds in 2022. About 12 percent proved fatal. During the same year, domestic emergency rooms treated 309,205 persons who had been violently cut or stabbed. Fewer than one percent of these injuries were fatal. Our graph on the right uses UCR data to show how law enforcement officers were affected. During the same year about 47% more officers (398 v. 270) were injured by firearms than with cutting instruments. About 14 percent of gunshot injuries to officers proved fatal; none who were cut or stabbed died.

Numbers alone can't enlighten us about the nature of violent citizen-police encounters. What brought on the carnage? Might it have been averted? A July 8th. Google query of "officer stabbed" generated ten episodes for 2024, nine in the U.S. and one in Canada. Here are four (incident dates shown):

May 8, 2024: A West Virginia trooper was stabbed twice with a knife while pursuing a man (depicted on right) who fled on foot from a traffic stop. A fellow trooper shot and killed the assailant. The trooper was seriously injured but is recovering.



May 18, 2024: According to D.C. police, an ill-behaving man being taken into custody to be evaluated for a mental health issue pulled a pocket knife and stabbed an officer in the neck. A Taser had no effect, and another officer wound up shooting the assailant. Fortunately, everyone survived. (Click [here](#) for the MPD news release)



July 7, 2024: "An individual acting bizarrely" walked up to a Kansas City police officer in a parking lot and, without warning, produced a "sharp object" and stabbed him twice. The assailant ran off; the officer is recovering.

[February 11, 2024](#): Tragically, not every officer survived their encounter. Las Cruces, New Mexico police were alerted about a man who trespassed on a business. As Officer Jonah Hernandez approached, the suspect suddenly attacked with the knife he was carrying in his right hand (see bodycam image). Officer Hernandez suffered fatal wounds to his head and neck. An armed passer-by shot and killed the assailant. Armando Silva, 29, had “[a long history of violent crime and mental illness](#).”



So what's to be done? What *can* be done? As your blogger learned during the many conflicted situations he and his colleagues encountered, gaining citizen compliance is definitely Job #1. But complications abound. Clashing officer perspectives can easily lead to poor endings. What officers observe – or think they observe – depends on *when* they arrive, *where* they wind up, and *how* they interpret what they see (or “think” they see). In the quickly-evolving, conflicted atmosphere of the streets, promptly – and *accurately* – figuring out who's “good” and who's “bad” is essential.

Gunning down the mentally disturbed is an inherently repulsive thought. And in our post-Floyd atmosphere, there is undeniable pressure to blame the cops, and only the cops. So while we don't hesitate calling out poor policing – see, for example, “[Confirmation Bias Can be Lethal](#)” – retrospective analyses are invariably fraught. Given the complexities of what the officers faced, and the rapidly evolving nature of the encounters, is it possible to accurately assess, post-facto, whether the shootings of Takar Smith and Oscar Sanchez were avoidable?



Consider the notorious killing of Tamir Rice, the 12-year old who was shot dead in November 2014 by then-Cleveland police officer Timothy Loehmann. We delved into that incident in “[Working Scared](#)”. Loehmann wasn't disciplined over the shooting. After all, Tamir had been flaunting “a realistic-looking pellet gun” (image on left) and the circumstances of their encounter were decidedly complex (click [here](#) for a detailed news account and [here](#) for a video.)

Inquiries into officer Loehmann's background turned up some disquieting information. Loehmann had been turned away by several agencies before being hired by Cleveland. A small department *had* taken him on, [and its deputy chief said he came to regret it](#): “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...”

[Cleveland fired Loehmann in 2017](#), not for the shooting but over alleged “inaccuracies” in his employment application. Loehmann then kept bouncing around agencies. On July 1, 2024, “public outrage” over the decade-earlier killing of Tamir Rice led him to resign [from a small police department in West Virginia](#). Here’s how its Chief explained Loehmann’s hiring:

Just as a person, I looked at the whole situation. I did a background check. I researched everything. It’s just a sad situation. Does any police officer in the world stand a chance when they’re involved in a shooting? Do they deserve to never work again as a police officer, or is it just this shooting?

Here’s what [Tamir Rice’s mother recently said](#):

I just don’t get it. This system is so broken. It’s like this man is haunting me. How can any department trust him? I don’t think anything has changed in the last ten years.

And here’s what [her lawyer recently said](#):

Timothy Loehmann should be radioactive to any responsible community or law enforcement organization.



Cops who bounce around agencies continue to be in the news. As does their handiwork. Most recently, there’s [the July 6th, 2024 shooting death of Sonya Massey](#), a troubled Springfield, Illinois woman who called 9-1-1 about a prowler. For reasons still unclear, Ms. Massey apparently threatened then-deputy sheriff Sean Grayson with a pot of boiling water after he entered her home. She then reportedly apologized. But Grayson, who kept his distance throughout, opened fire, killing her (click on image for the bodycam video). He then discouraged his partner from rendering aid. Grayson, who’s been jailed on 1st. degree murder charges, [bounced around six agencies during his four-year law enforcement career](#). Three were as a part-timer at small police departments, which hired him despite a driving record that included two DUI’s. His most recent job, as a Sangamon County deputy, began in May 2023. It followed on a year-long stint with the Logan County sheriff, a position that he resigned after issues over his performance arose.

Here's an extract from the IACP's message to its members about the killing of Ms. Massey:

While the facts are still being gathered, and the former deputy is entitled to due process, the killing of Sonya Massey was a devastating and avoidable tragedy. The shooting again underscores the critical need for police agencies to thoroughly vet potential hires. The pattern and nature of frequent job changes by a police officer should raise flags about their suitability for the policing profession.

And here's what we wrote, um, [eight years ago](#):

Alas, the hiring process isn't infallible. Even good screening measures fail. That's why it's essential to closely monitor recruits in the academy and during their first years in the field. That's not foolproof either. Every working officer knows cops who have poor people skills or are prone to overreact, leaving messes for colleagues to clean up. Fortunately, no one usually dies and things get papered over until next time. Occasionally, though, there is no "next time."

Until next time!

Posted 9/21/23

CONFIRMATION BIAS CAN BE LETHAL

Why did a “routine” traffic stop cost a Philadelphia man’s life?



For Police Issues by Julius (Jay) Wachtel. On August 14, two Philadelphia police officers assigned to the 24th. police district were on routine patrol [when they observed](#) a car “being driven erratically” in the area of “B” Street and Westmoreland. According to then-police commissioner Danielle Outlaw (she’s since announced her resignation) Officer Mark Dial, the passenger, and his partner, the driver, asked dispatchers whether that vehicle had recently raised suspicion (it hadn’t).



Officer Dial and his partner followed the car for about a half-mile as it drove down Westmoreland, turned left onto Lee St., and left again at Willard, a one-way street that runs in the opposite direction. After going the wrong way for a short distance it pulled to the left curb and parked.

That’s where PPD’s initial account – that the vehicle’s driver and sole occupant, 27-year old Eddie Irizarry, promptly jumped out wielding a knife – apparently went off the rails. As Ms. Outlaw acknowledged two days after the tragedy, Mr. Irizarry never stepped out of the car. Instead, [Officer Mark Dial shot and killed him](#) while he remained seated behind the wheel, with the windows rolled up. And yes, the encounter was captured by a stationary camera. We clipped this sequence of images from the [video](#), which was posted online.



Images 1 & 2 depict Mr. Irizarry's arrival (again, his car is going the wrong way). He quickly pulled to the curb, ran over a traffic cone, then backed in, blocking a parked SUV (3). His car stopped moving at 12:24:10. The police car arrived five seconds later (3-4). Officer Dial exited the passenger side at 12:24:16. He immediately walked around the front of Mr. Irizarry's car, [reportedly yelling](#) "show me your hands!" and "I will f***ing shoot you!" (4 & 5). [Officer Dial began firing](#) through the driver side window, which was rolled up, at 12:24:22 (6). That's *six seconds* later. And he kept shooting as he walked away (note the shattered glass) (7). His final, final, sixth round was fired at 12:24:24, *eight seconds* after he got out of the police car. Officer Dial then went to the passenger side of Mr. Irizarry's car, and his partner came to the driver's side and opened the door (8). They placed Mr. Irizarry in the police car and drove him to the hospital. But it was too late.

Here's the sequence using clips from [Officer Dial's bodycam](#):



Image 1 shows the police car's arrival. Image 2 depicts Officer Dial walking to Mr. Irizarry's car. Images 3 & 4 show him as he begins shooting, and Image 5 as he continues firing while walking away.



What do we know about Mr. Irizarry? [His family and their lawyers contend](#) that he suffered from chronic “mental problems”, including schizophrenia. These issues, however, apparently didn’t prompt any past police intervention. According to lawyer Shaka Johnson, Mr. Irizarry “has never been arrested a day in his life...He’s never seen handcuffs, the inside of a jail cell. Ever in 27 years. Never had a negative encounter with police.” We confirmed

through [Pennsylvania’s official portal](#) that Mr. Irizarry has no State record of a criminal arrest. However, our review of [Philadelphia municipal court records](#) turned up a 2018 case in which Mr. Irizarry pled guilty to disobeying a traffic control device (Docket #CP-51-SA-0000205-2018). While that’s no great shakes, it seems consistent with his allegedly erratic driving, including making that improper left turn onto Willard St. (see right).

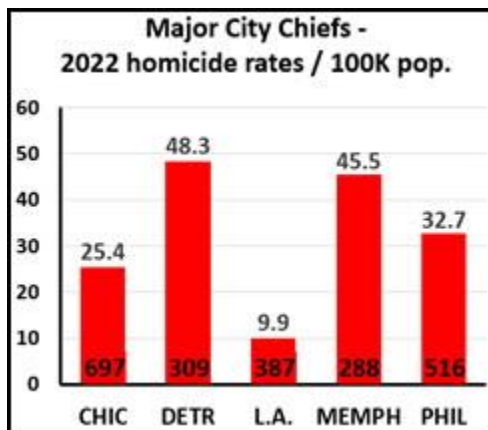


Still, considering that Mr. Irizarry remained in his car, and just how quickly Officer Dial opened fire, there may seem to be little reason to probe further. Most importantly, there’s no indication that Mr. Irizarry had a gun. We don’t have access to the bodycam video of the police car’s driver. But according to the lawyers for Mr. Irizarry’s family, who apparently do, Officer Dial’s partner quickly announced “he’s got a knife.” That supposedly spurred Officer Dial to order Mr. Irizarry to “[drop the knife](#).” ([Police commissioner Outlaw’s account](#) substituted the word “weapon” for “knife”. Implications-wise, that’s a *big* difference.) And when Officer Dial took his brief glimpse through the driver-side window – which *was* rolled up – he supposedly observed Mr. Irizarry “holding a small, open folding knife against his thigh.” It turns out that there were *two* knives in the car, and both were in plain view. Officials described one as a “serrated folding knife” and the other as “some type of kitchen knife” (the family’s lawyers said that Mr. Irizarry had a “pocket knife” he used for work.)

Clearly, neither dodgy driving nor having knives justifies killing. These behaviors may, however, provide some insight into where Mr. Irizarry was “at”. Perhaps the same applies to Officer Dial. Our essays are replete with chaotic episodes where cops inappropriately use lethal force. Sometimes a citizen waved a knife. Sometimes cops “saw” a gun that wasn’t there. Sometimes a troubled, uncompliant soul – [Ta’Kiya Young](#) comes to mind – stepped on the gas at the wrong time. On occasion, the

justification for responding with gunfire was clearly lacking. For a recent (and most depressing) example check out “[San Antonio Blues](#).” It’s about three cops who fired through the window of an apartment, killing a mentally troubled woman who threatened them *with a hammer*. Bodycam videos created such a compelling narrative that the officers were promptly arrested for murder (click [here](#) for a narrated video compilation).

Ditto, Officer Dial. Thanks to the neighborhood camera and his own bodycam, what happened doesn’t really seem at issue. [He’s been charged with murder](#) and is out on \$500,000 bail. A preliminary hearing is set for September 26. But that’s not quite the “end of the story”. [According to his lawyer](#), video (we assume, from his partner’s bodycam, which we haven’t seen) “demonstrates completely that Officer Dial got out of his car, ordered him to show his hands, and then heard ‘gun.’ You can hear it on the video. He then saw an individual pointing what he thought was a gun right in his face.”



We’ll have more to say about Officer Dial’s decision-making later. For now, we as usual turn to *place*. To begin with, he and his partner worked in a particularly violent metropolitan area. Check out our comparo on the left, which was prepared from data published by the [Major City Chiefs](#). Philadelphia’s 2022 murder rate (rates on top, number of incidents below) was *more than three times* L.A.’s. It even surpassed the rate of notoriously violence-stricken Chicago!

Still, as we emphasize in our “[Neighborhoods](#)” posts, when it comes to making inferences from statistics, citizens don’t live – and cops don’t toil – in aggregates. What *really* matters are neighborhoods. Let’s examine Philly’s:

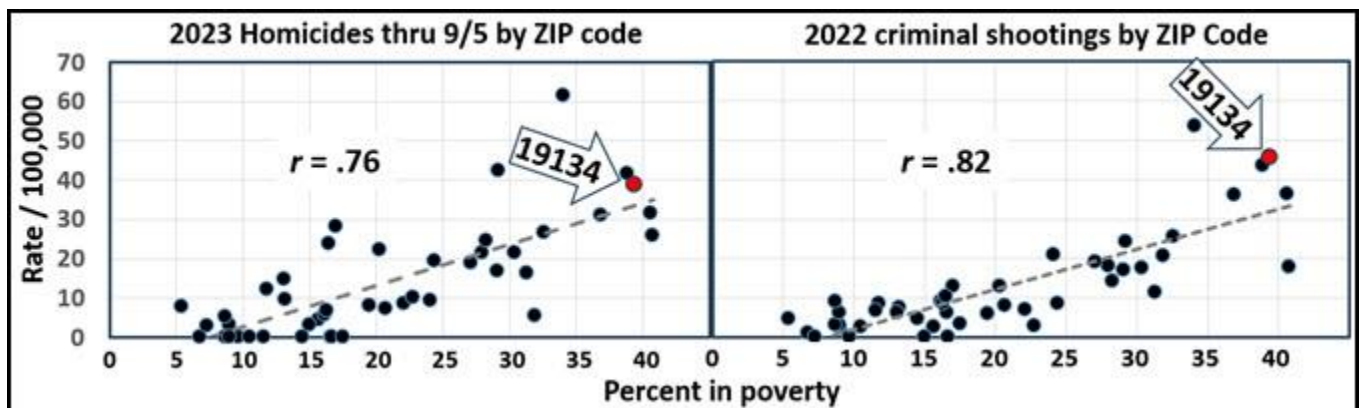
2023 Phila. criminal homicides thru 9/5 Five highest-rate ZIPs					2023 Phila. criminal homicides thru 9/5 Five lowest-rate ZIPs				
ZIP	Pop	Pov	Number	Rate/1K	ZIP	Pop	Pov	Number	Rate/100K
19132	32598	34.1	20	61.4	19102	4793	16.6	0	0
19139	44789	29.2	19	42.4	19103	24854	9.1	0	0
19121	33708	38.9	14	41.5	19115	35226	9.7	0	0
19134	59230	39.4	23	38.8	19118	9999	6.8	0	0
19140	53979	40.6	17	31.5	19119	28509	10.5	0	0
Average		36.4	13.5	43.1	Average		10.5	0	0

Officer Dial was assigned to Philadelphia PD's [24th. District](#), and the encounter, from beginning to end, took place within its primary ZIP, 19134. We downloaded and ZIP-coded January 1 – September 5, 2023 homicide data from the [city's official website](#) and obtained population and poverty numbers for each of Philadelphia's 35 residential ZIP's from the [Census](#). With a deplorable 39.4 percent of its citizens in poverty ([U.S. is 12.6 percent overall](#)), ZIP 19134 (it's highlighted in red) was the city's third-poorest. And with a murder rate of 39.4 per 100,000 population, it was its fourth most lethal.

Violence isn't only measured by murder. CBS collected data about [criminal shootings](#) in Philadelphia in 2022, and we ZIP-coded their locations. Here's how *that* can of worms turned out:

2022 Phila. criminal shootings 5 highest-rate ZIPs					2022 Phila. criminal shootings 5 lowest-rate ZIPs				
ZIP	Pop	Pov	Number	Rate/10K	ZIP	Pop	Pov	Number	Rate/10K
19132	32598	34.1	175	53.7	19118	9999	6.8	1	1.0
19134	59230	39.4	270	45.6	19119	28509	10.5	7	2.5
19121	33708	38.9	147	43.6	19106	13064	5.4	6	4.6
19140	53979	40.6	196	36.3	19137	8384	14.5	4	4.8
19133	25798	36.9	93	36.0	19102	4793	16.6	3	6.3
Average		38	176	43	Average		10.8	4.2	3.8

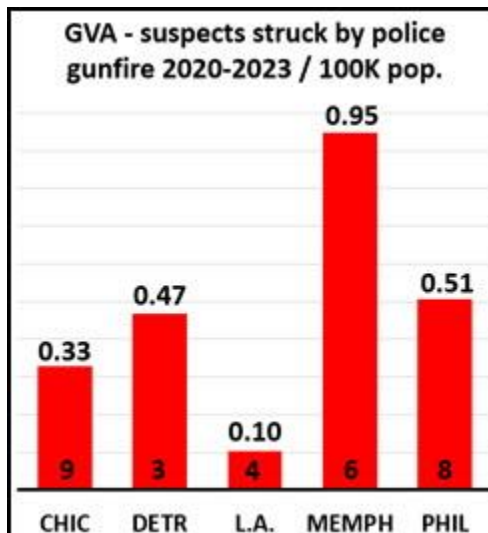
ZIP Code 19134 (highlighted in red) comes in second-worst out of thirty-five. That's decidedly not something to brag about. Neither is the disquieting fact that, as we chronically harp in our "[Neighborhood](#)" posts, poverty and violence are virtually in lockstep. Check out the "*r*" (correlation) statistics on these graphs:



Correlations can range from zero, meaning no association between variables (i.e., poverty and crime), to one, meaning a perfect, lock-step relationship. With an *r* of "plus" .76, Philly's poverty and murder rates are, statistically speaking, very closely linked.

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Ditto, poverty and criminal shootings. In fact, at $r=.82$, that measure comes tantalizingly close to perfection. Of the lousy kind.



Let's look at officer-involved shootings. We downloaded data from the [Gun Violence Archive](#) on suspects struck by police gunfire in our five cities between 2020-2023. Our bar graph on the left (rates on top, number of incidents below) places Philadelphia in the unenviable position of surpassing chronically-beset Chicago and Detroit in terms of police gunfire. We also obtained information about officer-involved shootings in Philadelphia between 2018-

2023 from its [police portal](#) (see right). That revealed that ZIP 19134 (circled in red), where Eddie Irizarry suffered his fatal encounter, had the greatest number and, as well, the highest rate of shootings. ZIP 19134 is actually served by two precincts, 24 and 25, which are housed together. Their officers also handle areas within several other ZIP's, and three of those (19124, 19140 and 19133) had a substantial number of shootings as well. And that unholy relationship between crime and poverty is clearly evident. Notice how average poverty across ZIP's (circled in red) worsens as the number of police shootings increases from zero to one, then to two, and finally to three-plus.

PPD ZIP's with 3+ shootings by police 1/1/2018 - 8/17/2023				
ZIP	Pop	Pov	# Shtgs	Pcts
19134	59230	39.4	7	24, 25
19144	44831	28.3	5	14, 39
19145	44743	16.3	5	1, 17
19124	71209	32.6	4	15, 24, 25
19140	53979	40.6	4	25, 39
19146	40743	13.1	4	17
19133	25798	36.9	3	22, 25, 26
19148	50744	19.5	3	3, 4
Average		28.3		

PPD ZIP's with 0-2 shootings by police 1/1/2018 - 8/17/2023		
# ZIPs	Avg. Pov.	# Shtgs
5	23.4%	2
17	22.0%	1
16	14.4%	0

Lethal blunders have befouled policing since time immemorial. Supposedly well-intentioned officers were being charged with murder long before the George Floyd imbroglio hardened public and prosecutorial attitudes towards the police. Consider, for example, the 2017 killing of [Justine Ruszczyk](#), a well-meaning, middle-aged Minneapolis resident who unexpectedly walked up to the police car that responded to her 9-1-1 call.

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The officer who shot her [wound up serving three years](#) for manslaughter and third-degree murder.

Officer Dial had been a Philadelphia cop for five years. We otherwise know precious little about him. What we *do* know is that he worked in an especially poor and violence-prone zone of a violence-beset city. “[Working Scared](#)” emphasized that officer personalities are shaped by their working environment. As its subtitle asserts, “fearful, ill-trained and poorly supervised cops” are indeed “tragedies waiting to happen.” Was Officer Dial’s workplace so beset with ill-behavior that it exerted an unholy influence on every citizen-officer encounter? That’s where “[confirmation bias](#)” comes in. It’s the normal human tendency – meaning *everyone*, not just cops – to interpret things in a way that reinforces their pre-existing biases and beliefs. Mr. Irizarry’s erratic driving and, particularly, his rejection of authority figures – he immediately rolled up his window – might have “confirmed” Officer Dial’s biases and badly distorted his decisions.

It might even explain why a cop “saw” a non-existent gun. That, of course, doesn’t excuse his behavior. Really, police officers *are* human. They’re also well-armed. Although they’re also supposedly carefully selected, well trained and closely supervised, some continue to impulsively react with gunfire. Why is that? Are those working in violence-beset areas particularly affected? Might instinctively drawing a gun when danger looms be partly to blame? Given the quirks of human nature, and not just those of the badge-wearing kind, avoiding interminable replays would require that police embark on a brutally honest, in-depth exploration of the underlying issues. We mean at *every* academy session, *every* command get-together, and, most importantly, *every* roll-call, from now until the cows really *do* come home.

Posted 8/1/10

DANCING WITH HOOLIGANS

***For street cops every day's a reality show.
And that reality is often unpleasant.***

By Julius (Jay) Wachtel. Last month a [Seattle cop](#) decided that jaywalking on his beat was getting out of hand. No more breaks! Spotting a flock of young evildoers dashing across a busy highway (they ignored a pedestrian overpass fifteen feet away) he corralled the group. They were mouthy and uncooperative. One, a 19-year old girl, walked off, and when he tried to stop her she pulled away.

Not a good move. You see, Seattle police [take jaywalking seriously](#). So seriously, in fact, that last year they mounted an anti-jaywalking campaign. That led to a number of nasty physical confrontations, [spurring an auditor to recommend](#) that the department reconsider the whole business (pp. 8-9).

In most cities, including Seattle, cops are deployed singly. Since they're usually outnumbered gaining voluntary compliance is crucial. Without a partner to help discourage or overcome resistance officers working alone must rely on their wits, a good dose of command presence and, most of all, public cooperation. Fortunately, most citizens who are treated respectfully will peaceably submit to authority. Unfortunately, correctly identifying those that won't isn't always easy.

The video begins as the cop struggles to handcuff a good-sized teen. While they dance a jig a burly 17-year old girl breaks from a male youth's grasp and jumps in to rescue her friend. The officer responds by punching her in the face.

The fight is on.

[Use of force continuums](#) were developed to remind officers of their legal obligations and help them choose an appropriate technique should they need to apply force. It all begins with verbal commands. Next in line are use of hands, fists and chemical agents such as pepper spray. If these fail to do the job, and keeping in mind that circumstances can change instantly, officers may deploy batons, the Taser, less-than-lethal projectiles such as bean-bag rounds and, when available, canines. At the top of the pyramid is lethal force, including firearms and other means likely to kill. It's reserved for situations where officers or innocent persons face an imminent risk of great bodily injury or death and less forceful measures are ineffective.

Officers know that even the most “ordinary” encounters can quickly escalate. They also know that trying to overcome resistance while working alone is very dangerous. Every year several cops are shot with their own guns. Four were killed this way [in 2008](#). Yet if anything the Seattle officer limited his use of force to hands (and, at a singular moment, a fist) and kept trying to talk the 19-year old into submitting. [Don Van Balicom](#), a use of force expert and former police chief suggested that the intrusion by the second woman might have justified a more aggressive approach. “He has two people he’s engaged with. They are both good sized people. He has a hostile crowd around him. He’s by himself....He’s not using as much force, quite honestly, as he could have.” In retrospect it seems fortunate that the 17-year old’s male companion pulled her away, as the cop was running out of options.

Why wasn’t the officer more physically assertive? Maybe he didn’t want to seriously injure a young woman, as might have happened had he placed more pressure on her arms or taken her to the ground. Maybe he didn’t want to inflame bystanders or appear brutal on camera. Maybe it was a combination of things.

He might have felt differently had he known a bit more about these “ladies.” The one he punched in the face was arrested last November for doing exactly that to a 15-year old boy whom she and her friends allegedly robbed of cash and a cell phone (charges were dropped because the boy and his 14-year old companion refused to testify.) She had been previously arrested for stealing a minivan, an offense that earned her a deferred disposition. Her 19-year old friend was arrested in 2009 for assaulting a sheriff’s deputy. She had reportedly been abusing staff members at a home for troubled girls and pushed the cop to the ground. That too ended with a deferred disposition.

Well, that’s par for patrol work, where officers must often act on incomplete information. Occasionally they behave rashly and use excessive force, sometimes with tragic consequences (for a more complete discussion see “[Making Time](#)”.) Yet here we have a cop who perhaps used too little force and wound up locked in a dangerous dance with a pair of hooligans.

Still, no use of force is pretty to watch, and that’s particularly so when the precipitating incident is as minor as jaywalking. It would be interesting to know more about the initial interaction between the officer and the jaywalkers, before the video. Perhaps the Seattle PD training unit, where the cop has been temporarily reassigned, can help cops learn to defuse things before they turn ugly. Maybe they can reinforce the need to alert dispatch when making an enforcement contact with multiple individuals. What they can’t do, of course, is change the hearts and minds of hooligans, so unless police decide to forego certain encounters altogether the underlying dilemma will persist long after this writer and his readers have turned to dust.

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In any event, this time things ended well – for the hooligans. At last report they’ve apologized to the officer and are probably well on their way to earning yet another deferred disposition.

Alas, things turned out less favorably for everyone else. Since the officer is white and his antagonists are black [divisions quickly formed across racial lines](#). Coming less than two months after the videotaped stomping of a Hispanic man by a Seattle cop, the incident is being touted as [another reason](#) why the acting chief shouldn’t get the top job.

And as for the officer, well, with the video enshrined on You Tube his two-step will be a topic of discussion at police academies and roll-call training for years to come. What he might think of his new-found fame one can only imagine.

Posted 1/13/16

DE-ESCALATION: CURE, BUZZWORD OR A BIT OF BOTH?

***As bad shootings dominate the headlines,
cops and politicians scramble for answers***

By Julius (Jay) Wachtel. In July 2004, the Department of Justice [issued a biting report](#) that criticized Newark cops for using force instead of acting, as reviewers thought they should, with “thick skin and patience.”

Unfortunately, rather than using de-escalation techniques and acting within the constraints of the Constitution when confronted with disrespectful behavior, NPD has engaged in a pattern and practice of taking immediate offensive action, without regard to whether that conduct complies with the law.

Newark isn't alone. DOJ has been launching “[pattern and practice](#)” investigations of police departments throughout the U.S. During the last five years alone, agencies ordered to change their ways include Albuquerque, Cleveland, East Haven (CT), Miami, New Orleans, Newark, Portland, Puerto Rico and Seattle. (Chicago went under the Federal microscope last month. More about that later.)

Although the events that precipitated Federal intervention were in each case different, excessive force, and particularly the inappropriate use of lethal force, has been the main concern. [DOJ's slap-down of New Orleans](#) cited “many instances in which NOPD officers used deadly force contrary to NOPD policy or law.” Once again, “de-escalation” figured prominently in the prescription for reform:

Critical in-service topics include: use of force, firearms, defensive tactics, integrity and ethics, community policing, communication skills / de-escalation training, cultural competency, search and seizure, policies and procedures, and current legal developments....All force policies should guide officers on how to avoid even justifiable force where it is safe and effective to do so, through the use of de-escalation techniques and solid tactics.

[Miami conceded from the start](#) that, yes, its officers had shot persons without sufficient justification. DOJ used these and other, similar events as evidence that turning to firearms when lesser force would suffice had become an integral component of the city's policing culture: “Based on our comprehensive review, we find reasonable

cause to believe that MPD engages in a pattern or practice of excessive use of force with respect to firearm discharges.” As had become routine, the need for “de-escalation” figured prominently in its recommendations:

...a man known by MPD to have mental illness was shot after he lunged at officers with a broken bottle...Numerous officers unnecessarily surrounded the man, escalating the situation...Although MPD had a CIT officer on the scene, unlike other cases involving persons with mental illness, the supervising officers failed to control the scene so that the CIT officer could do his job. An alternative approach prioritizing de-escalation techniques might have eliminated the need to use deadly force.

Use of force on mentally disturbed persons, drug users and veterans suffering from PTSD was the subject of “[An Integrated Approach to De-Escalation and Minimizing Use of Force](#),” a symposium held three years ago by the Police Executive Research Forum, perhaps the nation’s leading voice in advancing the craft of policing. Here are some of its key conclusions:

- Not every situation calls for police intervention, and not every refusal to comply with an officer’s order requires a forceful response.
- “Slowing things down” can prevent tragic misperceptions, such as thinking someone is going for a gun when they’re actually reaching for a cell phone. Making time also gives time for backup officers, supervisors and crisis intervention teams to arrive.
- De-escalating encounters, for example, by using verbal skills, can cool things down and prevent violence.

[Philadelphia PD’s E.A.R. strategy](#) was featured as an example of this approach. It is comprised of three sequential elements: engage, assess, resolve.

First, you should calmly engage the special needs person to make a connection; the first 10 seconds of this interaction are crucial. Ask the person his name and tell him your name...show empathy and make the person feel heard...Next, gather as much information as possible...Ask the person whether he has a medical condition, is receiving medical treatment, or is taking medication...Once you’ve assessed the person, start thinking about how to resolve the problem...When you have decided your course of action, be sure to announce your intentions...Let him know what you plan to do, and be patient and repetitive in your explanation.

It's been this writer's experience that an informal version of E.A.R. is how *most* law enforcement officers handle *most* situations, *most* of the time. Along those lines, here's an abridged version of what Steve Pomper, the author of [a well-known police blog](#), had to say about de-escalation:

As a retired cop who worked a sector with numerous mental health facilities let me assure you that de-escalation is nothing new to cops. De-escalation has always been and will always be a cop's first instinct, although it's not always possible. For example, it's rather difficult to verbally de-escalate a person charging at you with a knife. Instructors taught de-escalation in the academy when I was there twenty-three years ago, and it was taught long before that. De-escalation is also just plain common sense, the natural inclination for intelligent people who prefer the path of least resistance—in this case, literally.

Still, considering the many excesses that have come to light, “most of the time” may not be good enough. As if Chicago hasn't experienced sufficient discord (see “[Does Race Matter, Part I](#)” for a gut-churning example), on December 26 one of its cops [accidentally shot and killed](#) a beloved grandmother while aiming for a mentally disturbed 19-year old who reportedly charged at officers with a baseball bat. (The youth was also shot and killed.) And only days ago [LAPD chief Charlie Beck recommended](#) that one of his own cops be criminally prosecuted for shooting to death an unarmed, homeless man with whom officers had a “physical altercation” last May.

Has the frequency of tragic goofs increased? Executives at the PERF forum expressed concern that the new breed of digitally-enlightened police officers may be less apt verbally and less skilled in unarmed combat than “past generations,” thus more inclined to resort to a weapon. Of course, today's cops face an increasingly well-armed public. Indeed, the consequences of America's love affair with the .44 magnum are well known in Chicago, where [murder jumped 12.5 percent during 2014-2015](#), reaching 468, reportedly a U.S. high. Active shooters have become commonplace, occasionally with consequences so grim that [patrol officers are being trained to engage threats](#) instead of waiting for SWAT.

There is another, equally intractable problem. If it's true that most cops prefer to be kind and gentle, that still leaves some who don't, or won't. [Numerous citizen complaints](#), mostly about excessive force, dogged the Chicago cop who now faces murder charges for gunning down Laquan McDonald. As DOJ's findings in Miami demonstrate, it only takes a few trigger-happy officers to cause havoc:

Finally, a small number of officers were involved in a disproportionate number of shootings. A combination of seven officers participated in over a third of the 33

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officer-involved shootings. Had the shooting investigations been completed in a timely fashion, corrective action could have been undertaken and may have prevented the harm that can result from officers' repeated shootings, such as injury or death to the officer and/or the subject, trauma to the officer and others, and costly legal settlements....

So far it's been up to police executives and, on rare occasions, prosecutors and the courts to remove dangerous cops from the streets. But policing is in fact a licensed occupation. To that extent it's not so different in kind from vocations such as plumbing and electrical repair, architecture, law and medicine. If cities are unwilling to enforce professional standards, perhaps state peace officer boards, which set the requirements for officer certification in the first place, ought to step in.

In any event, the training bandwagon has already left the station. Four days after the grandmother was shot dead, the windy city's embattled mayor [announced a set of reforms](#) to "inject humanity" into policing. Rahm Emanuel solemnly promised that officers will be trained to avoid reflexively using deadly force. They will learn to create "more time and distance" when responding to tense situations and to recognize "degrees in between." And just in case the soft approach doesn't work, every beat car will be equipped with a Taser.

Let's hope that this medicine takes hold. We really don't want to revisit Chicago's woes anytime soon.

Posted 8/11/24

“DISTRACTION STRIKE”? ANGRY PUNCH? BOTH?

When cops get rattled, the distinction may ring hollow



For Police Issues by Julius (Jay) Wachtel. Delivered in L.A.’s crime and poverty-beset Watts neighborhood by a clearly angry cop, that notorious punch rocked far more than its beefy victim. Within moments of the officers’ approach to Alexander Mitchell’s double-parked, wrong-way Dodge Charger (the car on the right), residents closed in with cell phones in hand. Less than four-and-one-half minutes later, as two regular-size cops struggled to handcuff the ornery, six-foot-four, 280-pound citizen, bystander videos captured a “distraction strike” that will surely go down in infamy.



LAPD released both officers’ bodycams (click [here](#)). They cover the same 30-minute period, 5:15 to 5:44 p.m., Sunday, July 28, and are in two parts, with the driver-side officer first. Simply connecting with Mr. Mitchell proved challenging. Heavily tinted windows blocked view of the car’s interior, so the wary driver-side officer looked in with a penlight. He asked that the window be rolled down, and Mr. Mitchell complied. But he became quarrelsome when the officer asked for ID, objecting that “I’m not on probation or parole”.

After Mr. Mitchell repeatedly ignored requests for I.D. the officer ordered him to step out of the vehicle. Mr. Mitchell grudgingly complied, but violently resisted an attempt to pat him down. Although the officer didn’t announce his intentions, we assume that he

was arresting Mr. Mitchell for [failure to comply with the lawful orders of a peace officer](#) (i.e., present a driver license.) According to LAPD, Mr. Mitchell was ultimately booked for a misdemeanor violation of [Penal Code section 148](#), resisting, delaying or obstructing a public safety officer. [He was cited and released](#), and a court date is pending.

Throughout the struggle, Mr. Mitchell repeatedly asserted that that he knew the (correct?) “protocol” and was “not on probation or parole”. More citizens arrived, and their sympathies clearly didn’t lie with the cops. Several began filming away.



Mr. Mitchell’s size forced officers to use two pairs of handcuffs. Their commands to “put your hands behind your back,” though, fell on deaf ears. Repeatedly intoning “what did I do?”, Mr. Mitchell made affixing the second set impossible (left image depicts the passenger-side officer.) About four minutes into the tangle officers wrestled Mr. Mitchell back to the patrol car. That’s when the driver’s-side cop delivered that blow (second image portrays the moment just after the strike). While the punch instantly aroused spectator scorn (third image), it did seem to slow the large man down, [“enabling the officers to complete the handcuffing”](#) (LAPD’s initial assessment.) Moments later, the second pair of cuffs were affixed (right image).

For a brief bystander video of the punch, click [here](#). For our edited, 1– minute compilation of the key aspects of the encounter, including officer and bystander footage, click [here](#).



Many more officers arrived. More passers-by also appeared, and they sauntered through the area mostly unimpeded. Meanwhile, a now fully-cuffed Mr. Mitchell kept resisting. “What did I do?” he repeatedly demanded. And when told that he was going to jail, he complained “I didn’t do nothing”. As officers struggled to place him in a police

car, his objections morphed into “I can’t breathe.” Complaining about passing out, he soon went more-or-less limp.

Officers placed Mr. Mitchell on the ground and summoned paramedics. They soon arrived and placed him on a gurney. That’s when the (now, compliant) patient noticed that his car was being driven away.

“Why you taking my car?” he asked.

[According to Mr. Mitchell’s lawyer](#), the encounter broke his client’s nose and left him with jaw pain. “It was brutal, it was uncalled for, it was unjustified,” complains attorney Brad Gage. As one would expect, he’s preparing a claim (precursor to a lawsuit) against the city.

This wasn’t Mr. Mitchell’s first tangle with the law. Our search of civil and criminal records revealed that his family hails from the Lone Star State. Texas criminal record no. 50226672 indicates that a man variously known as Alexander Donta Goffney, Alexander Goffney-Mitchell, and Alexander Donta Mitchell had two encounters with the state’s criminal justice system:

Date	Type	Details
4/7/2022	Adult dispositions	Both below cases convicted as misdemeanors, concurrent 1 yr. sentences
10/6/2021	Felony arrest	Violate protective order, 2+ prior convictions
10/30/2020	Felony arrest	Aggravated assault w/ serious injury, family member



Why are we confident that these entries are about “our” Mr. Mitchell? His birthdate on Texas records is consistent with his chronological age (28) as reported by LAPD and other sources. “Goffney” is also very close to “Goffnerney”, the middle name ascribed to Mr. Mitchell on the LAPD report and elsewhere. And a somewhat dated photo from Mr. Mitchell’s Texas record (see left) seems a dead ringer for the facial images captured by LAPD and passer-by bodycams (LAPD on right).



As this intriguing episode wends its way through the criminal, civil justice (i.e., lawsuit) and police disciplinary systems, two aspects of the encounter provoked our interest. First - and most importantly - the reason for the arrest.



Click [here](#) for the driver-side officer's initial, one-minute interaction with Mr. Mitchell. After using a penlight to confirm that the car was occupied (left image), the officer asked the driver to lower the window. Mr. Mitchell did so (second image), then promptly demanded to know "what's going on?" In a low-key, conversational tone, the officer asked for a license and I.D. (third image) But Mr. Mitchell ignored him. Instead, he repeated "what's going on?" and added "I'm not on probation or parole." And when the cop (again, in a mild voice) pointed out that Mr. Mitchell was double parked and facing the wrong way, his antagonist countered with "what does that mean, I'm not on probation or parole". With the exchange seemingly going nowhere, the officer soon accused Mr. Mitchell of "ignoring" him and politely asked that he step out of the car. Again complaining that he wasn't "on probation or parole," Mr. Mitchell did so (right image.) That's when the officer moved in. And when the fight began.

Once again, consider the circumstances the officers encountered. Mr. Mitchell's car was double-parked and facing the wrong way. Its windows were blacked out all around. And its driver's ornery, challenging attitude must have provoked suspicions about his intentions. Why didn't the cop demand Mr. Mitchell's driver license from the very start? After all, he could have then simply ordered him to move the car. Job done!

But he didn't. He then moved in, seemingly to make a physical arrest. Was there sufficient cause?

That brings us to our other concern: the need for the punch. The officer is reportedly still on the job but off the street. His supervisor, though, has filed a personnel complaint, and [a use-of-force investigation is underway](#). However, the cop's prospects aren't completely grim. As mentioned above, LAPD credited the punch with resolving the situation. In fact, "distraction strikes" are widely recognized throughout cop-land as a "[decisive means to regain control of an encounter](#)." Still, they're not part of the [California State peace officer curriculum](#). Former LAPD Chief William J. Bratton

actually banned use of the term because he thought it could invite misconduct. However, [an official March 2023 LAPD directive](#) authorizes officers to use “strikes and kicks” when doing so is necessary to “overcome active resistance to arrest, create distance from a suspect, protect self or others from injury, stop or stun a suspect, and distract a suspect.”

But did it have to get to that point? Let’s self-plagiarize from [our essay in *The Crime Report*](#):

How can cops make it more likely that crooks and ordinary citizens will voluntarily comply? De-escalation – slowing things down, providing distance, avoiding the use of threats – can be a useful approach. Yet, as I discovered on the job, defusing potentially explosive, rapidly-evolving encounters doesn’t always come from being “nice.” Indeed, a few folks seem to consider courtesy as an invitation to misbehave. Avoiding violence might require firmness. Displaying weapons and using less-than-lethal means might even be called for.



[A recent study of officer-citizen interactions](#) captured on police bodycams concludes that suspects were more likely to comply with officers who “presented a positive tenor/demeanor or employed noncoercive verbal tactics.” But for an ornery few, nothing helped. While we’re not sold on the approach employed by the driver’s-side cop, considering Mr. Mitchell’s uncompliant nature, maybe there *really* was no hope. Still, as we mentioned in “[Blows to the Head Were Never O.K.](#)”, kicks and punches to the head are not an accepted practice. Even [Officer.com’s](#) relatively permissive piece recommends that distraction strikes be delivered “somewhere in the neck area with the edge of the hand or arm.” Considering Mr. Mitchell’s size, strength and combativeness, the only realistic alternatives might have been to deliver multiple blows from a club, multiple strikes from a Taser, or have additional officers join in. Problem is, as we discussed in “[Piling On](#),” and “[Policing is a Contact Sport \(II\)](#)”, each of these practices carry substantial risks.

So we’re back to square one. A more (verbally) forceful approach *might* have peacefully resolved the problem of a double-parked car. While the underlying reason for Mr. Mitchell’s presence would have remained a mystery, in these troubled, deeply polarized times, half a loaf isn’t bad.

Posted 12/2/15

DOES RACE MATTER? (Part I)

Police killings of black persons roil the nation

For Police Issues by Julius (Jay) Wachtel. No one disputes that [Laquan McDonald](#) had a grim upbringing. Neglected by his mother, then physically abused by her boyfriend, Laquan had passed most of his seventeen years in foster care. Friends point out that at the time of his death – the teen was shot and killed by a Chicago police officer on October 20, 2014 – Laquan was taking classes at a continuation high school, making good grades and trying to succeed. Yet he had recently been arrested for possessing marijuana and his autopsy revealed traces of PCP. Here is how [Garry McCarthy](#), Chicago's former police superintendent (he got canned the other day) summed up the challenges facing the troubled youth:

In this case, we have a tragic ending unfortunately to a tragic life of a young man who was betrayed on a number of different levels. And typically, these cases end up in the police department's hands. And, in this case, it ended up in his death.

McCarthy's comments were made on November 25, the day when fourteen-year veteran officer Jason Van Dyke surrendered on charges of first-degree murder for gunning down McDonald, and only one day after a court ordered the release, against the city's wishes, of a [graphic police video](#) of the encounter. Considering the year-plus delay in filing charges, it left many wondering [whether anything would have happened](#) had a protest movement (its now-famous rallying cry is "sixteen shots, thirteen months") failed to coalesce.

According to a unique *Washington Post* [website](#), police have shot and killed 894 persons in the U.S. this year, including 431 whites, 228 blacks and 145 Hispanics. States with more than one black fatality include Florida (six), California (three) and Maryland, New York, Ohio, Texas and Virginia (two each). Twenty-eight white casualties and thirty black casualties were reportedly unarmed. Of the latter, the two most recent are [Anthony Ashford](#), 29, shot and killed October 27 by a San Diego Harbor police officer, and [Jamar Clark](#), 24, shot and killed November 15 by a Minneapolis officer. According to police, Ashford attempted to grab an officer's gun and Clark had been combative.

Controversies about such shootings may be leading prosecutors to act in situations they might have once ignored or left for the civil courts to untangle. Outcomes are

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proving mixed. In November 2014 a Maryland judge sentenced suburban cop [Johnnie Riley](#) to five years imprisonment after a jury convicted him of first-degree assault for shooting a handcuffed, fleeing man in the back, leaving him paralyzed. But not all such cases have borne fruit:

- Last week [jurors acquitted](#) a suburban Pennsylvania officer of manslaughter for shooting and killing David Kassick, a 59-year old white person who was lying on the ground, brought down by Taser darts while fleeing on foot from a traffic stop. <http://www.phillyvoice.com/pennsylvania-officer-acquitted-in-shooting-of-susp/>
- In August prosecutors dismissed voluntary manslaughter charges against Charlotte, North Carolina police officer [Randall Kerrick](#) after jurors deadlocked 8-4 in favor of acquittal. Two years earlier, Kerrick shot and killed Jonathan Ferrell, an unarmed black man who was pounding on doors of private residences after a late-night car accident.
- In April a jury acquitted Chicago PD detective [Dante Servin](#) of involuntary manslaughter for shooting and killing a black woman two years earlier. Servin, while off-duty, had been aiming at the victim's companion, a rowdy male who allegedly charged at him, and whom Servin mistakenly believed was armed.

Two foundational Supreme Court decisions guide the police use of force. In [Tennessee v. Garner](#) (1985), the Court ruled that deadly force cannot be used to prevent a felon's escape unless there is probable cause to believe that the suspect "poses a significant threat of death or serious physical injury to the officer or others." Four years later, in [Graham v. Connor](#), the justices held that police use of force should be evaluated in light of the Fourth Amendment's "reasonableness" standard: were officers' actions "objectively reasonable" in light of the circumstances? Further, "reasonableness" was to be judged *not* from an after-the-fact, lay point of view but from the perspective of a reasonable officer on the scene, with allowance for officers' frequent need to make split-second decisions.

Official police policies and procedures closely track these rulings. For example, here is the [Los Angeles Police Department's policy](#) on use of deadly force:

Law enforcement officers are authorized to use deadly force to protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or, prevent a crime where the suspect's actions place person(s) in imminent jeopardy of death or serious bodily injury; or, prevent the

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escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall, to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury. The reasonableness of an officer's use of deadly force includes consideration of the officer's tactical conduct and decisions leading up to the use of deadly force.

Exactly what constitutes a sufficient threat remains legally uncertain. A recent Supreme Court decision ([Mullenix v. Luna](#), no. 14-1143, 11/9/15) reviewed the actions of a police officer who, armed with a rifle, perched on an overpass and fired as a fleeing felon sped by, killing the man. Survivors filed a lawsuit alleging excessive force. Although lower courts favored holding a trial on the merits of their claim, the Supreme Court ruled that the officer was entitled to qualified immunity, as it has not been “clearly established” that the Fourth Amendment prohibits using deadly force under the circumstances he faced.

Let's turn to the issue of present concern: police shootings of black people. In “[Lessons of Ferguson](#)” we speculated that “crossed signals” between cops and citizens are less likely when both parties are of the same race. It also seems commonsensical that racially representative police forces are more likely to enjoy good relations with minority communities. Yet in many areas – say, Ferguson, [with only three black officers](#) (out of 52 total) for a city that is two-thirds black – there are relatively few black cops. A [recent analysis](#) of [2013 data](#) for 269 police agencies serving populations of 100,000 or more revealed that blacks are underrepresented by an average of 6.4 percent. In twenty-six localities where blacks are in the majority, the average gap increases to 14.5 percent. Gaps are most pronounced in medium-sized communities, reaching 45.4 percent in Daly City, California, 44.1 percent in Edison Township, New Jersey, and 42.4 percent in Fremont, California. However, in the larger cities the gaps vary. Black police officers are underrepresented by 6.6 percent in Chicago and 6.5 percent in New York City, but are overrepresented by 1 percent in Dallas, 1.1 percent in Seattle, 1.4 percent in Boston, 2.8 percent in Los Angeles, 3.5 percent in San Francisco, 10.6 percent in Washington D.C. and 15.6 percent in Miami.

Every year the FBI publishes [statistics of killings by police](#). Aside from being incomplete – participation is voluntary, and many agencies contribute sporadically or not at all – the data only reflects situations (nearly all are shootings) where someone died, the killing was deemed justifiable, and the decedent was a “felon.” Keeping the limitations in mind, *ProPublica* used the data to analyze police killings during 1980-2012 (click [here](#) and [here](#)). On the one hand, they found that black youths, ages 15-19,

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were from 9.1 to 21 times more likely than white youths to be shot dead by police. On the other, they discovered that seventy-eight percent of the “felons” killed by black officers (they accounted for ten percent of shootings) were also black.

ProPublica did not reach any conclusions about the effects of officer or suspect race. Indeed, as there is no comprehensive national repository of killings by police, figuring out whether black persons are more likely to be shot because of their race, the circumstances of an encounter, or factors such as the local crime problem, seems an impossible task. Fortunately, that hasn't stopped researchers from trying. Next week we'll report on their work (including a recent, in-depth DOJ-commissioned study) and even offer some of our own (fully baked!) solutions.

Stay tuned!

Posted 12/14/15

DOES RACE MATTER? (PART II)

The Philadelphia story, and its implications for urban policing

By Julius (Jay) Wachtel. On May 14, 2013, Philly.com, a website affiliated with the Philadelphia Inquirer, rocked the “city of brotherly love” [with a post](#) that questioned why Philadelphia cops were shooting more citizens – they shot 52 persons in 2012, seventeen more than in 2011 – even as violent crime was going down. Although the department offered some justification – gun assaults on officers had jumped to 101 from 76 in the preceding year – when compared to prior years the toll seemed decidedly excessive.

Within two weeks [PPD officers shot four more civilians](#), three fatally. A Fraternal Order of Police official blamed the gunplay on criminals who were armed with everything up to assault rifles and often outgunned street cops. But police commissioner Charles Ramsey took a different tack. Admitting that the many shootings “gets people wondering if they were all justified,” he called for an inquiry by the Department of Justice, just like he did while police chief in Washington D.C. In 2014 PPD began posting officer-involved shooting data [on the web](#).

DOJ wrapped up its inquiry earlier this year. [It examined 394 officer-involved shootings \(OIS’s\)](#) between 2007-2014. [During that period](#), in a city that was approximately 43 percent black and 37 percent white, eighty percent of those shot were black and nine percent were white. Fifty-six percent had been armed with a firearm and eight percent with a “sharp object,” while others carried blunt objects and bb guns. Fifteen percent, though, were completely unarmed. It’s that group that drew our attention. Why were unarmed persons shot? Specifically, were unarmed blacks more likely to be shot than unarmed whites? And did officer race matter?

According to the study, officers usually shot unarmed persons for one of two reasons: a failure of “threat perception,” and during physical altercations:

Threat perception failures occur when the officer(s) perceives a suspect as being armed due to the misidentification of a nonthreatening object (e.g., a cell phone) or movement (e.g., tugging at the waistband). This was the case in 49 percent of unarmed incidents. Physical altercations refer to incidents in which the suspect reached for the officer’s firearm or overwhelmed the officer with physical force. This was the case in 35 percent of unarmed OISs.

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Perhaps surprisingly, unarmed whites were more likely to be shot than unarmed blacks (twenty-five percent of shootings versus 15.8 percent.) The reasons were also different: unarmed whites were most often shot because they physically resisted, while unarmed blacks were most often shot due to lapses in officers' threat perception. And there was another surprise: black officers seemed *more* likely than their white colleagues to misperceive threats when citizens were black:

We also examined the race of involved officers in threat perception failure OISs to gain a greater understanding of how cross-race encounters may influence threat perception. We found that the threat perception failure rate for White officers and Black suspects was 6.8 percent. Black officers had a threat perception failure rate of 11.4 percent when the suspect was Black. The threat perception failure rate for Hispanic officers was 16.7 percent when involved in an OIS with a Black suspect.

So, did race matter? While DOJ's report doesn't say "no," its conclusions, which sharply criticized PPD's training and supervisory practices, don't mention race. Aside from this study, there is precious little data about cross-racial law enforcement encounters. And where it exists, the interpretations are decidedly mixed. Here are some examples:

- An analysis of surveys and observations in Indianapolis and St. Petersburg during 1996-1997 concluded that black cops seemed significantly more willing than white officers to defuse conflicts in predominantly black areas. To complicate matters, it also seemed that black officers seemed more likely than white officers to turn to coercion (Ivan Y. Sun and Brian K. Payne, "Racial Differences in Resolving Conflicts," *Crime and Delinquency*, October 2004, pp. 516-541.)
- [A study of 230 shootings](#) by St. Louis police between 2003-2012 determined that the most important determinant was not officer race but the level of firearms violence.
- A review of FBI and other data from 1994-1998 for 179 cities with populations of 100,000 or more found no significant relationship between police killings of felons and the prevalence of black or Hispanic officers (Brad W. Smith, "The Impact of Police Officer Diversity on Police-Caused Homicides," *The Policy Studies Journal*, 31:2, 2003, pp. 147-162).
- An examination of similar data for 2000-2003 found that, in line with the hypothesis that minorities were regarded as threats, *sustained* complaints of

excessive force went up as the proportion of minority residents increased. Interestingly, sustained complaints went down as the proportion of black (but not Hispanic) officers increased (Brad W. Smith and Malcolm D. Holmes, “Police Use of Excessive in Minority Communities: A Test of the Minority Threat, Place, and Community Accountability Hypotheses,” *Social Problems*, 61(1), 2014, pp. 83-104.)

It seems that the effects of race on officer decisions, if any, are often subtle, difficult to measure, and open to divergent interpretations. For example, it may be that officials feel more pressure to take excessive force complaints seriously in areas with larger minority populations. Really, policing yields sufficient anecdotes to confirm or refute virtually any position. Those who don’t feel that race matters can point to the incident mentioned in [Part I](#), where Maryland officer Johnnie Riley was convicted for shooting a handcuffed prisoner. (It turns out that both officer Riley and his victim were black.) On the other hand, those convinced that race is important can bring up tragic events such as the shooting death of [Tamir Rice](#), a black 12-year old Cleveland boy who was killed by a white police officer while holding a toy pistol.

In the end, quarrels about the impact of citizen and officer race cannot be resolved with data alone. In this world, race obviously *does* matter. Police – those unique citizens we empower to use force and coercion – must represent the diversity of the communities they serve. And that’s not just for the sake of appearances. In British tradition, cops are much more than peacekeepers and law enforcers – they’re role models, whose conduct sets the standard to which all citizens should aspire. Consider just how useful it might be for youths living in disadvantaged areas to be regularly exposed to officers who really, *really* look like them. It’s a crime-prevention strategy that could potentially yield great rewards.

Posted 9/12/10

EVERY COP NEEDS A TASER

***There must be a way for three officers to handle
a drunk with a knife short of killing him***

“Let’s be clear, and I will be, about what happened in the Westlake area. There was a man with a knife. That man with a knife was threatening individuals, innocent people who were on the street there. That man was in close proximity – in fact, the facts will show that actually he had his hand on at least one person at some point in that altercation. We’ve got to go through an investigation. But when it’s all said and done, I’ll guarantee you what’s going to come out is that these guys are heroes, and I stand by them.”

By Julius (Jay) Wachtel. Coming on the heels of three days of disturbances in the Westlake district, an impoverished, densely-populated area of central Los Angeles that’s home to tens of thousands of Central American immigrants, many without papers, [Mayor Antonio Villaragoisa’s](#) comments conveyed a tinge of desperation. Cops did their jobs. Why would anyone criticize them?

Hizzoner’s frustration was understandable. Although what happened later isn’t as clear-cut, it’s beyond dispute that [the incident began](#) when a pedestrian alerted three bicycle officers about a man threatening passers-by with a knife. Officers quickly found the suspect, Manuel Jamines, 37, a Guatemalan national, and approached him on foot. According to police, Jamines was waving a knife. In an episode that LAPD Chief Charlie Beck said lasted less than a minute, officers ordered Jamines in both English and Spanish to drop the weapon. Instead of complying Jamines held the knife high and advanced on officer Frank Hernandez, a 13-year veteran. Hernandez fired twice, striking Jamines in the head and killing him.

It turned out that Jamines, a day laborer, was drunk. A large folding knife with a six-inch blade was recovered. It was speckled with blood.

Relatives said that Jamines had an alcohol problem and had been drinking since that morning. A cousin told Jamines to go home but the man apparently didn’t listen. His body will be reportedly returned to the Guatemalan village where his wife and three children reside.

Residents erected a makeshift memorial. Then the marches and protests began. Participants, including a handful of very white-looking members of the “Revolutionary

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Communist Party” flooded the Pico-Union district. There were three nights of disturbances, a handful of injuries and several dozen arrests. Trash was strewn about and a few dumpsters were set on fire but damage was slight. [LAPD rules that forbid officers](#) from routinely inquiring into immigration status don’t apply to those arrested, and it may be that fear of being deported helped keep things from escalating.

A couple of witnesses have since come forward to report that Jamines had nothing in his hands when he was shot. Frankly, their accounts are less than credible (one, who hid her face from cameras, criticized officers for moving on unlicensed sidewalk vendors, an issue of continuing controversy.) Your blogger wasn’t there, and until there’s an authoritative account to the contrary we accept that officer Hernandez sincerely believed there was no option but to shoot.

Yet we remain troubled.

According to the FBI, law enforcement officers [justifiably shot and killed](#) 368 persons in 2008, the last year for which complete data is available. During the same period [58,792 officers were assaulted](#) and 15,366 were injured, with 188 hurt by gunfire and 125 with cutting instruments. From this perspective the number of citizens slain by police seems, for lack of a more delicate term, relatively modest. That officers generally exercise restraint is borne out by a [BJS special report](#), which estimated that only 1.6 percent of police-citizen contacts in 2005 involved the use of force.

While police must be able to protect themselves and others, they are expected to accept some risk. Considering the many instances in which citizens have been shot because they were mistakenly thought to present a threat there are probably more than a few cops who wish they had not been as quick to pull the trigger.

And that brings us to this incident and this particular officer. [According to the Los Angeles Times](#) officer Hernandez has previously shot two persons. Both shootings were reportedly ruled “in policy,” meaning that they were deemed justified. In the first episode, which occurred in 1999 when Hernandez had three years on the job, he shot a female armed robbery suspect after an exchange of gunfire. In the second, which occurred in 2008, Hernandez shot an alleged assault suspect whom he said pointed a gun while trying to flee. [A follow-up story in the Times](#) reports that Hernandez was admonished for using improper tactics in the latter incident. A lawsuit has also been filed. It now seems that the man Hernandez wounded was unarmed and apparently unconnected with the assault.

Considering that most cops complete their careers without shooting anyone, Hernandez is somewhat of a rarity. Yet each situation must be judged on its own.

Assuming that the mayor is correct and that the present shooting will also be ruled “in policy,” the question will nonetheless linger as to whether a father’s life might have somehow been spared.

That brings us to the observation that inspired this post. LAPD patrol units carry Tasers and beanbag shotguns. Bicycle officers, as Chief Beck acknowledged, typically don’t. (They do carry OC spray. Its limited reach and delayed effect, though, can make it chancy to use should suspects have weapons.)

Police around the U.S. regularly deploy Tasers against knife-wielding suspects with good effect. In July [a Salt Lake City bicycle cop](#) Tased a man who approached him and his partner while wielding a knife (for other recent examples Google “taser knife.”) A recent [Federally-funded study](#) identified 500 episodes in central Florida, including 185 involving edged weapons, where officers could have justifiably used deadly force but successfully opted for an alternative, most often the Taser (pp. 86-88). Lives were saved, expensive litigation was avoided and cops didn’t have to second-guess themselves for the rest of their careers.

Earlier this year ex-LAPD Assistant Chief George Gascon, now police chief in San Francisco, [asked for permission](#) to issue Tasers to the SFPD. Reviewing fifteen justifiable shootings between 2005-2009, he concluded that five, which involved suspects who had knives or “charged” at police, could have been averted had a less-than-lethal alternative been available: “One of the things we are saying in this analysis is that if we had another tool in the tool bag, i.e., a Taser, some of these shootings could have been avoided.”

Alas, the fear that cops might go hog-wild with CED’s carried the day and Chief Gascon didn’t get his wish. But one hopes that he’ll try again.

Back to L.A. [In a recent interview](#) Chief Beck expressed concern that an incident he considers “pretty straightforward” has touched off so much resentment. He seems committed to regaining the community’s trust and we wish him well. Of course, not being privy to all the gory details we can’t be positive that a Taser would have peacefully resolved this incident, thus making *real* heroes of the police and avoiding the recriminations that followed. Even so, there’s little question but that Tasers should be carried by all patrol officers, including bicycle cops. There really *must* be a way to handle a drunk with a knife without having to call in the coroner.

Posted 4/2/20

FAIR BUT FIRM

Gaining voluntary compliance is the sine qua non of everyday policing. Indeed, of everyday life.

For Police Issues by Julius (Jay) Wachtel. Every mom and dad remembers the day (well, maybe it was a week or a month) when their bundle of joy transformed into an obstinate brat. As we well know, that's a two-way street. How parents respond to their children's acting-outs – and how offspring react to their parents' response – can affect their relationship during the crucial teen years and well into adulthood.

To be sure, even the best parents can only do so much. Genes don't come with an instruction manual. And once environmental factors such as peers and schools come into play the ability to influence one's offspring is severely limited.

Gaining compliance – hopefully, without resorting to brute force – is crucial in areas other than parenting. Regulations that require industry to recycle waste and limit pollution would hardly be needed if businesses paid attention to their impact on public health. Alas, when the “bottom line” is in play, corporations tend to assess the benefits of social responsibility with a calculator. Governments can offer inducements such as financing and technical assistance, but in the end [there seems to be no substitute](#) for the ability to impose fines that exceed the cost of doing the right thing from the very start.

Big business has problems other than Uncle Sam. Their chieftains must contend with corporate boards, investors and the stock market. So what about individuals? Must they also be coerced to do the right thing? Perhaps. [According to Robbins and Kaiser](#) the likelihood of punishment for noncompliance seems to be the key motivator for paying one's taxes. (“Legitimate authorities and rational taxpayers: An investigation of voluntary compliance and method effects in a survey experiment of income tax evasion,” *Rationality and Society*, 2018).

What about policing? Are threats of punishment the real motivator there, too? Much of the literature says “yes!” For example, [Sommers and Bohns](#) looked into so-called “consent” searches. Bottom line: citizens who comply do so because they feel pressured. (“The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance,” *Yale Law Journal*, 2019).

Just like what happens between parents and kids, police encounters involve two parties: citizens and cops, and what one says or does inevitably influences the other. In

“Compliance, non-compliance and the in-between: causal effects of civilian demeanor on police officers’ cognition and emotions,” [Nix, Pickett and Mitchell](#) probed how citizen behavior affects what cops do. Working officers were asked to respond to three detailed vignettes: one described an encounter with a disorderly pedestrian, another a car stop for a traffic violation, and the third a dispatch about a “suspicious person.” (Our post is about commonplace encounters. We won’t be commenting on bank robberies and such.)

As one might predict, citizens who were “outright noncompliant” evoked the most negative sentiments. Next to compliance, officers thought that citizen demeanor was also important. “Disrespectful” citizens consistently “arouse[d] greater suspicion” and “evoke[d] more antagonistic emotions (i.e., anger, annoyance, frustration).” Citizen disrespect also heightened officers’ sense of danger on dispatched calls and increased their fear during traffic stops. Researchers thought these latter effects especially important because sentiments such as anger might distort perceptions; say, turn a cell phone into a gun. (For more about that check out “[A Reason? Or Just an Excuse?](#)”).

To be sure, it’s a two-way street. How cops go about their job affects how citizens react. In “Compliance on demand: the public’s response to specific police requests,” [Mastrofski, Snipes and Supina](#) described findings of a ride-along study in Virginia. In routine encounters, being “forceful” or showing a citizen “disrespect” proved significantly less likely to yield compliance than a “friendly” (but *not* gushing) approach. Officers with more experience and those who reported more positive feelings about community policing also seemed to get better results.

Yet cops were only part of the puzzle. Citizens who were less “rational” proved less likely to comply. Compliance also suffered in non-public settings (e.g., someone’s home) and as situations increased in severity. However, it improved when it was obvious that the citizen had done wrong.

What can police do to enhance the prospects for compliance? Nix and his colleagues suggest that realistic training exercises might help officers improve their ability to analyze risk:

...training emphasizing that bad attitudes violate no laws may help to reduce officers’ reliance on the attitude test to judge civilian suspiciousness and dangerousness. Such training may also have the added benefit of helping to reduce antagonistic emotions by countering the view that a bad attitude is a moral violation.

Better risk analysis could enhance officer safety. It could also help citizens survive should they say or do something that might cause an untrained cop to become

needlessly fearful. (For more about the centrality of risk tolerance to the craft of policing, check out [“Working Scared.”](#))

Mastrofski et al seemed less sanguine about the prospects for improvement, in part because of difficulties in nailing down the officer traits that really count. They did speculate, though, that cops who regularly succeeded at securing compliance might have “heightened diagnostic skills” that helps lead them down the most likely paths to a peaceful and satisfactory conclusion.

Such things have preoccupied pundits (including us) for some time. Beyond the willingness to accept risk, our [“Use of Force”](#) section is replete with posts that caution against letting [the chaotic nature of the streets](#) interfere with one’s judgment. (To be sure, easier said than done.) [About the need to slow down](#), keep one’s distance and, when possible, work from a position of cover. [About de-escalating](#). In [“Three \(In?\)explicable Shootings”](#) we emphasized the centrality of officer characteristics such as temperament, judgment and forbearance, which should come with experience (but sometimes don’t), and of the need for training that goes well beyond the academy. Bottom line: shifts that work together should train together.

Yet even the best crafted and intentioned police work sometimes fails. While this really(!) isn’t a post about the virus, the pandemic offers pertinent examples of just how difficult it can be to get citizens to give up something they prize. Consider, for example, the avid surfer [who received a \\$1,000 fine](#) after brushing off “numerous warnings by police and lifeguards cautioning him not to go in the water.” Or the Florida pastor [who assembled his flock for church services](#) despite pleas by cops and lawyers to avoid “putting his congregation in danger of contracting the coronavirus.” (He was arrested.)

To be sure, these characters would probably justify themselves differently. Yet their obstinacy likely shares a common psychological root. As everyone who’s worked in law enforcement knows, some citizens – and that includes surfers, preachers, angry spouses and inner-city gang members – seem determined, come what may, to do *what* they want *when* they want. Consider the threat such pig-headedness could pose, and especially should a gun be around. Alas, there’s no quick, street test for being *shtupid* (one of my dissertation chair’s favorite sayings.) When that condition is diagnosed it’s usually *after* someone gets hurt.

Ultimately, changing hearts and minds is a task for society. For civic leaders. Educational institutions. Politicians. And yes, even the clergy. Make it loud and clear: it’s everyone’s obligation to comply with the cops. After things have settled – and only then – complain. Until that sentiment spreads and takes hold, though, we urge that, if nothing else, officers fall back on the old “firm but fair” ditty but swap the terms around.

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After all, citizens usually assume that cops will be forceful. So surprise them with a pleasant and meaningful tweak. Whether it's a preacher or gangster, come in "fair" from the very start. Still, keep Mastrofski et al's findings in mind and don't overdo the sugar (that "carrot" in our online graphic.) In the real world of the streets, and seemingly everywhere else, there is sometimes no substitute for "firm."

Posted 1/18/11

FIRST, DO NO HARM

Just how intrusive should patrol be?

By Julius (Jay) Wachtel. It's noon on Martin Luther King day, January 17, 2011. While on routine patrol you observe a man sleeping on the sidewalk of a commercial park.* He's lying in front of offices that are closed for the holiday. A Papa John's pizza box is next to him. Do you: (a) wake him up, (b) call for backup, then wake him, (c) quietly check if there's a slice left, or (d) take no action.

Think you've got it? You'll get another chance in a minute.

It was Sunday afternoon, December 12, 1010. All was quiet in Belmont Shore, an upscale residential area of Long Beach, California. [Douglas Zerby](#), 35, was sitting on the second-floor balcony of a friend's apartment. As usual, he had been drinking. For reasons that he would take to his grave he had a pistol-grip water nozzle in his hands. Yes, the kind for a hose.

Local residents were accustomed to Mr. Zerby's presence and paid no attention. Unfortunately, [one who didn't know him](#) called the cops. He or she described the object in Mr. Zerby's hands as looking like "a tiny six-shooter." Two officers responded and took cover some distance away. They observed an apparently intoxicated man fiddling with an object that looked like a pistol. They called for backup, then for reasons that aren't completely clear moved in to "contain" the suspect. One cop was armed with a handgun and the other with a shotgun. That's when Mr. Zerby reportedly raised his arms and pointed the object in their direction. Both officers fired, sending six handgun rounds and eighteen shotgun pellets, each roughly equivalent to a .38 caliber bullet, downrange. Mr. Zerby was struck multiple times and died at the scene. There is no indication that he and the officers spoke.

Mr. Zerby was the father of an 8-year old. An alcoholic, in and out of rehab, he was by all accounts a pleasant, law-abiding person. Police expressed deep regret but defended the officers' actions as reasonable. Neighbors disagreed. So did Mr. Zerby's surviving relatives, who hired a lawyer and plan to sue.

During the early morning hours of Friday, January 14, 2011 LAPD responded to a disturbance in the upscale Westside community of Playa Vista. When officers arrived

they found [Reginald Doucet, Jr.](#) running around stark naked, “yelling and behaving erratically.” A former college football player and NFL prospect, the 25-year old had been arguing with the taxi driver who brought him to his condominium.

Officers convinced Mr. Doucet to don his underwear. But he ran away twice when they tried to detain him. He was at the front door of the complex when officers finally closed in. Cornered, he began throwing punches, landing blows on both officers in the face and head. Police say that Mr. Doucet then tried to take one of the cop’s guns. That’s when the officer’s partner fired twice, killing him.

Both officers were treated for injuries and released.

One of Mr. Doucet’s neighbors was his former sports agent, Chris Ellison. He described Mr. Doucet as “an outstanding young man who was trying to make a better life.” Ellison said he had never seen Mr. Doucet drunk or violent. “Were the police really getting whooped that bad that they needed to shoot him – twice? They can’t pull out a billy club? They can’t Tase him?”

Ellison’s views were echoed by civil rights advocate [Earl Ofari Hutchinson](#), who questioned why an unarmed man couldn’t be subdued without killing him. “Is it always going to be a situation where you're going to use deadly force? Because if so, that's a problem.” He called on the chief to revamp training. But Paul Weber, president of the LAPD officer union, brushed the suggestion aside. “In this case, naked or not, when Mr. Doucet tried to take an officer's gun away from him, he set in motion the chain of events that sadly led to his death. An officer who loses his gun to a suspect loses his life.”

Stay in the law enforcement biz long enough and you’ll come across plenty of examples of normally law-abiding persons getting shot dead by police. Sometimes they deserve it. Sometimes they don’t. Sometimes, as in Mr. Zerby’s killing, officers misinterpret a gesture as a lethal threat. Sometimes, as in Mr. Doucet’s, they feel that their own lives are at risk.

We seldom hear about the far more frequent (and far less newsworthy) good decisions that cops make every day. Cops routinely accept considerable risk. (Sometimes, as in the case of Lakewood, New Jersey officer [Christopher Matlosz](#), they may take things too casually, with tragic consequences.) When dealing with combative suspects most officers turn to less-than-lethal weapons such as Tasers and beanbag shotguns whenever possible. Regrettably, some departments, possibly fearing overuse, limit their distribution to supervisors and specialized units.

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For more about such things check out the posts linked below. But for now let's turn to the main reason for this post. As readers probably know, "[first, do no harm](#)" is the core principle of medical ethics. Physicians are taught that before intervening they must weigh potential harm against potential benefits.

Primum non nocere would also seem like a good rule for cops to follow. But decades of bombardment by strategies such as "[broken windows](#)" and "[community policing](#)" have left police feeling as though they must take decisive action not just in cases of serious crime, but whenever things seem amiss. It's more intrusion, not less. That may be a mistake. As we emphasized in "[Making Time](#)," the police workplace is hopelessly unpredictable. Cops seldom have complete information or the opportunity to collect it. Experience also teaches that things are often not what they appear to be. Yet officers are pressured to butt in anyway. After all, 911 means "emergency," right?

Lacking verifiable details it's hard for outsiders to speculate what officers might have done to avoid killing Mr. Zerby and Mr. Doucet. However, we *can* urge that when no serious crime has occurred, bias be shifted in the direction of restraint. As it turns out, Mr. Zerby could have been observed indefinitely. Mr. Doucet presented a different problem. But every cop knows that without a less-than-lethal weapon (and sometimes even with it) it can take several officers to restrain a large, uncooperative man without seriously hurting either the suspect or themselves. Mr. Doucet had not committed a serious crime. It's likely that he, too, could have been watched from a safe distance until additional officers arrived.

It feels odd to be writing such an obvious prescription in the twenty-first century. Let's hope that another blogger doesn't feel the need to repeat it in the twenty-second.

Oh, yes, go back to the top and retake the quiz (answers below.)

* Real story, except that (1) there was no cop involved, and (2) the blogger used an unrelated image to represent the drunk, who left before the photo was taken

Quiz answer: (d). If you picked (a) or (b) read the post again; if (c), check out our *Conduct and Ethics* page

Posted 4/19/09

GOOD COP / BAD COP

NYPD's handling of a student protest may have missed its mark

By Julius Wachtel, (c) 2010

[April 10, 2009](#) was a blustery day in Gotham. During the early morning hours about twenty members of the “[New School in Exile](#)” burst into a building at 65 5th. Avenue, New York City. Carrying rucksacks, chains and padlocks they shoved aside a startled security guard, bound themselves together and pledged not to leave until the New School's embattled president stepped down. A banner on the roof announced the takeover. Dozens more protesters staged a noisy rally outside.

It wasn't the first time. [In December 2008](#) angry students occupied a cafeteria (conveniently, one might think) for three days. Again, Bob Kerrey was the target. Hired in 2001 to bring order and financial stability to the liberally-minded campus, the former U.S. Senator and Medal of Honor recipient was planning to increase tuition. After going through five Provosts in seven years, he had also appointed himself the school's chief academic officer, an odd move considering that he lacked a Ph.D. Temporarily humbled by a [faculty no-confidence vote](#), Kerrey defused things by promising that everyone, students included, would have a say in charting the school's future. He also started a [blog](#).

Now, five months later, things were back to square one, and this time Kerrey called in the cops. That's when the “fun” began.

NYPD deployed two contingents of officers, one to enter the building and another to clear its exterior. An official video depicts what happened inside.

NYPD Video -- Inside the New School

Everyone seems almost eerily composed. Although students refused to leave voluntarily, they didn't resist and were cooperative to a fault. Led by a captain who exuded calm, officers crisply went about their business. A city videographer captured everything and promptly uploaded it to You Tube. It's a brave new world, indeed!

But as an unsanctioned amateur video reveals, things were going down far less smoothly on the outside.

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Amateur Video -- Outside the New School

The video begins with a shot of officers forcefully blocking a side door to keep protesters from leaving. Officers also repeatedly doused students with pepper spray, an action that [an NYPD spokesman said didn't happen](#) until shown the video. Meanwhile, off camera, some demonstrators reportedly flung portable barricades at police and ran off. Cops [chased them](#) down the street, catching one and wrestling him to the ground. A demonstrator is also depicted exchanging angry words with an officer, who swats at him, causing the youth to lose his balance. As the cop disinterestedly walks away other officers jump on and handcuff the man.

Overall the impression is hardly favorable. Police seem disorganized. Officers are reacting impulsively, dashing to and fro and tangling with protesters who try to leave. If someone is in charge (all we see are a few sergeants) their influence seems negligible. Precious minutes passed before cops simmered down and got organized. By then a lot of force had already been used.

Nowadays much of what cops do winds up on You Tube. Lacking context, what gets depicted is often inflammatory. Just like making sausage, policing is a messy business. Despite what many might think, cops really *are* human, and when provoked they're likely to lash out. As a [retired NYPD sergeant](#) who watched the New School videos aptly put it, "Lots of times some skell [New Yoak lingo meaning 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."

That, of course, is no excuse for doing a lousy job. We spend huge amounts on our police forces, in part so that trained professionals are available to defuse potentially explosive situations. That, of course, is when a steady hand is most needed. Consider the striking contrast between the videos. It was the chaotic exterior, with uncooperative "skells", where the police nearly fell apart.

Like the good sergeant suggests, getting stressed-out cops to react appropriately is no easy task. Here are some things to think about for the next time:

- Command and control are crucial. Sergeants aren't enough. Having a captain actively participate was an excellent idea; had one been outside it might have helped immensely.
- There are times for crime-fighting and times for peacekeeping. Student demonstrations definitely fall in the latter. No "crimes" of any significance were

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committed, and for all the yelling and tumult there was precious little damage. Yet officers intent on making arrests chased after delinquents and bottled others up, escalating tensions and needlessly raising the temperature. It was precisely the wrong thing to do.

- Training and more training are key. It's not just about public relations: *it's about money*. Processing scores of protesters through the criminal justice system is a phenomenally expensive distraction. Accidentally crippling some bobble-headed youth or running him into the path of a car can easily cost a department the equivalent of a precinct's yearly payroll. One need only consider the multi-million dollar settlements resulting from LAPD's [MacArthur Park](#) fiasco to appreciate the consequences of mishandling demonstrations. Staging regular, quality instruction only sounds expensive until one is confronted with the alternative.

Getting cops to ignore provocations and make good decisions while under stress may be a tall order, but it's why society shoulders the phenomenal expense of fielding police forces in the first place. We can't just sit around and wait for evolution to provide a more civil society. It's up to the police to take the first step.

Posted 7/18/16

GOOD GUY / BAD GUY / BLACK GUY (PART I)

Do cops use race to decide who poses a threat?

By Julius (Jay) Wachtel. On July 5 [a caller alerted Baton Rouge police](#) that a man selling CD's on the street brandished a gun. That man turned out to be Alton Sterling, 37, a registered sex offender with an extensive criminal history that included a stretch in prison for selling marijuana while armed with a gun (for more on his record click [here](#).) Officers wound up tussling with Sterling, and after deploying a Taser to little apparent effect took him to the ground. Sterling continued to resist. During the struggle an officer noticed that Sterling was armed and yelled "he's got a gun!" His partner drew his sidearm and, after a brief interval, repeatedly shot Sterling point-blank, fatally wounding him. (For bystander videos click [here](#) and [here](#).)

According to [census figures](#), Baton Rouge is 55% black. Sterling was black. But was he a "bad guy"? Even if he was, did the cops have to shoot him? To be sure, Sterling was a very big man. He had also landed on his back, hindering efforts to restrain him. Officers struggled mightily (observe one cop's exhaustion at the end) and only spotted the gun belatedly. It's unclear just how much control they had of the man. So without more information, your blogger, while skeptical that lethal force was necessary, is reluctant to criticize. (He has vivid memories of rolling around the ground with a domestic abuser in Oregon, an encounter that could have turned out far more poorly had the man been armed.)

Still, [as Louisiana governor John Bel Edwards said](#), appearances were disturbing. Citing "very serious concerns," he referred Sterling's killing to the Feds.

Both officers were white. One had been on the job four years, the other, three. [Each had two use-of-force complaints](#), in each instance involving a black person. None were sustained.

One day later two officers were on patrol in Falcon Heights, a suburb of St. Paul, Minnesota, when [they observed a vehicle](#) driven by Philando Castile, 32. One thought that Castile [resembled an armed robbery suspect](#) depicted on a flyer and initiated a traffic stop. (Media originally indicated the stop was for a broken taillight. That reason, reportedly supplied by Castile's girlfriend, now seems incorrect or incomplete.) Neither cop was wearing a body camera, so exactly what took place cannot be confirmed.

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According to the woman, who was seated next to Castile, an officer came to the driver's side and asked for ID. Castile supposedly had a handgun within view and told the officer that it was licensed. But when Castile went for his wallet the cop opened fire, fatally wounding him.

That's when the stunned woman [began live-streaming on Facebook](#). As Castile slumps on the seat, bleeding to death, the stunned officer says "I told him not to reach for it...I told him to get his hand out..." Unfortunately, that interaction happened before the passenger began recording. A lawyer representing the officer [insists that his client](#) was simply reacting to whatever it was that the driver actually did (those details have yet to be released.) "This had nothing to do with race. This had everything to do with the presence of a gun."

That's not what Minnesota Governor Mark Dayton thought. In comments that stirred great controversy, [he asked](#) "would this have happened if those passengers, the driver were white? I don't think it would have...No one should be shot in Minnesota for a taillight being out of function. No one should be killed in Minnesota while seated in their car."

But Castile *was* killed in his car. And he was clearly not a "bad guy." A well-liked food service supervisor for the public schools, Castile had a long history of traffic citations but no criminal record. According to the Minneapolis Star-Tribune, [he was licensed to carry a gun](#).

Castile was black. The officer who shot him was Hispanic and had been on the job four years. He and his partner were praised by their one-time college instructor, who called them "very intelligent" and endowed "with a ton of common sense." Both had earned "batons of honor" for their class performance.

Of course, this wasn't school anymore.

On the very next day a deeply troubled 25-year old man armed with a handgun and a high-powered rifle was ensconced in a Dallas office building, laying in wait. Outside, [police monitored a Black Lives Matter](#) protest spurred by the shootings of Sterling and Castile. Micah Xavier Johnson, a military reservist, suddenly opened fire. Soon five officers were dead and seven officers and a private citizen lay wounded. During unsuccessful negotiations, Johnson reportedly said he was targeting white officers to retaliate for police shootings of black men like himself. In an unprecedented tactical response, [police eventually killed Johnson](#) with an explosive charge delivered by a robot.

Reliable data about police use of force is scarce. The FBI's UCR program only publishes [simple tallies of fatal shootings by police](#). Its scope is limited to homicides that reporting agencies deem justifiable, and there is no breakdown by race. Media outlets have tried to fill the gap. [A running tally](#) by the Washington Post indicates that as of this writing 524 persons fell to police bullets in 2016. Of the 475 whose race and ethnicity are known, about 51 percent (243) were white, 27 percent (129) were black and 17 percent (80) were Hispanic. While it's oddly reassuring that a majority of those killed by police are white, that provides little comfort to blacks, as they constitute only 13.3 percent of [the American population](#) (whites comprise 77.1 percent and Hispanics 17.6 percent.)

In some localities, the disparity is greater, even startling. In "[Does Race Matter \(Part II\)](#)" we reviewed a [DOJ-commissioned report](#) that analyzed 394 shootings by Philadelphia police during an eight-year period. In a city that's about 43 percent black and 37 percent white, 80 percent of those shot by police were black. A [just-released report](#) by the San Francisco D.A. noted that while blacks only constitute 5.8 percent of the city's population they figured in 39 percent (20) of the 51 officer involved-shootings during 2010-2015 where race was known.

Are police more likely to shoot blacks because of their skin color? Until recently, most empirical research has rejected the racial bias hypothesis. For example, the Philadelphia study found that mistaken shootings of unarmed persons were most often due to errors in threat perception, and these were *less* likely to occur when cops were white and suspects were black. [Another study](#), in St. Louis, concluded that police lethal force was primarily driven by fluctuations in the rate of firearms violence.

On the other hand, a pair of recently-released studies conclude that cops apparently *do* use race to help decide who's a bad guy. After aggregating a year's worth of use of force data for twelve agencies, [The Center for Policing Equity](#) calculated a mean use of force rate per 100,000 pop. of 273 for blacks and 76 for whites. Limiting analysis to arrests narrowed the gap to 46 per 1,000 arrests for blacks and 36 for whites. Interestingly, restricting it further, to arrests for violent crimes, reversed the effect: 1003 for whites and 731 for blacks.

Researchers then coded force on a six-point scale: (1) Hand and Body (2) OC spray (3) Weapon (4) Canine (5) Less-lethal and Taser, and (6) Lethal. Doing so greatly increased the race gap, yielding use of force rates of 653 per 100,000 for blacks and 174 for whites. When only arrests were considered the difference narrowed to 82 per 1,000

arrests for blacks and 62 for whites. In arrests for violent crime the effect again flip-flopped, to 1738 for whites and 1368 for blacks.

Despite the unexpected reversal for violent crimes, the authors concluded that “Black residents were more likely than Whites to be targeted for force.” Still, they acknowledged the possibility that other variables could account for a seeming relationship between race and force. So they recommended that “significant attention should be paid to additional situational factors in attempting to quantify and explain racial disparities in use of force.” For example, by exploring possible between-race differences in attitudes towards resisting, fleeing, respecting officers, and so on.

Their wish was promptly answered. In “[An Empirical Analysis of Racial Differences in Police Use of Force](#),” Harvard economist Ronald G. Fryer, Jr. examined the influence of race on police use of force, alone and in combination with factors including citizen and officer demographics, citizen behavior, encounter characteristics and area crime rates. He and his team of graduate students used four data sources: New York City stop-and-frisks between 2000-2013, triennial BJS national citizen surveys between 1996-2011, Houston officer involved shootings from 2000-2015, and police shootings between 2000-2015 in ten jurisdictions: Houston, Dallas, Austin, six counties in Florida, and Los Angeles.

Here are some of their findings:

NYC stop-and frisks (excludes lethal force): A simple analysis – effects of race on force – yielded a 53.4 percent greater likelihood that force will be used against black citizens. (One-hundred percent is “twice as likely,” so this is “half again as likely,” not an earth-shattering amount.)

Of course, “race” is a proxy for many things. When we measure its influence we unavoidably include the effects of factors that go along with race, such as area crime rates. To strip away these contributions and determine the impact of race alone we must include these factors in the analysis. Once this was done, the penalty for being black was reduced three-fold, yielding an increased risk of 17.3 percent, or 1.17 times the risk posed to whites, an exceedingly modest difference. (In our view it only proved statistically significant because such analysis is sensitive to dataset size, and there were nearly five million stop-and-frisks.)

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Public contact surveys (excludes lethal force): Here is where the effect of race seemed the most robust. Including all variables, blacks self-reported that 170 percent more force used against them, a rate nearly three times greater than for whites.

Officer-involved shootings in Houston (includes a sample of arrests where OIS is likely): Unexpectedly, risk changed direction. If only race is taken into account, blacks are 23.8 percent less likely to be shot than whites. Adding in other factors increases the risk to blacks, but it still remains 8 percent less than for whites. Here is the author's reaction:

Given the stream of video "evidence", which many take to be indicative of structural racism in police departments across America, the ensuing and understandable outrage in black communities across America, and the results from our previous analysis of non-lethal uses of force, the results...are startling.

Officer-involved shootings in ten jurisdictions: More unexpected findings. When only measuring race, blacks and whites seem about equally likely to be shot. As threat factors to police increase (e.g., nighttime, physical attack, armed civilian) being black becomes increasingly *less* risky, ultimately affording a 47.4 percent benefit over whites. (Of course, all this depends on the accuracy of police reports.)

Clearly, both these studies intended to be applicable to the real world. Yet each had interpretive issues. Consider, for example, the Center for Police Equity's six-point use-of-force scale. Lethal force can bring on death, which is a very big deal. But on the scale it's only *six times* more consequential than placing hands on a citizen. That seems vastly understated (one-hundred times might be more like it.) Since lethal force was nearly twice as likely to be used against whites as blacks during arrests for violent crimes (.64/.37 per 1,000 arrests), applying the scale inflates the threat posed to blacks.

Methodological problems also detract from the Harvard study. It's likely that many of the factors it considers are correlated, which could exaggerate or otherwise bias estimates of their effect. Houston data seems particularly vulnerable to interpretive issues, as in addition to officer-involved shootings, it included a large sample of arrests for crimes that might provoke gunplay, such as resisting arrest. (This was apparently done because OIS incidents are infrequent.)

Compelling empirical proof that police are biased against blacks remains elusive. In Part II we'll examine police practices that, regardless of their intended purpose, might lead to undesirable outcomes for black citizens.

Posted 7/18/16

GOOD GUY / BAD GUY / BLACK GUY (PART II)

Aggressive crime-fighting strategies can exact an unintended toll

By Julius (Jay) Wachtel. Part I concluded that data about police bias towards blacks yields ambiguous and contradictory findings. For black citizens, though, the notion that police decisions are supposedly based on objective factors such as crime rates may be of little comfort. A majority of the stops in [New York City's stop-and-frisk campaign](#) took place in "high crime" zones, meaning low income areas largely populated by minorities. That essentially predetermined the race or ethnicity of those most likely to be stopped. Although blacks only [comprise about 26 percent](#) of New York City's population (whites are 44 percent, and Hispanics about 29 percent), fifty-eight percent of the nearly five-million persons who were detained were black. Twenty-five percent were Hispanic and a measly one in ten was white.

Police executives may insist that's unavoidable. Blacks also need cops to be where the crime is. Consider the numbers. [There were 11,961 murders in 2014](#). Fifty-one percent of the victims were black, 45 percent were white and about 16 percent were Hispanic. Blacks were murdered [and arrested for murder](#) at rates (4 times and 3 times, respectively) considerably exceeding their proportion of the population.

Some of us remember the bad old days of the seventies, eighties and early nineties, when an epidemic of violence fed by crack cocaine gripped the nation. Progressive police agencies sought to enhance their efficiency and effectiveness with newfangled analytical tools like Compstat (click [here](#), [here](#) and [here](#)) and integrated enforcement strategies such as "hot spots" policing (click [here](#) and [here](#)). Aggressive tactics, particularly stop-and-frisk (click [here](#) and [here](#)), became all the rage.

There was a catch. 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.

Methodologists call these "false positives." If you're white like the blogger (and reasonably law-abiding) can you remember the last time an officer mistakenly jacked you up? Yet for black persons being a false positive is commonplace. Brian Williams, a

middle-aged black man, recently described [an incident that happened not long ago](#) while waiting outside his apartment building for a friend:

Someone called in a report and police questioned me and asked me why I was there. I had to prove to them that I actually lived there. It did not become physically violent but my initial reaction was visceral, I was like I need to watch what I say here because this could turn bad.

Past encounters with police gave him cause for alarm. In one particularly humiliating episode, which took place while he was in the Air Force, officers needlessly spread-eagled him across the hood of their car after stopping him for speeding.

My experiences they go back decades, one after the other, they become internalized. And it's a combination of my own experiences and an oral history I receive from my friends and family members that have gone through the same thing, we don't just make this up, this happens.

A couple weeks ago Dr. Williams, a trauma surgeon, was in the operating room, laboring to save the lives of officers gunned down by the crazed sniper in Dallas.

In time, the resentment spawned by hundreds of thousands of false positives could no longer be ignored. Lawsuits, an unfavorable ruling from a Federal court (later set aside), [imposition of a Federal monitor](#), and the election of a new mayor forced NYPD to drastically cut back on stop and frisks. (For more about that click [here](#) and [here](#).) [Stops plunged](#) from 685,724 in 2011 to a reported (some claim, under-reported) 22,563 in 2015.

It's not just the Big Apple. [Numerous complaints about civil rights violations](#), particularly abusive stop and frisk practices, [recently forced Newark](#) to let a Federal monitor oversee the restructuring of its police department. Stop and frisk has also created major heartburn in [Chicago](#), [Philadelphia](#), and, most recently, [San Francisco](#).

Officer personalities vary. Some are thoughtful. Others may be impulsive or unusually fearful. Even the most skilled cops often struggle to make sense of incomplete or contradictory information. If that's not enough, good guys and bad can prove wildly unpredictable. Bottom line: not every encounter will end optimally. Indeed, some seem almost predestined to fail.

On August 12, 2015 Los Angeles police officers [were called to a pharmacy](#) that had been robbed of cash by a woman brandishing a knife. They soon spotted the suspect and chased her down an alley. According to their account, she drew a large knife, refused to drop it, and advanced towards an officer. A Taser was fired, to no apparent effect. An officer then shot her dead. Currency and a robbery note were found on her body.

A witness insisted that police shot Redel Kentel Jones, 30, a black woman, while she was running away. Exactly what happened can't be conclusively confirmed, as officers did not activate their vehicle dashcams and body cameras had not yet been distributed.

On July 12, amidst raucous protests, [the Los Angeles Police Commission met](#) to issue its ruling on the propriety of the shooting. [Its decision](#), that the use of lethal force was "objectively reasonable and in policy," seemed predestined, as the chief had already deemed it "in policy." Commissioners nonetheless criticized numerous alleged failings and departures, including a lack of planning, poor positioning and inadequate inter-officer communications. A reading, though, fails to convince that doing these things differently would have greatly influenced the outcome.

The officer who shot Jones had a Hispanic surname. He had been on the job a bit more than eight years.

Nearly a year later, on June 25, 2016, [a private citizen called Fresno, California police](#) to report a suspicious man dressed in camouflage and carrying a rifle. Responding



officers pursued a vehicle speeding away from where the suspect was last seen. Its driver refused to yield but eventually stopped. [Officer body-cam videos](#) depict the vehicle's operator, Dylan Noble, 19, ignoring commands to show his hands, walking away from officers, then approaching them, uttering "I fucking hate my life," all the while reaching behind him as though for a weapon. Officers fired twice, then twice more as

Noble moved his arms while on the ground.

Was Noble a good guy or a bad guy? His behavior must have quickly convinced officers of the latter. As it turns out, though, Noble was unarmed. With the benefit of hindsight, the incident seems like a clear example of "suicide by cop."

One officer had 20 years on the job; his partner, seventeen. Noble, a reportedly well-liked, “happy-go lucky” youth with no criminal record, was white. What happened to the man with the rifle remains a mystery.

In “[An Epidemic of Busted Taillights](#)”, “[Too Much of a Good Thing?](#)” and “[Love Your Brother – and Frisk Him, Too!](#)” we worried that extensive use of stop and frisk, no matter how well intentioned, “can erode the bonds of trust and confidence between citizens and police.” [Here’s a prescription from the past](#) that still seems pertinent:

Target individuals, not ethnic groups. Selecting low-income, minority areas for intensive policing, even if they’re crime “hot spots,” can damage relationships with precisely those whom the police are trying to help. Aggressive stop-and-frisk campaigns such as NYPD’s can lead impressionable young cops to adopt distorted views of persons of color, and lead persons of color to adopt distorted views of the police. Our nation’s inner cities are already tinderboxes – there really is no reason to keep tossing in matches.

Cops would correctly point out, though, that it’s not just about enforcement “campaigns.” Even so-called “ordinary” police work can lead to tragedy. How can we prevent that? In “[First, Do No Harm](#)” we suggested that this famous medical principle is equally applicable to law enforcement. Policing must not be thought of as society’s Swiss army knife. If one need not intrude, then, simply, *don’t*.

Easy to say, not so easy to do. Police cannot ignore calls about people brandishing handguns. They must respond to robberies. And while wearing camouflage and strutting around with a rifle might seem perfectly normal in, say, Texas, it’s wildly out of place in the Golden State. What’s more, people are unpredictable. Accurate information is scarce. Resources are limited. As we pointed out in “[Making Time](#)” and elsewhere, it seems almost a miracle that the bodies of clueless citizens don’t line the sidewalks at the end of each shift.

But they don’t. “[De-escalation](#),” a trendy, supposedly new concept being advanced by policing experts is nothing new. Most cops have always used a lot of flexibility in handling field situations, often accepting more risk, sometimes much more, than what their own agencies might officially recommend. Uncommon sense, heart, and keen insight into human nature form the core of being a cop. It’s up to field training officers to convey these values to nervous rookies so they’ll never have to explain why they shot a citizen who was reaching for a hankie. Let’s plagiarize from a [prior post](#):

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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.

Unfortunately, present trends are unfavorable to the craft of policing. At the moment of this writing the country reels from [the tragic loss of two Baton Rouge officers and a sheriff's deputy](#), shot down on the morning of July 17 by a self-styled "black separatist" wielding an assault rifle. While neither he nor his actions had any support in the community, murderous rampages by deeply disturbed individuals, whatever their twisted motivations, can only lead to more police militarization and tactical rigidity and blur the line between "good guys" and "bad guys" even further. As we've said before, it's not the outcome we'd wish for, but thanks in part to the [proliferation of highly lethal firearms](#), it's the one we'll inevitably get.

Posted 8/5/11

HOMELESS, MENTALLY ILL, DEAD

***Officers may have beat a troubled man to death.
But we all share in the blame.***

By Julius (Jay) Wachtel. Common sense would dictate that a 37-year old homeless schizophrenic who is off his meds and has an assaultive history shouldn't be on the streets. But common sense doesn't count when it comes to public policy. Indeed, vagrants with mental health issues have become such a commonplace aspect of city life that we seldom give them much thought. That is, until one of them dies at the hands of the police.

We've repeatedly blogged about such things (see "Related Posts," below.) This time the dead guy is 37-year old [Kelly Thomas](#). He was from Fullerton, California, a solid middle-class community in conservative Orange County, where his father once served as a deputy sheriff. Described as a "bright, loving kid," Thomas was stricken with the dreaded disease in his early twenties. He then began amassing a string of arrests, the most serious resulting in a conviction for assault with a deadly weapon.

Thomas' nomadic lifestyle came to an abrupt end on the night of July 5, 2011. That's when he encountered two Fullerton police officers who were investigating a report that someone was breaking into parked cars. When they tried to look into his backpack he ran off.

[Deinstitutionalization](#), a movement that dates back to the 1950s, sought to revolutionize care of the mentally ill by treating them in community settings rather than isolated hospitals. In practice, however, the money saved by closing institutions proved far less than what was necessary to fund effective local models. Legions of mentally ill wound up homeless or in jail. And that's where things stand today.

States tried to close the gap. In 2004 California passed the Mental Health Services Act (MHSA,) levying a special tax on high-earners to pay for programs and clinics. But earlier this year, as the general fund sank hopelessly into the red, [a whopping \\$861 million of MHSA money](#) got siphoned off to pay for mandated services. [Mental health advocates screamed foul](#). Their complaints were mostly ignored. Really, it's hard to wield much influence when one's constituency spends much of its waking time digging through trash cans looking for its next meal.

It's not just a lack of funding. Deinstitutionalization emphasized the liberty interests of the mentally ill. Over time the "threat to oneself or others" standard became so strictly interpreted that, excepting sex offenders, involuntary commitment has largely become a thing of the past. For an example look no further than Thomas. [Off his meds for years](#), he was unwelcome at home, where his bizarre and threatening behavior – he once grabbed his mother by the neck and wouldn't let go – led his parents to call police. They got a restraining order and tried to get their son committed. But the law said no.

Legal constraints and scarce resources mean that lots of unstable characters wind up roaming the streets, whether they want to or not. Some who knew Thomas say that he was a "[free spirit](#)" and homeless "by choice." Maybe so. In any case, his unruliness, criminal history and reluctance to take meds made him an unappealing client for residential shelters and job-training programs, which have enough of a problem as it is. So for nearly two decades Kelly Thomas was everyone's problem. Meaning, of course, no one's.

"There seems to be a general sense of outrage and fear." That's how Fullerton city councilmember Bruce Whitaker described the reaction to Thomas' death. Now under investigation by the D.A. and, separately, the FBI, the tragic encounter has led to a blizzard of news articles, e-mails and blog posts, as well as a large (and by Fullerton standards, completely uncharacteristic) protest outside the city's normally placid police headquarters.

Six officers were ultimately involved. One was initially placed on paid leave, while the others remained on duty although not on patrol. As the outcry intensified – one councilmember went so far as to ask the chief to resign – the other five were also sent home. Presently the official line is that Thomas, who was reasonably thought to be prowling cars, put up a fierce struggle and officers responded appropriately. (Claims that one suffered broken bones have been amended to say he was bruised.) Bystanders, though, paint a dramatically different picture, of a bunch of aggressive cops who dragged a helpless man to the ground, slammed his head on the pavement, beat him with flashlights and repeatedly zapped him with a Taser.

Where the truth lies is presently impossible to say. Initial indications, though, aren't favorable for the cops. [A transit security video](#) captured distressed passengers conveying what they just saw to a bus driver. "The cops are kicking this poor guy over there. All these cops," said one. "He's almost halfway dead, they killed him," said another. Several witnesses took their own videos. As a stun gun clicks in the background one says, "they've Tased him five times already, that's enough!" Another calls police "Freaking

ruthless...I don't know why they don't just put cuffs on him and call it a night, instead of hitting him."

Thomas died five days later. Although the cause of death is as yet undetermined, his father released a photograph apparently taken as Thomas lay dying in a hospital bed. It's a grisly sight.

Police officers frequently deal with the homeless and mentally ill, and by all accounts resolve most encounters peacefully. Naturally, it's the others that draw public attention. In an episode last March, LAPD gang officers [shot and killed a young man](#) who was walking the streets late at night. Instead of stopping as ordered he approached the cops and made a move they interpreted as going for a gun. It turned out that the youth was unarmed. And autistic.

Most civilians voluntarily comply with police. However, those who are cognitively impaired don't realize that not following directions or, even worse, resisting can provoke a catastrophic response. It's for such reasons that police academies and progressive agencies offer specialized training for identifying and dealing with the mentally ill. It goes without saying that regular instruction in this area is crucial.

Still, in the uncertainty and confusion of the streets it's not always obvious when a citizen is "different." Neither are all cops alike. Some rattle easily. Others may be quick to anger, or may not be willing to accept more than a smidgen of risk. Officers often interpret situations differently. When they patrol singly, as in Fullerton, coordinating their response is particularly challenging. Techniques such as "swarming" can minimize the amount of force that's needed to subdue an unruly person. But successfully applying such tactics in the hurly-burly of the real world calls for frequent hands-on training, probably much more than most departments provide.

A lawyer who works for police unions [has come out in the officers' defense and](#) rebutted the most inflammatory allegations; for example, that cops struck Thomas with flashlights. "Unfortunately," he said, "public perception of officers trying to control a combative, resistive suspect rarely conforms to those officers' training, experience, what those officers were experiencing at the time or reality. This seems to be a case in point."

On the other hand, an anonymous source told a local radio station that something far more sinister may have taken place. In an on-air interview, a self-described Fullerton PD insider said that police managers had each of the involved officers repeatedly rewrite their accounts of what happened, by implication, not to make them more accurate but less. He also spoke of a live video feed from the scene, visible at dispatch and the watch

commander's office, that clearly depicts an officer striking Thomas with the butt of the Taser and drop-kicking him in the throat. On the next day that same cop supposedly bragged about delivering a beating. His comments weren't well received by other officers, who already shunned their colleague over past incidents of brutality.

If the caller's account is accurate, the good news is that there was no concerted effort to beat up Thomas. Only one or two cops may have gone overboard. That's consistent with our impression of an undisciplined, uncoordinated response, with each officer essentially acting as a Lone Ranger. The bad news is that officer reports may have been coordinated, thus enmeshing superiors as well. If there really was an attempt at a cover-up Fullerton PD may have a far more serious and deep-rooted problem than a couple out-of-control cops.

Posted 5/5/19

INFORMED AND LETHAL

Confirmation bias, on steroids

For Police Issues by Julius “Jay” Wachtel. In Minnesota, to return a verdict of guilty of [murder in the third degree](#) – its least severe form – requires proof that the defendant had a “depraved mind”. Here is the statute’s present form:

Whoever, without intent to effect the death of any person, causes the death of another by perpetrating an act eminently dangerous to others and evincing a depraved mind, without regard for human life, is guilty of murder in the third degree and may be sentenced to imprisonment for not more than 25 years.

“Depraved mind” is an expansive, highly charged term for a package of personality characteristics that supposedly lead to noxious behavior. Here is how Minnesota’s high court defined it [nearly a half-century ago](#):

A mind which has become inflamed by emotions, disappointments, and hurt to such degree that it ceases to care for human life and safety is a depraved mind.

Proof of the defendant’s depravity was one of the challenges faced by Minneapolis prosecutors during [the recent trial](#) of former city police officer Mohamed Noor. On July 15, 2017 Noor, 32, a two-year veteran of the force (and of police work) was riding in the passenger seat of a patrol car driven by officer Matthew Harrity, 25, with one year on the job. About midnight they were dispatched to a pair of 911 calls placed by Justine Rusczyk, 40, who reported hearing noises that suggested a sexual assault was taking place in the alley behind her residence.

As officers Noor and Harrity cruised slowly through the narrow, dark passageway they saw nothing out of the ordinary. [Officer Harrity would testify](#) that they were about to clear the call when he heard a “thump” and a “murmur” and observed that someone had approached his side of the patrol car. Fearing an ambush, he pulled his handgun and pointed it towards the floorboard. But he didn’t shoot.

His senior partner, officer Noor, reacted differently. At his trial for murder and manslaughter, [Noor testified](#) that he heard a “bang.” He then heard his partner utter “Oh, Jesus” and saw him draw his gun. Officer Noor said he observed a woman next to their car with a raised arm. Interpreting her actions as a lethal threat, officer Noor pulled his gun and fired once. It turned out to be Rusczyk, the caller. She had

apparently been seeking to personally contact the officers, something that no one had foreseen. (Click [here](#) for the detailed account that officer Harrity gave to State investigators.)

Ruszczyk's wound proved fatal. In March 2018 officer Noor was charged with [third-degree murder](#) and [second-degree \(culpably negligent\) manslaughter](#) and resigned from the force. Several months later prosecutors added an additional charge of [second-degree \(intentional\) murder](#).

Noor was brought to trial on April 1. On April 30, after one day of deliberation, [jurors found him guilty](#) of manslaughter and third-degree murder but acquitted him of second-degree murder. Their decision to convict may have been influenced, in part, by prosecutors' contentions that the alleged "thump" and other noises suggestive of a possible ambush were made up after the fact, and that in any event they were not made by Ruszczyk, as her fingerprints were not found on the police car.

Three use of force experts testified. Two were called by the prosecution; as one might expect, both concluded that Noor acted unreasonably. One, an ex-police chief, said that a citizen "has every right to go out [to the police vehicle] and be sure that her community is safe." In contrast, an expert called by the defense stated that "if you wait to see the gun appear, you're going to be shot with it."

Citizen rights aside, approaching a police car in the dead of night seems like a clearly unwise move. But arguing that it justifies being shot dead is clearly over the top. No democratic society could possibly endorse what took place. In the end, Noor's fate was probably sealed by [jury instructions](#) that directed the panel to compare what he did to what a "reasonable" cop should do:

Giving due regard for the pressures faced by peace officers, you must decide whether the officer's actions were objectively reasonable in the light of the totality of the facts and circumstances confronting the officer, *without regard to the officer's own state of mind, intention or motivation*. [emphasis added]

In this case, that "reasonable" officer was sitting right next to Noor. Although officer Harrity also considered the unknown woman a "threat", [he testified that he held his fire](#) because he had neither sufficiently analyzed things nor observed the person's hands.

But *murder*? [Prior posts](#) have remarked on an apparent inclination to overcharge officers accused of using excessive force so as to make it more likely that jurors will convict on *something*. That, according to some legal commenters, may be what [drove Noor's prosecutors](#) to prefer murder charges:

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You throw a lot of pellets up in the air and you don't care which one brings down the bird. Obviously you would always like to get (a conviction on) the highest charge but you want to leave at the end of the day with some conviction.

Noor testified that he saw the woman at whom he fired. Still, his reaction seems by any measure instantaneous. He knew nothing about his human target nor did he see a weapon. That distinguishes this incident from that other notorious Minnesota example, the July 6, 2016 [shooting of Philando Castile](#) by Falcon Heights officer Jeronimo Yanez. Yanez stopped Castile's vehicle because he supposedly resembled an armed robber, then fatally shot him when he appeared to reach for a gun (there was one, but Castile was licensed to have it). Yanez was subsequently [found innocent on all charges](#), including reckless discharge and felony manslaughter.

Excluding accidental shootings, such as [drawing one's gun instead of a Taser](#), or involuntarily squeezing off a round [because of a startling noise](#), our [Use of Force](#) and [Strategy and Tactics](#) sections offer many examples of purposeful yet misguided uses of lethal force (for a few see "Related Posts" below.) If one ranked these episodes according to how much accurate information an officer had before discharging their weapon, Noor's example would probably be at the bottom.

Several others would fall close. One is the September, 2016 encounter between Tulsa police and [Terence Crutcher](#), a middle-aged parolee and substance abuser:

Crutcher, 40, had abandoned his truck in the middle of the road and was walking around disoriented. He ignored the first officer on the scene, Betty Jo Shelby, and as backup arrived he returned to his vehicle and reportedly reached in. Officer Shelby, who is white, fired her pistol and another cop discharged his Taser. Crutcher, who was black, was fatally wounded. No gun was found.

[Officer Shelby was charged](#) with first-degree manslaughter. True enough, she acted precipitously and as it turns out, incorrectly. Yet in this uncertain world, officers need some wiggle room. As Noor's expert suggested, delaying can cost a cop's life. It was that quandary that likely moved the jury foreperson in Shelby's trial to draft an [extraordinary public letter](#) to explain what the panel knew would be a most controversial acquittal.

In this imperfect world, officers rarely have complete, accurate information at hand, and what's known or observed isn't always helpful. Indeed, it can poison the atmosphere and lead officers astray. Mr. Crutcher's criminal past and his bizarre, uncooperative behavior made it easy to believe that he would be armed. As for the killing of Ms. Ruszczuk, officer Harrity pulled his gun but didn't fire. Still, his frightened reaction to her presence affected officer Noor, [who would testify that he acted to save his partner](#).

Considered from this perspective, both shootings seem examples of [confirmation bias](#), on steroids. Their clashing legal outcomes might also reflect an understandable tendency by jurors in such matters to focus their search for possibly exculpatory evidence on the suspects, of whom by the time of trial usually a lot is known.

What can be done to help avoid the needless use of lethal force? Here are some ideas:

- In “[Working Scared](#)” we discussed personality characteristics such as impulsivity, which some officers have in abundance, and risk tolerance, which some seem to altogether lack. Attending to these concerns during selection, training and evaluation seems clearly vital.
- What happens in police academies is important. Officer safety lectures and training scenarios must be attuned to the realities of the workplace, not left to the imagination of drill instructors. Scaring inexperienced recruits into a “draw first and ask questions later” mentality - essentially [the approach that Noor described in his testimony](#) - is part of the problem.
- We’ve frequently mentioned, most recently in “[Speed Kills](#),” that procedural antidotes such as keeping one’s distance, taking cover and de-escalating *do* exist. Of course, in the unpredictable environment of policing, such remedies aren’t always effective or applicable. So here’s a splendid opportunity for tactical geniuses to devise alternatives.
- Information is frequently advanced as a remedy. [We’ve done it ourselves](#); for example, by encouraging agencies to keep records on mentally ill and other problematic characters so that dispatchers can inform patrol. But as we warn in this post, knowing more can actually make things worse.

So we’re back to our favorite “square one.” Let’s [self-plagiarize](#):

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.

In a democracy, police officers need to accept more risk than one would prefer. And yes, that means some will get hurt, and that others will die. So where should they set their

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limits? We can't expect them to divine a solution. Laws and regulations certainly haven't done the job, and probably can't. It may be distasteful, it may be impolite, but if we wish to avoid sending any more cops to prison, it's a discussion in which police and society must promptly engage.

Posted 10/5/16

IS IT ALWAYS ABOUT RACE?

***Unruly citizens and streets brimming with guns
make risk-tolerance a very hard sell***

By Julius (Jay) Wachtel. Fatal police shootings of black men in Tulsa, Charlotte, El Cajon and, most recently, Los Angeles have inflamed tensions between police and minority communities. We'll look at these and other episodes in a moment. But if black citizens are indeed treated more harshly – [as we've reported](#), the findings go both ways – the essential question is: why? Some officers – hopefully, very few – may be classically “prejudiced,” meaning driven by racial animus. On the other hand, racial stereotyping is probably widespread. Cops are likely influenced by their experiences in lower-income, minority communities, where violence and gunplay are an ever-present threat. And when it comes to blacks the data is particularly grim. While African-Americans constitute only 13.3 percent of the population, 52.3 percent of homicide victims in 2015 were black. (Click [here](#) for census data, [here](#) for victim data, and [here](#) for offender data.)

Sometimes, though, it's not just about race. Let's begin our exploration with a few “perfect storms” from Southern California, your blogger's backyard. We start with one of our earliest posts:

[May 2008, Inglewood](#): Patrol officers investigating gunfire saw a man jump into a car. It accelerated in their direction. They opened fire, wounding two occupants and killing Michael Byoune, a 19-year old black teen. It turned out that no one in the car had done anything wrong. Here's what the police chief said: “I won't go so far as to call it a mistake. The process that the officers went through had a very tragic outcome.” One officer was Hispanic, the other, white. Two months later, [the white cop was involved in another fatal shooting of a black man](#) and was removed from patrol duty. He later [left the department and sued](#), ultimately unsuccessfully, for discrimination. A civil suit by the victim families [was settled for \\$2.45 million](#).

[September 2009, South L.A. County](#): L.A. County Sheriff's deputies looking for two robbery suspects encountered a pair of candidates. One, a middle-aged black man, ran off and an officer chased him on foot. At some point the man made a motion, leading the officer to fire, killing Darrick Collins, 36. But he turned out to be innocent. Collins did have some pills, though, and after a recent arrest for drugs was probably trying to avoid another bust. An internal investigation found the cop to have “acted lawfully, in self-defense.” Even so, Collins' family [received a \\$900,000 settlement](#).

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[March 2010, Los Angeles](#): LAPD gang officers on motorized patrol heard a “loud noise.” Looking around, they observed a pedestrian fiddling with something in his pants. They ordered the man to stop but he approached them, still fiddling. The officers fired, fatally wounding Steven Eugene Washington, 27, an autistic black man. Washington was unarmed. [An internal investigation](#) found the officers at fault for how they “approached and engaged” but not for the shooting, as they could have reasonably feared he was reaching for a gun and had only an instant to decide. [The victim’s mother settled for \\$950,000](#). After several years on desk duty the officers (both are Hispanic) sued for discrimination and retaliation. [Jurors awarded them \\$4 million](#).

[July 2011, Fullerton](#): Officers confronted a man who seemed to be prowling parked cars. When he resisted multiple cops pummeled him and repeatedly applied a Taser, deeply alarming passers-by. Kelly Thomas, 37, a white, homeless schizophrenic, later died. Three officers were prosecuted for manslaughter and excessive force: [two were acquitted and charges were dismissed against the third](#). (Our post commented on an apparently undisciplined response by multiple units and the involvement of a cop with an allegedly brutal reputation.) A civil suit filed by the victim’s family [was settled for \\$4.9 million](#).

[February 2012, Orange County](#): A sheriff’s deputy observed an SUV crash through the locked gates of a high school at 4:30 am. The driver, who was black, walked off, leaving two girls, nine and fourteen, in the cab. More cops arrived. Soon the driver returned, ignored the deputy, got in the vehicle and tried to drive off. Supposedly to protect the girls, the officer, who is white, fired three times, fatally wounding Manuel Levi Loggins, Jr., a 31-year old Marine Corps sergeant (the children were his daughters.) Although no charges were filed, [the D.A. nonetheless wondered](#) why the deputy let the driver re-enter the vehicle:

In hindsight, one could conclude that several non-deadly options were available to Deputy Sandberg prior to the shooting. For example, he could have removed the children and/or the keys from the vehicle prior to [the driver’s] return. Of course, this would have required [the deputy] to anticipate that [the driver] would return to the vehicle and blatantly ignore the deputies’ commands prior to re-entering the SUV.

“Anticipate,” of course, is what cops do. [A \\$4.4 million settlement was reached](#) with the man’s wife and kids.

[Civil judgments 2012-2013](#): Be sure to read our mind-boggling summary. One, for an eye-popping \$24 million, resulted from the 2010 shooting of a teen playing with a pellet gun. Here’s an extract from the LAPD chief’s reaction to the jury’s award:

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...The replica gun was indistinguishable from a real handgun on a dark night. When our officers are confronted with a realistic replica weapon in the field, they have to react in a split second to the perceived threat. If our officers delay or don't respond to armed suspects, it could cost them their lives...I am encouraging the City Attorney to appeal because I believe the judgment is unwarranted.

The child, Rohayent Gomez, 13, [was paralyzed](#). Both he and the officer are Hispanic.

[August 2014, Los Angeles](#): Two LAPD gang officers, one white, the other Hispanic, confronted a black male pedestrian at night in a high-crime area. According to police, the man assaulted one cop and went for his gun. He was shot dead. As it turns out, Ezell Ford, 25, was unarmed and seriously mentally ill. LAPD's chief found the shooting "in policy." But the Police Commission disagreed, concluding that the officers lacked reason for the stop and handled it poorly. Both cops wound up on permanent desk duty, [then sued for discrimination and retaliation](#). State and federal lawsuits [were also filed by Ford's family](#). (This notorious incident has its own [Wikipedia page](#). For an activist viewpoint click [here](#).)

Ford's death wasn't the only during that "[Very Hot Summer](#)." Two weeks earlier NYPD officers tangled with a middle-aged black man peddling untaxed cigarettes. A late-arriving cop jumped into the fray and applied a choke hold, [killing Eric Garner, 43](#). That incident was promptly followed by the [shooting of Michael Brown](#), an 18-year old black Missouri youth who shoplifted a box of cigarillos from a convenience store and shoved aside the protesting clerk. This episode is now simply referred to by the name of the city where it took place: "Ferguson."

Only two months after Brown's death, [a Chicago cop with a history of complaints](#) shot and killed [Laquan McDonald](#), a mentally troubled 17-year old black youth wielding a knife. Other cops on scene reportedly thought force excessive. Protests engulfed the city, leading to the chief's prompt firing, and, ultimately, to the officer's indictment for murder (the case is pending.) Chicago settled with the victim's family for \$5 million.

And still there was no let-up. Only a month later, in November 2014, a Cleveland officer shot and killed [Tamir Rice](#), a black teen who had pointed a realistic-looking pellet gun at visitors to a city recreation center. Although the cop insisted that 12-year old reached for the gun, witnesses disagreed, and a video suggested that the officer fired almost instantly after encountering the youth. Citing a "perfect storm of human error, mistakes, and communications by all involved that day," grand jurors declined to indict the cop or his partner. Cleveland settled with the child's family for \$6 million.

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Five months later came an event that didn't involve gunplay. On April 12, 2015 [Freddie Gray](#), a 25-year old black man was fatally injured while riding in a Baltimore police van. Gray was being taken to jail after an arrest for having a switchblade knife. In a city where police had been repeatedly accused of mistreating blacks, the incident (we blogged about in "[A Very Rough Ride](#)") set off nights of protest, looting and violence. Determined to make things right, the D.A. (she is black) promptly charged six cops, including three black officers, for crimes ranging to manslaughter. But evidence of intent was lacking, and after one mistrial and three acquittals – by a black judge, no less – all remaining charges were dropped. Gray's family settled for \$6.4 million.

One month later, two LAPD officers [tussled with a homeless man](#) annoying passers-by on the Venice boardwalk. During the struggle the officer, who is black, drew his gun and fired, mortally wounding Glendon Brenn, a 29-year old black man. A surveillance video contradicted the cop's claim that Brenn went for his partner's gun. In a rare set of moves, the chief criticized the cops' approach as tactically unsound, ruled that drawing a gun and firing were unjustified, and recommended prosecution. However, the D.A. hasn't acted and at this point it seems unlikely that the officer who shot Brenn will face charges.

Less than a year later [two incidents](#) led the kettle to boil over. On July 5, 2016 officers in Baton Rouge tangled with [Alton Sterling](#), a 37-year old black man. Sterling, a registered sex offender with a violent past, was selling CD's and had reportedly brandished a gun. He resisted being searched and a furious struggle ensued. A Taser didn't work, and when Sterling allegedly reached for the pistol that he was indeed carrying a cop shot him dead. One day later, on July 6, officers in Falcon Heights, Minn., a suburb of St. Paul, stopped a car whose driver supposedly resembled the photo of an armed robber. [Philando Castile](#), a 32-year old black man, promptly pulled over. His girlfriend, who was riding in front, said that he immediately told the officer he had a gun (he did, and it was legally registered.) But something got lost in translation, and when Castile reached for his wallet the cop opened fire, fatally wounding him. And no, Castile was not the robber.

While the precipitating factors differed, the deaths of Sterling and Castile led to widespread protests and became the driving force behind the movement known as "[Black Lives Matter](#)." Inflammatory, anti-cop rhetoric [became a "new normal"](#), inspiring angry, disturbed characters to retaliate. One day after Sterling's death a gunman murdered five officers and wounded nine in Dallas; ten days later, another shot and killed three officers and wounded three in Baton Rouge.

If there had ever been a time for introspection and, perhaps, some behavior modification on everyone's part, this was surely it. Alas, polarization prevailed. Law

enforcement executives expressed little appetite for fundamentally rethinking the use of force, while black leaders condemned the police while ignoring the drug use, gunplay and loutish behavior bedeviling their own communities.

And the toll continued. On September 16 a pair of Tulsa cops [confronted a disoriented middle-aged black man](#). Ignoring police orders to stop, [Terence Crutcher](#), 40, returned to the vehicle he had inexplicably abandoned and reached in, prompting one officer to discharge his Taser and the other to fire her gun. Crutcher fell dead. Police did not find any guns, but did recover a vial of PCP. A former parolee with a history of arrests, [Crutcher had served nearly four years on drug charges](#) and was reportedly using PCP. Prosecutors accused Officer Betty Jo Shelby, 42, of overreacting and promptly charged her with manslaughter.

A mere four days later another middle-aged black man fell to police gunfire. On September 20 Charlotte (N.C.) [plainclothes officers on an unrelated assignment](#) observed [Keith Lamont Scott](#), 43, sitting in a parked vehicle. According to Officers Scott was rolling a joint, and when he stepped out and reentered his vehicle they noticed he was armed with a handgun. In North Carolina open carry is legal, but the presence of both a gun and drugs ultimately led police to order Scott from his vehicle. He got out but allegedly ignored orders to drop the gun, then made a supposedly threatening motion. That's when a black plainclothes officer shot Scott dead. Videos of the event proved inconclusive [and riots erupted](#). As a convicted felon – he served a prison term for a 2005 shooting – Scott was Federally prohibited from possessing firearms. Police recovered a handgun, and a video of the incident depicts him wearing an ankle holster.

One week after that, Alfred Okwera Olango, 38, a Ugandan refugee, [was shot dead by an officer in El Cajon](#) (Calif.) His sister had called police and reported her brother was acting strangely. Two officers confronted Olango: one pointed a Taser, the other a gun. A video still from the moment at which they fired depicts Olango in a shooting pose, aiming what turned out to be an electronic vape device at one of the cops. Olango [had been convicted in the U.S.](#) for transporting and selling drugs and for being an armed felon, and Uganda refused to take him back. “My son was a good, loving young man,” his mother lamented. “Only 38 years old, I wanted his future to be longer than that. I wanted him to enjoy his daughter.”

Whew. Let's pause to offer some comments about the use of force. First, cops who place themselves inside threat perimeters without cover (e.g., most incidents described above) are gambling that they know what's up and can react appropriately. But citizens are full of surprises, repeatedly startling officers into doing exactly what most

desperately want to avoid. So unless innocent persons are under immediate threat, the old “surround and call-out” technique is highly recommended. When there aren’t enough officers to bottle someone up, disabling vehicles, closing off escape routes or simply tagging along [can “make” precious time](#) to gather information and plan the next move. Maybe that gun really is a vapor pen. Who would have thought?

Of course, some citizens refuse to be interrupted. Others may be so physically imposing – Eric Garner and Alton Sterling are good examples – that going mano-a-mano promises a big-time struggle with an uncertain conclusion. Cops carry lots of stuff on their belts, and none want to roll around on the ground and risk having their tools used against them. [That’s where bean-bag shotguns and Tasers come in](#). Yes, they’re expensive, use specialized “ammunition” and require training and regular practice. But when citizens refuse to comply, there are few better options. [Every cop should have a Taser](#), and each police car should be equipped with a bean-bag shotgun, not just the supervisor vehicles where they’re usually kept.

Incidentally, our vision of Tasers and bean-bags as preventive tools probably clashes with some agency guidelines. Bringing down an uncooperative someone with a less-than-lethal weapon is best done the instant it’s possible. Waiting for additional justification can turn into a death warrant. So reworking the rules governing the use of less-than-lethal force may be called for.

Constructs such as “productivity” and “proactivity,” while perhaps defensible in other occupations, are a lousy fit for policing. We have repeatedly argued against the widespread use of strategies such as stop-and-frisk, and even suggested that it is sometimes best to simply leave petty offenders alone. (For a comprehensive overview see [“Good Guy/Bad Guy/Black Guy, Part II”](#).) Aggressive law enforcement practices mesh poorly with the social fabric, and their use has badly damaged relations between citizens and police. Should a paradigm be called for, we suggest [“craftsmanship.”](#)

Finally, many of the incidents described above can best be described as “clusters.” (Yes, we mean it in the vernacular.) To minimize the use of force a well-organized response is essential. [That’s why patrol shifts must regularly train together](#). (Those who think that notion odd or too expensive are directed to the million-dollar awards and settlements mentioned above.) And once cops are on scene, someone must, regardless of rank, take charge and remain in control until there’s an orderly handoff.

Policing is an imperfect enterprise conducted by fallible humans in unpredictable, often hostile environments. Limited resources, gaps in information, questionable tactics

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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 like the examples above 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:

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.

Unfortunately, [ever-more-lethal firearms](#) keep flooding the streets (for how that takes place see our related article, below). Here's a brand-new example. Three days ago, on October 1, LAPD officers [pulled over a vehicle](#) they suspected was stolen. A passenger in the back seat reportedly ducked down. As the car slowed to a stop an 18-year old black male jumped out while "holding his waistband as if he was supporting something." Thinking he might be armed, officers gave chase. (Watch the surveillance video. As it turns out, the cops had it right.) When Cornell Snell allegedly turned to face them, gun in hand, they opened fire. Snell was shot dead. A .40 caliber pistol was recovered, fully loaded, round in the chamber.

Bottom line: thanks to the ready availability of powerful guns, the real and perceived risks of everyday policing have risen to unprecedented levels. With risk tolerance becoming a very hard sell, implementing a "tolerable" approach to policing seems increasingly out of reach.

Posted 6/19/20

IS IT *EVER* OK TO SHOOT SOMEONE IN THE BACK? (PART II)

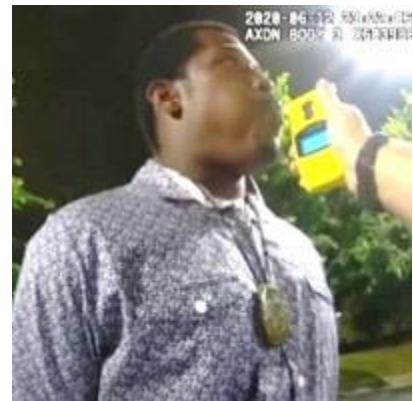
***In Atlanta, a “routine” encounter turns lethal.
Instantly, the deplorable outcome is attributed to race.***

For Police Issues by Julius (Jay) Wachtel. Friday, June 12, Atlanta. Thanks to citizen videos, police bodycams and a fixed surveillance camera, there is little question about what took place in a Wendy’s parking lot on that fateful evening. But explaining why a “no big deal call” (in cop-speak) led to the death of a citizen who had at most driven while drunk takes a lot more than pictures. To be sure, given the current, polarized atmosphere, jumping to the conclusion that it was all about race – after all, the cops were white, the citizen black – seems like a no-brainer. But policing is a complex enterprise. So let’s take a closer look. (Our main sources were [ABC News](#), the [Atlanta Journal-Constitution](#), [The New York Times](#), and a [YouTube post](#) by GPB Media.)

Wendy’s called police about 10:30 pm to report that drive-thru customers were maneuvering around a motorist who was asleep in his car. Officer David Brosnan responded. According to [ABC News](#), he’s on his second year as a cop. Officer Brosnan [woke up the driver](#), Rayshard Brooks, 27. Brooks was pleasant and cooperative, and on request relocated his vehicle to a parking spot.



Officer Brosnan called for assistance. Officer Garrett Rolfe soon arrived. He had been with Atlanta PD since 2013. According to the *Journal-Constitution*, officer Rolfe, a member of the “High Intensity Traffic



Team,” made more than fifty DUI arrests in 2019 and was honored by Mothers Against Drunk Driving. Brosnan quickly briefed Rolfe, who took over. Brooks readily performed a field sobriety test, then agreed to a breath test, which Rolfe administered.

That’s when things turned dicey. [A body-cam close-up](#) of the breath device screen depicts a reading of .108. That’s 35 percent higher than [Georgia’s .08 limit](#). After telling

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Brooks that he had “too much to drink to be driving,” Officer Rolfe instructed him to put his hands behind his back and reached for his handcuffs. (Officer Brosnan, who isn’t clearly depicted on the video, walked up to help.)



Mr. Brooks, who had already volunteered to leave his car and walk home, seemed upset. Although he initially complied, as



officer Rolfe started applying the cuffs Brooks resisted with such force that he and both officers tumbled to the ground. That’s when officer Brosnan pulled his Taser. Brooks promptly grabbed it. Breaking free, he then punched officer Rolfe in the face and bolted, armed with a Taser. Officer Rolfe fired his Taser at Mr. Brooks, who seemed to react. But the man ran off anyway.



Taser in hand (newer versions can fire twice), officer Rolfe chased Brooks through the parking area. Officer Brosnan



trailed far behind. During the chase, officer Rolfe switched the Taser to his left hand and [drew his pistol](#). Momentarily, Brooks turned and fired his Taser (see left). His shot went wild. Officer Rolfe instantly discarded his Taser, aimed the pistol and fired several rounds (see right). Two struck Brooks; both in the back. (Apparently, at least one round went wild and struck an occupied vehicle in the lot.)

Brooks died at the scene. According to the medical examiner, [cause of death](#) was “two gunshot wounds of [Mr. Brooks’] back that created organ injuries and blood loss.”

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Things moved swiftly. One day after the shooting, [Atlanta Mayor Keisha Lance Bottoms](#) announced that she did “not believe this was a justified use of deadly force” and fired officer Rolfe. At a hastily-called news conference, the mayor also [announced the voluntary departure](#) of police chief Erika Shields, a veteran Atlanta cop. Here’s an extract from the chief’s parting words:

Out of a deep and abiding love for this City and this department, I offered to step aside as police chief. APD has my full support, and Mayor Bottoms has my support on the future direction of this department. I have faith in the Mayor, and it is time for the city to move forward and build trust between law enforcement and the communities they serve.

Chief Shields’ “offer” had been quickly accepted. Blame assessment was moving at warp speed. In a charged national atmosphere, city officials were confronting the police killing of a black citizen who had seriously harmed no one. Yet forty-five minutes after the police stepped in he lay dead. That dreadful incongruity [resounded with mayor Bottoms](#):

I firmly believe that there is a clear distinction between what you can do and what you should do. I do not believe this was a justified use of deadly force and have called for the immediate termination of the officer.

Her sentiments [were promptly echoed](#) by Fulton County D.A. Paul Howard, whose office was considering charges against the officers:

(Brooks) did not seem to present any kind of threat to anyone, and so the fact that it would escalate to his death just seems unreasonable. It just seems like this is not the kind of conversation and incident that should have led to someone's death.

What is the law about police use of deadly force? Here are two Supreme Court cases on point:

- [Tennessee v. Garner](#) (1985): Officers may not use deadly force to prevent “an apparently unarmed, non-dangerous fleeing suspect” from escaping unless there is “probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.”
- [Graham v. Connor](#) (1989): Four years after Garner the Justices offered a key concession, ruling that the appropriateness of force must take into account “the facts and circumstances judged from the perspective of a reasonable officer on

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the scene” while allowing “for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.”

Unlike the Supremes, who simply refer to “suspects,” best we can tell [Atlanta P.D.’s use of force policy](#), which cites *Graham v. Connor*, mentions deadly force only in relation to arresting a suspected felon (sec. 4.6.9):

Employees shall only use deadly force to apprehend a suspected felon when: (a) he or she reasonably believes that the suspect possesses a deadly weapon or any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury; (b) when he or she reasonably believes that the suspect poses an immediate threat of physical violence to the officer or others; (c) or when there is probable cause to believe that the suspect has committed a crime involving the infliction or threatened infliction of serious physical harm (O.C.G.A. Section 17-4-20) if the employee *reasonably believes that the suspect’s escape would create a continuing danger of serious physical harm to any person.* (emphasis ours)

That “O.C.G.A. section” refers to [a provision in the Georgia State code](#) that addresses using deadly force to apprehend felons. Actually, the “felon” distinction probably makes little difference here. After all, Mr. Brooks *became* a suspected felon when he violently resisted arrest, then fired a Taser at his pursuer. [According to the D.A.](#), the task now was to decide whether Brooks posed the threat mentioned in *Garner*:

Specifically, (the question is if) Officer Rolfe, whether or not he felt that Mr. Brooks, at the time, *presented imminent harm of death or some serious physical injury*. Or the alternative is whether or not he fired the shot simply to capture him or some other reason. If that shot was fired for some reason other than to save that officer's life or to prevent injury to him or others, then that shooting is not justified under the law. (emphasis ours)

Bottom line: did officer Rolfe believe he faced a risk of “death” or “serious physical injury” at the moment that he pulled the trigger? Or did he feel that he or others “imminently” faced that risk? And either way, was that belief reasonable?

As far as the D.A. was concerned, *it was not*. On June 17 [he filed eleven counts](#) against the ex-cop, including murder, aggravated assault, violating his sworn oath and damaging property. Three of the aggravated assault counts and the property offense stem from his discharge of a round that went astray and struck an occupied vehicle. One count of aggravated assault accuses him of kicking the dying man. Officer Brosnan

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wasn't charged in relation to the actual shooting. But he faces three counts: aggravated assault, for stepping on Mr. Brooks as he lay on the ground, and two counts of violating his oath.

Let's take a closer look at Mr. Brooks. At first, he seemed pleasant and cooperative. He even referred to officer Rolfe by his first name. Those niceties ended when the cuffs were about to come on. Watch the videos – Mr. Brooks' fighting abilities are jaw-dropping. He was also a convicted felon, and currently on probation. Here's his summary table from the Clayton County superior court:

Type	Name	Offense	Filing Date	Case No. /Status	Judge
DEF	BROOKS. RAYSHARD	THEFT BY TAKING FIN TRANS CD TH FIN TRANS CD TH FIN TRANS CD TH FIN TRANS CD TH	07/13/2016	2016CR01606 09 Disposed	CARTER
DEF	BROOKS. RAYSHARD	FALSE IMPRISON SIMP BATTFAM V BATTERY SIMPLE FELONY CRUELTY	05/22/2014	2014CR01069 09 Disposed	CARTER
DEF	BROOKS. RAYSHARD	FALSE IMPRISON THEFT BY REC ST INTERFER WCUST OBSTR OFFICER	05/22/2014	2014CR01051 09 Disposed	CARTER
DEF	BROOKS. RAYSHARD	FELONY CRUELTY	05/30/2014	2014AD00333 09 Disposed	CARTER
DEF	BROOKS. RAYSHARD	VGCSA MARIJ VGCSA SCHED I WEAPONPOSS OUR MARJ OUNCELESS IDENTITY FRAUD MARJ OUNCELESS	04/12/2012	2012CR00822 09 see clerks office	CARTER

Mr. Brooks' record (click [here](#) and enter his name) dates back to 2012, when he was charged with drug and weapons crimes. Mr. Brooks pled guilty to two counts and received a suspended sentence. Two years later he pled guilty to false imprisonment, two counts of battery and one of felony cruelty to children and drew a one year prison term, to be followed by probation. In 2016 he pled guilty to five counts of theft and apparently returned to prison for another year. He was again released on probation. Apparently there were more violations, and his most recent hearing was in February 2020. (We couldn't find a detailed account of Mr. Brooks' criminal record in the American media. For a *Daily Mail* [U.K.] summary click [here](#).)

An [opinion piece](#) by CNN host Van Jones, who is deeply involved in criminal justice reform, suggested that Mr. Brooks' record had *everything* to do with his reaction:

For a person on probation, as Brooks was, any contact with a police officer -- for any reason -- means an almost certain return to the horrors of a jail cell. It is safe to assume that Brooks did not want to go back to jail over sleeping in his car or

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failing a sobriety test, lose everything he had and be forced to start his life over again. In other words, we do not know why the Atlanta police officer chose to shoot a man who was running away from him. But we can guess why that man chose to run, in the first place. Brooks didn't want to lose his liberty. Instead, he wound up losing his life.

What about officer Rolfe? After all, this is the time of coronavirus. With police departments throughout the country throttling back, it's been suggested that another officer might have let the man walk home. Mr. Brooks' status as a felony probationer, though, probably made that less likely. In any case, strictly enforcing DUI isn't a bad thing. Indeed, there are innumerable police-citizen encounters every day, and nearly all turn out peaceably. But as your writer can personally attest, there are also plentiful opportunities for bad endings. Making lots of arrests can yields great stat's and plaudits from MADD. It also increases the chance that sooner or later something will go wrong. Possibly *very* wrong.

We've often argued that both citizen and officer personalities matter. As he interacted with Mr. Brooks and administered field sobriety and blood-alcohol tests, officer Rolfe evidenced a calm, adept, compliance-gaining approach. Yet your blogger also sensed that he was a determined, perhaps even hard-headed sort. If there was enough evidence, no way would he let Mr. Brooks go. At the end, that .108 blood alcohol cinched it. Probable cause!

In "[Fair but Firm](#)" we mentioned that, as every cop well knows, being nice doesn't always gain compliance. Even when officers do their best, some citizens – say, Mr. Brooks – still go berserk. (Our first "[Is it Ever OK?](#)" cited two such examples, both involving chronic offenders.) Yet even when things go wrong they seldom turn lethal. Was there something about officer Rolfe that made it more likely he would turn to a gun? [ABC News reported](#) that officer Rolfe was "reprimanded" for a 2016 episode in which he used a gun. One year before that, [according to the Guardian](#), officer Rolfe and two colleagues shot a man during what a judge would call "the wildest incident," then allegedly covered it up.

But as we discussed two years ago in [Part I](#), shooting a man in the back – it was then 25-year old Daniel Hambrick – is something more. *Much* more:

Cops are supposed to protect everyone – not just themselves. That, indeed, is the reason for their being. Still, whatever its justification, shooting someone in the back is and will forever remain a loathsome practice. To many observers, perhaps most, Hambrick's killing seems nothing less than an execution, and this won't

change no matter how carefully we deconstruct the circumstances that led to his demise.

There's no doubt that Mr. Brooks' willingness "to go to the mat" presented substantial risks. On the other hand, while we don't consider officer Rolfe's actions *per se* unreasonable, the thought of shooting someone in the back remains simply abhorrent. We're certain that most cops wouldn't do it. A number of policing experts, though, believe that officer Rolfe was justified. Chris Wigginton, director of Georgia's law enforcement academy, pointed out that [officer Rolfe had plenty of reason to fear](#) that a second attempt was coming, and that it could leave him seriously injured or dead. According to the *New York Times*, officer Brosnan's lawyer now claims that [Mr. Brooks Tasered his client](#) during the struggle, so shooting at officer Rolfe left him with an empty gun. We didn't see that first discharge on the videos, and even if it happened it's doubtful that in the heat of things the officers were keeping count.

Along these lines, we should keep in mind that officers routinely call in the names and birthdates of whomever they stop, and dispatchers promptly check and report any criminal histories they find. During the stop Officer Rolfe may well have learned that Mr. Brooks was on felony probation. So that, too, might have influenced his actions.

However one evaluates what took place, avoiding such endings is something that everyone can agree on. Could more training help? Perhaps, but officer Rolfe was [reportedly recently trained](#) in use-of-force and de-escalation techniques. How about more rules? Usually we're of the opinion [that there are already plenty](#). But weighty public policy decisions are now being made at warp speed. With poorly informed, ideologically-driven solutions looming, agencies should make every effort to speedily clean their own house. They could begin by having working officers give examples and provide opinions about regulating the use of force against fleeing suspects, including those who aren't believed to be armed with a gun.

So let's get on with that fine-tuning. And please, let there be no reason for a Part III!

Posted 10/8/18

IS IT *EVER* O.K. TO SHOOT SOMEONE IN THE BACK?

Laws, policies and politics clash with the messiness of policing



Click to play video of Officer Andrew Delke chasing Daniel Hambrick

By Julius (Jay) Wachtel. Let's begin by summarizing two episodes in Nashville:

- On February 10, 2017 Nashville police officer Josh Lippert was driving an unmarked cruiser [when he observed an SUV run a stop sign](#) and pull into a parking lot. Officer Lippert, who is white, parked behind the vehicle. He was immediately approached by its driver and sole occupant, Jocques Clemmons, a 31-year old black man. [Officer Lippert said](#) he told Clemmons, who appeared to be fumbling with something on his person, to return to his car. Instead, the man took off running (see [surveillance video](#), beginning on the extreme upper left). Officer Lippert chased him on foot. As they made their way around parked cars a revolver reportedly fell from Clemmon's waistband. According to Officer Lippert, Clemmons snatched it up and turned towards him. That, Officer Lippert told investigators, is why he opened fire. "He was fixing to kill me. I truly believe he was fixing to kill me."
- One and one-half years later, during the evening hours of July 26, 2018 Nashville officer Andrew Delke, who was also operating an unmarked cruiser, [tried to pull](#)

[over a car](#) that was supposedly “travelling in an erratic pattern.” But the vehicle purposefully eluded him. Officer Delke, who is white, soon happened on a parked car. Several black men stood nearby. Officer Delke later said that they resembled the occupants of his vehicle of interest. One, Daniel Hambrick, 25, promptly ran off, and Officer Delke chased him on foot. Officer Delke said that Hambrick had a handgun in one hand, and that he repeatedly yelled warnings to drop the weapon or be shot. His commands had no apparent effect, and shortly after the pair rounded a corner [Officer Delke fired four times](#): three rounds struck Hambrick in the back, with fatal results (for the graphic video click above image or [here](#)).

We’ll come back to these incidents in a moment. First, let’s examine how police use of force law developed. That takes us back to October 3, 1974, when [Memphis officers shot and killed a fleeing burglar](#) who ignored their orders to stop. Their reason for shooting – that the suspect would have otherwise gotten away – complied with Tennessee law that allowed “all the necessary means” to arrest a fleeing suspect, and with agency rules that allowed using deadly force to arrest burglary suspects. In time this incident led the Supreme Court to rule that officers may not use deadly force to prevent “an apparently unarmed, nondangerous fleeing suspect” from escaping unless there is “probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.” (*Tennessee v. Garner*, No. 83-1035a, 1985)

Garner caused major changes in use-of-force laws and regulations. [Here is an extract](#) from Tennessee’s most recent (2010) version:

...the officer may use deadly force to effect an arrest only if all other reasonable means of apprehension have been exhausted or are unavailable, and where feasible, the officer has given notice of the officer's identity as an officer and given a warning that deadly force may be used unless resistance or flight ceases, and [the officer] has probable cause to believe the individual to be arrested has committed a felony involving the infliction or threatened infliction of serious bodily injury [or] that the individual to be arrested poses a threat of serious bodily injury, either to the officer or to others unless immediately apprehended.

And here, using their punctuation, are [Nashville P.D.’s current rules](#):

11.10.120 Use of Deadly Force in Self Defense

Authorized employees may use deadly force when they have a reasonable belief that the action is immediately necessary to prevent imminent death or serious bodily injury of a human being, including the employee.

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11.10.130 Use of Deadly Force to Effect an Arrest

Authorized employees may use deadly force to effect the arrest of a fleeing felon only when:

- A. The employee has probable cause to believe the individual to be arrested has committed a felony involving the infliction or threatened infliction of serious bodily injury; AND
- B. The employee has probable cause to believe that the individual to be arrested poses a threat of death or serious bodily injury, either to the employee or to others unless immediately apprehended; AND
- C. Where feasible, the employee has identified himself/herself as a police employee and given warning such as, “STOP--POLICE--I'LL SHOOT,” that deadly force is about to be used unless flight ceases; AND
- D. If all other means of apprehension available to the employee under the attendant circumstances have been exhausted.

Similar policies are in effect at departments across the U.S. (For use of force rules in the 100 largest police departments see the [“Police Use of Force Policy Database.”](#))

Back to the foot chases in Nashville. Since there was no reason to believe that either suspect committed a breach beyond a minor traffic violation, neither officer was shielded by the city’s “to effect an arrest” rule (11.10.130, above). Both cops, though, claimed that they acted within the purview of 11.10.120; that is, in self-defense:

- Officer Lippert insisted that his quarry dropped his gun, picked it up and turned towards him. Although that event wasn’t captured on video, a witness confirmed that Clemmons picked up a dropped gun. [A stolen .357 revolver was recovered](#) at the scene. [Autopsy results](#) proved somewhat mixed. While two bullets penetrated from the back (not good!), Clemmons also suffered a bullet wound on the left side and a grazing wound on the left abdomen. [He also had a substantial criminal record](#), including an eight-year prison term for a cocaine conviction which, as a felony, prohibited him from possessing a firearm. Despite protests by local activists, [Officer Lippert was fully exonerated](#) and no lawsuit was ever filed.
- Daniel Hambrick, the man Officer Delke chased, [had an extensive criminal record](#), including convictions for aggravated robbery and, repeatedly, for felon in possession of a weapon, once quite recently. Officer Delke’s radio calls during the chase [mentioned that the suspect had a gun](#). But as the surveillance video shows, Hambrick didn’t turn around, and there was no evidence that he directly threatened anyone with the weapon. (Nashville PD later posted [a picture of the firearm](#), a 9mm. pistol, on Twitter.)

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Finding Officer Delke's justification for going after Hambrick vague and disjointed, and lacking compelling evidence that his life was at risk, [the D.A. charged Officer Delke with homicide](#), which under State law runs the gamut from culpable negligence to murder. Bottom line: unlike the episode involving Officer Lippert, no one turned on Officer Delke with a gun. So there was no self-defense.

Maybe not. Yet distinguishing between the threats posed by Clemmons and Hambrick is fundamentally unsatisfying. Both were armed felons. They ostensibly fled for the same reason: to avoid being caught with a gun, an offense that could easily land them in prison. As Officer Delke's lawyer pointed out, an armed felon could certainly be considered a threat to his pursuer, to any citizens they might encounter, and to other officers coming in to help. What if there had been no chase? On the one hand, maybe nothing bad would have happened. On the other, Hambrick might have capitalized on his liberty to, say, shoot an innocent someone the following day. How would the community feel then?

[“Routinely Chaotic”](#) describes how the disorderliness of the police workplace affects officer decision-making. Bottom line: given the unpredictability of street encounters, even the best officers may not be able to tailor their responses to the intricacies of laws and regulations, let alone politics. That may be why only four years after *Garner* the Supreme Court offered a key concession, ruling that the appropriateness of the use of force, including deadly force, must be assessed “in light of the facts and circumstances judged from the perspective of a reasonable officer on the scene,” giving allowances “for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.” ([Graham v. Connor](#), No. 87-6571, 1989)

Cops are supposed to protect *everyone* – not just themselves. That, indeed, is the reason for their being. Still, whatever its justification, shooting someone in the back is and will forever remain a loathsome practice. To many observers, perhaps most, Hambrick's killing seems nothing less than an execution, and this won't change no matter how carefully we deconstruct the circumstances that led to his demise. Still, in light of *Graham*, we anticipate that while Officer Delke may have erred in tactics and judgment, he will be eventually absolved of criminal liability. Should that happen, explaining *why* to communities that are already angry about the killing of black men by white cops promises to be a very tough slog.

Posted 8/31/08

IS IT TOO EASY TO “ZAP”?

By Julius Wachtel, (c) 2010

Smarting from its first-ever loss in court, [Taser International](#) was assessed damages in excess of \$6 million by [Federal jurors](#) who ruled that the company “failed to warn police that its stun guns could be dangerous when used on people under the influence of drugs or in conjunction with chest compressions.”

The June 2008 verdict held the company 15% responsible for the death of a Salinas (CA) man whom police zapped as many as thirty times while trying to calm him down. An autopsy attributed the cause of death to methamphetamine intoxication, heart problems related to chronic drug abuse and being Tasered.

In another recent “first” a Winnfield (LA) cop became the [first officer ever charged](#) for unlawfully killing someone with a Taser. The 22-year old cop, son of the town’s late police chief, was indicted for manslaughter and malfeasance in office for Tasering a handcuffed suspect as many as thirty times and not getting him medical help. According to physicians, the man died from heart failure brought on by multiple shocks. If convicted the officer could face a 40-year sentence.

Tasers are pistol-like devices that use compressed nitrogen to shoot two darts that attach themselves to a target’s clothing, delivering a 50,000-volt shock for up to five seconds per trigger pull. They have been cited as contributing factors in numerous fatal encounters between citizens and police, but until recently virtually every death was ultimately attributed to other causes.

It’s easy to understand why cops like the Taser. In the heat of a struggle batons and other impact weapons are difficult to use: blows must be placed so as to disable but not kill, and officers must get close to suspects who may be larger in size and more physically adept. Pepper spray is often ineffective. Not only must the stream be carefully aimed, but its action is not instantaneous and the spray can contaminate others. In contrast, the Taser is simple to use, allows officers to keep their distance and immobilizes instantly. A [2004 study](#) in San Jose, California concluded that Tasers were highly effective and reduced officer injuries by twenty percent. A [recent North Carolina study](#) revealed that despite its apparent hazards the Taser was greatly favored over pepper spray for dealing with combative suspects.

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How dangerous is the Taser? Although death reports keep coming in, a 2007 [medical study](#) of the weapon's after-effects determined that it was safe and effective. Indeed, following a string of questionable police shootings, [RAND recently recommended](#) that New York police substantially increase the deployment of Tasers so that officers would have less lethal options than firearms. Still, confidence in the Taser's safety is by no means universal (see, for example, the report by [Amnesty International](#)). There is considerable concern about the Taser's effects on persons who are ill or have heart conditions, particularly when repeated shocks are administered.

Here's where a little self-criticism can pay off. No matter how easy and convenient Tasers are to use (and that might be part of the problem) they should not be viewed as a solution to the rough-and-tumble of everyday policing. "Going to the mat" is often inevitable. Instead, their real value lies in helping officers gain a *momentary* advantage over the physically belligerent so they can be taken into custody without anyone getting hurt. To that end, officers should be trained in appropriate physical control techniques so that a single jolt is all that's necessary.

No approach will always apply, and special rules and tactics may be necessary for cops working alone. Still, if we blindly continue on the same path and Taser-associated fatalities keep mounting it's only a matter of time before this valuable tool winds up occupying the same place in the use-of-force continuum as a gun. And that's an outcome that no one wants.

Posted 6/27/10

IS IT *WHEN* TO CHASE? OR *IF*?

***Ten days and twenty-five hundred miles apart,
two pursuits end in tragedy***

By Julius Wachtel, (c) 2010

[Kayla Woods](#) won't be enjoying a seventh birthday party. She'll no longer be there to watch over her younger brother and comfort him when he's sad. And she'll never again play with her friends, like she was doing on June 10, when a vehicle fleeing from police sped through the Lake View Terrace neighborhood where she and her family lived. According to her grieving father Kayla was all of six years and ten days old when the speeding car crushed her tiny body, pinning her against a wall.

[Moments earlier](#) LAPD officers responded to reports of a drug transaction involving armed men. When cops arrived a vehicle containing three suspects took off. Police gave chase. As the pursuit entered a residential area the car's occupants tossed two handguns. Seconds later, while negotiating a sharp turn, the vehicle went out of control and plowed into a sidewalk, striking the victim. Two passengers, Juanquin Hiriarte, 34 and Manuel Ydiarte, 49 were immediately arrested. The driver, Aaron Rojas, 32, was taken into custody two hours later when a police dog found him hiding in the trash. [All were charged](#) with murder, felony evading and being ex-cons with guns. Ydiarte was also charged with possessing heroin for sale.

Local residents wondered why police would chase in a residential area. In an interview LAPD Chief Charlie Beck emphasized that officers were dealing with armed criminals and that the pursuit was "very brief." He also said that deciding whether to chase was a "tough call" and had he known the outcome in advance he would have told officers not to come to work.

Ten days later in Harlem [a speeding minivan](#) approached a red light. It didn't bother to slow down. In what a witness described as an "explosion" an oncoming vehicle smashed into the van, catapulting it into a group of pedestrians waiting to cross the street. Sister Mary Celine Graham, 83, was killed. Several others were injured, including Sister Mary Celine's fifty-eight year old health aide, Patricia Cruz, a mother of six. Ms. Cruz was hospitalized in critical condition but is expected to recover.

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A member of the Franciscan Handmaids of the Most Pure Heart of Mary, Sister Mary Celine retired in 1999 after spending fifty-one years as a teacher and director at Harlem's St. Benedict's Day Nursery. Described as "a wonderful lady...a holy woman, bright, vibrant," Sister Mary Celine suffered from Parkinson's disease but was determined to "continue her work through prayer."

Sister Mary Celine's mission wasn't interrupted by an ordinary accident. The van that brought her life to its sudden, violent end [was being chased by police](#). Only moments earlier officers had pulled it over in connection with an armed robbery. As its 18-year old driver was arrested his 20-year old companion took the wheel and drove off. He fled after the accident but was caught the next day.

Police strongly defended their actions. Police Commissioner Raymond Kelly described the brief pursuit by an unmarked sedan – it ran with red lights and siren and kept a block away – as within guidelines and tactically sound. "It was an unfortunate series of events that caused a nun to lose her life," he said. Dr. Geoffrey Alpert, an expert in such matters, remarked that "chases often end badly" so the trend has been to restrict them. Yet he went on to say that in this particular case what the police did seemed appropriate.

What's known about police pursuits? Querying the [FARS database](#) for pursuit-related vehicular fatalities in 2008, the most recent year with complete data, yielded 279 crashes and 320 deaths. Victims included 301 vehicle occupants, twelve pedestrians, three bicyclists and four others. Although the toll has remained stable for a decade (275 crashes and 321 fatalities in 1998) reporting isn't mandatory, so the figure is presumably an undercount. Applying simple corrections, the author of a [2002 article](#) in the FBI Law Enforcement Bulletin estimated yearly pursuit-related deaths at 375 to 500.

Yet even that figure may be too low. [A comprehensive 1992 study](#) sponsored by the AAA Foundation for Highway Safety reported there were about 50,000 pursuits each year, with 18 to 44 percent leading to accidents, five to 24 percent causing injuries, and one to three percent – 500 to 1,500 – resulting in deaths.

It's currently accepted that about forty percent of chases end in a collision. A [1997 NIJ study](#) reported that 40 percent of Omaha pursuits caused property damage and that 41 percent of Miami chases caused injuries. [More recently](#), two-thousand in-service Minnesota police officers reported that 41 percent of the chases in which they had participated ended with someone (usually the person being pursued) crashing.

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There's no denying that chases are inherently dangerous. It's also well known that cops are reluctant to back off. Officers in the Minnesota study, for example, said they voluntarily discontinued pursuits less than five percent of the time.

But should cops chase in the first place? In a [2008 report](#) for the Police Foundation, Alpert and Smith concluded that pursuits are difficult to justify:

The empirical research debunked two common myths: most fleeing suspects are dangerous violent felons; and if the police don't chase suspects, all suspects will continue to flee, thereby greatly endangering public safety. What emerged...was the fact that most suspects who flee the police were young males who had committed minor offenses and who had made very bad decisions to flee. Additionally, the research supported the finding that if the police were to restrict their pursuit policies and not chase all offenders, no wholesale fleeing was likely to occur....

Fleeing suspects may not be as benign as the authors suggest. Kayla Woods and Sister Mary Celine were killed in chases involving armed offenders. And while a slim majority (fifty-one percent) of [Omaha](#) pursuits were for traffic violations, a not inconsiderable forty percent of those chased had committed serious crimes. In [Miami](#) the proportion of such chases was 35 percent; over four years that amounted to 117 armed robberies, 67 vehicular assaults, 37 aggravated assaults, 37 stolen vehicles, 24 burglaries and 62 other felonies.

With evidence accumulating about the tragic consequences of pursuits the tendency has been to restrict the practice. Perhaps the most extreme example is Baltimore, where General Order 11-90 (in full, [here](#); summarized, [here](#)) prohibits high speed pursuit driving except when "failure to pursue may result in grave injury or death." Pursuing officers must use lights and siren and come to a full stop at controlled intersections. In addition, the Maryland Court of Appeals [has ruled](#) that 11-90 is admissible in civil actions against the city. So the bottom line is clear: if you're a Baltimore cop, don't even think about chasing.

Pursuit policies in [Los Angeles](#) and New York (PG 212-39, not online) are far more permissive. Excepting infractions and misdemeanor evading or reckless driving, LAPD officers may pursue anyone who tries to flee. Cops must take into account factors including the severity of the offense, community safety, risk to the public by pursuing, traffic and weather conditions, and whether a violator can be apprehended later.

New York City's policy is similar. Officers must consider the nature of the offense, time of day, weather, location and population density, the capability of their vehicle and

their familiarity with the area. Pursuits must be terminated “whenever the risks to uniformed members of the service and the public outweigh the danger to the community if [the] suspect is not immediately apprehended.” Unmarked vehicles and motorcycles must “limit” pursuits and yield to regular patrol cars as soon as practical.

In trying to strike the proper balance some jurisdictions restrict pursuits to specified crimes. [New Jersey](#) limits chases to offenses punishable by at least five years in prison, or to persons who pose an immediate threat to the safety of police or the public.

[Orlando](#)’s policy is narrower, allowing pursuits only when officers “have a reasonable suspicion that a fleeing suspect has committed or has attempted to commit a violent forcible felony...” (Dodging fleeing cars doesn’t count.) Then there’s [Milwaukee](#), where a recent spate of pursuit-related deaths led the city to institute a policy requiring that officers have probable cause to believe that a violent felony occurred before starting a chase.

Kayla Woods and Sister Mary Celine were struck down by felons fleeing from gun-related incidents. From what’s known the New York City episode, at least, should satisfy virtually all rules short of Baltimore’s. Yet even if shaped by the most stringent cost-benefit analyses, pursuit policies seem awfully hollow when, as so often happens, an innocent life is lost. It may be that as extreme examples of the application of force (think about your Saturday morning drive, then consider 3,000 pounds of steel coming your way) chases should be subject to public scrutiny and their conditions enshrined in law so that everyone who may be affected is onboard.

Or we could just say “no.”

Posted 5/17/21

IS THE “CURE” WORSE THAN THE “DISEASE”?

*Dem’s push the “George Floyd Justice in Policing Act.”
Its consequences could be profound.*



For Police Issues by Julius (Jay) Wachtel. On June 8, 2020, a mere twelve days after those punishing “nine minutes and twenty-nine seconds” took George Floyd’s life, the 116th. Congress introduced the “George Floyd Justice in Policing Act of 2020.” Seventeen days later, on June 25, the House approved the measure by a comfortable 236-181 margin. [Only three Republicans](#), though, voted in its favor. And the Senate, then a province of the “Reds,” simply refused to take it up.

Hoping for a better outcome, the Dem’s reintroduced the legislation in the 117th. Congress. On March 3rd., reflecting their eroded standing, the “George Floyd Justice in Policing Act of 2021” passed the lower chamber [on a far less decisive](#) 220-212 vote. It now awaits action by the evenly-divided Senate. Here are some of its key provisions (for the text version click [here](#); for a summary click [here](#).)

- As Federal law ([18 USC 242](#)) presently stands, police officers can only be prosecuted for “willful” civil rights violations, meaning done on purpose and with bad intent. The George Floyd Act would relax this standard to include behavior that was “knowing” – meaning, not by accident – or “reckless.” Should death result, present penalty enhancements would be extended to include situations where officer conduct was a “substantial” contributing factor to the fatality, not only its sole or primary cause.

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- In *Harlow v. Fitzgerald* ([457 U.S. 800](#), 1982) the Supreme Court ruled that “qualified immunity” protects government employees from lawsuits for deprivation of civil rights under [42 USC 1983](#) “insofar as their conduct does not violate ‘clearly established’ statutory or constitutional rights of which a reasonable person would have known.” Under the Floyd Act, that “immunity” would become a historical footnote. Civil rights lawsuits against individual officers would be heard (and could ultimately succeed) no matter whether an officer “was acting in good faith” or believed that their conduct was “lawful.”
- An extensive, highly detailed section of the Act regulates how Federal law enforcement officers (but read on) go about their business. No-knock warrants are prohibited. Officers must intervene when colleagues misbehave. Most importantly, the use of force, including deadly force, would be bound by standards that are far less forgiving than the present go-to, the Supreme Court ruling in [Graham v. Connor](#). Here’s a extract from that landmark decision:

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.

No more. If at all possible, de-escalation must be attempted. Force also appears restricted to making arrests, and then only when “the officer has probable cause to believe” (*correctly* so) that the person being taken into custody committed a crime. Moreover, the force used must be “necessary and proportional,” and lethal force is only allowed “as a last resort” once “reasonable alternatives...have been exhausted” and there is “no substantial risk of injury to a third person.” Chokeholds and carotid holds are banned outright.

- To keep getting Federal law enforcement funds, state and local governments would have to follow the same use-of-force standards as the Feds. They must also contribute to a “National Police Misconduct Registry” that will include information about every citizen complaint filed against a state or local law enforcement officer. Instances that allegedly involve racial profiling or excessive force would be indexed by officer name and appear on a public website. To keep those Federal bucks rolling in, agencies would also have to participate in a national effort to combat racial profiling and assure a “more respectful interaction with the public.” They would be required to consistently detect “episodes of discriminatory policing” and sanction officers who engage in such

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practices.

- The Act goes beyond George Floyd. To quell concerns that surplus military gear “could be used inappropriately during policing efforts in which people and taxpayers could be harmed,” the measure prohibits its transfer to local law enforcement agencies except for counterterrorism purposes (no more using it for drugs or border security.) The Act bars the transfer of firearms, impact weapons, drones, and vehicles other than automobiles and utility trucks. There’s a provision for exceptions, but its complexities seem befuddling.

After reintroducing the measure in the new Congress, its main House sponsor, Rep. Karen Bass (D-Calif., pictured above) [evocatively summarized its purpose](#):

Never again should an unarmed individual be murdered or brutalized by someone who is supposed to serve and protect them. Never again should a family have to watch the murder of their loved one over and over again on the TV. Never again should the world be subject to witnessing what we saw happen to George Floyd in the streets in Minnesota.

Representative Bass’ partner in the effort, House Judiciary Committee Chairman Jerrold Nadler, also expressed intense views. But he did offer an olive branch to the authorities:

We have not forgotten the terrifying words ‘I can’t breathe’ spoken by George Floyd, Eric Garner, and the millions of Americans in the streets who have called out for change in the wake of the murders of George Floyd, Breonna Taylor and so many others...With this legislation, the federal government demonstrates its commitment to fully reexamining law enforcement practices and building better relationships between law enforcement and the communities they are sworn to protect and serve.

Were it that simple. [A continued profusion](#) of lethal encounters (i.e., [Breonna Taylor](#), [Ma’Khia Bryant](#), [Adam Toledo](#), [Daunte Wright](#)) has led some “Blues” to criticize the Floyd Act as much too little, far too late. Sponsored by Representative Ayanna Presley (D-Mass.) and Rashida Tlaib (D-Mich.), the “[BREATHE](#)” Act would, among other things, “divest federal resources from incarceration and policing” and “invest in new, non-punitive, non-carceral approaches to community safety that lead states to shrink their criminal-legal systems....”

As one might expect, such views have horrified the “Reds.” But there are exceptions. Say, [Senator Tim Scott](#) (R-S.C.) One of the few Republicans to openly endorse some

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aspects of the Floyd Act, he seeks “a substantive piece of legislation that is transformative for policing.” But his views on what the final product should look like aren’t what the measure’s sponsors have in mind. For one thing, he’d like a re-do of the qualified immunity provision so that the burdens of litigation and unfavorable outcomes fall on agencies instead of individual cops. He also strongly opposes the notion of making it easier to prosecute officers for Federal civil rights violations:

If you demonize and/or eliminate protections that they (police) have, chances are very low that you're going to have officers responding, so community safety goes down. Case in point: Portland, Cleveland, New York, Atlanta, Chicago. So we have to do something that strikes the right balance.

Were it that simple. While some tweaks might help get a few of Representative Scott’s colleagues to vote “yea,” influential civil rights groups that back the Floyd Act have steadfastly refused to water it down. Sherrilyn Ifill, President of the NAACP Legal Defense and Educational Fund, [demands that the law pass exactly as written](#):

The George Floyd Justice in Policing Act is a vital public safety measure. The core of the bill are measures that clear away barriers to holding law enforcement officers accountable for brutality and misconduct...We call on the Senate to do its part and immediately take up and pass the George Floyd Justice in Policing Act.

That’s definitely a non-starter for the more stalwart Reds, say, the [Heritage Foundation’s Zack Smith](#). In his view, prohibiting the transfer of military gear and eliminating no-knock warrants would make policing far more dangerous, while tightening the rules on the use of deadly force “could cause officers to hesitate in critical situations.”

Naturally, police union leaders are deeply invested in what the Act might bring. [Patrick Yoes, the FOP’s National President](#), feels that some of its measures “[could have a positive impact](#).” Yet he (and, assumedly, most of his membership) strongly opposes other aspects, such as abolishing qualified immunity. Mr. Yoes has also complained that despite the need for “genuine dialogue and engagement” the Act was sent “directly to the floor – without Committee consideration or any real debate on meaningful amendments.”

That lack of consultation has troubled other influential law enforcement leaders. Cynthia Renaud, the retired police chief who leads the International Association of Chiefs of Police, issued [a detailed, highly critical “letter”](#) that strongly objects to the Act’s key provisions. She warns, first, that ending qualified immunity “would have a profoundly chilling effect on police officers and would limit their ability and willingness

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to respond to both critical incidents and routine calls for service without hesitation.” Ms. Renaud also cautions that the Act’s use-of-force rules, which go well beyond *Graham*, assume “a level of officer influence over circumstances that does not exist and strives to create a level of perfection that cannot possibly be obtained.” In effect, cops would be encouraged to do nothing. Her objections extend to the National Police Misconduct Registry and to the prohibition on the transfer of military equipment, which she deems crucial for officer safety. Really, considering the penetrating power of firearms [in the hands of the general public](#), the availability of armored vehicles does seem a no-brainer.

So what do *we* think? (Glad you asked!) We’ve taken a deep look at the proposal and are greatly concerned about its reach. In its enthusiasm to reflect today’s sociopolitical climate, the Act seems to overlook the actual workplace of policing. As this retired law enforcement professional well remembers, it’s an inherently messy space. When Louisville cops executed their infamous search warrant at the residence of [Breonna Taylor](#), they didn’t anticipate that a companion would be there, nor that he would be armed, nor that he would interpret their presence as a criminal assault and open fire. And when an officer fired back after a bullet struck his partner, his round missed its mark and tragically killed Ms. Taylor, who was standing alongside.

That episode likely spurred the Act’s prohibition of lethal force unless there is “no substantial risk of injury to a third person.” Yet officers often arrive at chaotic scenes knowing preciously little about the circumstances and nothing about its participants. Consider the recent tragic example of [Ma’Khia Bryant](#). Within seconds of a cop’s arrival at the disorderly scene, one angry teen tried to plunge a knife into the torso of another. In this example, the officer’s shots struck their intended target. Had he not fired, as others were nearby, Ms. Bryant would have survived. But her intended victim could have been fatally stabbed.

It’s for the reason that officers must occasionally make “split-second” decisions that the Supreme Court ruled as it did in *Graham*. As we mentioned in “[Routinely Chaotic](#)”, lethal encounters typically occur in confused situations that teem with conflict and uncertainty. Throw in a lack of information, a shortage of human and material resources, and the inevitable “idiosyncrasies” of both cops and noncompliant citizens, and you have “[A Recipe for Disaster](#).”

What gets little play are the many successes (including more than a few miracles) that good cops pull off as a matter of course. As we recommended in [our recent Police Chief piece](#), studying these could prove instructive. Yet the jargon-rich Act doesn’t propose to craft organic solutions, and certainly not with any input from working cops. Instead, the Act’s approach seems wholly regulatory, as though the infinitely complex

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legislation can accomplish anything beyond guaranteeing long-term employment to legions of Federal and State overseers.

But reality *has* intervened. Major cities are experiencing [a surge in violence and armed mayhem](#) (click [here](#) for Chicago, [here](#) for Los Angeles, and [here](#) for New York City.) So it seems unlikely that the Act will pass in its current form. Hopefully, though, its sponsors will get the message and craft an approach that's attuned to the messy social environment that officers face each day. Cops *and* citizens deserve no less.

Posted 1/10/10

IT'S NOW L.A.'S PROBLEM

*A cop's tragic fumble turns into a cause célèbre.
What will happen if he's acquitted?*

By Julius Wachtel, (c) 2010

In a few weeks the murder trial of former Bay Area Rapid Transit police officer Johannes Mehserle will get underway. [As we reported earlier](#), Mehserle, who shot passenger Oscar Grant to death at an Oakland subway platform one year ago, argues that he meant to use a Taser but in the confusion pulled his pistol instead. Although we found his claim credible, it didn't sit well with [Alameda County Judge C. Don Clay](#), whose hostile remarks at the preliminary hearing ("there is no doubt in my mind that Mr. Mehserle intended to shoot Oscar Grant with a gun and not a Taser") made it perfectly clear to the ex-cop's lawyers that he desperately needed a change of venue.

And he got one. But the raucous protests greeting Mehserle's recent appearance at Los Angeles Superior Court show that the heat's still on. In effect, Oakland's problems have become L.A.'s. No matter: we're confident that once the evidence in this grossly overcharged case is in jurors will conclude that the shooting was unintended. Indeed, that's what has us worried.

Let's recap. About 2:00 am on New Year's day 2009 Mehserle and other BART officers detained four riders who had allegedly created a disturbance on a subway train. For reasons that aren't perfectly clear they wrestled Oscar Grant to the ground then struggled to handcuff him. A [bystander's cell phone video](#) shows Mehserle fumbling for his gunbelt. As he stands Mehserle draws his pistol and fires once into Grant's back, instantly killing him.

Witnessed by scores of bystanders, accounts of Mehserle's inexplicable deed spread like wildfire. It would take a month, when defense lawyers filed a [motion to set bail](#), for their client's version of what happened to come out. Too late! Within hours of the incident gangs of toughs rampaged through downtown Oakland. Disturbances continued for days. Meanwhile media outlets busily pumped out an avalanche of inflammatory coverage, with one television station promptly broadcasting both the cell phone video and an interview with the Grant family attorney that essentially portrayed the officer as a cold-blooded killer. With dispassionate, even-handed analysis going out the window it seemed as though the officer was already tried and convicted.

Why wait? String him up now!

Mehserle was soon arrested for murder. Ironically, his bail application was based mostly on what prosecutors dug up. Witnesses confirmed that Grant, who had not yet been searched, resisted attempts to get his hands out from under his stomach. Mehserle was overheard warning other cops that Grant might be hiding a gun and that he intended to deploy the Taser, and no less than seven citizens reported that Mehserle went into shock right after firing the fatal shot. Here is an extract from the interview with citizen witness Alike Rogers:

Officer Mehserle put his hands up to his forehead and he appeared to be in shock. Rogers did not see Mehserle put his gun away. Rogers read Officer Mehserle's lips, which appeared to say "Oh my god, Oh my god." The shooting really looked like a total accident. The expression on Officer Mehserle's face was as if, "Oh my god, I can't believe that just happened."

Here is another, with civilian witness Karina Vargas:

Vargas said the Officer who shot Grant had a surprised, dumbfounded look, like he was in shock. "After the shot, he stood there a few seconds trying to take in what had just happened. He had placed his hands to his head."

In June 2005 airman Elio Carrion was riding in a car that crashed while fleeing police. The first officer on the scene, [San Bernardino County sheriff's deputy Ivory Webb](#), ordered Carrion onto the ground. Carrion complied, but soon asked for permission to get up. Alone and frightened, Deputy Webb tried to tell Carrion "don't get up," but in his excitement apparently left out "don't" twice. [A sequence captured by an amateur videographer](#) shows Carrion getting up, prompting Webb to shoot him three times.

Carrion miraculously survived his wounds. At his trial for attempted voluntary manslaughter, Webb testified that if he said "get up" it was only because he had been too scared to articulate clearly. His account was supported by [defense psychologist William Lewinski](#), who said that when officers are under great stress their analytical processes can shut down. Lewinski described other situations in which officers feared for their

lives. “Their analytical process began to collapse,” he testified. “They had so much to do that, literally, they were overloaded.”

Is that what happened to Mehserle? Another officer said that he had never seen him so scared. Our [earlier post](#) mentioned past instances when stressed-out officers mistakenly drew and fired their duty weapons when they actually meant to use a Taser. That’s not as far-fetched as it seems. Tasers commonly used by police feel and operate much like a pistol. For convenience and to keep from confusing them with real guns they’re usually worn worn, as Mehserle did, on one’s weak side. But while officers frequently drill with their issue handguns, which they take home, care for and not infrequently draw while on duty, they get far less practice with Tasers. That was especially true for the BART police, where the weapons were a recent innovation and, with few on hand, had to be passed from shift to shift.

According to his bail pleading Mehserle had been certified to use Tasers for only a month and had carried the weapon no more than a dozen times. Given his agitated state it’s not difficult to see how he might have become confused. It’s an instance where the muscle memory that enables officers to swiftly draw their issue handguns can have an unintended consequence. Reacting in the way that he was conditioned, Mehserle robotically reached for the far more familiar holster. In his rattled state of mind he failed to detect, in the instant before squeezing the trigger, that the weapon at hand was not the one he had meant to deploy.

It’s happened before, and thanks to an inherent design flaw that makes Tasers so gun-like will likely happen again. Really, there’s no technical reason why Tasers can’t be shaped differently and activated, say, by pressing a button. But that would be a different blog post.

None of what we’ve said is new to the Alameda D.A. So why do they persist in charging Mehserle with murder? (Mehserle’s lawyer asked Judge Clay to reduce the charge to involuntary manslaughter. He refused.) Considering the public outcry, the charges of police racism, the marches and demonstrations, prosecutors probably figured that jumping on the choo-choo train was probably the safest choice, politically and otherwise. Still, there must be *something* to justify a charge of murder. While we’re not privy to the evidence in the case, the [bail filing](#) did mention that after the shooting Mehserle told another officer, “Tony, I thought he was going for a gun.”

According to Judge Clay, that statement and the video were enough to convince him that Mehserle purposely shot Grant. But to believe that requires one dismiss compelling evidence that points in a far more innocent direction. Regrettably, the reasoned voices

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have been strangely silent, leaving the public unprepared for what we're convinced will be a big (and to many, unwelcome) surprise. Knowing of the shooting's near-explosive aftermath, and with demonstrations already occurring in L.A., what will happen when, as we fully expect, it turns out that the State lacks the evidence to meet its burden?

Posted 5/17/09

KICKING A SUSPECT WHEN HE'S DOWN

There may be an explanation for kicking a compliant suspect in the head, but there's no excuse

By Julius Wachtel, (c) 2010

One can imagine how frustrated El Monte (Calif.) officers must have felt the other day when the [arrest of a wanted parolee](#) turned into another cause célèbre for the ACLU.

[A helicopter video](#) depicts the event in remarkable detail, up to the moment that a cop, gun drawn, violently kicks the prone suspect in the head, drawing a startled gasp from the camera operator. Criminal justice experts who viewed the blow called it lots of things, none nice. "Outrageous" said one; "one of the worst incidents of this kind that I've seen" said another. Even an ex-cop found something to criticize: "You have an individual who is compliant....I don't understand why an officer would want to get so close."

The incident in the hardscrabble Los Angeles suburb of 122,000 began when an officer tried to stop a vehicle occupied by three heavily tattooed members of the Florencia street gang. The car took off, precipitating a wild chase. During a slow-speed stage an occupant jumped out and surrendered. Eventually the fleeing vehicle careened off a parked car and stalled. As officers approached a second passenger gave up. But the driver, parolee-at-large Richard Rodriguez bolted. Police soon cornered him in a yard.

In the video we see the man lie down and spread out his arms, as though he's done it a thousand times before. An officer grasping a pistol approaches, then for no obvious reason delivers the formidable kick. More cops arrive. Rodriguez is handcuffed, although apparently not without receiving several flashlight strikes to the torso.

El Monte's beleaguered police chief refused to pass judgment. "I worked internal affairs for four years and I have learned that you do not make a decision in a vacuum," he said. "I do not know what was in the mind of that officer, as to why he did that. I saw the individual turn his head toward the officer."

On the other hand, police union lawyer [Dieter Dammeier](#) knew exactly what the cop had been thinking. "When you're going to have to take a bad guy into custody physically

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it is sometimes going to be aggressive and the cops are there to win...Better safe than sorry.” [Dammeier](#) later insisted that the officer acted within policy:

The individual officer saw some movement. He feared the parolee might have a weapon or be about to get up. So the officer did what is known as a distraction blow. It wasn't designed to hurt the man, just distract him.... [El Monte officers] are trained to deliver a distraction blow to stop a [suspect] doing what they planning on doing.

“Distraction blows” isn't a brand-new concept. In an infamous [2004 incident](#) an LAPD officer ran up to a car theft suspect who was being restrained by other cops and repeatedly struck him with a flashlight. It was all caught on camera. LAPD's then-new head, Bill Bratton, was surprised to learn that department guidelines allowed so-called “distraction blows” to the arms and shoulders (but not the head) of combative persons. (Bratton did away with heavy flashlights and fired the officer. The blows' lightly injured recipient settled for a cool \$450,000.)

California law authorizes “any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense to use reasonable force to effect the arrest, to prevent escape or to overcome resistance” ([P.C. 835a](#)). Police agencies are required to adopt use-of-force policies consistent with this statute. For example, the [Riverside Police Department](#) considers kicking (along with punching, batons and less-than-lethal munitions) appropriate when facing “threatening actions of an aggressive suspect.” Even then officers are cautioned to “avoid striking those areas such as the head, throat, neck, spine or groin which may cause serious injury to the suspect.” Distraction blows aren't mentioned.

Enough said. Most law enforcement professionals are repelled by the thought of using force on compliant suspects. Really the issue here isn't about kicking the head, a potentially life-threatening act that's unacceptable except under the gravest circumstances, but whether the cop did so maliciously. Did he think he was about to be attacked? Did he even intend to strike the head? To lay such a heavy blow? Might another reasonably well-trained and well-intentioned cop have done the same thing?

The incident is under investigation, and we will be interested to learn the outcome. We're also curious about the officer. According to the [San Gabriel Valley Tribune](#) he owns an Internet e-commerce website, [www.torcidoclothing.com](#), that sells “authentic jailhouse wear,” mostly t-shirts bearing text and images that signify gang membership and drug use. (“Torcido” means “twisted” or “crooked”).

Officers are individuals, with unique backgrounds, personalities and temperaments. Two cops standing in the same spot and observing the same event can react completely differently. And while it's true that fear and adrenaline-charged incidents such as chases have led to beatings and worse, officers usually hold their emotions in check. Yet, [as we've pointed out](#), police are reluctant to concede error. Cops whose blunders can be somehow justified often escape any consequences at all, while those whose mistakes can't be overlooked (perhaps, because they're caught on video) are vilified.

In the "old" days wizened Sergeants would get on the radio at the end of a chase and blurt out something like "watch your force!" Now that we're in the twenty-first century there are probably more sophisticated approaches. Selection, training and supervision are key. We must avoid hiring applicants who might easily panic, get angry or lose their moral compass. We must intervene when active-duty officers go astray and if possible help them reform. And real-time supervision (not just passive "oversight") is always essential.

Yes, when serious mistakes happen blame must be assessed. But policing would be much farther along if we'd expend half as much effort in preventing foul-ups as in putting Humpty-Dumpty back together again.

Posted 11/29/14

LESSONS OF FERGUSON

Lethal encounters between cops and aggressive (yet unarmed) citizens are common

By Julius (Jay) Wachtel. What happened in Ferguson is far from rare. Posts in our “Use of Force” section offer many examples of the use of lethal force by police against aggressive but unarmed citizens. Here are four examples:

- August 11, 2014. Two LAPD gang enforcement officers approached a 25-year old male on foot. They were unaware that he was mentally ill. According to police, the man tackled one of the officers and went for the cop’s gun. Both officers opened fire, and killed the man. However, a citizen witness denied that a struggle took place. The incident remains under review.
- January 14, 2011: Two LAPD officers responding to a disturbance call came across a large, naked 25-year old man (he happened to be a former NFL prospect) “yelling and behaving erratically.” He ran off. When officers closed in he repeatedly punched them in the face and head, then supposedly grabbed for a gun. That’s when an officer shot him dead. The killing was ruled justified.
- March 20, 2010: Two LAPD officers heard a loud noise while on patrol. They spotted a 27-year old man on foot. He seemed to be fiddling with something. The cops pulled up and ordered the man to stop. Instead he walked towards them and reached into his waistband. An officer shot him dead. It turns out that the man, who was learning disabled, had a cellphone in his hands. The officers received “conditional reprimands.”
- May 17, 2008: Long Beach (Calif.) police responded to a 911 call about an “absolutely insane” person. They approached a shirtless, middle-aged man. Officers said he charged them. Despite a Taser strike and baton blows, he punched a cop in the face and grabbed his baton. As they tumbled to the ground the other officer shot and killed the man. His action was deemed appropriate. Some citizen witnesses denied that a struggle took place.

In the unpredictable environment of the streets, cops must make critical judgments on the fly. Citizens who are non-compliant or, worse, physically aggressive potentially set the stage for a tragedy. When the learning-disabled man (see the third example) failed to heed a cop’s warning to stop his advance, then reached into his clothing, anything that came out was likely to be construed as a gun. When Michael Brown, who punched officer Wilson and tried to take his gun turned and allegedly came at the pursuing cop, he may have seemed like a lethal threat.

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How can officers avoid using deadly force? One way is to back off and wait for help. As we pointed out in a prior post, one-on-one foot pursuits are inherently dangerous. It may have been better for officer Wilson to let Brown go until backup arrived. Of course, doing so is not always appropriate, as it can transfer the risk to passers-by and help a suspect avoid capture.

Another approach, which we've also discussed at length, is to deploy non-lethal devices such as pepper spray or a Taser. Here we must depart from officer Wilson's decision not to carry a conducted energy device. Still, using a Taser while working solo is potentially risky; if the darts miss or are deflected by outerwear, and the suspect keeps coming, there may be not an opportunity to go for a club or gun.

Officers working alone are at a serious disadvantage. As the episode in Ferguson demonstrates, backup is not instantaneous. Some articles in the police literature conclude that conflicted situations are more likely to be safely and peacefully resolved when a second officer is present.

On the other hand, as the above examples demonstrate, simply having more cops on scene is no panacea. (Keep in mind that our "sample" is not unbiased, as LAPD mostly uses two-officer cars.) In any case, deployment decisions usually yield to budgetary constraints. One-officer cars cover twice the area of two-officer cars, at about the same cost. In most communities, and particularly cash-strapped towns like Ferguson, the former are here to stay.

If officers must work alone, they should at least get timely information about potential threats. According to a transcript of radio traffic, the Ferguson dispatcher alerted units that "a black male in a white shirt" stole a box of cigars from a store (Track 349.) No other details were given. So when unit 22 (officer Wilson) encountered a man in a white shirt (Michael Brown, sauntering down the middle of the road,) he wasn't certain that Brown was the thief. Neither could he know that Brown's blood levels of THC, the active ingredient in marijuana, was sufficient to impair his judgment. Had officer Wilson known that it was Brown, and that Brown had strong-armed the store clerk and pushed him against a wall, he would have likely waited for backup. Indeed, given Brown's behavior, it's probably a good thing that the cop didn't immediately step out of his car and approach him on foot.

When a suspect's name is known, officers and dispatchers may be able to provide important behavioral clues. Some jurisdictions even enter information about mentally impaired persons into their dispatch system. Unfortunately, officer Wilson did not know Brown, and would not learn of his identity until it was too late.

Did race influence the outcome? Crossed signals are probably less likely between citizens and cops of the same race. However, Michael Brown might not have been

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swayed by persuasion regardless of a cop's ethnicity. He was high on THC and demonstrably aggressive, having just shoplifted a box of cigarillos and physically bullied the clerk who confronted him. Cooperating with a police officer of any race would have meant a quick trip to jail, and Brown didn't seem in the mood for that.

Nothing in the record suggests that Brown was shot because he was black. Still, it's always preferable that a police department's racial and ethnic makeup resemble the composition of the community it serves. As those involved in police hiring well know, the competition for qualified minority candidates is intense. Smaller jurisdictions are at a marked disadvantage. With limited finances, they prefer to hire trained, certified and experienced officers from other agencies (officer Wilson is himself an example.) However, snagging laterals who also happen to belong to a minority group is not easy. To redress the racial imbalance in its police, Ferguson must begin by expanding the force. It will have to advertise, create a pool of applicants, select the most qualified, pay to train and certify them, then assign the new rookies to a senior officer for the twelve or eighteen months of experience they'll need before going solo.

To be sure, taking such steps is a lot harder than jawboning and pointing fingers. It's certainly not cheap. Neither is it guaranteed to prevent tragic encounters such as between officer Wilson and Michael Brown. But if we're looking for a lasting improvement, there is really no alternative.

Posted 1/15/12

MAKING SAUSAGE

*Delivering a blow looks nasty,
but it can be vastly preferable to the alternatives*

By Julius (Jay) Wachtel. Readers who follow this site know that we're not shy about criticizing excessive force. Nor about calling a time-out when officers try to excuse egregious behavior with outrageous claims. And on first glance this incident seemed a perfect example.

Six days ago Los Angeles County Sheriff's deputies were dispatched to a bus stop. A man had called 911 to complain that [a woman was threatening riders](#). "She's trying to pick a fight with anybody, she almost hit an old man. She was talking about how she got out of prison and 'I'll beat up all you guys'." (Click [here](#) to hear the 911 call in its entirety.)

It turns out that Julie Nelson [had been convicted four times](#) for assaulting cops. Homeless and mentally disturbed, the mordantly obese 42-year old woman had left on a bus. By the time that deputies hopped on board Nelson seemed friendly enough. Yet knowing her all too well, the officers asked Nelson to exit. She refused, and when they tried to force compliance Nelson resisted and uttered profanities.

That's when the male deputy elbowed her in the face.

A rider recorded everything on a cell phone. He later told reporters that he was appalled at how deputies treated the woman. [Sheriff Lee Baca seemed equally skeptical](#). "If the individual deputy who swung an elbow at the lady is looking at that as a sensible solution," he told a radio host, "we need to retrain that individual." But when asked whether the deputy did wrong, Baca demurred. "We have to look at what *his* threat level was when that occurred and then from there we can make that determination." (Emphasis added.)

Taking Sheriff Baca to task is becoming a habit. We recently criticized [his feeble attempts to distance himself](#) from what seems to be a pattern of excessive use of force by jail deputies. Here we're doing a one-eighty. Whatever threat Nelson might have posed to the male deputy is besides the point. He wasn't acting to safeguard himself but others, who presumably didn't know about Nelson's assaultive propensities. [As the Los Angeles County D.A. wrote](#) in a different case:

A police officer is not analyzed from the standpoint of exercising self-defense against an aggressor, rather the “police officer is in the exercise of the privilege of protecting the public peace and order [and] he is entitled to the even greater use of force than might be in the same circumstances required for self defense.”

Further, [[Graham v. Connor’s](#)] definition of reasonableness has been described by courts utilizing its analysis as, “comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present [thus affording] a fairly wide zone of protection in close cases.”

Assuming that deputies were justified in physically booting Nelson off the bus, was elbowing her in the face reasonable? Watch each version of the video carefully (click [here](#), [here](#) and [here](#).) All who have done police work – including your blogger – know that it can prove nearly impossible to handcuff a noncompliant person without causing injury. (If you don’t believe it, watch the video below.) In this case the deputies’ task was complicated by Nelson’s size. They didn’t want a protracted struggle or a tumble to the ground, where the woman could asphyxiate. Using a Taser or OC on someone as out of shape and mentally ill as Nelson [can be dangerous](#). So the blow was an excellent choice. While causing no permanent injury it momentarily disoriented her, allowing deputies to push her onto a bench where she was contained and handcuffed.

As bad as it may look, punching and striking uncompliant persons – yes, women included– is occasionally necessary. This video, from our post “[Dancing With Hooligans](#),” demonstrates what happens when a Seattle cop is beset by an aggressive woman. Pay notice to how the fracas began, and consider whether a second blow might not have resolved it more safely.

For reasons that become quite clear, we called that one for the cop. But that wasn’t our conclusion in the infamous [episode of May 2009](#), when an El Monte (Calif.) police officer kicked a proned-out, by all appearances compliant suspect in the head. He had done so, the cop said, because the suspect swiveled his head, suggesting that he might flee or attack. We weren’t the only who thought this “distraction blow” story ridiculous. Although we’re unaware of any accepted protocols that endorse what the cop did, the D.A. bought the explanation and declined to prosecute.

LAPD has also tangled with “distraction strikes,” which [it once officially recognized](#) in its manual. Five years ago [then-Chief Bratton ordered](#) that officers cease using the term, as some had applied it “to describe strikes intended to cause the suspect to submit to arrest or stop an offensive action when there was no intent to transition to another technique.” His concern wasn’t about delivering blows, which can be appropriate, but about vague terms such as “distraction” that can misrepresent what takes place. That

was apparently a problem in Portland, where cops who used a distraction blow technique learned at the State training academy [were using the term](#) to circumvent requirements that officers report all uses of force.

Given the ubiquity of video-enabled cell phones, the sausage-making qualities of street policing are more evident than ever. But until the day comes when people quit acting like Cro-Magnons, police will keep resorting to fists – and elbows – to get the job done safely while minimizing injuries to cops and citizens alike. To be sure, instances where excessive force is used will keep happening, and when they do we'll say so.

But this wasn't one of them.

Posted 4/11/10

MAKING TIME

Split-second decisions can end in tragedy

By Julius Wachtel, (c) 2010

Early on a Saturday morning three weeks ago [two uniformed LAPD gang enforcement officers](#), one with eight years of experience, the other with seven, were patrolling in South Los Angeles when they heard a “loud noise.” Wheeling their car around they spotted Steven Eugene Washington, 27, walking down the sidewalk. He seemed to be fiddling with something on his person. Although a detailed official account is lacking, it seems that the officers exited their vehicle, called out to Washington and ordered him to stop. Instead he walked towards them and removed an object from his waistband.

Or seemed to. Fearing that their lives were in danger, the officers fired. Struck once in the head Washington fell, mortally wounded.

No gun was found. What the object was – if anything – hasn’t been disclosed.

According to Washington’s mother, and to the attorney representing her in a claim against LAPD, her son, [who suffered from autism](#), was on his way home after seeing a friend. Fearful of strangers and respectful of police, he had never been in trouble with the law. [“We want to know why,” his outraged aunt demanded.](#) “You’re dealing with a 27-year old man who is autistic – 27, but with the mind-frame of a 12-year old. He never carried a gun, he was never around guns, he wasn’t violent. He was a kid.”

At a press conference soon after the incident [LAPD Assistant Chief Earl Paysinger](#) emphasized that officers believed Washington was reaching for a gun and had only an instant to decide. “The officers made decisions in a fraction of a second and teams of investigators now have to examine it from every possible angle...It is important to note that what happened was tragic to Mr. Washington, his family, to whom we offer our condolences, but also for the officers, who have our strong support during this incredibly difficult period for all of us.”

Earlier postings (see “related posts,” below) document a recent string of questionable shootings by Southland law enforcement agencies. Perhaps the most similar took place in May 2008 when [two Inglewood cops](#) shot at a car they mistakenly thought was the source of gunfire. One occupant was killed and two others were wounded. Expressing

deep regret, the city's police chief suggested that it wasn't the police but circumstances – shots *had* been fired and the vehicle seemed to be headed straight at the officers – that were really to blame. “I won't go so far as to call it a mistake. The process that the officers went through had a very tragic outcome.”

Mentally unstable persons do present a special challenge. One week after the Inglewood incident [Long Beach officers](#) were called to deal with a middle-aged man who was behaving erratically. During a struggle he grabbed an officer's baton and was shot five times. Surviving relatives described him as a loving person who was distraught about a failed relationship. (They sued, but a jury found in the department's favor.)

Considering the innumerable police-citizen encounters that take place each day in this gun-obsessed and violence-prone land, it seems a miracle that so few shootings actually occur. Knowing that appearances can deceive, most officers take care not to act hastily, thus accepting at least some risk. If they didn't, dead civilians would be lining the streets at the end of every shift.

Still, one needless death is one too many. What can prevent mistaken shootings? Shortly after Washington's death [LAPD reassured the public](#) that its officers are trained to deal with the autistic. A project by the [Autism Society of Los Angeles](#) has reached thousands of officers, including many with family members afflicted by the disorder. Autism training is now commonplace for cops around the U.S. (Awareness of the problem has even seeped into popular entertainment, with a theatrical play, “[The Rant](#),” portraying the police killing of an autistic teen.)

Yet is training enough? Last October [an autistic 16-year old](#) North Carolina high school student asked to speak with a resource officer. When the cop arrived the youth suddenly drew a knife and lunged. By the time it was over the officer had several knife wounds and the boy was shot dead. “It's very upsetting, and I just hope everybody realizes that this was an isolated case, and he was a good kid,” [said the boy's mother](#).

When officers have the luxury of time skills learned during classroom instruction and practical exercises can be useful. But self-initiated contacts, such as the observation that led to the encounter between the LAPD cops and Washington are far more difficult to manage. Officers who know nothing beyond what they observe might perceive a threat where none exists. And if they're in a high-crime area, fear, anxiety and past experiences can predispose them to respond reflexively.

Sometimes cops must make decisions in Chief Paysinger's “fraction of a second.” But it may also be possible to “make” enough time to give oneself some breathing room. Officers know not to place themselves in positions where they lack cover or are

inherently at risk, such as in front of a suspect's car. On the other hand, choreographing unplanned street encounters isn't easy. Merely closing in can place an officer in a dangerously exposed position. Should a suspect make a move, the cop may instinctively react by deploying their only ready defense – a gun.

That's what supposedly led to a [widely-criticized episode](#) last September, when a man running from an L.A. County deputy was fatally shot when he reached for what turned out to be a cell phone. Incredibly, the person turned out not to be the one being sought. The upshot was a [new policy](#) that urges officers to contain suspects rather than charge in. "You don't have to go barreling in on every case and then find yourself in a position where you have no choice but to use your gun," said Sheriff Lee Baca.

When cops go through simulation exercises they learn the importance of taking cover and seeing a gun before firing. Unfortunately, the lessons don't always transfer to the rough-and-tumble of the streets. How long did the officers who shot Washington observe him before moving in? Once they did, did they take any precautions to increase the time they had to react? And most importantly, *what was in the youth's hands?*

Hastily entering an uncertain environment with little information is a recipe for tragedy. Alas, it's a practice that officers seem doomed to repeat.

Posted 3/16/16

MORE RULES, LESS FORCE?

PERF promotes written guidelines to reduce the use of force. Cops aren't happy.

By Julius (Jay) Wachtel. A few weeks ago the Police Executive Research Forum (PERF), an organization of progressively-minded police executives, released "[Use of Force: Taking Policing to a Higher Standard](#)." PERF's new monograph promotes thirty "principles" that, if wholeheartedly implemented by the nation's police departments, would supposedly restore public confidence in its law enforcers and enhance the safety of both citizens and cops.

Many of the principles seem self-evident. Principle 1 emphasizes the sanctity of life and stresses that police should treat everyone with respect. Principle 3 urges that force be proportional to the severity of a threat. Principle 6 urges officers to intervene when colleagues use excessive force. Principle 9 prohibits using deadly force against suspects who only pose a threat to themselves. Principles 10-13 set out various policies on use of force, including thoroughly documenting use of force incidents and insuring that each is carefully investigated. Principle 27 cautions that officers must not automatically turn to a gun just because an ECW (i.e., a Taser) proves ineffective. And principle 29 recommends that 911 operators be trained in various areas, including responses to situations involving the mentally ill.

However, some of PERF's suggestions are less straightforward. Here is an extract from principle 2, which has probably generated the most controversy:

Agency use-of-force policies should go beyond the legal standard of "objective reasonableness" outlined in the 1989 U.S. Supreme Court decision *Graham v. Connor*. This landmark decision should be seen as "necessary but not sufficient," because it does not provide police with sufficient guidance on use of force.

In [Graham v. Connor](#), the Supreme Court ruled that police use of force must be judged "in light of the facts and circumstances judged from the perspective of a reasonable officer on the scene." According to the Court, allowances are also necessary "for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation."

PERF felt that the decision's "objectively reasonable" threshold and "split-second" wiggle room were far too permissive for everyday use. So it called on agencies to enact

explicit rules that go well beyond *Graham*. Principle 17, “De-escalation,” is an example of this approach:

De-escalation can be used in a range of situations, especially when confronting subjects who are combative and/or suffering a crisis because of mental illness, substance abuse, developmental disabilities, or other conditions that can cause them to behave erratically and dangerously. De-escalation strategies should be based on the following key principles [extracts below]:

- Effective communication is enough to resolve many situations; communications should be the first option.
- Communications often are more effective when they begin at a “low level,” e.g., officers speaking calmly and in a normal tone of voice.
- Whenever possible, officers should be trained to use distance and cover to “slow the situation down” and create more time for them to continue communicating and developing options.
- If an encounter requires a use of force, officers should start at the lowest level of force that is possible and safe.
- As the situation and threats change, officers should re-evaluate them and respond proportionally.

PERF has clarified that its principles [aren’t meant to be applied to persons with guns](#). Instead, they’re about minimizing force when doing so is possible. But that won’t happen unless cops “slow things down”:

It is important to emphasize that PERF’s 30 Guiding Principles are about resolving situations in which subjects either have no weapons, or may have knives, rocks, or other weapons – but not firearms. It is these types of encounters in which officers may be able to “slow it down” and consider various options designed to prevent the situation from ever reaching the point where deadly force would be required.

“Slowing it down” is essential for implementing principle 22, which urges that supervisors be present whenever the use of force seems likely:

Provide a prompt supervisory response to critical incidents to reduce the likelihood of unnecessary force (emphasis added.) Supervisors should immediately respond to any scene:

- Where a weapon (including firearm, edged weapon, rocks, or other improvised weapon) is reported,

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- Where persons with mental health problems are reported, or
- Where a dispatcher or other member of the department believes there is potential for use of force.

Once on the scene and if circumstances permit, supervisors should attempt to “huddle” with officers before responding to develop a plan of action that focuses on de-escalation where possible. In the case of persons with mental health problems, supervisors who are not specially trained should consult and coordinate with officers on the scene who are specially trained.

Our nation’s inner cities are suffused with guns, drugs and violence. Patrolling alone, or at most in pairs, officers regularly confront the consequences of poverty, ignorance and social disorganization. Cops peacefully resolve innumerable conflicts every day. Actually, many of PERF’s principles (e.g., “communications should be the first option”; “officers should start at the lowest level of force”) reflect how most policing gets done.

In Los Angeles, where officers are trained in de-escalation, the Police Commission declined to adopt PERF’s principles in full. Still, it called for [rules](#) that would compel the use of strategies such as “slowing it down.” That enraged a union official. His complaint, that “every second counts, and hesitation will kill you,” was a common reaction among the rank and file. Indeed, as some of the more demanding principles make the rounds (e.g., “officers should never do anything to escalate a situation”), cops everywhere have started to balk (click [here](#) and [here](#).) Even the stodgy old IACP has [chimed in](#):

...the IACP is extremely concerned about calls to require law enforcement agencies to unilaterally, and haphazardly, establish use of force guidelines that exceed the “objectively reasonable” standard set forth by the U.S. Supreme Court nearly 30 years ago (*Graham v. Connor*). The creation of a multitude of differing policies and use of force standards throughout the United States would, undoubtedly, lead to both confusion and hesitation on behalf of law enforcement officers which in turn would threaten both their safety and that of the citizens they are sworn to protect.

Knowing from experience just how dangerous and impulsive citizens can be, cops are naturally wary of rules that would have them wait for a boss or a riot shield (as principle 28 requires) while an unpredictable someone holds their ground. Earlier this month two [NYPD officers cornered a deranged man](#) who had already stabbed a shopkeeper dead and set another person on fire. They ordered him to drop the knife in his hands. Instead, he doused them with chemicals from a bottle. Both officers suffered serious burns but managed to shoot and wound the suspect.

That's not to say holding off is always inappropriate. But given the uncertainties of field encounters, the IACP, street cops, and, yes, this blogger are leery of requiring officers, on penalty of discipline, to come up with compelling justifications for not "slowing things down." One can imagine all the creative, after-the-fact writing that would inspire! If nothing else, PERF's implicit assumption that suspects will peacefully wait while cops deploy shields and huddle with supervisors and mental health professionals seems to convey a certain naiveté about the environment of American policing.

Well, mystery solved! PERF's principles came from a visit to Scotland (click [here](#) and [here](#).) That's right – Scotland – where violent crime is less than a quarter the U.S. rate, [all handguns and semi-automatic rifles](#) beyond .22 rimfire are illegal, fewer than one in ten homicides [are committed with guns](#), and only [two percent of cops](#) are armed. According to a recently retired chief constable, "you never see people with guns in this country. If you do, you're in a rural area and it's a bloke out shooting rabbits."

Policing can and should be improved. Law enforcement practices must not be immune from analysis and criticism. As we've said before, cops who are loath to take personal risks should consider less dangerous occupations. We recently examined [de-escalation](#), and prior posts have looked into many instances of excessive force, including [firing at vehicles without clear justification](#). Still, instead of making more rules – believe us, American police have plenty of those – it might be wiser to examine, in depth, the craft of policing. That's right – the *craft*. Some cops excel at peacefully defusing things. A systematic study of their working styles could generate ideas to make policing kinder and gentler. And we wouldn't have to turn officers into liars.

Incidentally, if the notion of policing as a craft seems intriguing, your blogger delivered [a paper on that topic](#) during a visit to...Ukraine. But it's all about America. Really. For the rest of the story, click [here](#).

Posted 2/15/09

OAKLAND BART SHOOTING: A TRAGEDY, YES -- BUT IS IT *MURDER*?

It's not the first time that a cop accidentally drew a gun

By Julius Wachtel, (c) 2010

On March 10, 2001 Sacramento (Calif.) police arrested a "very drunk" Steven Yount. Hobbled by handcuffs and leg restraints he kept on fighting, prompting an officer to reach for his Taser. That according to the [California Supreme Court](#) was when things went terribly wrong:

Officer Shrum pulled what he thought was his Taser and fired it at the back of Yount's upper thigh. It was only then that he looked down at the weapon in his hand and saw he had mistakenly grabbed his pistol.

Yount survived and sued the police for violating his civil rights. His case is pending.

On September 2, 2002 Rochester (Minn.) police officers tried to arrest a drunk and belligerent [Christofar Atak](#). During the struggle an officer went for his Taser. Or thought he did. Atak wound up with a bullet in his back. [His lawsuit](#) was settled for \$900,000.

On October 27, 2002 [Everardo Torres](#) was sitting in the back of a Madera (Calif.) police car, handcuffed and under arrest. When he wouldn't stop trying to kick out the windows an officer drew her Taser. Or thought she did:

[Officer Noriega](#)...reached down with her right hand to her right side, where she had a Glock semiautomatic pistol in a holster in her officer belt and, immediately below, a Taser M26 stun gun in a thigh holster. She unholstered a weapon, pointed the weapon's laser at Everardo's center mass, and pulled the trigger of her similarly-sized-and-weighted Glock....There is no question that Officer Noriega intended to draw her Taser but mistakenly drew her Glock.

An instant later Torres was dead of a bullet wound. His family sued.

On October 23, 2003, a Somerset County (Maryland) deputy sheriff was trying to arrest [Frederick Henry](#) for failure to comply with a child support order. Henry ran off

before he could be handcuffed. The officer drew his Taser. Or thought he did. [Moments later](#) Henry had a hole in place of his elbow:

[The officer] did not realize he had fired the handgun until after the weapon discharged. He immediately told Henry and another witness at the scene that he had not meant to shoot Henry and that he had grabbed the wrong weapon.

Henry survived to sue the police.

In these examples officers were carrying Tasers on the same side as their pistols. To prevent such tragedies most departments now require that stun guns be worn “cross draw,” meaning on the officer’s weak side. That’s how ex-San Francisco Bay Area transit cop [Johannes Mehserle](#), 27, was carrying his Taser X-26 on January 2, 2009 when he helped other officers detain four subway riders who were allegedly involved in a disturbance.

What happened next was captured on a [bystander’s cell phone](#). About halfway through the video the officers wrestle one of the suspects, Oscar Grant, to the ground. During the struggle (Grant is on his stomach, supposedly resisting being handcuffed) Mehserle draws his pistol, stands up and fires once into Grant’s back, killing him. Mehserle’s hands instantly go to his head. He and his colleagues seem stunned.

Days of protests and disturbances follow. Mehserle resigns from the force and goes into seclusion. He is eventually charged with second-degree murder and released on \$2 million bail.

While no one can know exactly what was going through Mehserle’s mind it’s highly unlikely that he intended to use deadly force. Transit officers had only been carrying stun guns for three months. Anxious and overly excited, he probably reverted to habit: [intending to grab the Taser](#), Mehserle robotically reached for the far more familiar holster -- the one that held the gun. According to [news reports](#), bystanders overheard him tell his colleagues that he intended to Tase the suspect. (His comments after the shooting were supposedly contradictory. Still, it’s his state of mind at the time of the incident that’s crucial.)

There is little precedent for accusing a blundering officer with murder. An [incident in California](#) that led to a lesser charge took place in January 2006, when a badly rattled San Bernardino County Sheriff’s deputy shot and wounded an unarmed passenger after a car chase. Audio from a bystander video suggests that the deputy told the victim,

whom he had ordered to the ground, to get up. But when the man did so the deputy shot him three times. The officer steadfastly denied giving the victim permission to rise and said that he thought he was about to be assaulted.

Prosecutors charged the officer with attempted voluntary manslaughter. During trial an [expert defense witness](#) gave examples of officers behaving oddly during a crisis: “Their analytical process began to collapse. They had so much to do that, literally, they were overloaded.” One officer repeatedly told a suspect openly wielding a knife “show me your hands!” Why? Because that (instead of “drop the knife”) was the command he remembered from training.

Taking this testimony to heart, jurors promptly [acquitted the deputy](#). As one said, “police officers have to be given the right to make their decisions. If they make a bad decision in the line of duty, should we...incarcerate them for it? I don’t think so.”

Ultimately, that’s the point. The deputy was fired, as he should have been, and was sued, as was the victim’s right. But prosecuting an officer for a felony when they unintentionally make a terrible call serves no purpose, other than to perhaps soothe an angry public. Unlike [U.S. Attorneys](#), who cannot prosecute unless they believe that someone is in fact guilty and there is evidence to prove it in court, California D.A.’s are bound by the [ABA’s far less stringent guidelines](#), which require only that they “refrain from prosecuting a charge that [they] know is not supported by probable cause.” It’s precisely that discretion that enables politically timid prosecutors to ignore their consciences and leave the tough calls for a jury.

Let’s hope that the Alameda County D.A.’s extraordinary step of charging a cop with murder is based on much more than what on first glance seems to be a tragic yet not unprecedented mistake. If not perhaps Oakland jurors will prove, like their San Bernardino counterparts, to be sufficiently wise to know the difference.

Posted 12/13/22

ON THE ONE HAND...BUT ON THE OTHER...

California's lethal force laws devolve into a legal Neverland



For Police issues by Julius (Jay) Wachtel. A few days ago the City of Pomona, Calif. and its police department settled a long-running ACLU lawsuit ([Gente Organizada v. Pomona](#), L.A. Superior Court case no. 20STCV28895). While no bucks will apparently change hands, the agreement seemingly imposes significant restraints on the city's cops.

Among (many) other things, Pomona P.D. must revamp its use-of-force rules to conform with the August 2019 revision of California Penal Code [Sec. 835a](#). Officers will have to be informed that the decision-making process about using deadly force has become far more demanding, creating "a higher standard for the application of deadly force in California." They must also receive extensive training to assure that the "new normal" is incorporated into everyday practice.

We'll get into the specifics of Pomona's travails later. But first, let's examine the disturbing episode that propelled the change in California's police use-of-force laws. We posted a detailed essay ("[A Reason? Or Just an Excuse?](#)") about the fraught event two weeks after it took place. It didn't happen in Pomona but in the State's capital, Sacramento. To summarize, on March 18, 2018 city police officers encountered Stephon Clark, 22 as they responded to a late-evening 9-1-1 call about someone "going into back yards and breaking the windows of parked cars." Clark was quickly spotted by a helicopter. His behavior fit the suspect's, and as he ran from officers and entered yet another rear yard the threat level skyrocketed.



Clark took refuge under a patio. (Click [here](#) for helicopter video and [here](#) for officer bodycam video). Two officers peered around a wall. And as Clark (that third, lone figure) motioned with one of his hands, which held an indistinct object, they opened fire. After all, it simply *had* to be a gun. Alas, what they couldn't predict was our essay's subtitle: "Figuring out why officers kill persons 'armed' with a cell phone". Neither did they know that this was the residence of Clark's grandmother, with whom he was staying.

Clark, who was on probation for robbery, was clearly up to no good. His behavior had inarguably placed two cops in a tough spot. Apparently so tough that one year later, on March 2, 2019, the Sacramento D.A. announced that [neither officer would be charged](#).

Based on the circumstances of this incident, Officers Mercadal and Robinet had an honest and reasonable belief that they were in imminent danger of death or great bodily injury. Therefore, they acted lawfully in shooting Clark to defend themselves. Accordingly, we will take no further action in this matter.

Three days later [that decision was seconded](#) by the California Attorney General. And on September 26, 2019, the U.S. Department of Justice determined that [there was insufficient evidence](#) to pursue Federal civil rights charges.

When Mr. Clark was shot dead two long-standing California statutes governed police use of force. [Penal Code section 835a](#), which didn't then specifically mention *lethal* force, bound cops who had probable cause to make an arrest to use "reasonable force to effect the arrest, prevent escape or overcome resistance." In contrast, [P.C. section 196](#) was all about *lethal* force. It deemed it justifiable:

1. In obedience to any judgment of a competent Court; or,
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,

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3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest. [emphases ours]

P.C. 196's emphasis on "necessity" didn't automatically endorse the shooting of Mr. Clark. But in 1989, the U.S. Supreme Court ruled in [Graham v. Connor](#) that the unforgiving nature of the police workplace must be taken into account:

The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.

And as Sacramento D.A. Anne Marie Schubert reached the end of her sixty-one page decision, that's where she turned. While *Graham* was a Federal Fourth-Amendment case, its grant of that "allowance" apparently inspired her to conclude that the cops couldn't be faulted as they had done their "reasonable" best.

Needless to say, the reaction wasn't all positive. Here, for example, is [what the ACLU had to say](#):

Police departments in California are some of the deadliest in the country. Police in Kern County, for example, have killed more people per capita than in any other county in the U.S. But many of these deaths could have been prevented if police were held to a higher standard that valued the preservation of life.



Mr. Clark was Black, so his killing carried racial implications. But it wasn't *all* about race. After all, one of the cops who shot him was also Black. Still, it was left to Shirley Weber, a Black assembly member from the opposite end of the state, to lead the charge. She was soon joined by Kevin McCarty, a White assembly member from Sacramento. On February 23, 2017 they introduced AB 931, the "[Police Accountability and Community Protection Act](#)." Its focus was Penal Code Section 835a. [Here's how the existing section then read](#), in full:

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall

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such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

Despite its weighty topic, Section 835a's word count was a stingy 99. Its suggested replacement, via AB 931 (click [here](#)), came in at an awe-inducing 858 words. Here's an extract from its introductory content:

...a peace officer's decision to use force must be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances must account for occasions when officers may be forced to make quick judgments about using force in circumstances that are tense, uncertain, and rapidly evolving.

Well, that seems cop-friendly. But what followed imposed strict limits on the use of deadly force, and particularly against fleeing suspects. At the time, Penal Code Sec. 196 authorized police to use lethal force "when necessary" against known or suspected felons who flee or resist (see above). These provisions were eliminated. Lethal force was also broadly defined, encompassing "any use of force that creates *a substantial risk* of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm" (emphasis ours.)

AB 931's complexities and unforgiving language drew strong objections from the law enforcement community. For example, the [Peace Officers Research Association of California](#) (PORAC) complained that while officers take "necessity" into account as a matter of course, making it an explicit standard [might lead them to inappropriately hesitate](#):



Hesitation will place our communities at greater risk as officers delay the response to a rapidly evolving and dangerous situation in order to review and evaluate a checklist of options before acting to protect the public safety.

Despite [strong support from civil rights groups](#), as 2018 rolled to an end the bill quietly died. But in February 2019 Assemblymembers Weber and McCarty introduced a replacement measure, AB 392. Here's the preamble to its new, supposedly improved version of P.C. section 835a:

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(2) ...it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.

At a full 833 words, the [“California Act to Save Lives”](#) is, like its abandoned predecessor, elaborately articulated. But constraints on police use of lethal force have somewhat relaxed from the bad, old AB 931. Here’s a side-by-side comparo of key text from both (emphases ours):

AB 931 (OLD P.C. 835a)	AB 392 (NEW P.C. 835a)
<p>(2) (d) (1) (A) A peace officer may use deadly force <i>only when such force is necessary</i> to defend against a threat of imminent death or serious bodily injury to the officer or to another person.</p>	<p>(5) (c) (1) ...a peace officer is justified in using deadly force upon another person <i>only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary</i> for either of the following reasons:</p>
<p>(3) A peace officer may use deadly force against fleeing persons only when both of the following are true:</p>	<p>(A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person.</p>
<p>(A) The peace officer has probable cause to believe that the person has committed, or intends to commit, a felony involving death or serious bodily injury.</p>	<p>(B) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.</p>
<p>(B) There is- a threat of imminent death or serious bodily injury to the peace officer or to another person if the subject is not immediately apprehended.</p>	

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In the new version, the requirement that lethal force must in fact be “necessary” seems tempered. Ditto, constraints on using lethal force against fleeing suspects. AB 931 required that officers who wished to do so have probable cause that a suspect committed or intended serious violence. For AB 392, a prior act that “threatened” a bad outcome is enough. In actual practice, that could be a significant distinction.



Still, considering the complexities that the “good, new” AB 392 introduces into P.C. 835a – again, we’re talking 833 words vs. 99 – many peace officer groups remained opposed. [One complained](#) that the new version “does nothing to change use of force policing policies, training, or guidelines-no funding for training, critical to any plan to reduce police use of force, and no proactive plan to achieve such a reduction in force.” But the highly influential (and politically attuned) [California Police Chiefs Association](#) shifted its stance [from opposed to “neutral.”](#) And on August 19, 2019, California Governor Gavin Newsom [signed AB 392 into law](#).

Back to Pomona P.D. Why did it draw the ACLU’s ire? Go back to May 25, 2020. That’s the day when a Minneapolis cop squeezed the life out of [George Floyd](#). And, not incidentally, forever altered the trajectory of American policing. Two months later, on July 31st., the ACLU sued. Filed in California Superior Court, [the action claimed](#) that Pomona P.D. “unlawfully used public funds and employee time in adopting policies and trainings — designed by police lobbying groups — that conflict with the new state law”. PORAC, the peace officer group that worried about hesitating cops, drew prominent mention:

The Pomona Police Department, in the spirit of that opposition, deleted in multiple spots the word “necessary” — the new law’s single most vital change — in its stated policy of state penal code. The department’s training center also instructed supervisors to review with employees PORAC’s content on AB 392 that denied any change to the legal standard for deadly force. A sergeant forwarded the directive with the note: “FYI from PORAC. Nothing has changed.”

In its announcement, the ACLU bitterly remarked that Pomona officers had “shot and killed three people since the law went into effect” on January 1st, 2020. That naturally raised the question of whether cops would have fired had Pomona sincerely attempted to train them about the new provisions. We found the episodes in the *Washington Post*’s [“Fatal Force”](#) database. According to the San Bernardino County D.A., two of the shootings, of [Nick Costales](#) on 6/29/20 and of [Matthew Dixon](#) on 7/5/20, were fully justified. Costales murdered his mother then fired at officers who intercepted his flight.

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Dixon allegedly “pointed a gun at different people”. While the D.A.’s website did not mention the third shooting, of [Anthony Pacheco](#) on 3/31/20, a local news source reported that Pacheco had stabbed his brother. A police bodycam video (we couldn’t find it) reportedly depicts him advancing on a cop with a sword while “ignoring the officer’s repeated commands to stop.”

No matter. On November 8, 2022, Pomona P.D. Chief Michael Ellis affixed his signature to [a settlement](#) in which he agreed to incorporate the statutory changes in agency policy and to train officers on the new normal. A “new, improved” [use of force policy is online](#). Its well-intentioned attempt to mesh the intricacies of the law with the real world of policing, though, doesn’t fully succeed. Here’s an extract (emphases ours):

If an *objectively reasonable* officer would consider it *safe and feasible* to do so under the *totality of the circumstances*, officers shall evaluate and use other *reasonably available* resources and techniques when determining whether to use deadly force (emphases ours).

Aside from potentially confusing working cops, each italicized condition creates an obstacle to retrospectively evaluating whether a use of force was justified. Cops aren’t only judged by persons who have done policing. Decisions about the correctness of the use of force are often made by persons such as the D.A. who cleared the cops in the killing of Stephon Clark. And given our society’s litigiousness, by robed creatures such as the one depicted at the top of this post.

And that brings us back to Sacramento. Its D.A.’s reliance on good-ol’ *Graham v. Connor* caused severe blowback from the civil rights community. That led to the expansion of the Penal Code section that regulates police use of force from a “mere” 99 words to a weighty 833.

Job done, right?

Well, not exactly. In “[Who’s in Charge?](#)” we discussed the tragic killing of a 14-year old girl who was struck by one of the bullets an LAPD officer fired at a man who was rampaging through a clothing store. That incident happened on December 23, 2021, two years into P.C. 835a’s “new, improved” version. When time came for the Police Commission to rule on the officer’s actions, it disagreed with the Chief’s conclusions that none of the shots were justified (the suspect’s weapon was a bicycle chain.) Instead, the Commissioners ruled that the first shot (but not the second or third) was reasonable. Here’s one of the closing paragraphs of their “abridged” [44-page decision](#):

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Based on the totality of the circumstances, for round one, by a 3-2 vote, the BOPC concurred with the UOFRB Majority and determined that an officer with similar training and experience as Officer F, in the same situation, would reasonably believe that the use of deadly force was proportional, objectively reasonable, and necessary.

According to the Commission, it analyzes the use of deadly force “by evaluating the totality of the circumstances of each case consistent with the California Penal Code Section 835(a), as well as the factors articulated in *Graham v. Connor*.” That turned out to be Section 835’s most prominent mention. *Graham* played a far more significant role in the assessment. It was mentioned as the source of the all-important “objectively reasonable” standard that’s “used to determine the lawfulness of a use of force.” And *Graham*’s “reasonableness” language, which we set out above, appeared twice.

In all, the nuances and complexities of P.C. Section 835a seem to make it a poor vehicle for deconstructing (let alone *making*) police decisions. *Graham*’s far more succinct and well-articulated approach continues to carry the day with both officers and superiors. Really, given the complexities of the police workplace, the personal characteristics of cops and citizens, and the reluctance of more than a few of the latter to comply, sometimes less is really, *really* more.

Posted 4/17/23

PILING ON

Swarming unruly citizens and pressing them to the ground invites disaster



For Police Issues by Julius (Jay) Wachtel. On March 31, 2020, two months before the murder of George Floyd forever tarnished American policing, a resident of Southern California lost his life in an appallingly similar way.

During the early morning hours of March 31, 2020 a pair of California Highway Patrol officers [stopped Mr. Edward Bronstein](#), a thirty-eight year old Burbank man, on suspicion of drunk driving. He was detained and transported to a CHP station. On arrival, officers asked his consent for a blood draw. (That may have been due to previous DUI's. See below.) But Mr. Bronstein refused, so [they obtained a telephonic warrant](#) and summoned a nurse.

Seven CHP officers were involved. Five were hands-on. A sixth stood to the side, and a Sergeant videoed the encounter. (Click [here](#) for our condensed, captioned and backlit version, and [here](#) for the full-length CHP video). Officers placed Mr. Bronstein on his knees and tried to get him to change his mind. But Mr. Bronstein wouldn't, so they pressed him to the ground. Mr. Bronstein was instantly scared and "promised" he would comply. But an officer said "too late."

These images depict what happened next. About 1:25 min. into the CHP video, one



officer is shown pressing down on Mr. Bronstein's neck area with his knee (we outlined its approximate shape). Less than a minute later (2:09 on the video) Mr. Bronstein begins screaming "I can't breathe." An officer replies "then stop yelling." The blood draw began about 2:50 mis. in. By 3:10 mis. Mr. Bronstein seemed unresponsive. But the procedure continued. At about 4:30 mis. the nurse checked for a pulse in various places, then tried to slap Mr. Bronstein awake. After nine minutes had passed the officers raised Mr. Bronstein's torso, and the nurse used a stethoscope to check for a heartbeat. About 13:30 mis. someone utters "heart attack". Active resuscitation measures don't visibly begin until nearly fifteen minutes into the encounter. That's about *twelve minutes* after Mr. Bronstein seemingly passed out.

["Violent and Vulnerable"](#) discussed the syndrome of "excited delirium," which the emergency medical community formerly applied to highly agitated persons, typically under the influence of drugs (see the American College of Emergency Physicians' 2009 ["White Paper on Excited Delirium Syndrome"](#)). When physically restrained, some cease breathing altogether or go into cardiac arrest. But the [EMS World](#) white paper that we originally linked is no longer online. It's been replaced by ["A New Lens on Excited Delirium."](#) According to the site editor, concern had developed that "excited delirium" had become "a catchall diagnosis that obscures other causes of death" and allows police to excuse the physical abuse of minorities (i.e., the George Floyd episode).

Still, agitated persons continued to perish. [A 2021 report](#) by the American College of Emergency Physicians (ACEP), offers a new, improved syndrome: "hyperactive delirium":

Hyperactive delirium with severe agitation, a presentation marked by disorientation and aggressive words and/or actions, is an acute life-threatening medical condition that demands emergency medical treatment...(pg. 2)

Fine. So was "hyperactive delirium" a factor in Mr. Bronstein's death? [ACEP's website](#) notes that (just like the bad, old "excited" delirium) forceful intervention can play a key role:

...Hyperactive delirium syndrome is a life-threatening constellation of symptoms manifested as a clinical syndrome. The combination of vital sign abnormalities, metabolic derangements, altered mental status/agitation, and potential physical trauma raises serious concerns for impending danger. Patients with this condition are at high risk of...secondary physical trauma that may result from physical restraint to allow for evaluation of the patient by emergency personnel.

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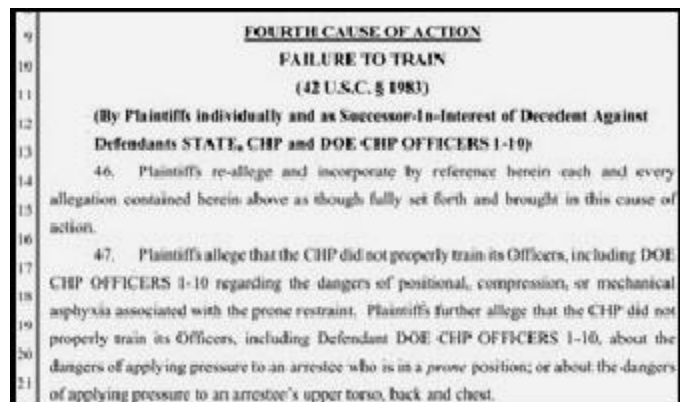
What's more, drugs make things worse. "Hyperactive delirium with severe agitation, as well as hyperadrenergic physiological states, commonly results from stimulant intoxication and may be caused solely by exposure to this class of drugs." (pg. 7)

For Mr. Bronstein, it was apparently "all of the above." According to the [L.A. County Coroner](#), the cause of death was "acute methamphetamine intoxication during restraint by law enforcement." A highly agitated man who was under the influence of a powerful, mood-altering drug had a gaggle of officers press on his chest. Given Mr. Bronstein's fragile condition – call it "hyperactive delirium" if you wish – that application of force likely interfered with his breathing and brought on cardiac arrest.

Leaving out any mention of "delirium", excited or otherwise, this causal chain forms the basis of [a Federal civil rights lawsuit](#) filed by Mr. Bronstein's family against the state, the CHP, and each of the officers (2:20-cv-11174-FMO-JEM). Here's a brief extract from its "Fourth Cause of Action, Failure to Train" (pg. 10):

Plaintiffs allege that the CHP did not properly train its Officers, including DOE CHP OFFICERS 1-10 regarding the dangers of positional, compression, or mechanical asphyxia associated with the prone restraint.

Plaintiffs further allege that the CHP did not properly train its Officers...about the dangers of applying pressure to an arrestee who is in a prone position; or about the dangers of applying pressure to an arrestee's upper torso, back and chest.



A recent filing indicates that a settlement is in sight, and a hearing to approve it is scheduled for October.

Full stop. It's not just civil litigation that the officers face. On March 28, 2023, just three days shy of the *three-year* mark, a new D.A., George Gascon, [charged the R.N. and the seven CHP officers](#) with violating [Penal Code section 192\(b\)](#), involuntary manslaughter, a felony, in this case "the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection". Each officer was also charged with [section 149, a misdemeanor](#) that applies whenever an officer "under color of authority, without lawful necessity, assaults or beats any person." Here's an extract from the [D.A.'s online announcement](#):

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...Bronstein initially refused the blood draw, but then agreed to comply as officers pushed him to the ground...Six officers are accused of forcing a handcuffed Bronstein to the ground and pinning him down as Baghalian drew his blood. While pinned down, Bronstein repeatedly told officers he could not breathe. As the blood draw continued, Bronstein became unresponsive. He was kept facedown for approximately six more minutes...Approximately 10 minutes after he became unresponsive, the officers attempted CPR, but Bronstein never regained consciousness and was later pronounced dead.

Mr. Bronstein's encounter with the CHP happened before the Floyd episode, when the risks of pinning recalcitrant subjects to the ground were not widely recognized outside of the medical community. That, of course, has changed. [Commenting on the officers' prosecution](#), Acting CHP Commissioner Sean Duryee emphasized that training and field practices have been substantially upgraded:

Following this incident, CHP leadership updated agency policies to prevent officers from using techniques or transport methods that involve a substantial risk of positional asphyxia...The CHP has also conducted training for all uniformed employees to help them recognize individuals experiencing medical distress. The CHP is exploring alternatives to administering mandated chemical tests when people arrested on suspicion of driving under the influence refuse to submit to testing, as required by law.

Policing is an inherently fraught enterprise, and [getting citizens to voluntarily comply](#) can be tough. Mr. Bronstein might have been a particularly tough nut to crack. Our search of Los Angeles Superior Court case files revealed that a man with the same first and last name, and same birth year and month, had three DUI and three driving on a suspended license convictions between 2001-2012. (There were also convictions for battery on a peace officer and domestic violence.) Prior DUI's may be why CHP officers insisted on a blood draw, then telephoned a judge when Mr. Bronstein refused to submit voluntarily. But even when told that there was a court order, Mr. Bronstein said "no."

Police Issues doesn't hesitate to criticize cops when they do wrong. Our essay about the George Floyd episode, "[Punishment Isn't a Cop's Job](#)," was posted *nine days* after the lethal encounter. Try as we might, though, we can't summon that conviction here. True enough, a CHP officer's "too late" retort expressed considerable annoyance with Mr. Bronstein. Still, the officers observably tried to play nice, and a nurse was present throughout. In our view, there was an absence of the hostile tenor evident in, say, how ex-MPD cop Derek Chauvin treated George Floyd. So we're disturbed that charges are being levied so long after the fact, and by a new D.A., George Gascon, [a self-avowed](#)

[progressivist](#) whose efforts to constrain his prosecutors' vigor have inspired [several recall attempts](#) and [caused considerable discord within his office](#). (Click [here](#) for the D.A.'s news release about the Bronstein episode.)



D.A. Gascon's emphasis on police accountability has led to the reopening of other old cases. Among those is the [recent filing of charges](#) against two Torrance, Calif. Police officers for the 2018 shooting death of a suspected car thief, an episode for which they had been formally cleared by the prior D.A., Jackie Lacey.

Ideological issues aside, an underlying dilemma remains. Forcefully restraining a combative person is highly problematic, and particularly so if pressure – perhaps even moderate pressure – is applied to one's chest. Forget L.A. Skip to present-day Virginia. Consider what happened to [Mr. Irvo Otieno](#). On March 3 Henrico County deputies arrested the deeply troubled man for burglary. An emergency mental health order landed him in the hospital. He then assaulted three deputies and wound up in jail.

Three days later deputies took Mr. Otieno to a state mental facility. Their prisoner proved combative, so they used pepper spray and shackled the man's hands and feet. And on arrival, the deputies literally "piled on." Here's Commonwealth Attorney



Ann Cabell Baskerville's reaction to the [video](#):

They're putting their back into it, leaning down. And this is from head to toe, from his braids at the top of his head, unfortunately, to his toes.

Mr. Otieno wound up on his stomach and reportedly remained under pressure for twelve minutes. He never regained consciousness.

State's Attorney Baskerville swung into action. Accusing the seven deputies and three hospital security officers of "smothering" Mr. Otieno to death, she promptly charged them with second-degree murder. As one would expect, [concerns have been raised](#) that's

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overly severe. However, in Virginia second-degree murder includes accidental killings that are caused by “[extreme recklessness](#)”. Perhaps the prosecutor is frustrated, as we are, that a full *three years* after the killing of George Floyd, some officers are still “piling on.”

Whether or not one subscribes to “hyperactive delirium,” it seems beyond question that forcefully restraining a disturbed person places them at risk. In the real world of policing, that’s often unavoidable. But taking an agitated someone to the ground and exerting pressure on their torso can disrupt breathing and circulation. Tasers and pepper spray can make things worse. For those whose bodily functions have been degraded by drug use or health issues, that can be more than enough to tip them into cardiac arrest. And unless *that’s* instantly recognized, resuscitation attempts may prove futile.

What to do? Combative persons should be placed on their knees to apply handcuffs or restraints. Agreed, that may not always work well in practice. It will also require retraining. But there are no perfect solutions. Even if side positioning is intended, “going to the mat” is an invitation to disaster. And the days of “piling on” are really, *really* over.

Posted 1/30/25

POINT OF VIEW

Do scholars really “get” the craft of policing?



For *Police Issues* by Julius (Jay) Wachtel. “[The more things change, the more they stay the same](#).” That catchy phrase naturally drew our attention. But it was the title’s second half, “A multi-wave national assessment of police academy training curricula,” that led us to pore through the data-laden article in depth. Authored by criminal justice academics John J. Sloan, Eugene A. Paoline and Matt R. Nobles, the deeply-researched piece probes whether “decades of efforts” succeeded in getting police recruit training to shed its historical “danger imperative” orientation in favor of “a guardian-based foundation and emphasis” that “allows for the rare instances when officers need to use warrior tools.”

After an in-depth quantitative analysis of basic training curricula [at 421 U.S. police academies](#), their answer is a resounding “no.” Across the 2002-2018 study period, “police operations” and “weapons and defensive tactics” hogged a consistent 70 percent of basic training time. Training in police operations was primarily directed at the “warrior dimensions of the occupation,” such as patrol procedures and emergency vehicle operations. On the other hand, community policing drew sparse attention. Its two components, “mediation/conflict management” and “cultural diversity” usually merited no more than three days in programs whose length often exceeded ten weeks. These findings were by no means unique:

Recent qualitative fieldwork at multiple academies by Simon (2023, 2024) and Sierra-Arevalo (2021, 2024) identifies an overall BLET [basic law enforcement training] message (often amplified by graphic body camera recordings of police officers being killed by civilians) stressing the “danger imperative” that recruits

will face on the job, supplemented with a secondary message that recruits must “become warriors before they can become guardians.”

It’s not only academics who question that “warrior” approach. While

DOJ’s [Final Report of the President’s Task Force on 21st. Century](#)

[Policing](#) doesn’t dig into the actual content of police training curricula, its

take on things seems very much in sync with “the more things change”:



Law enforcement culture should embrace a guardian—rather than a warrior—mindset to build trust and legitimacy both within agencies and with the public...A starting point for changing the culture of policing is to change the culture of training academies... The designation of certain training academies as federally supported regional “training innovation hubs” could act as leverage points for changing training culture while taking into consideration regional variations.

So there we were, getting ready to pen a provoking piece about the disconnect between what police academies teach and what criminal justice academics (and DOJ) wished they would. But that nasty “real world” of policing suddenly got in the way. On September 4, 2024 the [Washington Post](#) alerted readers to the police killing of Justin Robinson, a 25-year old D.C. resident whom officers had shot dead three days earlier. Protesters were blocking streets around a police station and demanding the release of the full, unedited video of the officers’ interaction with Mr. Robinson, an apparently highly-regarded “violence interrupter” with the Capital city’s [“Cure the Streets” program](#).

[That video](#) was soon released. We’ll use screenshots and audio clips to follow along with the [U.S. Attorney’s official account](#) of what took place. Here’s how its report begins:

On September 1, 2024, at about 5:20 a.m., Metropolitan Police Department (MPD) Officers received a radio run for a vehicle that had crashed into the side of the McDonald’s...MPD Officers and D.C. Fire and Emergency Medical Service (DCFEMS) members responded to the scene and observed an unresponsive individual, later identified as Justin Robinson, sitting in the driver’s seat of the vehicle....When the MPD Officers arrived, they observed a firearm in plain view in Mr. Robinson’s lap.



Our first frame depicts the vehicle as officers found it, blocking the drive-thru lane. Its crash damage is in the second frame. In the third frame the first officer on scene exits his car. He walks up to the vehicle and notices that Mr. Robinson, the sole occupant, is seemingly passed out behind the wheel. Within seconds the officer radios “send me additional vehicles to McDonald’s, suspect has a firearm on his lap” (right frame.)



Mr. Robinson awakens as backup arrives. In the left frame, an officer says “I got movement. Sir, keep your hands off the gun.” Multiple colleagues move in (center frame) and command “hands up.” Mr. Robinson’s hand comes up, but then seemingly drops back down (right frame). An officer yells that the suspect has his hand on a gun.



D.C. police officer Vasco Mateus extends his gun-bearing hand into the car. Mr. Robinson grabs the weapon (left frame). A vicious struggle ensues, and officer Mateus [reportedly threatens to shoot Mr. Robinson in the face](#) (the audio is indistinct.) Officer Mateus then steps back and opens fire. He discharges ten rounds. A colleague, officer Bryan Gilchrist, fires once. Here’s the U.S. Attorney’s account:

As an MPD officer reached into the car and attempted to retrieve the gun from Mr. Robinson's lap, a struggle ensued, during which Mr. Robinson refused to relinquish control of his own gun and grabbed the firearm of that MPD Officer. MPD officers instructed Mr. Robinson to take his hand off the gun. After this warning, as Mr. Robinson continued to struggle, two MPD officers discharged a total of 11 rounds from their service pistols at Mr. Robinson, striking him.



Mr. Robinson was promptly pulled from the car and given first-aid. He soon died. A few minutes later an officer said “make sure that DFS [forensic services] is coming out to recover [Mr. Robinson's] firearm.” [Its image](#) (see left) on a Washington D.C. police report depicts a [Canik TP9 9 mm. pistol](#).

Where that pistol came from hasn't been revealed. But Mr. Robinson wasn't supposed to have a gun. On October 1, 2018, Mr. Robinson, then 19, drew a five-year prison term, and a 26-year old running mate, Kevin Grover, got twenty years, [for a killing that took place on D.C. streets](#) two years earlier. According to a [DOJ press release](#), Mr. Robinson got into an argument with the victim, then had Grover shoot the man dead. (Mr. Robinson was also armed but didn't fire.)

Back to the McDonald's. Officers Mateus and Gilchrist were promptly placed on paid leave. On January 15, 2025 the Justice Department [announced that neither would be charged](#):

After a careful, thorough, and independent review of the evidence, federal prosecutors have found insufficient evidence to prove beyond a reasonable doubt that the MPD Officers were criminally liable for Mr. Robinson's death.

Both officers have supposedly [returned to duty](#).

Fraught officer-citizen encounters are commonplace. Happily, most reach a more-or-less amicable conclusion, and everyone gets to go home. But as in this case, some citizens can prove seriously uncompliant, and may even be armed. Seemingly “ordinary” situations can quickly descend into chaos (“[Routinely Chaotic](#)”). That's a special problem in chronically violence-ridden places such as D.C. (“[America's Violence-Beset Capital City](#)”), where urgent calls frequently strain resources. Two recent posts, “[What Cops Face](#)” and “[When \(Very\) Hard Heads Collide](#)” discuss how such things can

undermine policing. And there's more bad news. As we mentioned in "[Working Scared](#)", outcomes are always influenced by officer attributes and skillsets:

Some cops may be insufficiently risk-tolerant; others may be too impulsive. Poor tactics can leave little time to make an optimal decision. Less-than-lethal weapons may not be at hand, or officers may be unpracticed in their use. Cops may not know how to deal with the mentally ill, or may lack external supports for doing so. Dispatchers may fail to pass on crucial information, leaving cops guessing. And so on.

Here, all the above apply. Imagine responding to a call where an ex-con (with a violent prior conviction, no less) is passed out behind the wheel of a car he crashed into a drive-through. What's more, there's a gun on his lap and he's uncompliant when awakened. Two law enforcement scholars assessed the police response in the [Washington Post](#). One thought that officer tactics were "really poor from start to finish." In his view, the gun in Mr. Robinson's lap didn't pose an immediate threat. Since "there was no need to rush" officers could have "set up a perimeter and tried to wake Robinson from a distance with a loudspeaker." In contrast, the other academic thought that going after the gun "without startling Robinson" was a good idea. But once the man started wiggling, "cover and distance" became the best approach.

We're not sure that D.C.'s chronically-pressed cops would be prone to set up loudspeakers. Still, we have a serious quibble with sticking a pistol into a suspect's car, let alone their face. Doing so clearly unnerved Mr. Robinson and, we feel, directly provoked the tragic outcome. "[When \(Very\) Hard Heads Collide](#)" describes a like provocation, and an equally catastrophic result, when Ohio officers tried to coax a woman out of her Lexus. Here's what took place:

Eight seconds after Officer 2 began ordering Ms. Young to exit her vehicle, Officer 1 walked by and planted himself in front of the car....Only nine seconds after that, the car began to move. Veering sharply to the right, it knocked Officer 1 aside. Having already unholstered his gun, he instantly fired. His round penetrated the windshield...and fatally wounded Ms. Young.



Ta'Kiya Young had just participated in a mob shoplift. She had a minor criminal record, including petty theft and driving offenses. So she was a non-compliant sort. And when a cop placed himself in front of her car and drew his gun, something definitely snapped.

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Back to recruit training. Should academies shed their “danger imperative” orientation and adopt “a guardian-based foundation and emphasis” that “allows for the rare instances when officers need to use warrior tools”?

Our preference would be to drop the loaded language and ideologically-infused approach. Instead, do as we suggested in [“How to Defuse Police-Civilian Encounters”](#) and [“Why Do Officers Succeed?”](#). Ask street cops what *they* experience and how things can improve. How do they avoid igniting non-compliant souls? How do they minimize the use of force? How do they keep colleagues from making things worse? Instead of shedding tactical training, suffuse it with the real, everyday experiences of working cops. Use actual examples, such as the above, to explore the effects of chaotic, potentially dangerous situations (and no, they’re definitely *not* “rare”) on the police response. After all, thanks to *YouTube*, there are few “secrets” to keep.

And be sure to let us know how it goes!

Posted 8/19/11

POLICING IS A CONTACT SPORT (PART I)

How did the Taser's reputation reach such a low point?

By Julius (Jay) Wachtel. Ten million dollars. That's what a Federal civil jury [recently ordered Taser International](#) to pay the family of a North Carolina grocery clerk who died after being struck in the chest with darts from a police Taser.

On March 20, 2008 Darryl Turner, 17 got into a heated argument with his boss. Police were called. A store surveillance video depicts the youth (white undershirt) menacing the manager. A police officer soon enters, extends his arm and fires a Taser. Turner strolls by the cop and goes off camera with the darts still embedded in his chest. He then collapsed. It was later determined that the officer, a 15-year veteran, held down the weapon's trigger for 37 seconds. Due to his Taser model that generated a prolonged shock, in this instance more than seven times longer than the normal 5-second pulse.

Three years earlier a confrontation in Salinas, California played out to a similar conclusion. On February 19, 2005 [a 40-year old man high on meth went berserk](#), attacked his parents and thrashed their home. Police arrived. Five officers fired Tasers, shocking Robert Heston as many as twenty-five times. His heart stopped beating for 13 minutes and he died the next day.

[According to the coroner](#) Heston died from "multiple organ failure due to cardiac arrest due to agitated state due to methamphetamine intoxication (with the contributory conditions of left ventricular hypertrophy and dilation. Taser application and struggle with police.)" A consulting physician remarked that experiments on pigs suggested that CEDs were unlikely to endanger a normal human heart. However, he thought that in this case the Taser might have contributed to Heston's death because he ceased breathing moments after officers delivered the final shock.

Heston's family sued police and Taser International. In June, 2008 a Federal jury exonerated the officers. Taser, though, was held culpable, mostly because it had failed to warn users that it was dangerous to administer repetitive shocks. [Jurors awarded \\$5 million in punitive damages](#). They also awarded \$1 million in compensatory damages, then slashed it by 85 percent to reflect their estimate of Heston's blame for his own demise.

Taser petitioned the trial judge for a reversal both as to law and fact. Four months later the judge set aside the punitive damages due to legal errors in jury instructions. But he agreed with the jury's factual conclusion that Tasers could under certain circumstances prove lethal. For bringing that to light he rewarded the plaintiff's lawyers with nearly \$1.5 million in attorney's fees.

Taser appealed. On May 5, 2011 [the Ninth Circuit delivered a split verdict](#). On the one hand it ruled that the plaintiff's experts correctly applied the findings of prior research:

The studies demonstrated a relationship between Taser deployments and blood acid levels that could be aggravated by additional factors at play in this case, such as the numerosity and duration of Taser deployments and the victim's already-enhanced oxygen needs and blood-acid levels.

On the other hand it ruled that the award of legal fees was not permissible under California law. It reasoned that plaintiff lawyers, who took the case on contingency, didn't do it as a public service but in hopes of earning a big payoff, which for various reasons didn't materialize.

Until recently lawyers who took on the Taser had only the Heston case in their corner. Given the qualified nature of the coroner's report and a non-precedential Ninth Circuit opinion, they must have been overjoyed by the multi-million dollar verdict in Turner. Although it hasn't been tested in appeals – after all, there is a chance it could be reversed – its autopsy findings seem compelling. According to the medical examiner [the youth had no relevant pre-existing condition](#), so the “acute ventricular dysrhythmia and ventricular fibrillation” that led to his death must have been caused at least in part by the Taser:

This lethal disturbance in the heart rhythm was precipitated by the agitated state and associated stress as well as the use of the conducted energy weapon (Taser) designed for incapacitation through electro-muscular disruption.

As one might expect, [Taser International vehemently disagrees](#). Its lawyers offered evidence that Turner had a preexisting heart condition. They also insisted that the National Institute of Justice had absolved the Taser from culpability for deaths following its use.

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NIJ has issued two reports on the Taser. In June 2008 it released a brief summary entitled “[Study of Deaths Following Electro Muscular Disruption: Interim Report.](#)” It’s loaded with qualifications. For example, after reviewing coroner reports and relevant medical studies, the authors found no “*conclusive* medical evidence” that CEDs present a “*high risk*” of death or serious injury:

There is *currently* no medical evidence that CEDs pose a significant risk for induced cardiac dysrhythmia *when deployed reasonably*. Research suggests that factors such as thin stature and dart placement in the chest *may lower the safety margin* for cardiac dysrhythmia. There is no medical evidence to suggest that exposure to a CED produces sufficient metabolic or physiologic effects to produce abnormal cardiac rhythms *in normal, healthy adults*. [Emphasis added]

Tasers were neither endorsed nor ruled out. Law enforcement agencies were simply advised that, in the best tradition of double negatives, they “need not refrain from deploying” CEDs as long as they are used in compliance with nationally accepted standards.

NIJ didn’t offer any. But the [Police Executive Research Forum](#) (PERF) did. Its 2005 guidelines for Taser use endorse a single, five-second cycle, then a pause and re-evaluation before applying additional cycles, their number and duration to be determined by agency policy. ([PERF’s revised guidelines](#), issued this year, recommends no more than 15 seconds total exposure, whether in one cycle or three. That’s far less than what Turner and Heston got.)

In July 2010 NIJ released “[A Multi-Method Evaluation of Police Use of Force Outcomes: Final Report.](#)” Its main conclusion was that CEDs were safe when properly used. Data was collected on 25,000 uses of force by twelve law enforcement agencies. Incidents were categorized by type of force (physical, OC/pepper spray, CED) and injuries (suspects, cops.) In brief, the results indicate that injuries to suspects were much less likely when the force used was OC spray or CED. Injuries to officers were not associated with CEDs, and were *more* likely when OC was deployed.

The authors also examined experimental evidence of the effects of CEDs on pigs and humans. Standard five-second bursts harmed neither animals or people. Some pigs experienced ventricular fibrillation (VF) when exposed to shocks of unusually high output or long duration (two 40-second applications). No significant effects were detected when humans were shocked for 15 seconds, either in one burst or in three 5-second bursts. Twenty-second exposures produced higher heart rates in humans but there was no evidence of VF or changes in blood chemistry. For ethical reasons humans have not been tested at exposures such as what Turner and Heston experienced.

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Still, CED-related deaths are infrequent, and when they occur other factors such as heart disease, dangerous drugs and positional asphyxia are nearly always present. Given what little is known, the report's authors surmised that the physiologic and metabolic effects of CEDs, while innocuous for the healthy, could prove fatal, say, for an obese drug user or heart patient who struggles with police, particularly when prolonged or repeat shocks are administered. For this reason they recommend the same as PERF, a single, five-second cycle, followed by a pause, and no more than 15 seconds total exposure.

Darryl Turner's \$10 million award was announced on July 19, 2011. On the same day [Charlotte city fathers closed ranks in support of CEDs](#). "It is still a very effective, non-lethal force to control a situation," said City Attorney Mac Mc Carley. As far as he was concerned, it would be business as usual.

His position didn't last long. On the very next day, July 20, a Charlotte cop zapped a man who was beating and choking a woman at a transit terminal. The suspect collapsed. He was pronounced dead an hour later. Charlotte promptly took all Tasers out of service, to test them for safety and give the city time to review policies on their use.

And, one supposes, to ponder whether it can risk another eight-figure verdict.

Next week we'll examine a few more examples, consider how and why cops use CEDs, and make suggestions to help assure that this vital tool is properly used. And rest assured, we'll clarify what the title of this post really means. Stay tuned!

Posted 8/26/11

POLICING IS A CONTACT SPORT (PART II)

***Tasers are useful. But they're not risk-free,
and over-reliance is a problem.***

By Julius (Jay) Wachtel. During the early morning hours of Saturday, August 6, University of Cincinnati campus police [were summoned to a fight](#) in a residence hall. That's where they ran into Everett Howard. The youth, who seemed to be in an "altered mental state," advanced on the cops fists balled, and when he refused to stop they zapped him with a Taser, according to news reports only once. Howard collapsed. Paramedics tried to revive him but without success.

Howard, 18, an honors high school student, was enrolled in a college-prep program. Oddly, [he had apparently been Tasered before](#), in 2010, in an incident whose details haven't been disclosed.

Two hours later and about 500 miles away police in Kaukauna, Wisconsin responded to reports of someone screaming for help. When officers arrived [they observed a naked man running across a bridge](#), yelling that he was dead and covered with snakes.

Officers realized that they had a mental case and summoned an ambulance. But as they approached, the man ran off. To stop him they fired a Taser (how many times is unknown.) Gregory Kralovetz, 50, collapsed and died. Authorities surmise that he had been in a state of excited delirium brought on by drug intoxication, which is consistent with the fact that he had two convictions for possessing cocaine.

A few hours later and about 900 miles away paramedics in Manassas, Virginia responded to a 911 call by a woman whose brother-in-law was supposedly having a heart attack. The patient, Debro Wilkerson, 29, fought off firefighters, so [police were called](#). Wilkerson, who said he was on heroin and PCP, then repeatedly attacked the cops. He wound up getting zapped as many as three times before collapsing. He never came to.

So far there's no conclusive proof that Tasers kill. Deaths following the use of CEDs are infrequent, and when they happen police usually attribute them to other factors, such as "excited delirium" and drug intoxication. Proponents of the Taser are also quick to point out that research studies, including the NIJ report mentioned above, conclude that CEDs (also called ECWs, for "electronic control weapon") prevent injuries to cops and citizens alike.

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Even so, there's no denying the mounting number of Taser-associated fatalities. It's for this reason that the [Police Executive Research Forum](#) (PERF) and [NIJ](#) have recommended, among other things, that dosage be strictly limited. PERF has also identified categories of persons who are at special risk:

Some populations currently believed to be at a heightened risk for serious injury or death following an ECW application include pregnant women, elderly persons, young children, visibly frail persons or persons with a slight build, persons with known heart conditions, persons in medical/mental crisis, and persons under the influence of drugs (prescription and illegal) or alcohol. Personnel should be trained about the medical complications that may occur after ECW use and should be made aware that certain individuals, such as those in a state of excited delirium, may be at a heightened risk for serious injury or death when subjected to ECW application or other uses of force to subdue them.

NIJ's authors seem more favorably disposed to CEDs, concluding, perhaps a bit obstinately, that "the medical research to date does not confirm such claims [of causing fatalities]." However, a close reading of their literature review suggests that the devices can indeed be dangerous:

While the above review suggests CEDs are relatively safe when used on healthy at-rest and physiologically stressed subjects, medical researchers caution that CEDs are not risk free (National Institute of Justice, 2008; Vilke & Chan, 2007). Strote & Hutson (2008), for example, point out that CEDs may cause physiologic and metabolic changes that are clinically insignificant in healthy individuals but that could be harmful or even life-threatening in at-risk populations (e.g., obese subjects with heart disease and/or intoxicated on drugs who struggle with police).

Officers who lack CEDs have limited recourse when dealing with combative citizens: their hands, a club, and OC (pepper) spray. In the real world these are tricky to deploy and require getting in close. OC spray blows back. Whacking someone with a baton can lead to a fight, which is particularly risky for cops working alone. ([Forty were killed with their own sidearms](#) between 2000-2009.) It's no wonder that some officers might feel compelled to go for the gun, and the sooner the better. Consider two notable incidents last year, when cops without Tasers wound up shooting and killing knife-wielding drunks in [Los Angeles](#) and [Seattle](#), provoking days of serious disturbances in the former and a [DOJ "patterns and practices" investigation](#) in the latter (that officer was also fired.)

CEDs can save lives. To all but their most stalwart boosters it's obvious that they can also kill. For examples one need look no further than the deaths mentioned above, of

[Darryl Turner and Robert Heston](#), brought up last week, and, more recently, of [Kelly Thomas](#), a homeless and mentally ill California man whose July 5th. killing precipitated a political crisis in the city that hosts your blogger's university campus.

What to do?

One could restrict Tasers to situations that would normally merit using lethal force. If some should result in a citizen's death one could argue that they would have likely been killed anyway. Of course, whether cops should be encouraged to risk their own well-being in such cases is a matter of controversy. At this writing a report has come in of [an LAPD officer who was struck with a sharp cane](#) when he and a partner tried to use a Taser to subdue "a screaming man." The cop's injuries were minor; the suspect was shot dead.

There is no question that in sheer numbers the much greater usefulness of Tasers lies in helping resolve the many lesser physical confrontations that can nonetheless result in serious injury to citizens or police. Paradoxically, many or most of these episodes involve substance abusers, the mentally ill, and others who may be especially sensitive to the effects of CEDs. Obviously, that can make the calculus of costs and benefits quite complex.

So if Tasers are to be used in such cases, [PERF's dosage recommendations](#) seem very much in order. Officers need to train so that only one deploys the tool and that overall exposure doesn't exceed fifteen seconds. Along these lines it's important to note that some of the newer CEDs emit power as long as the trigger is depressed, requiring users to exercise exceptional self-control to deliver no more than the recommended dosage. (Taser International has resumed marketing the old type, which cycle for five seconds with each trigger pull.)

Not every encounter with an unruly citizen merits deploying a Taser. NIJ's authors warn that for some cops CEDs have become the proverbial hammer, and every threat the nail:

We noted above that CEDs can be used too much and too often. A critical research question focuses on the over-reliance of the CED. During our interviews with officers and trainers, we heard comments that hinted at a "lazy cop syndrome." That is, some police officers may turn to a CED too early in an encounter and may rely on a CED rather than the officer's skills in conflict resolution or even necessary hands-on applications.

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If some officers turn to CEDs because they're insufficiently skilled in "hands-on applications" we should work on improving those. Cops who can take down a suspect the old-fashioned way, by tackling him and slapping on the cuffs, are less likely to abuse the Taser. Sometimes good policing really is a contact sport.

Posted 10/10/20

R.I.P. PROACTIVE POLICING?

Volatile situations and imperfect cops guarantee tragic outcomes



For Police Issues by Julius (Jay) Wachtel.

Banged on the door, no response. Banged on it again no response. At that point we started announcing ourselves, police, please come to the door. So we kept banging and announcing. It seemed like an eternity.

That, according to Louisville police sergeant Jonathon Mattingly, [is how the infamous March encounter began](#). In testimony before a Grand Jury, the supervisor whose bullet (according to the FBI) fatally wounded Breonna Taylor insisted that despite the search warrant's "no-knock" provisions he and his companions, Detectives Myles Cosgrove and Michael Nobles and former Detective Brett Hankinson, loudly announced their presence and only smashed in because no one promptly came to the door.

As soon as they entered chaos erupted. Ms. Taylor's boyfriend, Kenneth Walker, whose presence the officers didn't expect "was standing in the hallway firing through the door." One of his bullets pierced Sergeant Mattingly in the leg. He and detectives Cosgrove and Hankinson returned fire. Walker escaped injury, but bullets fired by Mattingly and Cosgrove fatally wounded Breonna Taylor, the apartment's occupant of record. Meanwhile Hankinson's barrage went wildly off the mark, peppering another apartment but fortunately striking no one.

Kenneth Walker said he thought the officers were criminals breaking in. He was arrested for shooting Sergeant Mattingly but ultimately escaped prosecution. (He blames cops for firing the shot that struck the officer.) In June the police chief fired

Detective Hankinson, [who was disciplined a year earlier](#) for recklessly injuring a citizen. And on September 15 [the city announced it was settling a claim](#) filed by Ms. Taylor's family for \$12 million. That's reportedly one of the largest payouts of its kind, ever.

Grand jurors returned their findings one week later. Neither Mr. Walker nor the officers who unintentionally killed Ms. Taylor were charged. However, [former cop Hankinson was indicted](#) for discharging the fusillade that endangered other tenants. He pled not guilty and awaits trial.

It's not surprising that Ms. Taylor's killing has taken on such significance. Compare it with two other recent cases: [Mr. George Floyd](#), who died after being roughly handled by a Minneapolis cop, and [Mr. Rayshard Brooks](#), who was shot dead by an Atlanta police officer during a foot chase. Mr. Floyd and Mr. Brooks fought police; Mr. Brooks went so far as to fire at his pursuer with the Taser he grabbed from another cop. In contrast, Ms. Taylor did absolutely nothing to warrant rough handling. She was in her own apartment, just standing there when officers opened fire. Her killing was clearly a lethal error.

Law enforcement officers serve search warrants and engage in other high-risk activities every day. Many of these episodes involve dangerous characters, yet most conclude peacefully. However, since most research of police use of force focuses on episodes with bad endings, we know little about the factors that underlie successful outcomes. (That gap, incidentally, is the subject of your writer's recent essay, "[Why Do Officers Succeed?](#)" in *Police Chief*.)

Given the extreme circumstances that the officers encountered at Ms. Taylor's apartment, return fire by Sgt. Mattingly and detective Cosgrove might have been unavoidable. Tragically, their rushed response proved lethally inaccurate. In "[Speed Kills](#)" we mentioned that blunders are likely when officers act hastily or impulsively. Consider the July 2018 episode when, after shooting his grandmother, a Los Angeles man [led police on a wild vehicular pursuit](#). It ended at a retail store where the suspect bolted from his car and ran inside as he fired at the officers. They shot back, missing him but fatally wounding an employee.

Lethal foul-ups also happen when suspects *don't* shoot. In February 2019 late-arriving New York cops [unleashed a barrage at an armed suspect](#) who was fleeing the store he just robbed. Two plainclothes officers who were already on scene got caught in the middle: one was wounded and the other was killed. The suspect's handgun turned out to be fake. Seven months later an NYPD officer [repeatedly fired at a felon](#) with

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whom he had physically tangled. That led arriving officers to mistakenly conclude that they were being shot at. So they opened fire, killing both their colleague and the suspect. His unfired revolver lay nearby.

Police behavior is unavoidably influenced by the well-known risks of the job. And those are indeed substantial. According to the [LEOKA](#) more than two-thousand law enforcement officers (2,116) were assaulted with firearms in 2018. About 129 were injured (6.1 percent) and 51 were killed. Unfortunately, the LEOKA doesn't offer detailed information about the encounters, nor of the outcomes for civilians. Last year [the FBI launched an effort](#) to collect data about all police uses of force that either involve their discharge of firearms or which lead to a citizen's death or serious injury. So far, nothing's been released. However, the *Washington Post* has been collecting information about police killings of civilians since January 2, 2015. As of October 1, 2020, [their database has 5673 entries](#), one for each death. We downloaded the dataset. This table lists some of the pertinent findings.

Means of death		Citizen armed		Mentally ill		Citizen threat	
Shot	5390 (95%)	Gun	3223 (57%)	Yes	1318 (23%)	Attacked officers	3671 (65%)
Shot & Tasered	283 (5%)	Knife, bladed	987 (17%)	No	4355 (77%)	Other threat	1749 (31%)

Citizens were “armed” with a wide assortment of items, including cars, shovels and (yes) even pens. We included only guns and cutting instruments. Six percent (358) of those killed were unarmed.

In 2017 four academics analyzed the *Post's* 2015 data. Published in *Criminology & Public Policy* (Feb. 2017) [“A Bird's Eye View of Civilians Killed by Police in 2015 - Further Evidence of Implicit Bias”](#) concluded that race affected officer threat perceptions. “Controlling” for citywide violent crime rates, the authors concluded that non-Whites, and especially Blacks, were nonetheless significantly more likely to be shot. But more specific “places” such as areas or neighborhoods were *not* taken into account. As we noted in “Scapegoat” [Parts I](#) and [II](#) proactive policing normally targets areas within cities that are beset by violence, usually poverty-stricken neighborhoods that are disproportionately populated by non-Whites. As our tables in [Part II](#) demonstrate, once we “controlled” for location the influence of race and ethnicity on LAPD stops virtually disappeared.

Of course, one need not attribute outcomes such as Ms. Taylor's death – or the killings of [Dijon Kizzee](#) in Compton, [Jacob Blake](#) in Kenosha, [Rayshard Brooks](#) in

Atlanta or [George Floyd](#) in Minneapolis – to racial animus to brand them as tragic mishaps. Posts in our [Compliance and Force](#) and [Strategy and Tactics](#) sections have discussed the forces that drive policing astray and suggested correctives. “[Working Scared](#)” stressed the role of personality characteristics such as impulsivity and risk tolerance. “[Speed Kills](#)” emphasized the advantage of taking one’s time – preferably, from a position of cover. Chaos, a chronic fixture of the police workplace that often leads to poor decisions was the theme of “[Routinely Chaotic](#).” And when it comes to preventives there’s [de-escalation](#), a promising approach that’s at the top of every chief’s list.



Back to Ms. Taylor’s death. On March 13, 2020 Louisville police executed search warrants at 2424/5/6 Elliott Ave. (pictured here) and at her apartment, 3003 Springfield Dr. #4 (top photo). According to police, Jamarcus Glover, Ms. Taylor’s one-time boyfriend, and his associate Adrian Walker (no relation to Kenneth Walker) were using the Elliott Ave. locations as “trap houses” (places where drugs are stored and sold.) Both were convicted felons out on bond awaiting trial for drug trafficking and illegal gun possession charges levied in December 2019.

Here’s a summary of the justification provided in the [search warrant](#):

- Mr. Glover and Mr. A. Walker were pending trial on gun and drug charges.
- In January 2020 police stopped Mr. A. Walker as he left the “trap house” and found marijuana and cash in his vehicle. In the same month a pole camera depicted numerous vehicles visiting the trap house during a brief period. There were many recorded and physical observations of suspicious behavior by both suspects in and around the trap house and of visits to a nearby rock pile they

apparently used to stash drugs.

- In January 2020 the affiant observed Mr. Glover and Mr. A. Walker making “frequent trips” between the trap house and Ms. Taylor’s apartment. Mr. Glover had listed her apartment as his address and was using it to receive packages. On one occasion Mr. Glover was observed taking a package from the residence to a “known drug house.” Ms. Taylor’s vehicle was observed parked at the trap house several times.
- In conclusion, the affiant asserted that his training and experience indicated “that Mr. J. Glover may be keeping narcotics and/or proceeds from the sale of narcotics at 3003 Springfield Drive #4 for safe keeping.”

In late August the [Louisville Courier-Journal](#) and [Wave3 News](#) published detailed accounts about the alleged connection between Ms. Taylor and Mr. Glover. This story drew from a [leaked police report](#), prepared after Ms. Taylor’s death, that describes the evidence detectives gathered before and after executing the March search warrants. It indicates that drugs, cash, guns and paraphernalia were seized from the trap houses and the suspects’ vehicles. There are also surveillance photographs and detailed transcripts of intercepted jailhouse calls made by Mr. Glover after his arrests in December and March. Here’s an outtake from a January 3, 2020 (pre-warrant) phone call between Mr. Glover and Ms. Taylor:

1123 – J. Glover calls ***-***-**** (Breonna Taylor) from booking:

J. Glover: “Call Doug (Adrian Walker) on Facebook and see where the fuck Doug at. He’s got my fuckin money, riding around in my motherfucking car and he ain’t even where he’s supposed to be at.”

B. Taylor: “You said Doug?” J. Glover: “Yeah, Big Doug.”

B. Taylor: “I’ll call him...Why can’t I find him on Facebook? What’s his name on here?”

J. Glover: “Meechy Walker.”

1318 – J. Glover calls ***-***-**** (Breonna Taylor) from booking:

J. Glover: “You talk to Doug (Adrian Walker)?”

B. Taylor: “Yeah I did. He said he was already back at the trap... then I talked to him again just a minute ago to see if you had contacted him. They couldn’t post bond till one.”

J. Glover: “Just be on standby so you can come get me... Love you.”

B. Taylor: “Love you too.”

Here’s part of a post-warrant phone conversation between Mr. Glover and a domestic partner who bore his child:

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1307 – J. Glover calls ***-***-**** (Kiera Bradley – child’s mother) from his dormitory:

K. Bradley: “So where your money at?”

J. Glover: “Where my money at? Bre had like \$8 grand.”

K. Bradley: “Bre had \$8 grand of your money?” J. Glover: “Yeah.”

J. Glover says to an unknown male that joined the call, “Tell cuz, Bre got down like \$15 (grand), she had the \$8 (grand) I gave her the other day and she picked up another \$6 (grand).”

K. Bradley and J. Glover are arguing over him not being honest and him having money at other people’s house. J. Glover says to K. Bradley, “Why are you doing this?”

K. Bradley: “Cuz my feelings are hurt.”

J. Glover: “Why cuz the bread (money) was at her house?”

J. Glover: “...This is what you got to understand, don’t take it wrong but Bre been handling all my money, she been handling my money... She been handling shit for me and cuz, it ain’t just me.”

In a post-warrant call to Mr. Walker, Mr. Glover explains why police searched Ms. Taylor’s residence and why, according to Kenneth Walker (Ms. Taylor’s live-in boyfriend) the officers didn’t find any cash:

1720 – J. Glover calls ***-***-**** (Male – likely Adrian Walker per Accurant) from his dormitory:

J. Glover: “Where you at?” A. Walker: “You know the spot, “E”.”

J. Glover: “I just watched the news nigga... They tryin act like they had a search warrant for Bre’s house too.”

A. Walker: “I know... The only thing I can figure out is they check that license plate. They been putting an investigation on a motherfucker.”

J. Glover: “They checked Bre’s license plate?”

A. Walker: “That’s the only thing I can think of... A motherfucker pull up on the block in the charger, that’s the only thing I can think of.”

J. Glover: “Who at no haters running their mouth?...That nigga (Kenneth Walker) didn’t have no business doing that shit. That nigga got Bre killed nigga.”

A. Walker: “You got to see like the bigger picture to it though you feel me, it’s more to it than what you feelin like right now.”

J. Glover: “I know, I know she was feelin me. At the end of the day everything stolen from me though, I swear I know that.”

J. Glover: “...That man tell me, I watched you leave your baby momma’s house. Alright if you watched me leave my baby momma’s house, why would you execute a warrant at Bre’s house... Bre got that charger and all this shit... Bre’s paper trail makes sense for everything she got though.”

J. Glover: “...I don’t understand how they serve a warrant for Bre’s house when nothing

ties me to Bre house at all except these bonds.”

A. Walker: “Bonds and cars and 2016... It’s just ties though... Look at the ties since 2016, ever since Rambo (homicide victim)... and the camera right there, they see a motherfucker pull up.”

J. Glover: “Yeah she (Breonna Taylor) was out there the top of the week before I went to court.”

A. Walker: “They didn’t even have to see her pull up, all they had to do is see that license plate... They done put two and two together... Then on top of that they go over there and find money.”

J. Glover: “No, Bre don’t, Bre don’t, Bre don’t...Bro you know how Bre do... They didn’t find nothing in her house.”

A. Walker: “I thought you said they found some money over there?”

J. Glover: “It was there, it was there, it was there...They didn’t do nothing though that’s the problem... Kenneth said ain’t none of that go on.”

A. Walker: “So they didn’t take none of the money?”

J. Glover: “Kenneth said that none of that go on. He said Homicide came straight on the scene and they went to packaging Bre and they left.”

Mr. A. Walker and Mr. Glover were released pending trial. Mr. Glover has reportedly absconded.

Go through the report. If genuine – and it certainly seems to be – it depicts Ms. Taylor as a knowing participant of Mr. Glover’s drug-trafficking enterprise. There is really no gentle way to put it.

As a Fed your blogger obtained and participated in serving many search warrants. In his opinion, the March 2020 search warrant of Ms. Taylor’s residence seems well supported by probable cause. Yet neither this writer, nor anyone he knows, was ever shot at while on the job, let alone had a partner wounded. How would we have reacted under such circumstances? Would we have instantly realized that the shooter “didn’t really mean it?” Could we have safely “de-escalated”? And if not, would we have accurately placed return fire?

Set warrants aside. Consider a far more common cause of innocent deaths: police pursuits. Instead of getting into specifics, [California law](#) requires that agencies establish detailed policies about *when* and *how* to chase and train their officers accordingly. (Click [here](#) for LAPD’s policy.) Yet pursuits [still continue to end poorly](#).

Really, when it comes to the more fraught aspects of policing such as pursuits or search warrants the usual preventives – rules, training, supervision – can’t always be counted on to prevent horrific outcomes. Yes, there are other ways. Police occasionally abandon chases. As for search warrants, officers sometimes elect to watch, wait and intercept occupants as they leave. Naturally, doing that is resource-intensive, and should surveillance be detected it could lead to the destruction of evidence. Detaining persons also carries risk.

About 17 percent of Louisville’s residents live in poverty. In Ms. Taylor’s ZIP code, 40214, the proportion is about twenty percent. In 40211, where the “trap houses” were located, it’s about thirty-four percent. Jamarcus Glover and Adrian Walker were taking advantage of a deeply troubled neighborhood for their selfish ends. Sadly, Breonna Taylor had apparently lent a hand.

Search warrants aren’t the first proactive strategy to come under challenge. Most recently, “Should Police Treat the Whole Patient?” discussed the back-and-forth over stop-and-frisk and other geographically targeted enforcement campaigns, whose intrusiveness and tendency to generate “false positives” has badly disrupted police-minority community relations across the U.S.

Search warrants, though, are supposedly different. They’re based on articulated evidence of criminal wrongdoing and must be approved by a judge before execution. As your blogger discovered while a Fed, they’re the stock-in-trade of serious criminal investigations. Without this tool officers would be hard-pressed to combat major sources of drugs or guns. They’ll undoubtedly play a key role in “Operation Legend,” that new Federal-local partnership we’ve heard so much about. Of course, it’s also essential that police avoid endangering the lives of innocent citizens. Perhaps it’s time to revisit some of our more cautionary essays; say, “First Do No Harm” and “A Delicate Balance.”

Yet in our ideologically charged, perhaps irreparably fractured climate, turning to the usual remedies (i.e., training, tactics, supervision) may not do. Breonna Taylor’s characterization as an innocent victim of police overreach has added a bucketful of fuel to the fire. We’re talking “defund” on steroids. So by all means let’s quit pretending. Level with the inhabitants of our poorer, crime-stricken places about the risks of even the best-intentioned proactive policing. Give them an opportunity to opt out of, say, drug investigations and such. Of course, be sure to inform them of the likely consequences. Considering what our nation is going through, it seems to be the least we can do.

Posted 7/20/23

SAN ANTONIO BLUES

Poverty – and what it brings – can impair the quality of policing



For Police Issues by Julius (Jay) Wachtel. It's a chilling scene. As bodycams grind on, three San Antonio, Texas police officers [open fire on a distraught, mentally disturbed woman](#) who aggressively approaches. With a *hammer*.

According to [a press briefing](#) by SAPD Chief William McManus, during the early morning hours of Friday, June 23 his officers responded to a report that a female resident of an apartment complex cut wires to its alarm system, setting it off and causing firefighters to respond. When police arrived and encountered her outside the complex, Melissa Perez, 46, ran back into her ground floor apartment and locked the door. And when an officer tried to speak with her through an open window, she threw a glass candle, striking him in the arm. A sergeant and two officers promptly relocated to the apartment's rear patio and removed a window screen. From inside, Ms. Perez reacted by shattering the window glass with a hammer. One officer responded with gunfire. But Ms. Perez wasn't struck, and she again went at the cops with the hammer. This time all three officers fired, inflicting mortal wounds.

What Ms. Perez *didn't* have was a gun. What's more, she and the officers remained on opposite sides of the apartment's exterior wall throughout the encounter. According to the investigating detective's [criminal complaint](#), the woman San Antonio's cops killed "did not pose an imminent threat of serious bodily injury or death when she was shot because the defendants had a wall, a window blocked by a television and a locked door between them."

Amplly corroborated by multiple bodycam videos (click [here](#) for SAPD's narrated compilation), the circumstances were sufficiently damning to lead to the three officers' arrest on murder charges that very same evening. And to their Chief's highly contrite

statement on the very next day. Ms. Perez's killing added copious fuel to the long-troubled relationship between San Antonio's cops and the citizens they serve and ostensibly protect. Here's [an outtake from the website of ACT 4 SA](#), a local group that argues for "a truly accountable, compassionate and transparent public safety system that works for everyone":

These officers had been on the force ranging from 2-14 years...All are required to de-escalate according to SAPD policy, yet none acted accordingly. What kind of "training" is this? What type of "protection" is this? Why was the mental health unit not dispatched for this call? SAPD acted with neglect, foolishness, and violence that resulted in an unforgivable end to Melissa's life.

As one would expect, [a lawsuit's been filed](#). It accuses officers, among other things, of ignoring that Ms. Perez, who was being treated for schizophrenia, was in an obvious



"mental health crisis." And while the cops could clearly see that Ms. Perez was alone and didn't pose an immediate threat, they didn't even try to de-escalate. Neither did their sergeant do his job. He failed to step in when an officer needlessly fired at Ms. Perez (supposedly discharging five rounds) but, even worse, began shooting as well.

Ms. Perez wasn't an unknown quantity. SAPD had reportedly taken her into protective custody in the past. Unfortunately, the city didn't field a mental health team at night, and that's when the tragedy occurred. There's lots more in the civil complaint, and we'll refer to it shortly. But when we learned of the incident, SAPD Chief McManus had already released the videos and delivered an exceedingly grim account that directly faulted his officers. Indeed, they had already been charged. So our attention instantly fell on them.

Each of the accused ex-cops (they've already been fired) is Hispanic, as was their victim. So this couldn't be simply attributed to race or ethnicity. As your blogger can attest from personal experience, the personalities of law enforcement officers differ, sometimes dramatically, and some of these "differences" can profoundly affect – and, yes, even distort – how they respond to fraught situations. Here's some self-plagiarism from "[Working Scared](#)":

Prior posts have identified factors that can lead to the inappropriate use of lethal force. Some cops may be insufficiently risk-tolerant; others may be too impulsive. Poor tactics can leave little time to make an optimal decision. Less-than-lethal

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weapons may not be at hand, or officers may be unpracticed in their use. Cops may not know how to deal with the mentally ill, or may lack external supports for doing so. Dispatchers may fail to pass on crucial information, leaving cops guessing. And so on.

SAPD's three supposedly trigger-happy cops include a fourteen-year veteran with the rank of Sergeant and two officers, one with five years on the job, the other with two. [Records obtained by KSAT](#) indicate that both the Sergeant and the five-year veteran (he's the one who opened fire when Ms. Perez smashed the window) had substantial disciplinary histories:

- Sergeant ____ was suspended four times during the past five years. One suspension, for ten days, alleged that he “yelled profanities” at a person involved in a domestic quarrel. Two others, one for eight days, another for ten, were caused by his alleged failure to provide timely backup. And the most recent, for ten days, related to mishandling evidence.
- Officer ____ was suspended three times during his brief career. Once, for two days, for using profanity and damaging an inside door when chasing a disorderly man. Another suspension, for fifteen days, was levied because he let the parties involved in a traffic accident “settle” things between themselves although one was unlicensed and had active warrants. He was also once smacked with a 25-day suspension for trying to give a similar “break” to a Walmart shoplifter.

But according to the [lawsuit](#), the Sergeant had suffered an additional suspension, in 2018, for failing to activate his body camera (p. 25). What went unpunished, though, was that during this episode he had pointed his gun at a distraught motorist, and supposedly without good reason. That, contend the plaintiffs, was par for the course:

The results of formal and informal policies have been that SAPD has created a culture of escalating mental health encounters that are unnecessary, objectively unreasonable and clearly excessive. This practice and culture is so common and well-settled as to constitute a custom that fairly represents municipal policy. (p. 12)

Former sergeant ____'s gun-pointing incident is apparently the only documented prior example of misuse of force by the three ex-cops. So to make the point that Ms. Perez's lamentable treatment was “normal” by SAPD standards, the lawsuit offered ten examples of grave misuses of force by other SAPD cops (pp. 12-24). We recently mentioned one in an update to “[When Must Cops Shoot? \(II\)](#)”:

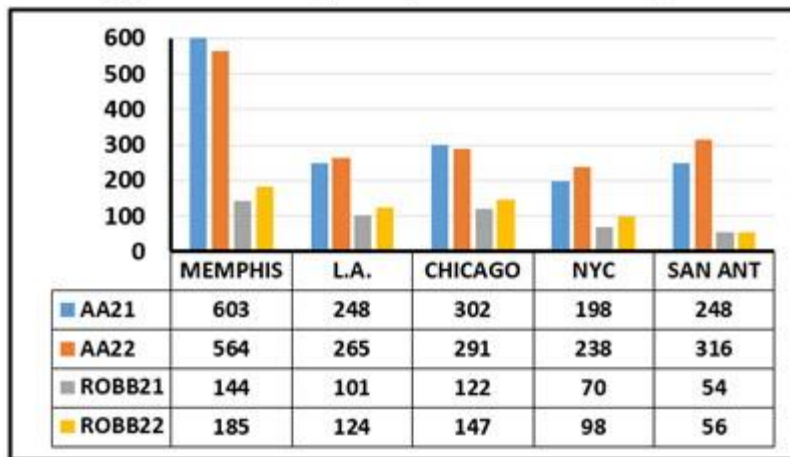
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[10/10/22](#) A San Antonio, Tx. police officer spotted a car that eluded him a day earlier parked at a MacDonald's. So he walked up, opened the driver's door and ordered its teen driver - he was munching a burger - to get out. But the youth promptly started the car and threw it into reverse. Its door bumped the cop, and he opened fire. Erik Cantu, 17, was badly wounded. And three days later, officer James Brennand, a rookie still on probation, was fired. [Video](#)

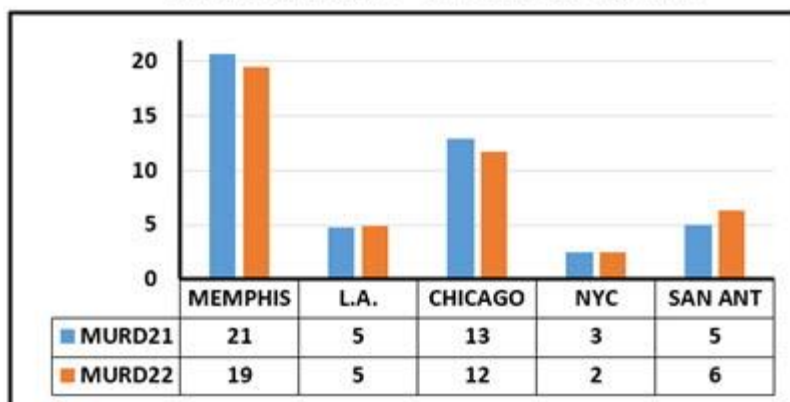


Most police officers manage to complete their careers without getting suspended even once. And certainly, without being charged with murder. But set individuals aside. Consider the environment in which they work. What is it that San Antonio officers actually *face*? Last September the [Major City Chiefs Association](#), which represents the largest police departments in the U.S., [released a report](#) with violent crime data for its constituent cities for the first six months of 2021 and 2022. In “[Punishment Isn't a Cop's Job \(II\)](#)” we used these numbers to compare violent crime in Memphis with our three “usual suspects” – L.A., Chicago and New York City. These charts extend that comparo to include San Antonio:

Agg Aslt & Robb /100K, 1st. 6 mos. 2021, 2022



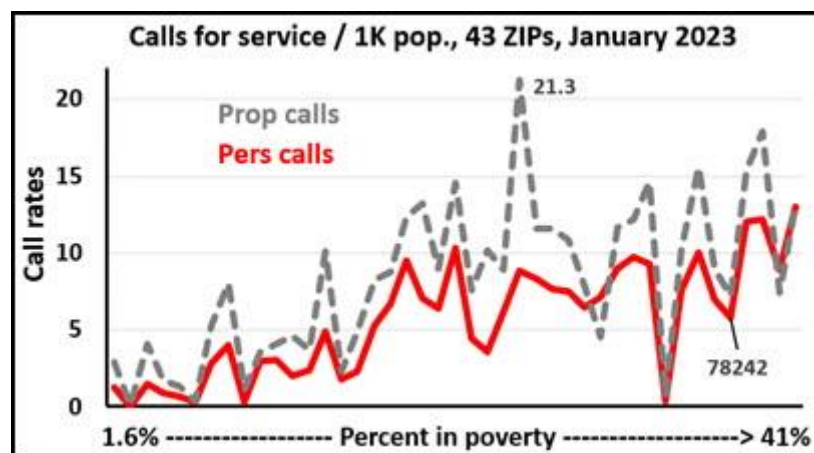
Murder /100K, 1st. 6 mos. 2021, 2022



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Note that the numbers are rates per 100,000 population, so they're directly comparable. San Antonio's rates are certainly not sterling, but nowhere near the abysmal numbers reported by Chicago and Memphis. As we've repeatedly cautioned, though, citywide statistics can obscure wide variances *within*. L.A.'s numbers look relatively favorable. But as "[Good News/Bad News](#)" recently reported, the January-June 2023 aggravated assault rate for its poverty-stricken Central area was *sixteen times* that of economically blessed Foothill Division.

Ditto San Antonio. While its neighborhood crime rates can't be readily compared (SAPD's online data lacks crime location ZIP's) the San Antonio city portal provides ZIP codes for police responses to [citizen calls for service](#). Using [Census ZIP poverty figures](#) we coded "crimes against person" and "property crime" calls for service during January 2023 for forty-three San Antonio ZIP's with populations over 10,000. This graph arranges ZIP's by percent of citizens living in poverty:



During that month the 33,927 residents of ZIP 78242, where Ms. Perez resided, placed 196 persons-related calls and 245 property-related calls, producing per-1,000 rates of 5.8 and 7.2, respectively. While there are exceptions (one or two may have been caused by a reporting lapse), economically burdened ZIP's tended to generate more calls for service, and especially for crimes against persons. For the statistically-minded, the "r" coefficient (it's on a scale of zero to one, from no association to a perfect relationship) between poverty and persons calls is a compelling .84, and between poverty and property calls a lesser but still robust .66.

There *were* complications. About a dozen of these ZIP's aren't wholly within San Antonio, and calls for service to other agencies (say, the Sheriff) aren't included. Considering only the twenty-two ZIP's with populations over 10,000 that appear to be

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wholly within the city, the r for persons calls leaps to .93, and for property calls moves up to .68.

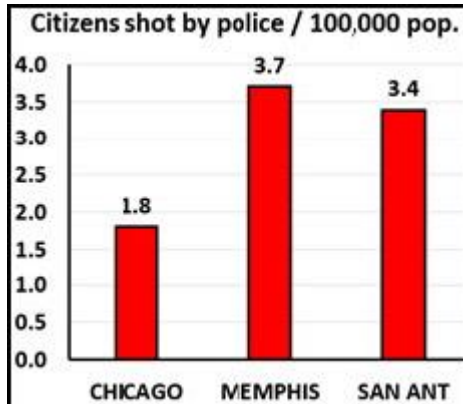
This table compares San Antonio's five poorest and five wealthiest ZIP's (78242, where Ms. Perez was killed, is the fifth poorest). It sets out percent of citizens who live in poverty, raw numbers and rates per 1,000 pop. for calls to police about crime against persons and property crimes during January 2023, and, using data from the [Gun Violence Archive](#) (GVA), the number of citizens struck by police gunfire and wounded or killed between January 2021 and July 2023.

POVERTY EXTREMES			CALLS AND OFFICER SHOOTINGS				
ZIP	Pop	Pct.pov	Pers	Pers/1K	Prop	Prop/1K	Shtgs
78248	13779	1.6	17	1.2	40	2.9	0
78261	23992	2.4	0	0.0	1	0.0	1
78259	25663	3.1	37	1.4	105	4.1	0
78254	73837	3.5	65	0.9	128	1.7	0
78255	17469	3.6	12	0.7	23	1.3	0
Average		2.84	26.2	0.8	59.4	2.0	0.2
78242	33927	28.3	196	5.8	245	7.2	1
78202	10327	29.7	124	12.0	159	15.4	1
78220	15654	29.8	191	12.2	280	17.9	1
78237	38642	30.3	344	8.9	287	7.4	1
78207	47341	41	616	13.0	624	13.2	3
Average		31.8	294	10.4	319	12.2	1.4

Contrasts between poor and wealthy ZIP's are pronounced. For example, check out that thirteen-fold difference between person call rates and the six-fold difference between property call rates.

Ms. Perez's killing took place in the highly impacted 78242, where more than one in four persons (28.3 percent) reside in poverty. Could that have influenced the officers' response? Cops *are* human. Their work product can be distorted by personal quirks, the foibles of coworkers and superiors, and, particularly, by the circumstances they encounter on the streets. As our essays have repeatedly pointed out, neighborhoods that are burdened by violence and gunplay can breed officer attitudes and behaviors that cops assigned to more privileged venues might find disgusting. (For a classic work about such things check out James Q. Wilson's "[Varieties of Police Behavior](#)," with which your author regularly burdened his students.)

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Our first two tables set out violent crime rates for San Antonio and four other cities during the first six months of 2021 and 2022. Chicago and Memphis seemed particularly stricken. Yet according to GVA data, San Antonio PD's rate of shooting citizens was *nearly twice* Chicago's and nearly matched Memphis, whose violent crime rates are *almost twice* as high. And grab another look at the "shtgs" column in the above table. San Antonio police shootings seemed substantially more likely in the poorest areas. Bottom line: concerns that some San Antonio officers might have let the workplace distort lethal-force decisions can't be simply brushed aside.

Does this let the three ex-cops "off the hook"? Certainly not. But to prevent endless replays, we must openly acknowledge that the disorder and lack of compliance common in poverty-stricken areas can poison officer decision-making and distort their response. However, the ultimate "fix" lies outside of policing. As we habitually preach in our [Neighborhoods essays](#), a concerted effort to improve the socioeconomics of poor places is Job #1. Not-so-incidentally, that could also improve the dodgy behavior of some citizens. And *good* cops would find that most welcome!

Posted 9/19/10

SOMETIMES A DRUNK WITH A KNIFE IS JUST THAT

***Feel-good rhetoric can't substitute for
deadly-force alternatives and frequent training***

By Julius (Jay) Wachtel. Only days after posting [last week's blog piece](#) about LAPD's shooting of a drunk with a knife we learned of a remarkably similar incident that had taken place a week earlier. On August 30 John Williams, 50, an Indian craftsman, was walking the streets of downtown Seattle, carrying a 3-inch folding knife and whittling on a wooden board. His life was in shambles. After a string of arrests for misdemeanor offenses, some serious, Williams had been convicted of felony indecent exposure. In an interview with a reporter a [staff member](#) at the shelter where Williams lived painted a disturbing picture of a deeply troubled man who could be explosively aggressive when drunk:

John's life experiences were complicated. They cannot be simplified to say he was a harmless individual and therefore he should not have been shot by the police. Maybe he should not have been shot, but it's not because he never hurt anyone in his life.

A Seattle cop with two years on the job caught sight of Williams. What then transpired took less than a minute. Exiting his vehicle (the patrol car camera came on with the roof lights) [the officer approached Williams](#), whom he didn't know. From about ten feet away he repeatedly ordered him to drop the knife.

As it turns out Williams is hard of hearing. He turned towards the officer but held on to the knife. Whether he then advanced on the cop, as the officer apparently claims, hasn't been confirmed, but in any event Williams was soon lying dead with four bullet wounds to his chest.

And no, the cop wasn't carrying a Taser.

[One week later](#) a like set of events played out in Los Angeles. This time the dead man was an illegal alien from Guatemala, his knife blade was twice as long, and there wasn't one cop but three – again, none with a Taser.

Both shootings led to angry demonstrations and, in Los Angeles, three evenings of disturbances and arrests. Politicians and police tried to calm things down by staging

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press conferences and community meetings. As usual, most of the thrust was on building better relations. Seattle Mayor Mike McGinn and Police Chief John Diaz [vowed to change the department's culture](#) and bridge the gap with minority communities (they even created a deputy chief's slot for that purpose.) Tim Burgess, the councilman in charge of public safety, applauded the reorganization and its focus on "building effective relationships in every neighborhood."

Who can be against that? Still, Williams and Jaminez didn't die because of failed police-community relations. Their problems were well known to friends and relatives, but no one could get them to change their self-destructive ways. Tolerated when sober, they were left for someone else to deal with when not. And as so often happens, that "someone else" wound up being the police.

Experienced officers know that when it comes to drunks and the mentally ill it's sometimes best not to intercede, as gaining voluntary compliance may be impossible and things can quickly escalate. Clearly there was no choice as to Jaminez, whom passers-by said had threatened them with a knife. As to Williams the need to step in isn't as clear, but one would guess that most cops would want to talk to a large, tipsy man openly walking around with a knife.

If these situations had to be handled, and by all appearances they did, the only question was *how*.

That's where Seattle seems to be demonstrating a bit more sophistication. Los Angeles authorities tried to have it both ways, calling for better police-citizen relations while stridently defending the cops (Mayor Antonio Villaraigosa went so far as to call them "heroes," thus essentially rendering the internal investigation moot.) Seattle police chief John Diaz seems headed in a more promising direction. Calling for a thorough outside review of practices and procedures, he vowed that his department would strive to "do it right 100 percent of the time." He's already moved to revamp training, including crisis intervention. He also promised to increase the deployment of Tasers, which are not presently carried by all patrol officers.

So far so good. We're for taking it a step further.

Americans have always been armed; consequently, so have their police. Marksmanship consumes huge chunks of academy time. And while cops are far more likely to use lesser levels of force, such as hands, clubs and pepper spray, once they leave the academy they mostly practice with firearms.

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It's no surprise that when officers face a threat they instinctively reach for their sidearm. Muscle memory gained through endless practice and repetition has even led some to [accidentally deploy their handgun](#) instead of a Taser, with tragic consequences. The old police adage of "don't draw a gun unless you intend to shoot" now seems almost quaint, with many cops pulling their weapons during a wide range of encounters. Of course, once that happens the odds of a shooting increase exponentially.

Being a practical sort, and recognizing that armed citizens do present a threat, we don't suggest that cops train with firearms any less. But by all means give equal time to Tasers. [As we noted last week](#) CED's have been successfully used to neutralize knife-wielding suspects, avoiding the loss of life and sparing officers needless psychological trauma.

Yet merely putting more Tasers in the field, as Seattle apparently intends, isn't enough. To keep cops from automatically reverting to their handguns, Tasers must be issued from the very start, meaning at the academy, and fully integrated into pre-service and in-service training. Beyond simple paper targets, use mannequins that can take darts, and instead of simply lining up trainees at simulators and projecting "shoot-don't shoot" scenarios, give them handguns and Tasers and let them figure out which weapon is more appropriate, and when.

There's one more thing. If we're serious about reducing civilian deaths cops must be able to work together. Patrol shifts across the U.S. have been trained in active-shooter scenarios. If they would also practice responding to the far more frequent episodes that involve drunk and disturbed persons the use of lethal force might well become a rarity.

It may seem impolitic to say, but it's not always about ethnicity, community relations or the cycle of the moon. Sometimes it's just about a drunk with a knife. So let's dig deep into the craft of policing and come up with an appropriate, professional response. As we wait for the big group hug that will settle all differences between society and the police let's see if we can save some lives along the way.

Posted 8/16/20

“SWAT” IS A VERB

Officers join specialized teams for a reason



For Police Issues by Julius (Jay) Wachtel. Let's begin with an interesting quote:

Under the surface...SWAT is controlled by a group of Police Officer III+1's ("plus-ones") who glamorize the use of lethal force, and who direct the promotions of officers who share the same values while maligning the reputations of officers who do not....These Police Officer III+1's exercise influence and power in SWAT in a manner that is highly disproportionate to their rank, and they refer to themselves as the "SWAT Mafia"....

These words form but a small part of a lawsuit recently filed by LAPD Sergeant Timothy Colomey against his employer, the City of Los Angeles ([L.A. Superior Court no. 20STCV28185](#).) In a highly detailed thirteen-page complaint, Sgt. Colomey, who helped supervise SWAT officers for over a decade, alleges that his honest criticisms about their work led to his banishment from an active role and stalled his career.

We obtained a copy of the complaint. What first caught our eye comes about a third of the way through, in paragraph number "26." That's where the good Sergeant asserts that in March 2019, while he was still active in SWAT, he informed LAPD internal affairs investigators that colleagues whom he described as members of a "SWAT Mafia" had engaged in "improper uses of force without being properly disciplined or otherwise held accountable." (Para. 26.) While these episodes aren't described, Sgt. Colomey's lawyers are said to be focusing on these three encounters:

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- [Accidental death of Carlos Ocana](#). During the evening hours of May 24, 2014 SWAT was called to help patrol officers [get a homeless man off the roof](#) of a commercial structure in L.A.'s downtown skid row. By the time they arrived fifty-six year old Carlos Ocana was on top of a billboard that was on top of the roof. To entice him down an officer proffered a cigarette. Sure enough, Ocana came down from the billboard. But after snatching his smoke he tried to go back up. Officers had planned to grab him, but before they could [a SWAT team leader fired his Taser](#). Struck by a dart, Ocana lost his balance and fell to the ground, tragically missing the cushions that firefighters laid down to absorb the impact should he fall. He died from his injuries.
- [Shooting death of Anthony Soderberg](#). On May 8, 2017 a woman found a strange man in her hillside home. Anthony Soderberg, 29, was "speaking to himself and referencing Jesus." She fled out a window, called police, and alerted them about unsecured guns and ammunition that were inside the home. [A helicopter was called in](#) and SWAT deployed a robot to communicate with the intruder.

What happened next is complicated, but it began inside the house, with Soderberg using one of the guns to fire at police while threatening to "kill all those SWAT officers that are out there." A gas grenade drove him outside. He exchanged fire with the helicopter and was fired on by a group of officers, all armed with rifles, who were positioned some distance away. Soderberg re-entered the home. He then left again, this time for good. Officers again opened fire. Soderberg, who may have been struck by a round, eventually wound up in a ravine. That's where he was shot dead by more rifle fire. According to [a detailed review](#) by the L.A. County District Attorney, the fatal wound was inflicted by an officer who fired from "56 yards away" when Soderberg, who had assumed a prone "praying position," suddenly moved.

- [Arrest of Jose Rauda](#). Five weeks after the Soderberg episode, on June 15, 2017, officers attempted to conduct a probation search at the residence of Jose Rauda, a 34-year old gang member. But they were met by gunfire, and Rauda ran out the back.

Two hours later SWAT team members spotted Rauda hiding in a trash can. He opened fire, wounding a police dog, then bounded into a shed. There was more gunfire, and when one of Rauda's rounds "grazed" an officer's helmet the team [unleashed an eighty-round barrage](#). Miraculously, none struck Rauda. He eventually came out and was arrested with help from a beanbag shotgun. Rauda was convicted on multiple counts of attempted murder and got life in prison.

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[LAPD's account of the episode](#) is online. We couldn't find any mention that discipline was ever considered in this affair.

Let's analyze. We'll begin with Mr. Ocana, the homeless man who fell to his death. Clearly, the only risk he posed was to himself. To their credit, officers seemed intent on keeping him from harm. But a SWAT team leader – a senior officer with a rank just below sergeant – had “a better idea.” According to the lawsuit, his sudden, uncoordinated discharge of the Taser “[substantially deviated from the tactical plan](#)” and led to the man's death.

Sergeant Colomey apparently intends to use this episode to illustrate the power and independence of these team leaders – the so-called “plus-ones” – who comprise the “SWAT Mafia.” His lawsuit alleges that while they ostensibly report to supervisors such as himself, they often make decisions without consultation, flaunt use-of-force rules, and exert unseemly influence on promotions and assignments:

...the powerful Police Officer III + 1's who make up the SWAT Mafia: routinely made decisions during tactical incidents without consultation or input from their sergeants; dictated to the SWAT lieutenants which officer candidates would be selected to undergo SWAT School; and successfully pressured SWAT supervisors into failing certain candidates out of SWAT School....SWAT Mafia members had engaged in improper uses of force without being properly disciplined or otherwise held accountable...SWAT trainings conducted by SWAT Mafia members instructed SWAT officers that the use of deadly force was permissible in situations when Department policy clearly dictated that it was not.

So what was the outcome for the team leader? Perhaps surprisingly, then-LAPD Chief Charlie Beck formally admonished the officer for making an unplanned, inappropriate use of the Taser and issued a written reprimand. Astonishingly, [the “plus-one” contested the wrist-slap](#) with a lawsuit. It ultimately failed.

Both other incidents involved multiple officers discharging large volumes of rifle fire at lone suspects who were at most armed with a handgun. Concerns about the SWAT response are evident throughout the Los Angeles Police Commission's [detailed review](#) of the killing of Mr. Soderberg. Although one officer's initial six rifle rounds were ruled “in policy,” three of four commissioners found that twelve other officers acted inappropriately when they fired a total of 38 rifle rounds at someone who was by then unarmed:

Officers...cited observations of a gun or dark object being held or presented by the Subject....The evidence in this case does not support the reasonableness of any of these reported observations. There were no firearms recovered outside the residence and there were no dark objects identified that could be construed as weapon....The officers' observations of the Subject were made from a considerable distance, which would have limited their ability to accurately observe and assess the Subject's actions as constituting an imminent deadly threat. Moreover, the relative proximity of the officers at the residence and APS officers to the Subject was such that it was not reasonable for these officers, from their distant location, to believe their intervention with lethal force was warranted.

[Then-Chief Charlie Beck disagreed](#) and ruled that all the force used was appropriate. After [an extensive review](#), District Attorney Jackie Lacey took a more nuanced position. She concluded that all officers but three had fired in self-defense, the defense of others, or to "apprehend a dangerous fleeing felon." As for the three who shot Soderberg as he lay on the ground, she found "insufficient evidence to prove beyond a reasonable doubt that the shots fired...were unlawful." Mr. Soderberg's survivors [have filed a lawsuit](#). An [expert statement](#) suggests that the plaintiffs will characterize the killing as an execution. So the last word on this conflicted episode is yet to be heard.

As for the episode involving Mr. Rauda, there was a happier ending: no one got shot despite all the gunfire. And there was a *lot* of that. Four officers fired a total of twelve pistol rounds and nine discharged a total of *ninety-two* rifle rounds. Yet the commissioners were largely pleased. All gunfire was ruled "in policy" [except for three pistol shots](#) fired by one officer as the encounter began (the officer was faulted by three of four commissioners for firing while confused and without a clear target.)

Mr. Rauda was armed throughout and repeatedly fired at police. [His gunfire](#) wounded a K-9 (don't worry, the pooch recovered) and nearly struck an officer's skull. Given all that, the incident clearly presented an easier call "politically" speaking. And until Sgt. Colomey came forward there's been no blowback.

More than a decade has passed since we posted "[You Can't Manage Your Way out of Rampart](#)." In the late nineties dozens of members of LAPD CRASH teams ("Community Resources Against Street Hoodlums") beat up suspects, planted evidence and flat-out lied as they combatted street gangs in the city's downtrodden Pico-Union district. (For a 300-plus page report click [here](#).) [Then there's the L.A. Sheriff's Department](#), whose

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tattooed deputy cliques (e.g., “Little Devils,” “The Jump-Out Boys,” “Banditoes,” “Spartans,” “Reapers”) have prowled the Southland’s high-crime unincorporated areas since the seventies.

Still, we’re skeptical about attributing Sgt. Colomey’s career crash to a police clique. We don’t doubt that SWAT officers have flung that colorful “Mafia” term about. But when it comes to the death of Mr. Ocana, there’s a readier explanation at hand. There are few working cops who haven’t experienced a senior officer butting in and messing things up. As past posts suggest, the consequences can sometimes be tragic:

- [In October, 2014](#) Chicago police officers corralled a knife-wielding youth and were trying to be “patient” when a late-arriving 14-year veteran rushed in and shot him dead.
- [Two years later](#) an NYPD sergeant aggressively barged in to an apartment where officers were containing a mentally disturbed woman. She ran into a bedroom and flaunted a baseball bat. He shot her dead.
- [And on May 25, 2020](#), in an episode that will live in infamy, a Minneapolis police sergeant’s cold-hearted knee-on-neck move caused a man’s death. Coming in after rookies had successfully corralled a suspect, the sergeant did things his way, setting off a chain of events from which we’ve yet to recover.

Neither is the presence of an officer “Mafia” necessary to explain the massive volleys fired at Mr. Soderberg and Mr. Rauda. Since they were alone, and neither was armed with a long gun, one might expect that a couple of officers would have engaged them with rifle fire. But *nine*? *Twelve*? Sgt. Colomey’s civil complaint indicates that he’s all about de-escalating. In our experience, though, that’s not exactly where combat-ready, rifle-toting teams such as SWAT typically are. His conservative views about high-risk engagement and use of force, if true, could have placed him at odds with most everyone in SWAT. So it wouldn’t be surprising if he was ostracized.

Then again, we haven’t seen Sgt. Colomey at work. Is he truly as skilled as he implies? It will be interesting to see what the lawsuit reveals.

Posted 3/13/09

TASERING A YOUNGSTER IS WRONG, EXCEPT WHEN IT'S NOT

Should police have zapped a violent 12-year old?



Word that a Hawthorne (Calif.) police officer zapped [an autistic twelve-year old boy](#) struck many observers as incomprehensible. Why did the cop have to resort to a weapon? Authorities say that the 5-7, 130 pound student grabbed a counselor and repeatedly punched a security guard, then kicked the officer who responded in the groin. When the youth ran away the cop Tasered him in the back. The darts came out in the emergency room.

There's little question that the kid was out of control. Had it been an adult we would have probably heard no more about it, but the fact of his youth and disability lends the event an undeniable gravity. As one might expect, [his parents filed a legal claim](#), a prelude to a suit.

Policing is a fundamentally nasty business. People don't call the cops to feed them coffee and sweets, and by the time that authorities arrive things have often deteriorated to a point where gaining voluntary compliance is difficult if not impossible. Still, officers can't fight their way through their shifts, so most get pretty good at settling things without going to the mat. Salesmanship and a command presence are the two most important tools of a street cop's arsenal.

Sometimes talk isn't enough. For the first century years of American policing there was only one alternative to the gun: the club, an insufferably crude implement that brings officers in close, exactly where they'd rather not be. In the heat and confusion of battle batons can prove ineffective or, should a blow be misplaced, as deadly as a .44.

Belt-carried tear gas dispensers, the first effective less-than-lethal weapon, became popular in the 1980's. They were supplanted by pepper spray, a powerful irritant that forces the eyes to shut. Alas, in the rough-and-tumble of policing aerosols aren't always useful. For best effect the stream must strike the face, and preferably the temple, a trick that's hard to manage unless a target is motionless. And as the writer can personally attest (he was doused during training) pepper spray can seriously impair breathing. Although the [National Institute of Justice](#) determined that the substance is

safe when properly used, an [ACLU report](#) notes that it's been associated with respiratory failures and a number of deaths.

Enter the [Taser](#), a device that propels two darts up to thirty feet to deliver a powerful, temporarily disabling electrical shock. Simple to use and highly effective, it allows officers to instantly immobilize a moving target at a distance. Police throughout the world champion it as the tool of choice for dealing with combative persons. Studies in the U.S. have concluded that the Taser has reduced injuries to officers and citizens alike. A string of police shootings recently led [RAND](#) to recommend that NYPD, which issues Tasers to tactical units, consider deploying them to patrol officers, giving them a more effective alternative to deadly force than the pepper spray they already carry.

On the downside, Tasers have been linked to deaths by heart failure. Although most [medical studies](#) have cleared the device, significant concerns remain about the weapon's possible effect on the young, the old and those with heart conditions, particularly when repeated shocks are administered.

Regrettably, Tasers have a rocky history. They've been used when force was unnecessary, when less violent methods were available (an electrical jolt is nothing if not violent) and when stunning someone was otherwise inappropriate. Two years ago an [L.A. County Jail inmate was permanently disabled](#) when he was Tasered while standing on a top bunk and fell on his head. Last year a similar misuse led a naked, mentally ill New York City man to [plunge to his death](#) from a ledge. (In a tragic postscript, the commander who gave the order to use the Taser was so remorseful that [he subsequently committed suicide](#).)

No matter how "safe" Tasers might be, their use must be consistent with expectations of how police ought to behave in a democratic society. Still, it's important to keep in mind that officers work in an unpredictable environment. Those who lack a partner, as in Hawthorne, are in a particular fix. Tumbling on hard concrete with a beefy youngster can cause disabling injuries for both, while letting a child run off can put him and possibly others in harm's way. As it turned out, the youth wasn't hurt. Stopped in his tracks by the Taser, he didn't have the opportunity to hit anyone else, nor did he run across the street without looking and get struck by a car.

No doubt about it, using stun guns on children looks bad -- *very* bad. Appearances *are* important. Still, the real world is a messy place where not everything can be anticipated. Instituting flat-out prohibitions or dreaming up excessively complex rules runs the risk of paralyzing cops when decisive action is crucial. And that's not a risk that either the police or the public should lightly accept.

Posted 9/27/09

THE CHASE IS ON

Are foot pursuits prone to lead to bad shootings?

Two weeks ago Los Angeles County Sheriff's deputies were looking for two robbery suspects when they spotted a pair of possible candidates. As they approached the men one ran off. A deputy gave chase. What happened next isn't clear, but it seems that at some point the fleeing man made a motion that the deputy considered threatening, leading him to fire three times, twice through a wooden gate. [Darrick Collins](#), 36 was fatally wounded. It turned out that all he had on his person was a cell phone and twenty-four tablets of an illegal street drug.

Collins was not one of the robbers. He had been recently arrested on drug charges and probably ran to avoid getting busted again.

Collins was the tenth person fatally shot by LASD deputies in 2009. An uproar led Sheriff Lee Baca to pledge that an inquiry would be completed in ninety days. A career law enforcement officer, Baca isn't particularly loved by his troops, who generally consider him far too liberal for their tastes. On the other hand, Baca enjoys excellent rapport with community groups, and his promise to promptly resolve the matter helped defuse things. He's also [commissioned a panel of experts](#) to look into deputy-involved shootings. Whether to change foot pursuit policy is one of the issues they're to consider.

Baca's moves were welcomed by Michael Gennaco. Head of the [Office of Independent Review](#), the county agency that oversees complaints against the Sheriff's Department, Gennaco has criticized delays that leave the public in the dark about shootings for eighteen months or more. It now seems that at least in "mistaken fact" incidents, where deputy error is evident, administrative and criminal inquiries will run simultaneously.

Less than a week after Collins' death LASD deputies [shot and killed three more persons](#). These unconnected incidents brought the number killed by deputies this year to thirteen, more than twice the number for all of 2008, when five persons fell to deputy gunfire. But if there was a positive side to the most recent shootings, it's that they differed from the Collins killing in one critical respect: this time each suspect was armed.

- 9/19/09. A 17-year old gang member who had evaded deputies was shot and killed when he pointed a loaded handgun at officers during a later encounter.

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- 9/20/09. A robbery suspect exchanged gunfire with deputies, wounding an officer in the leg before he was shot and killed.
- 9/20/09. A reputed gang member was shot and killed when he pulled a loaded handgun while struggling with a deputy in a motel parking lot. The man was being questioned for acting suspiciously.

As we've said before, the environment of policing has a profound impact on how officers perceive and respond to threats. To get a better perspective on what L.A. County's deputies face we looked up the remaining nine fatal shootings in the *Los Angeles Times* index on ProQuest, an online database. All but one were found. (Keep in mind that the accounts were sketchy and based mostly on official reports.)

- 8/8/09. Deputies encounter a wanted parolee. When they move in to make an arrest he tries to grab a deputy's gun.
- 8/7/09. Deputies break up an out-of-control party at a private residence. For unknown reasons one of the partygoers draws a gun.
- 8/1/09. Deputies responding to a 911 call are attacked by a man wielding two meat cleavers. He had just broken into a woman's apartment.
- 7/10/09. Deputies respond to a 911 call from a woman who says she was threatened with a gun. They pull over a parolee leaving the area. He runs off and is pursued on foot. *A deputy shoots him, apparently mistaking a cell phone for a gun.* A loaded gun is found in the suspect's car.
- 7/5/09. Deputies confront several teen gang members. One runs off and is pursued. He allegedly points a gun at the deputy. A loaded handgun is recovered at the scene; however, bystanders say there was no gun.
- 4/26/09. The robber of a fast-food restaurant points what turns out to be a replica pistol at deputies.
- 3/15/09. Deputies responding to a 911 call are attacked by a drug-crazed man wielding a machete and a baseball bat.
- 1/24/09. Gang deputies confront a gang member carrying a gun. He runs away, tries to hide, then allegedly points a gun at officers.

It's a mixed bag. Yet there are some common threads. Obviously, each of the deceased would still be alive today had they complied with deputies. As one might expect, the influence of guns and gangs is clearly evident. Sheriff Baca's concerns about foot pursuits are also borne out. Four shootings took place during foot chases, including both instances where deputies killed in error.

Cops know that foot pursuits can be a recipe for disaster. Chases place officers in unfamiliar surroundings. Often alone, lacking access to the normal tools of policing, they get wholly dependent on their guns for survival. Pumped up on anxiety and adrenaline, with little opportunity to observe or reflect, it's inevitable that their split-second decisions will occasionally prove to be tragically wrong.

Training only goes so far. When decades of study and experimentation yielded no discernible gains in the ability to safely pursue vehicles, most police agencies wound up forbidding car chases except under tightly specified and controlled circumstances. Foot pursuits are even more difficult to calibrate. They don't happen along clearly demarcated roads. Neither can they be choreographed with the assistance of radios and aircraft. Unless academies can produce Supercops who are unaffected by stress and fatigue and can see in the dark, prohibiting one-on-one foot pursuits may be the only option.

It would be informative to compare the characteristics of LASD's fatal encounters with those reported elsewhere. LASD is but one agency, and there might be something about it and its officers that could use fine-tuning. For example, deputies must spend years working the jails, so they accumulate far less field experience than their municipal police counterparts. What's more, in 2008 the Office of Independent Review issued reports chastising the [LASD training academy](#) and the department's [background investigation process](#) for yielding less-than-sterling recruits.

Improvements in selection and training are always welcome. There may also be substantial differences in officer propensities to shoot (see, for example, the case of Cleveland officer Jim Simone.) But there will always be a certain elephant in the room. Unincorporated inner-city areas such as those patrolled by L.A. County deputies brim with gangsterism and violence, frequently leading to encounters that any officer, not matter how well trained, would be hard-pressed to peaceably resolve. In the mean streets of SoCal, tragic conclusions to police-citizen encounters aren't all that surprising. We've said it before and it bears repeating: unless we can convince citizens to act kindly and gently, getting cops to do so may be out of reach.

Posted 4/23/18

THERE'S NO "PRETENDING" A GUN

Sometimes split-second decisions are right, even when they're wrong

By Julius (Jay) Wachtel. During the past decade this blog has commented on more than a few episodes of subpar policing that led to the loss of life. While some might argue that citizens often contribute to their own demise – see, for example, the post immediately below – in this imperfect world people frequently do crazy stuff. To avoid needlessly using force, and particularly lethal force, officers must regularly accept considerable risk, and fortunately most do. When in our opinion they should have but didn't, we've said so. When cops don't feel they can wait to collect more information, a tragic ending may be unavoidable. To be sure, "split-second" decisions are sometimes inevitable, but it's not Monday-morning quarterbacking to suggest that lives can be saved when officers pause for facts to surface, backup to arrive and hot heads (on all sides) to cool.

That, in essence, was our conclusion in "[A Reason](#)." Sometimes, though, the decision-making calculus is so unforgiving that deferring action – what we call "[making time](#)" – is out of the question. Consider what NYPD officers faced on April 4 when [three separate 9-1-1 callers reported](#) that a man was running around Brooklyn streets accosting passers-by with a gun, or at least with something that looked like a gun. Horrifying [video surveillance footage](#) assembled by NYPD confirms that these accounts were spot-on correct. As the episode ends the suspect suddenly pauses, takes up a shooting stance and aims his object at an undepicted target in the distance. That's where the video abruptly ends, but one can well imagine what happened next.

According to police, Saheed Vassell, a 35-year old bipolar man [was taking aim at responding officers](#) with a short length of metal pipe that had a knob on one end. They instantly opened fire with *real* guns, killing him. Area residents who knew Saheed considered him harmless; they guessed his pretend gun was something he picked up while walking around. His father, with whom he lived, said that Saheed was normally friendly and helpful but had been repeatedly hospitalized for mental problems, occasionally after run-ins with police. Saheed was not known to have a real gun, and beat cops reportedly did not consider him dangerous. Investigation of the shooting was turned over to the New York Attorney General.

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On June 6, 2017 a 9-1-1 caller alerted Los Angeles police about a man who was walking around with a gun and otherwise behaving oddly. Patrol officers [soon spotted a pedestrian](#) who matched the odd-duck's description. He held what to them looked like a pistol in his hands. According to the officers, Eric Rivera, 20, ignored their commands to drop the gun; instead, he walked towards them and raised the object as though aiming it. They leaped out of their patrol car and fired, killing him. In his hurry to exit the driver failed to apply the parking brake, and the police vehicle wound up running over the man.

No firearm was found. However, officers recovered a “green and black colored plastic toy water gun.” After a protracted investigation [police chief Charlie Beck determined](#) that the shooting had been prompted by “an imminent threat of serious bodily injury or death” that made it impossible for officers to take the time to de-escalate. It was thus “in policy.” His decision was seconded by the Los Angeles Police Commission, which ruled the shooting justifiable. (Although the board has often been at odds with the chief over his agency's use of force, in this instance its five members acted unanimously.)

As might be expected, both killings sparked vociferous calls for change. One day after Vassell's shooting, [hundreds of demonstrators took to New York streets](#), calling for police reform and the officers' prosecution. Rivera's family [picketed the D.A.'s office](#) for twenty-six weeks, demanding that the LAPD officers (like Rivera, both are Hispanic) be prosecuted. A Federal lawsuit alleging that police used excessive force is pending.

Toy and other pretend guns have figured in many tragic police-citizen encounters. Perhaps the most widely publicized such incident took place four years ago when a Cleveland officer [shot and killed Tamir Rice](#), a 12-year old boy who was pointing a pellet gun at visitors to a recreation center. NYPD's shooting of Vassell is also not the first time that police have mistaken a non-gun object for a gun. “[First, Do No Harm](#)” recounts the December, 2010 incident involving Douglas Zerby, a drunk, unarmed 35-year old man who for reasons he would take to his grave pointed a pistol-grip water nozzle at cops responding to a man-with-a-gun call.

Prior posts (see “Related Posts,” below) have suggested various measures that can help minimize or avoid the use of force. Alas, the shootings of Vassell and Rivera present a special difficulty, as the apparent threat they posed to officers and citizens was so immediate and extreme that stepping back and trying to “de-escalate” seems clearly inappropriate.

So what *was* the right thing to do? “[A Very Hot Summer](#),” which looked into a variety of fraught police-citizen encounters, suggested it may be best “to integrate patrol into all enforcement activities, to assure that someone familiar with the territory and its inhabitants is always present.” [None of the officers who shot at Vassell](#) was a beat cop: three were part of a plainclothes anti-crime unit and the fourth, a uniformed officer, was with a crime hot-spots team. Shocked residents suggested that officers who knew Vassell might have handled things differently. They may be right. Problem is, while Vassell was running around unmolested, pointing a pretend gun at innocent persons, cops who might have made a difference were elsewhere. Really, beat officers are often busy on calls, so one can never count on their presence. And when the cops did show up, the situation they encountered was so urgent that it ruled out calling, say, a [mental health crisis intervention team](#), as it would have required officers to wait and not intervene until specialists arrived.

What about prevention? Little is known about Rivera’s state of mind. Police had categorized Vassell as “emotionally disturbed,” and over time he did receive some mental health treatment. Considering his persistently odd behavior, though, the mental health follow-through seemed clearly lacking. As we noted in “[Homeless, Mentally Ill, Dead](#),” the much-ballyhooed transition from state mental hospitals to community treatment was never adequately funded, leaving legions of mentally ill – such as Vassell – on the streets, with at best sketchy treatment and oversight.

Perhaps there’s an intermediate step. “[A Stitch in Time](#)” suggested that dedicated police/mental health teams could proactively monitor and assist individuals whose behavior, like Vassell’s, has led to multiple contacts with the authorities. Those who merit it could be flagged for treatment and, if necessary, commitment. In fact, [such services do exist](#). Unfortunately, resources are limited and intervention takes time to arrange. They’re not the answer for sudden, serious meltdowns such as Vassell (and, probably, Rivera) experienced. In such cases, it’s always up to the cops.

What else can be done? What’s often missing from these discussions is the role of the community. The block. The next-door neighbor. [Here’s what a local resident had to say](#) at Vassell’s funeral:

I truly think it’s a community problem. That’s the reason why he’s this way, because nobody came and pulled him to the side and say “Yo what are you doing, that’s wrong. Yo what’s going on? Stop that.” No one.

“Making time” and “de-escalating” are useful concepts. While perhaps articulated in other ways, they’ve been around since the birth of policing. Sometimes, though, they’re besides the point. Would it have been O.K. for cops to hang back and mull things over

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had Vassell and Rivera *really* been armed? In our oftentimes violent environment, officers sometimes *must* act. And when it comes to guns, there really *is* no pretending.

Posted 4/15/12

THREE PERFECT STORMS

Scared cops and unruly young men prove a lethal combination

By Julius (Jay) Wachtel. One can only imagine what was going through officers' minds when, at the conclusion of a wild freeway pursuit, [they were confronted by a youthful driver](#) who repeatedly pointed at them as though he was holding a gun. By the time it was all over LAPD's finest had fired as many as 90 rounds, killing Abdul Arian, 19.

A one-time police Explorer scout who was [reportedly dropped for "disciplinary reasons"](#), Arian was driving a Crown Vic, a recycled cop car. Relatives described him as a law-abiding youth who wasn't into guns or drugs. Yet his Facebook page mentioned a trip to a shooting range. Arian had also been expressing strong fears of the LAPD. One of his Facebook postings, captioned "just always after me," depicts a police car in his rear view-mirror, its red lights on. Another post reads "done crying...tired of trying...yeah im smiling...but inside im dying." During the April 12 chase Arian warned the 911 operator that he was armed and ready to shoot it out. "I have been arrested before for possession of destructive devices, I'm not afraid of the cops. If they pull their guns, I'm going to have to pull my gun out on them."

As it turns out Arian was unarmed. A relative who watched the tape says that what the disturbed youth "pulled" was a cell phone.

When the plainclothes NYPD officer [confronted Ramarley Graham](#) inside the teen's apartment he had no search warrant. Neither had he been invited into the residence. Nor was he there to rescue anyone from an imminent threat.

Earlier that day, February 2, an NYPD street narcotics unit watched Graham and two companions exit a Bronx bodega that was apparently a hot-spot for drug dealing. Officers followed Graham to a nearby residence, where he remained for a brief period. A cop who saw him leave radioed that a gun butt was sticking out from his waistline. Police tailed Graham to the apartment building where he lived (as it turns out, with his parents and grandmother.) Officers couldn't get to the outside door in time to keep it from locking behind the youth. They unsuccessfully tried to kick it in. They were eventually let in by another resident.

As we mentioned in [“Too Much of a Good Thing?”](#) NYPD has been on stop-and-frisk binge for years. Given the observation of a “gun butt” there was enough for a stop-and-frisk. But there was a delay and Graham was no longer in a public place. Whether “hot pursuit” or probable cause/search warrant rules now applied are something that lawyers are still debating. Either way, officers rushed Graham’s second-floor apartment and kicked in the door. (If this seems surprising, you’re not alone. Your blogger went, “huh?”) One cop dashed to the bathroom, where he encountered Graham trying to flush the evil weed. For reasons that are presently unclear, the cop fired, killing the youth.

A baggie of marijuana was in the toilet bowl. And no, there was no gun.

Three things are known for sure. Here are two. On March 24 Pasadena, Calif. resident Oscar Carrillo called 911 to report [that he was just robbed](#) by two armed men. Moments later, police shot one of the suspects dead.

According to the 911 tape (click [here](#) for the audio) Carrillo told the dispatcher that two young African-American men accosted him and took his laptop and backpack. Both, he said, were armed. Officers quickly responded and spotted two youths running away. During the chase, one of the suspects, Kendric McDade, 19 approached a police car and, according to an officer, reached for his waistband. The cop fired, mortally wounding the youth. Other officers arrested his 17-year old companion nearby.

It turned out that neither suspect was armed. And while the backpack was recovered, no laptop was found. [Police chief Phillip Sanchez said](#) that the 911 caller lied. As Carrillo himself later conceded, and as a security camera reportedly confirmed, the younger teen snatched a backpack from his vehicle while McDade allegedly acted as a lookout. It wasn’t a stickup but a theft. Carrillo didn’t have a laptop and he never saw a gun. Why he told 911 otherwise is hard to say – maybe he thought an armed robbery would merit a quicker response – but as the chief pointed out, the mention of firearms undoubtedly “set the platform for the mindset of the responding officers.”

These episodes are fundamentally alike. Each was precipitated by petty offending involving immature and in one instance possibly disturbed teens. In the case of Arian, it was reckless driving; for Graham it was marijuana; and for McDade and his companion, theft. What made these events “perfect storms” was that police were forewarned that

their adversaries were armed. That information came once from the suspect's own lips, once from a cop's mistaken observation, and once from a victim's lie.

With killings of police a persistent problem ([they rose substantially in 2011](#)) it's no wonder that some cops are quick on the draw. When dozens of hardy LAPD officers converge on a scene and stage a wild, and as it turns out completely one-sided firefight, one cannot but conclude that police are working scared.

What's to be done? It's not just about keeping guns from criminals. As we pointed out in "[There's No Escaping the Gun](#)," ordinary people regularly go on violent rampages. Meanwhile restrictions on gun possession and carry grow increasingly lax. As America's gun makers continue flooding the streets with powerful, vest-penetrating handguns ([more than 500,000](#) pistols in calibers exceeding 9mm. were manufactured in 2010 alone), cops are right to be wary.

One could trot out all the usual fix-its, from more realistic academy scenarios, to more and better in-service training, to educational campaigns that prod citizens to play nice with the police. But we won't. Indeed, it's only because most cops are highly risk-tolerant that dead citizens aren't lining the streets. Still, drawing a weapon preventively used to be considered an overreaction; now it's commonplace. And once a gun is in hand, pulling the trigger is far more likely. But when everyone that cops encounter is apt to be armed, who wants to be responsible for the possible consequences of advising restraint?

Not me.

Posted 8/1/17

THREE (IN?)EXPLICABLE SHOOTINGS

Grievous police blunders keep costing citizen lives. Why?

By Julius (Jay) Wachtel. On April 29 Balch Springs, Texas police officer Roy Oliver and his partner [entered a residence](#) where teens were reportedly drinking. Gunfire suddenly erupted nearby and the cops ran to investigate. Five youths also left and jumped into a car. For reasons that remain unclear, officer Oliver fired at them with a rifle that he had fetched from his cruiser. One round fatally wounded Jordan Edwards, 15.

Police chief Jonathan Haber quickly issued a news release claiming that the youths had driven at the officers. Body cam video soon proved the assertion false. Chief Haber apologized and fired officer Oliver.

Last month a Dallas grand jury [indicted officer Oliver](#), 37 for murder and aggravated assault. He was also charged with pulling a gun on a motorist who rear-ended his personal vehicle some months ago. Oliver, an Iraq vet and cop since 2011, [had been briefly suspended in 2013](#) for being vulgar and aggressive with prosecutors and in court. No other disciplinary actions against him are known.

On June 4 Omaha police officers [encountered a disturbed man](#) licking a store window. Zachary Bearheels, 29, accepted water but refused further aid and was let go.

Bearheels continued behaving oddly. That evening he was kicked off an interstate bus, and during the early morning hours of June 5 he caused a ruckus outside a convenience store. Two officers eventually cajoled the 5-9, 250-pound man into the back of a squad car. A sergeant soon turned down their request to take Bearheels in for a mental check, so the officers decided to take him back to the bus station. But the unruly man broke loose and tried to flee.

That's when two other cops, Scotty Payne, 38 and Ryan Mc Clarty, 27 jumped in. During the ensuing struggle they delivered a stunning twelve five-second Taser jolts and numerous blows to the head. According to police chief Todd Schmaderer, who moved to fire both cops, "video showed Mr. Bearheels to be motionless on the final few strikes." Indeed, Bearheels was more than "motionless": he was dead. A coroner would later rule

the cause as “excited delirium,” a diagnosis that has been associated with [other episodes of repeated Taser strikes](#) on emotionally disturbed persons.

What’s known for sure is that Minneapolis police officer Mohamed Noor [shot and killed Justine Ruszczyk](#) during the late evening hours of July 15. What’s puzzling is *why*. Ruszczyk, a local resident, had just called 911 to report overhearing a possible sexual assault. After hanging up she may have tried to draw the attention of officer Noor and his partner, Matthew Harrity, by slapping the trunk of their vehicle as it drove down the alley behind her residence. Officer Harrity, the driver, later told investigators that he heard a loud noise and observed Diamond at his side window. His partner apparently considered the woman a threat [and fired](#). Noor’s bullet struck the middle-aged Australian woman in the torso, inflicting a fatal wound.

Since completing probation in fall 2015 Officer Noor, 31 racked up three complaints. One, an incident in May where he allegedly used excessive force against a mentally ill woman, [has turned into a lawsuit](#). Officer Noor declined to be interviewed about the shooting and is represented by a lawyer.

Independent information about the incident is lacking, as neither patrol car nor officer cameras had been turned on. Meanwhile the chief, who said the shooting “should not have happened,” resigned under pressure and a major shake-up of the department is reportedly under way. One change already made is that officers must now activate body cameras on all 911 calls.

[“The killing of Jordan Edwards shows again how black males — even children — are viewed as a threat.”](#) That headline (yes, *headline*) from the May 7 edition of the *Los Angeles Times* conveys what the editors clearly consider a given: that the killing of Edwards, a black youth, by officer Oliver was motivated by race. Among those quoted in the story is civil rights attorney Benjamin Crump, who on the day of Edwards’ funeral said “These [police officers] are trained professionals, who are supposed to make rational decisions, but they’re not. And yet again our children — I repeat, children — are paying the ultimate price.”

Police Issues has frequently commented on the use of lethal force against blacks. One such episode, which the *Times* also found pertinent, was the [November 2014 killing of Tamir Rice](#), a black 12-year old who was gunned down by a white Cleveland cop. (Rice

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had flaunted an air pistol, and a grand jury refused to indict. Cleveland settled for \$6 million.)

Given America's legacy of bias, concluding that Jordan Edwards was shot because he was black might have seemed obvious to the *Times*. After all, while officers kill many more whites than blacks, the latter have been proportionately much more likely to fall victim to police gunfire (click [here](#), [here](#) and [here](#)). Contemporary research, though, has cut both ways. For example, a [recent in-depth report](#) of shootings by Houston officers concludes that *whites* were at substantially greater risk of being gunned down by cops.

In any case, the officers who shot Bearheels and Ruszczyk were black. So what matters other than race?

- 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. In "[Working Scared](#)" we remarked that the cop who shot Tamir Rice was forced out from another department when a supervisor noticed that the rookie was inexplicably "distracted" and "weepy" during firearms practice.
- Good judgment and forbearance take time to develop. Pairing inexperienced cops may be a tragedy waiting to happen. [Minneapolis officer Noor](#) had been a cop only two years; his partner, officer Harrity, had one year of experience with MPD. Interestingly, the "loud noise" that may have provoked Noor to fire brings to mind the "loud noise" that [led one of a pair of rookie NYPD cops](#) to discharge a round in a darkened stairwell, fatally wounding a resident who was hoofing it because the elevator was out.
- Talk isn't enough. "[De-escalation](#)," a trendy new buzzword, is how most cops have always preferred to do business. But when beats are beset by guns and violence even the most adept communicators might need more than words. Prompt backup is essential. Less-than-lethal weapons must also be at hand and officers should be adept at their use.
- Practice makes perfect. [As we said not long ago](#), patrol shifts must train together. It's also essential that someone - an experienced officer, if not a supervisor - take charge and coordinate things whenever a use of force is likely.

We hate to label this post a call for "reform," as our analysis and prescriptions are nothing new. Yet an unending stream of unjustified police shootings have been threatening to turn *Police Issues* into a "use of force" blog. So, *please* (and not just for our sake) don't let that happen!

Posted 3/1/09

TO ERR IS HUMAN, TO PREVENT IS DIVINE

Admitting that cops make mistakes can prevent tragedies

The recent [tragic killing](#) of an unarmed man by a San Francisco transit cop provoked a deeply polarized response. [Outraged activists](#) pointed to the incident, which involved a white officer and a black victim, as yet another example of how the police treat minorities. They then [turned their anger on prosecutors](#) for waiting two weeks before charging the officer with a crime.

[As we've mentioned](#), there's plenty of reason to believe that the overexcited cop thought that he was firing his Taser. That's a conclusion that even the [victim's attorney](#) implicitly conceded. "It doesn't matter if he was reaching for a Taser or not. At the end of the day, it's what [the officer] did that counts." Meanwhile nervous BART officials avoided all talk of race and [promised](#) what bureaucracies usually promise when stuff hits the fan: to review their procedures.

...the BART Board's Police Department Review Committee will engage experts in law enforcement to conduct a top-to-bottom review of BART Police policies and procedures. These independent experts will examine police recruitment, hiring, training, and identify best practices. The independent experts will also recommend changes where necessary.

Departments seldom concede what students of the police have long known: that regardless of training and experience, stressed-out officers can make catastrophic mistakes. For reasons of pride and liability, agencies often rush to lay the blame elsewhere. When a SWAT officer accidentally shot and killed a toddler during a 2005 standoff, [LAPD exerted immense pressure](#) on the coroner to conclude that the fatal bullet really came from the father's gun. To his credit, he refused.

Tactical teams usually have the opportunity to prepare and strategize, so in truth they seldom goof that badly. Patrol officers, on the other hand, rarely have much time to plan. When their adrenaline-infused decisions prove disastrous, as they sometimes do, departments reflexively (and perhaps, understandably) circle the wagons. On February 6, 2005 [an LAPD patrol officer shot and killed](#) Devin Brown, a 13-year old black teen who allegedly tried to run him over with a stolen car. Chief Bratton declared the shooting "in policy" and tried to quell community furor by releasing an elaborate

reconstruction of the incident [that the D.A. later used](#) to absolve the officer of criminal liability.

Not everyone jumped on board. The Los Angeles Police Commission, Bratton's titular superior, overruled the chief and forced a disciplinary hearing. Their squabble wasn't unprecedented. Years earlier [the board rejected](#) then-Chief Parks' exoneration of an officer who shot and killed a mentally handicapped homeless woman wielding a knife. In the end, the Commission lost -- twice. By contract, serious discipline at the LAPD is meted out by a normally cop-friendly "Board of Rights," and it was that panel that ultimately cleared both officers of wrongdoing.

As we know from the BART shooting protecting one's own is a lot tougher when there's video. On January 29, 2005 a vehicle fleeing from [San Bernardino \(Calif.\) deputies](#) crashed. A 21-year old airman just back from Iraq exited from the passenger side. The first officer to arrive ordered him to the ground and approached, gun drawn. After a brief verbal exchange, the excited deputy said what sounded like "get up" three times. Apparently complying with the command, the man rose. That's when the deputy fired three times, inflicting serious, thankfully nonfatal wounds. The nighttime incident was captured on a [grainy video](#) by a citizen watching from across the street.

To citizens and newscasters what the deputy did (he was Black, his victim is Hispanic) was inexplicable; on first glance it seemed like an execution, the same thing that activists claim happened in Oakland. Of course, prosecutors are not lay people. Instead of acknowledging the horrifying event for what it was: a tragedy caused by a pumped-up cop whose brain short-circuited, the San Bernardino D.A. accused him of attempted voluntary manslaughter and assault with a firearm, charges that could bring a sentence of eighteen years.

At his trial the officer testified that he had been scared for his life, and that if he said "get up" it was only because he was too rattled to articulate clearly. (This blogger's audio analysis revealed that the first "get up" was indeed preceded by a "don't.") The officer's explanation was echoed by a [defense psychologist](#) who told the court that when officers are under stress their analytical processes can shut down. It took jurors only two and one-half hours to acquit the deputy on both counts. Naturally, the officer lost his job and faces a civil suit.

Pinning on a badge doesn't make cops superhuman, and it may be that in an atmosphere of guns and violence they're doing about as well as can be expected. But if we're looking for ways to minimize lethal flub-ups here are some things to consider:

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- We've said before that most cops are reasonably risk-tolerant; if they weren't, there would be a trail of dead citizens at the end of each shift. It's also a truism that [some cops are repetitively involved in shootings](#). Are there ways to filter out police applicants who are too easily rattled? Too eager to reach for a gun?
- Academies try to incorporate realistic exercises into their coursework. Yet time and resources are limited, so the tendency is to present proportionately far more "shoot" situations than an officer is likely to experience on the job, where firing a weapon is rarely called for. Some training programs bring in the real world by having cadets go on ride-alongs, but these are usually limited and don't take place until the end, when poor patterns may have already formed. There's clearly a lot more that can be done to help trainees and active-duty cops adjust to the uncertainties of policing while minimizing the risk to themselves and to others.
- Although police work is largely an individual task, there is frequently need for coordination. When multiple officers respond someone's got to take charge and assure they work as a team. That was clearly a problem in BART. The absence of command and control were also evident in a [May, 2005 incident](#) in which L.A. County Sheriff's deputies fired more than one-hundred rounds at an unarmed man during a slow-speed pursuit in a residential area. [Videos of the incident](#) demonstrated a wild, undisciplined response hardly befitting the image of an agency that relentlessly promotes itself on reality TV shows.

An initial step in twelve-step programs is to admit one's frailties, as little can be done for someone in denial. That's equally true here. Pretending that whatever happens, happens on purpose retards progress and exacerbates tensions between citizens and officers, unjustly making out the latter as criminals should their disastrous goofs get caught on camera.

Honest, dispassionate self-assessment is the hallmark of a true profession. It could prevent unnecessary violence and help defuse tensions in the inner cities. It would be a win for the public *and* the police.

Posted 7/8/20, edited 7/9/20

VIOLENT AND VULNERABLE

Some combative citizens may be at heightened risk of death



For Police Issues by Julius (Jay) Wachtel. It wasn't a chokehold that felled Robert Heston on that fateful Saturday afternoon some fifteen years ago. After going berserk, attacking his elderly parents and thrashing their home, Mr. Heston was in no mood to cooperate with Salinas (Calif.) police. He resisted violently, and [they responded with a score of Taser strikes](#). But once the cuffs went on Mr. Heston stopped breathing. He remained unconscious and died in the hospital on the following day.

Mr. Heston [had a substantial record of arrests](#) for drug use, drunkenness, disorderly conduct and assault, so he wasn't exactly an unknown. Yet nothing in his past or in his conduct that day would justify killing him. So the onus landed square on the cops – and, collaterally, on the tool (the Taser) to which they turned. And yes, there was a lawsuit, which ultimately drew nothing from the authorities but yielded a small judgment against Taser.

Why did Mr. Heston die? Litigation generated a series of post-mortems. Their findings were set out in great detail in [an expert's report](#). They were also summarized in Amnesty International's [ground-breaking study of Taser-linked deaths](#). Here's an extract:

The first...autopsy findings listed the Taser as a cause of death...a second report...listed an enlarged heart as cause of death and the Taser as contributory causes. The third and final report...determined that cause of death was multiple organ failure due to cardiopulmonary arrest; due to methamphetamine intoxication; *excited delirium*; left ventricular enlargement and fibrosis, with contributory causes: Rhabdomyolysis, secondary to multiple Taser application.

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We italicized “excited delirium” for a reason. [Here is how that term is defined](#) by medical specialists:

Excited delirium refers to a clinical situation that is characterized by a series of typical features that include agitation, aggression and paranoia, intolerance to pain, unexpected physical strength, failure to tire despite constant physical activity, lack of clothing, rapid breathing, profuse sweating, elevated temperature, an attraction to glass or mirrors, and failure to respond to police or medical directives.

As that article mentions, the syndrome, commonly referred to as “ExDS” has been stigmatized because some consider it a handy way to excuse police abuses. ([For a comprehensive accusation](#) to that effect check out this article in *Slate*.) Still, ExDS first appeared in nineteenth century medical literature as “Bell’s mania,” so its origin long predates current controversies in policing. And while some find it odious to attribute poor outcomes to anything other than officer misconduct, respected players in the policing community – say, [IACP’s Law Enforcement Policy Center](#) – have determined that ExDS is very much real.

More importantly, that’s also the view of the [emergency medicine community](#). In a highly detailed 2009 “[White Paper Report on Excited Delirium Syndrome](#),” the American College of Emergency Physicians concluded that ExDS “is a real syndrome of uncertain etiology...characterized by delirium, agitation, and hyperadrenergic autonomic dysfunction, typically in the setting of acute on chronic drug abuse or serious mental illness.” Two years later [an article](#) in the *Journal of Emergency Medicine* described the demeanor of persons in the throes of ExDS:

Patients present to police, Emergency Medical Services, and the emergency department with aggressive behavior, altered sensorium, and a host of other signs that may include hyperthermia, “superhuman” strength, diaphoresis, and lack of willingness to yield to overwhelming force. A certain percentage of these individuals will go on to expire from a sudden cardiac arrest and death, despite optimal therapy.

As one might expect, ExDS is also well known to [emergency medical responders](#):

The hallmark of ExDS is agitation and violent behavior in a patient with altered mental status. Patients with ExDS often have superhuman strength, do not respond to physical compliance techniques due to increased tolerance to pain, and are highly resistant to physical restraint. On physical exam, patients will present with hyperthermia, tachycardia and tachypnea.

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Officers, though, aren't clinicians. They don't work in anything that approaches a controlled environment. So while ExDS may indeed be "a medical problem masquerading as a police call" (that's what [an NIJ-sponsored report](#) calls it), the chaotic nature of street encounters may limit officers' willingness to let the fuse keep burning. After all, who says there won't be "bomb" at the other end? Bottom line: all that "superhuman strength" and unwillingness "to yield to overwhelming force" that accompanies a full-blown instance of ExDS will inevitably provoke a forceful police response.

Unfortunately, the U.S. lacks a national law enforcement use of force dataset. (In 2019 the FBI launched an effort to capture data about police use of firearms and any uses of force that caused death or serious bodily injury. For more about that click [here](#).) However, two common tools – pepper spray and conducted energy devices (CED's, e.g., "Tasers") – have been examined in some detail. [NIJ has little positive to say](#) about pepper spray. It's not considered an effective way to prevent violence and has actually been blamed for increasing officer injuries. On the other hand, [NIJ has reported that](#) CED's can reduce harm to both citizens and police.

Yet CED's also have problems. [A 2017 Reuters study](#) reported there had been more than one-thousand deaths attributed to their use. However, the authors blamed strikes to the chest for most of the toll. [According to PERF](#), though, some people are especially vulnerable to CED's. Among them are persons in the midst of an episode of ExDS:

Some populations currently believed to be at a heightened risk for serious injury or death following an ECW application include pregnant women, elderly persons, young children, visibly frail persons or persons with a slight build, persons with known heart conditions, persons in medical/mental crisis, and persons under the influence of drugs (prescription and illegal) or alcohol. Personnel should be trained about the medical complications that may occur after ECW use and should be made aware that certain individuals, *such as those in a state of excited delirium*, may be at a heightened risk for serious injury or death when subjected to ECW application or other uses of force to subdue them. [Emphasis ours]

Now that "excited delirium" has again reared its nasty head, consider the case of Zachary Bearheels. Here's a condensed version, self-plagiarized from "[Three \(In?\)explicable Shootings](#)":

Omaha officers came across a morbidly obese, mentally disturbed 29-year old man licking a store window. He accepted water and was let go. He was subsequently booted off a bus and caused a ruckus outside a store. Two officers got him into a squad car to go in for a mental check, but their sergeant said no.

Bearheels then broke free. Two other cops jumped in. They repeatedly Tasered Mr. Bearheels and struck him on the head. Zachary Bearheels went “motionless” and died at the scene. [A coroner later ruled](#) that his death was “associated with excited delirium (psychomotor agitation, hallucinations, speech and thought disturbances, reduced response to painful stimuli, bizarre and combative behavior, and hyperthermia), physical struggle, physical restraint, and use of conducted energy device.”

Many essays in our “use of force” section discuss instances that clearly line up with the syndrome. Consider, for example, the shooting death of [Michael Brown](#), which set off major protests and helped propel a national dialogue about the use of force against blacks. But as we pointed out in “[Lessons of Ferguson](#),” Mr. Brown was not blameless. [Convenience store videos](#) depict him shoplifting cigarillos and strong-arming a clerk who tried to stop him from leaving (1:12-1:35). Witnesses confirmed that Mr. Brown acted aggressively towards the officer who ultimately killed him. (The officer claimed that Brown punched him in the face and tried to take his gun.) And [an autopsy revealed](#) sufficient cannabinoids in Brown’s blood to impair judgment.

Fast-forward to...today. ExDS-like patterns are evident in two notorious recent episodes: the police killings of [George Floyd](#) and [Rayshard Brooks](#). No, we’re not saying that the officers who encountered them acted appropriately. (For our in-depth assessments check the posts.) But we *are* saying that factors associated with ExDS syndrome helped set the stage for the deplorable outcomes.

- Mr. Floyd and Mr. Brooks had substantial criminal records. Mr. Brooks was on felony probation.
- When faced with arrest, Mr. Floyd and Mr. Brooks suddenly turned non-compliant and violently engaged officers in protracted physical battles. Knock-down, drag out fights do happen in policing, but they’re definitely not typical.
- Mr. Floyd’s death is commonly attributed to choking. [His autopsy](#), though, revealed “no life-threatening injuries.” Instead, the diagnosis cites blunt force injuries, serious pre-existing medical conditions (e.g. severe arteriosclerosis, hypertension), and a substantial amount of drugs in his blood, including fentanyl and meth. *Notably, one of the rookies involved in the arrest, officer Thomas Lane, voiced concern during the struggle that Mr. Floyd was suffering from “excited delirium or whatever”* (see “[Punishment](#)” and 7/9 update, below.)

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- A field breath alcohol test indicated that Mr. Brooks was intoxicated. He had fallen asleep in his car in a drive-through lane, so something was clearly amiss. Manner of death was reported as two gunshot wounds to the back. No toxicology results or other medical information has been released.

In-custody deaths are frequently attributed to purposeful choking by police. Undoubtedly some have happened. But [a recent New York Times review](#) of seventy arrestees who died after telling police that they couldn't breathe paints a far more complex picture:

Not all of the cases involved police restraints. Some were deaths that occurred after detainees' protests that they could not breathe — perhaps because of a medical problem or drug intoxication — were discounted or ignored. Some people pleaded for hours for help before they died...In nearly half of the cases The Times reviewed, the people who died after being restrained, including Mr. Williams [Byron Williams, Las Vegas], were already at risk as a result of drug intoxication. Others were having a mental health episode or medical issues such as pneumonia or heart failure. Some of them presented a significant challenge to officers, fleeing or fighting.

While this account seems almost a roadmap to excited delirium, the *Times* makes no mention of the syndrome. Still, its analysis is eerily consistent with findings reported in the American College of Emergency Physicians' "[White Paper](#)" on ExDS:

There are well-documented cases of ExDS deaths with minimal restraint such as handcuffs without ECD use. This underscores that this is a potentially fatal syndrome in and of itself, sometimes reversible when expert medical treatment is immediately available.

In an extensive "law enforcement section" the paper's authors warn of the risks posed by persons in the grips of ExDS. But they also point out that virtually any technique or physical aid that's commonly used to control violent persons, including pepper spray, batons and joint locks, can prove lethal:

Given the irrational and potentially violent, dangerous, and lethal behavior of an ExDS subject, any LEO interaction with a person in this situation risks significant injury or death to either the LEO or the ExDS subject who has a potentially lethal medical syndrome.

What about simply stepping back? That's something we've repeatedly counseled (see, for example, "[First, Do No Harm.](#)") According to the authors, though, it may not be

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feasible to let persons who exhibit the symptoms of ExDS calm down on their own, “as this may take hours in a potentially medically unstable situation fraught with scene safety concerns.” Officers who encounter excited delirium are thus caught in the horns of a true dilemma, as any substantial application of force might kill. All they can realistically do is recognize when ExDS might be present, try to tailor their response accordingly, and call for EMS. And even if they do it all correctly, they’re hardly out of the woods:

This already challenging situation [ExDS] has the potential for intense public scrutiny coupled with the expectation of a perfect outcome. Anything less creates a situation of potential public outrage. Unfortunately, this dangerous medical situation make perfect outcomes difficult in many circumstances.

That paper was published during the halcyon days of 2009. More than a decade later its concerns about “potential public outrage” should policing prove lethally imperfect seem all too sentient. In these deeply polarized times it’s far wiser to blame poor outcomes on the cops, and *only* the cops. So if you’re an educator and decide to “pocket” this essay, we understand. We’re not offended!

Posted 1/31/21

WANT HAPPY ENDINGS? DON'T CHASE

Pursuits can lead to tragedy. Options are often available.



For Police Issues by Julius (Jay) Wachtel. Here are two extracts from one of our very first essays, “[When Cops Kill](#)”:

Police work is done in an uncertain environment. Making it perfectly safe for cops can make it perfectly dangerous for everyone else. Those loath to take personal risks should be encouraged to look for a different line of work.

A minority of officers use a majority of force. Personality traits such as impulsivity must be proactively sought out and addressed, hopefully before hiring, no later than during field training.

And here’s an outtake from a more recent piece, “[Working Scared](#)”:

Some cops may be insufficiently risk-tolerant; others may be too impulsive. Poor tactics can leave little time to make an optimal decision. Less-than-lethal weapons may not be at hand, or officers may be unpracticed in their use. Cops may not know how to deal with the mentally ill, or may lack external supports for doing so. Dispatchers may fail to pass on crucial information, leaving cops guessing. And so on.

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.

Got it? Let's apply these methods to a real-life tragedy. Say, the June 18, 2020 shooting death by Los Angeles County Sheriff's deputies of Andres Guardado.



According to the Sheriff's Department two deputies from the Compton station were in their cruiser patrolling a high-crime area when they observed Andres Guardado, an 18-year old youth with whom they were unacquainted, chatting with the occupants of a vehicle that

had parked in front of the driveway of an auto body shop. Mr. Guardado, they noticed, had a handgun. They pulled over and moved to confront him. He noticed and promptly ran off. (This surveillance video depicts the start of the chase. Mr. Guardado is on the right, one of the two deputies is on the left. Neither wore a body cam.)

What the L.A.S.D. release *doesn't* explain is why Deputy Miguel Vega would soon shoot Mr. Guardado dead. That justification [was provided to reporters](#) by the deputy's retained lawyer. He said that Mr. Guardado lay down on his stomach as if to surrender, but that as Deputy Vega approached with handcuffs the youth reached for the handgun he had thrown down during the chase. That account was seconded by the lawyer for Vega's partner, Deputy Christopher Hernandez, who didn't shoot. [The handgun they reportedly recovered](#), a .40 caliber pistol, lacked a serial number [and had been assembled from parts](#). In effect, it was an [untraceable "ghost gun."](#) It had apparently not been fired.



In the video Mr. Guardado doesn't seem to flaunt a gun. Otherwise what happened is indistinct. Of course, the deputies had a far better view. They also had abundant reason to look closely. Only a week earlier there had been a shooting at the shop. [A search of the business](#) turned up items beloved by drug abusers, including copious amounts of nitrous oxide gas and supposedly some meth. (Click [here](#) for stills and video related to the raid.) [Surveillance camera footage](#) seized from the business

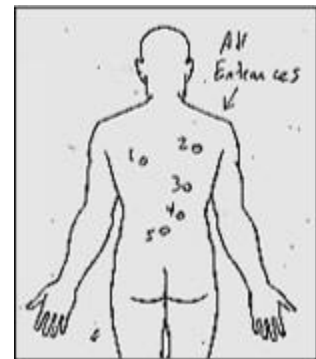
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depicts a whole lot of foot traffic for an auto body shop. Mr. Guardado was in street clothes. His presence and manner naturally provoked the deputies' interest. Was this fellow involved? Might he be directing customers to a new source?

According to the owner of the business everything was legit. Mr. Guardado, he said, [was working security](#):

We had a security guard that was out front, because we had just had certain issues with people tagging and stuff like that. And then the police came up, and they pulled their guns on him and he ran because he was scared, and they shot and killed him. He's got a clean background and everything. There's no reason.

We obtained a copy of the [official coroner's report](#). It indicates that Mr. Guardado suffered five bullet wounds, all in the back; each was considered fatal. There were also two graze wounds to his forearms (the deputy reportedly fired six or seven times.) Check out the diagram. Mr. Guardado was fully turned away from the officer when he was shot. If he reached for a gun, he didn't get very far. No drugs or alcohol were detected in Mr. Guardado's system, and the young man seemed otherwise healthy and fit.



Now for some *really* curious stuff. Sheriff Alex Villanueva [has long sought](#) to keep outsiders, including County officials, from meddling with things. He strongly objected to the autopsy's release (he said it would impair his investigation) and [accused the Coroner](#) of publicizing the results "to satisfy public curiosity." He also opposed holding a formal inquest with witnesses and such. And when the event *was* held – it was the County's first in thirty years – the only evidence that came in was from the autopsy. Both deputies, along with the two homicide detectives who investigated the shooting, invoked their Fifth Amendment rights [and refused to testify](#).

And now for even *more* curious stuff. A few days after the inquest (it was held on November 30) Sheriff Villanueva [relieved deputies Vega and Hernandez of duty](#). No, it supposedly had nothing to do with Mr. Guardado. Instead, the Sheriff's move supposedly stemmed from a traffic accident last April that injured a prisoner in a patrol car driven by Deputy Vega.

Why did the Sheriff wait eight months to suspend the deputies? Was Deputy Hernandez involved? As of yet, the circumstances seem impossibly murky. We know little about the deputies. [According to the L.A. Times](#), Deputy Vega, who shot Mr. Guardado, is an eleven-year veteran. His most serious recent faux-pas was a four-day

suspension in 2017 for either making false statements or failing to “properly screen a jail inmate.” More recently he was accused of using “unreasonable force” (the complaint was dismissed for lacking merit) and, twice, for alleged discourtesy. Deputy Hernandez’s disciplinary history was unspecified. A troubling allegation, though, has surfaced about the duo. In an unrelated civil rights lawsuit, fellow Compton station [deputy Austreberto “Art” Gonzalez](#) testified that Deputies Vega and Hernandez were prospective members of the notorious “Executioners” [deputy clique](#). (They deny it.) [Deputy Gonzalez also said](#) that it was common practice for Compton deputies to justify chases by falsely claiming they saw a gun.

[Mr. Guardado’s survivors sued the County in August](#). They allege that Compton deputies are poorly selected, ill-trained and inadequately supervised. Consequently, they habitually lie, misuse force and participate in “gangs.” But misconduct is mostly ignored. Here’s an extract from the [massive civil complaint](#):

54. Defendants further breached their duty in that defendants Los Angeles County Sheriff’s Department and County of Los Angeles deputies who were at the scene of the subject incident, including defendants Deputy Miguel Vega, Deputy Chris Hernandez, and DOES 1 through 50, and each of them, had a history of bad traffic and pedestrian stops, improper uses of force, improperly discharging their firearms, failing to follow proper procedures, and making false statements during investigations. Yet, the deputies were never disciplined, or were not disciplined properly, and were never trained or re-trained properly, and were never removed from service.

As one might expect, Mr. Guardado’s family and friends [had only good things to say](#) about the teen. He graduated from high school, was attending a technical college and held down two jobs, including as a security guard at that body shop. (According to the Sheriff the youth wasn’t licensed as a guard and was too young to be an armed guard.)

Well, those are some of the “facts.” Now all that’s left to figure out is the “why.”



Once again, check out the video of the encounter. (This view shows the second deputy.) There really is no other conclusion: Mr. Guardado purposely ran off. But why? After all, he was supposedly a security guard! According to his boss, Mr. Guardado got scared when deputies inexplicably charged at him. Still, we wonder. Look at the [photos](#), [video](#) and the [news account](#) about the search of the body shop. Was something beyond car repair going on?

Unlicensed carry [is forbidden in California](#). Ditto, selling handguns [to persons under twenty-one](#). According to the Sheriff, Mr. Guardado's ghost pistol had a California-illegal extended magazine [loaded with thirteen rounds](#). Did he [assemble the gun from parts](#)? Illegally buy it ready-made from someone else? Indeed, just who *was* Andres Guardado? His employer's questionable bonafides, the youth's flight and the gun leave us wondering.

Our concern extends to the deputies as well. Even if Mr. Guardado *did* go for a gun, Deputies Vega and Hernandez worked at the troubled Compton station, refused to testify at the inquest, and were ultimately suspended for something else. Still, there *is* that video. They took off after Mr. Guardado for a reason. Their justification – that the youth was armed – seems legitimate, and they reportedly seized a gun. Unfortunately, there is no body-cam video (according to the Sheriff body-cams won't be in wide use for another year.) All we have to explain *why* deputy Vega fired is what he said.

Bottom line: Mr. Guardado was wrong to flee, and in so doing he inarguably helped set the stage for a disastrous ending. We've written about similar episodes, most recently the police killings of [Jacob Blake](#) in Kenosha and [Rayshard Brooks](#) in Atlanta. In both cases officers had ample reason to intervene and their reasons for chasing seem justified. But here's what's so distasteful. Neither Mr. Blake nor Mr. Brooks nor Mr. Guardado were career criminals. They were more or less peaceably going about their business when officers showed up. That cops would soon shoot them dead seems vastly disproportionate. It's shocking.

Most cops and students of policing surely find such outcomes dispiriting. Still, cops *are* human. Once they're chasing someone who's resisting or may be armed, adrenaline rules. One of our earliest posts, "[The Chase is On](#)," reported on the fatal shooting of Darrick Collins by L.A. County deputies. Mr. Collins apparently resembled a suspected robber and fled when officers approached. In the end, the innocent man made a "threatening motion" and was shot dead. Our analysis led to some unpleasant observations. Here's an extract:

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Pumped up on anxiety and adrenaline, with little opportunity to observe or reflect, it's inevitable that [officers'] split-second decisions will occasionally prove to be tragically wrong.

Unless academies can produce Supercops who are unaffected by stress and fatigue and can see in the dark, prohibiting one-on-one foot pursuits may be the only option.

Short of outright prohibiting chases – after all, some are undoubtedly justified – here's another “option.” Rushing in isn't always necessary. Deputies Vega and Hernandez could have driven on, parked their vehicle out of sight and called for backup. A bit of planning and staging could have avoided an adrenaline-charged confrontation and the violence that such encounters can easily bring on.

Posted 8/24/23

WHAT COPS FACE

America's violent atmosphere can distort officer decisions



For Police Issues by Julius (Jay) Wachtel. In April 2023, following his return from tours in Afghanistan and Iraq, former Minnesota Army National Guardsman Jake Wallin [was sworn in as a Fargo, North Dakota police officer](#). He was twenty-three years old. Three months later, on July 14, Officer Wallin was shot and killed, and officers Tyler Hawes and Andrew Dotas were wounded as they awaited a tow truck to remove a car involved in the collision to which they had been dispatched. (One of the involved drivers was also wounded.)

That vehicle, which sat in the middle of the road, was attended by a fourth officer, Zach Robinson. His bodycam soon captured the most disturbing images one could imagine. (Click [here](#) for bodycam-only and [here](#) for the press conference and narrated bodycam.) This sequence tracks the encounter:



As traffic peacefully streams by the disabled vehicle (1), the shooter, a 37-year old local man, unobtrusively sits behind the wheel of a car parked in an adjacent lot (2). Meanwhile Officers Wallin, Hawes and Dotas are on foot nearby, awaiting the tow truck (3). Bursts of gunfire suddenly shatter the calm. Bullets strike each of the three officers and one of the drivers involved in the collision (4). Their origin, an AR-15 type rifle wielded by Mohamad Barakat, the sole occupant of the parked car, is equipped with an accessory “binary trigger” that discharges a second round as pressure is released. That in effect transformed his already lethal rifle into a machinegun. Barakat had also brought more than enough ammunition – 1,800 rounds were found in his car – to engage in a protracted gunfight (our introductory image depicts the arsenal found in his home.)

That he didn’t was due to Officer Robinson’s heroic and highly talented efforts. Instantly jumping into the fray, he quickly spotted Barakat, then fired a string of shots using the disabled vehicle as a shield. Barakat, who had stepped out of his car, was fatally wounded (5-8). Officer Robinson then scrambled across the road and, bravely exposing himself to return gunfire, continued engaging the gunman as he crawled behind the vehicle to its driver’s side (9-11).

[According to North Dakota Attorney General Drew Wrigley](#), Barakat was motivated by generalized feelings of hatred and picked on the crash scene “by happenstance”. His Internet searches over the years had featured keywords including “kill fast,” “explosive ammo,” “incendiary rounds,” “mass shooting events,” and, on the day preceding his attack, “area events where there are crowds.” That last search brought up [Fargo’s downtown street fair](#), which was taking place nearby and was in its second day. Barakat had also expressed interest in the city’s “[Red River Valley Fair](#),” a ten-day event that began July 7th.

Officer Robinson’s heroic response was absolutely correct. Alas, police shootings are often criticized, and often for good reason. A recent, noteworthy example is the August 5, 2023 fatal shooting by Denver police of Brandon Cole. This sequence tracks that encounter (click [here](#) for the video):



A 9-1-1 caller reported that Mr. Cole, 36, had pushed his wife off her wheelchair and attacked his teenage son. Two one-officer police cars responded (the images are from the second cop's bodycam). They found the situation depicted in the first image. Mr. Cole's wife was sitting on the curb. She asked for an ambulance [but reportedly implored the officers](#) "don't pull your gun out on my husband, please."

Mr. Cole, though, was aggressive from the start. He retrieved an object from his car, then walked towards the first officer, wielding what both cops thought was a knife (2-4). Although the second officer addressed Mr. Cole by his first name, he refused to stop. So while she covered things with her pistol, the first cop discharged his Taser (5-6). Alas, [one of its probes apparently missed](#). Despite more orders to stop, Mr. Cole then went after the second cop, "knife" in hand (7-9). She fired as he reached the sidewalk, inflicting fatal wounds (10-11). Mr. Cole's weapon (it's circled in red in the last two images) turned out to be a black marker.

Mr. Cole's pretend knife is reminiscent of an episode in Los Angeles last year. On July 18 a 9-1-1 caller [reported that he was being bothered](#) by an aggressive "dark-skinned guy with dreadlocks" to leave. But when he told the man to leave he replied "I'll leave when I

want. You can leave”, then pulled out a black pistol. Here’s a sequence of images from an officer bodycam (click [here](#) for the original video, and [here](#) for our annotated version):



The first image portrays Jermaine Petit walking away from two officers who trail behind. A vehicle occupied by a Sergeant and another cop follow along (2). One of the cops (we don’t know which) draws close (3) and notices that Mr. Petit’s “pistol” (fourth image, circled in red) isn’t a firearm. It was a car part (see left). But in the rapidly evolving situation – watch the video and notice how quickly things moved along – the officer’s “it’s not a gun bro” comment (5) was apparently lost in translation. One of the officers on foot replied “huh?”, then ordered Mr. Cole to “drop it” (6). And as their quarry stepped into the street (7), a careless gesture likely provoked the sergeant in the car and an officer on foot to open fire (8).

Fortunately, Mr. Petit survived. He would get to celebrate his 40th. birthday.

We addressed pretend weapons five years ago in “[There’s No Pretending a Gun](#)”. Two weeks before that, “[A Reason? Or Just an Excuse?](#)” explored why officers occasionally mistake ordinary objects like cellphones for a gun. Two years before that there was “[Working Scared](#)”. Here’s an outtake:

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.

Cops *do* get hurt and killed, and it's more than "occasionally." In our gun-beset land, preventives are few. Mohamad Barakat (legally) possessed a veritable arsenal. Even that "binary trigger" was legal. So when Mr. Barakat felt impelled to mount a terrorist attack, he instantly outgunned any ordinary cop on patrol.

Of course, cops well know that evildoers are apt to be better armed. Still, some officers are more skilled than others. Their personalities also vary. "[Working Scared](#)" emphasized that individual differences matter. But grab another look at the Denver and Los Angeles videos. Things were moving *very* quickly. Mr. Cole and Mr. Petit ignored officers' supplications and commands, and those vaunted "[de-escalation](#)" practices weren't an option. Both miscreants also clearly posed a threat to ordinary citizens. So that cure we once advanced – [backing off and letting suspects go](#) – wasn't in the cards.

Neither Mr. Cole nor Mr. Petit presented a clear-cut armed threat. Neither did they co-operate with police. Mr. Cole, though, was at first dealt with more sternly.

- As a colleague covered him with her pistol, the first officer on scene fired his Taser, but, as we noted, unsuccessfully. Mr. Cole then redirected his attention to the other cop. Unfortunately, he closed in on her so quickly that even if she had a Taser, switching to it could have been too risky. So she shot him.
- Although they seemingly had several opportunities to do so, officers didn't try to use a Taser against Mr. Petit. Perhaps the device was unavailable. His reported possession of a "pistol" may have also discouraged them from the distractions involved in deploying a non-lethal device.

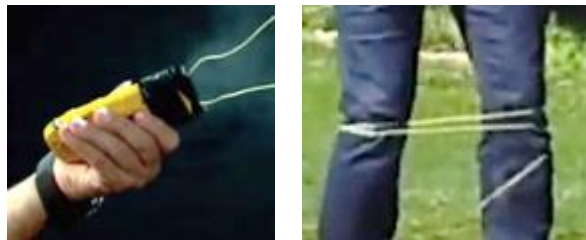
One day ago, at a news conference in Fargo, Attorney General Merrick B. Garland [expressed his heartfelt condolences](#) over the murder of officer Jake Wallin and the wounding of his colleagues. He also praised officer Robinson, whose heroism "saved the community from what could have been a catastrophic result." But the A.G. didn't venture into correctives. As cops well know, in our gun-besotted land, remedies other than bravery are few.

So what is available?

- Assault weapons laws. Most recently, "[Are We Helpless to Prevent Massacres?](#)" conveyed our distressing conclusion that "lawmaking is not a solution." That holds true in even supposedly "strong-law" states such as California ([#1 in gun](#)

[law strength per Giffords](#)), where loopholes such as we mentioned in “[Loopholes are \(Still\) Lethal](#)” allow the sale and possession of highly lethal .223 caliber semi-automatic rifles like the weapon used by Barakat.

- Extreme Risk Protection Orders. We’re unaware that the authorities had any advance notice that Mr. Cole or Mr. Petit were likely to lethally misbehave. On the other hand, [Mohamad Barakat was well known](#). In 2021 an anonymous tip about his “mental state”, use of “threatening language” and gun possession led to his interview by Fargo detectives. Barakat “denied any ill-intentions.” But, like Mr. Cole and Mr. Petit, he lacked a criminal record prohibiting gun possession, and the matter was dropped. Then, last September, his home kitchen caught on fire. Firefighters came across a “significant amount” of ammunition, several assault rifles and two large propane cylinders that seemed out of place. But there was no follow-through, and his threatening Internet activities were apparently undiscovered until it was too late. Even had they been known, preventative efforts would have been difficult, [as North Dakota lacks a “Red Flag” law](#) that would enable a judge to order guns seized before disaster strikes.
- Non-lethal weapons. It’s not just Tasers anymore. There’s now [BolaWrap](#), a gun-



like device which shoots a long Kevlar cord that wraps around a target’s arms or legs, disabling without causing injury. LAPD, [which touted its adoption four years ago](#), recently reported that patrol officers [successfully used it fourteen times](#) during a one-year trial period. Still, to be truly effective, non-lethal means must be quickly deployed, perhaps far sooner than present rules allow. In a post-Floyd atmosphere that discourages the use of force, that presents a substantial hurdle for even the most seemingly benign devices. So while LAPD Chief Michel Moore bragged about BolaWrap’s deployment to officers who patrol Metro, the city’s transit system, Metro officials emphasized that its use is yet to be approved.

Of course, prevention is the best option. But as rookies quickly discover, ill-intended characters can easily arm themselves to the teeth. Moreover, cops are human. Their toolbox is limited. Given the highly conflicted situations they often face, and the lack of voluntary compliance they often experience, it’s no surprise that their lethal-force

decisions will occasionally go astray. Last month we posted “[San Antonio Blues](#),” which analyzed the police killing of a distraught, ill-behaving citizen whose “weapon” was a...hammer. This tragedy occurred in one of the beset city’s poorest, most violence-stricken neighborhoods. And as one might expect, that’s where police shootings were most frequent:

Does this let the three ex-cops “off the hook”? Certainly not. But to prevent endless replays, we must openly acknowledge that the disorder and lack of compliance common in poverty-stricken areas can poison officer decision-making and distort their response. However, the ultimate “fix” lies outside of policing. As we habitually preach in our Neighborhoods essays, a concerted effort to improve the socioeconomics of poor places is Job #1. Not-so-incidentally, that could also improve the dodgy behavior of some citizens. And good cops would find that most welcome!

In “[On the One hand...But On the Other](#)” and “[Regulate. Don’t Obfuscate](#)” we mentioned that the Floyd episode has fueled a toxic atmosphere, promoting a disengagement that can ill-serve the public and advancing rules that threaten to impair cops’ ability to protect themselves. But make rules all you wish. For real solutions, one must address the socioeconomic environment in which cops labor. There really is no third choice.

Posted 9/3/22

WHAT WERE THEY THINKING? (PART II)

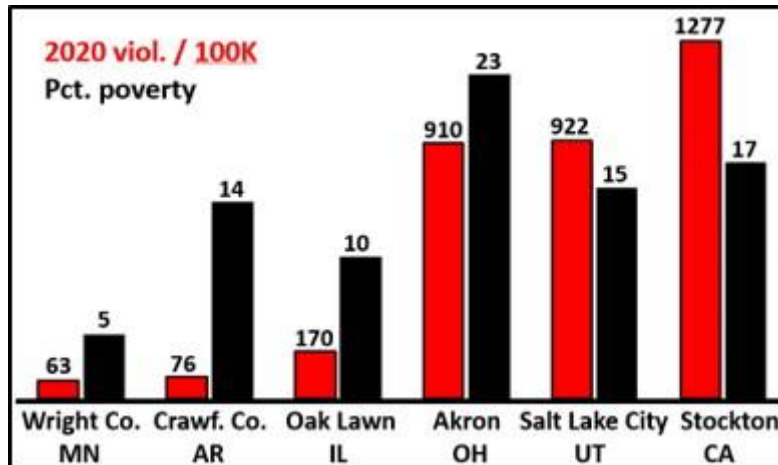
Examining six recent (and notorious) uses of force



For Police Issues by Julius (Jay) Wachtel. In Part I we examined the “particularly offensive” fatal shooting by Lawton, Ok. police of a 29-year old man. A pair of officers responded to a 9-1-1 call that Quadry Sanders was violating a protective order obtained by his estranged spouse. Prior episodes of misconduct had given Mr. Sanders a poor reputation, and this time around his failure to comply may have helped cops incorrectly conclude that when his hand dropped to his waistline he was reaching for the gun he reportedly brought along.

We say “helped” conclude because police decisionmaking is affected by a host of organizational, individual and situational factors. Agencies, cops and places differ, and each poses its own challenges. In “[Three In\(?\)explicable Shootings](#)” we mentioned that “cops who are easily rattled, risk-intolerant, impulsive or aggressive are more likely to resort to force or apply it inappropriately.” Lawton is the second most violent (and, not-so-incidentally, the second poorest) of Oklahoma’s ten largest cities. Gunplay is not uncommon. Indeed, only a year had passed since one of the cops (not the one who fired first) shot and killed an armed suspect – by official accounts, justifiably.

The environment in which cops toil has long been one of our favorite “explainers” (see, for example, “[The Chase is On](#)”). To continue our probe we selected a recent, highly-publicized use-of-force episode from each of six communities across the U.S. Violent crime rates were computed from the [UCR’s 2020](#) “offenses known to law enforcement” file. Poverty rates are from the Census Bureau’s “[Quick Facts](#)” page.



We ordered these places by their violent crime rates. As one might expect, it was far more pronounced in poorer areas. While the relationship between variables isn't precise, the three most economically challenged communities, Akron, Salt Lake City and Stockton, suffer considerably more violence per capita than their more prosperous counterparts. Compared to, say, the economically-blessed citizens of Wright County, the residents of Stockton, Salt Lake City and Akron are respectively *twenty, fifteen* and *fourteen* times more likely to fall victim to a violent crime.

Of course, economic conditions can't explain everything. Figuring out why cops act as they do requires probing incidents in depth. We'll begin by setting out what took place.

Episodes

Otsego, Wright County, Minnesota (August 7, 2022)



Wright County sheriff's deputies provide policing services for [Otsego](#), a prosperous city of 21,000 in the greater Minneapolis-St. Paul area. During the early morning hours of August 7 a 9-1-1 call alerted deputies that Jordyn Hansen, a deeply troubled 21-year old, was "having mental health challenges" and threatening the occupants of the home where he lived with a knife (for a CBS News piece on the episode, click [here](#).)

Mr. Hansen had long suffered from emotional and drug abuse issues. He was twice committed by a court and was living with his uncle and aunt after a recent stint in rehab. When first approached Mr. Hansen seemed cooperative and agreed to accompany

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deputies to the hospital. [But he suddenly bolted](#) into the kitchen, grabbed a knife and fled.

More cops arrived. Police soon cornered the youth in a nearby yard. [According to the Sheriff's Dept.](#) attempts to Tase Mr. Hansen were unsuccessful, and when he charged in with the knife two deputies shot him dead. Unfortunately, Wright County deputies don't wear body cameras. But Minnesota's [Bureau of Criminal Apprehension](#), which investigates all uses of force that result in death or serious injury, [informed CBS News](#) that (as yet unreleased) patrol car video "shows Hansen 'running towards Deputy Wilkinson' with a knife in his hand. Wilkinson then falls backwards 'as he fires his department handgun'."

[According to Mr. Hansen's aunt](#), deputies ignored her husband's supplications that they immediately restrain the youth and allowed him to move freely. In her view, the lax response allowed the youth to grab the knife.

Mulberry, Crawford County, Arkansas (August 21, 2022)

A guy came in the store...He got him some water in a bottle and went outside to sit on the bench. Got up and went to the front of the store sit on the curb. I went out and told him he could not sit there. He got up and spit on me and told me he would cut my f....face up...

[That's what an Alma, Arkansas store clerk told police](#) the morning of August 21. Two sheriff's deputies soon observed a bicyclist who matched the evildoer's description in nearby Mulberry. They were joined by a local cop. [According to Sheriff Jimmy Diamante](#), the suspect, Randal Ray Worcester, 27, instantly turned violent and brutally punched a deputy in the head, causing a concussion.



There's no video available of that interaction. But a bystander recorded the rest of the struggle (click [here](#) for the full video and [here](#) for our edited version.) Be forewarned that it's a difficult watch, as the



officers repeatedly deliver savage blows to what quickly turns into a defeated man (see left.) Towards the end, the cops notice they're being filmed and yell at the citizen to stop (see right).

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Sheriff Diamante has little sympathy for Mr. Worcester. Although he conceded that “the citizen video is troubling to watch” and gives rise to “concerns about the use of force”, he pointed out that the suspect is currently serving a three-year suspended sentence for punching an Oklahoma City police officer in the face in 2021.

Mr. Worcester was arrested for fighting the officers and was released on \$15,000 bail. He may also face charges for threatening the store clerk. His treatment, though, has drawn considerable criticism, and the U.S. Justice Department announced a civil rights investigation. [For now, the three cops have been suspended from duty.](#)

Oak Lawn, Illinois (July 27, 2022)

On July 27 Oak Lawn officers on routine patrol [noticed that a vehicle lacked a front license plate](#) and exuded a strong odor of marijuana. They pulled the car over and had the driver, a young male, step out. (Click [here](#) for ABC’s full coverage of the incident and [here](#) for our video compilation.) He was quickly patted down and stood aside. A teen passenger was then asked to exit. Hadi Abuatelah, 17, came out with a bag slung around his neck. And as he was being cursorily patted down he took off.



Officers chased Abuatelah and soon had him on the ground. They struggled mightily over the bag. Abuatelah wouldn’t let go, and the officers delivered many blows, supposedly because they feared the bag contained a gun. A third officer soon joined them [and delivered a contact stun from his Taser](#). According to Oak Lawn’s police chief, that was the only way they could free the bag from the youth’s grasp.

“Had the offender drawn the weapon, [the officer] could have shot him. Were they supposed to wait for him to pull it out?” And yes, there was a gun inside. It was a Raven Arms .25 pistol loaded with three rounds of ammunition.



Abuatelah suffered serious head and facial injuries and spent four days in the hospital. An officer was also injured but didn’t require hospitalization. [Prosecutors charged the youth](#) with “aggravated unlawful use of a weapon” and “unlawful possession of a firearm by a minor”; further proceedings are scheduled for September. But as one would expect, all those punches upset many citizens. According to a spokesperson for the Arab American Action Network, “the crime that everybody witnessed is the crime of Hadi being brutally assaulted by three grown men. That’s the crime that we want to talk about...”

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Mr. Abuatelah's family filed a lawsuit over the cops' "extreme and outrageous conduct". Yet Oak Lawn's police chief strongly defends his officers' actions. An internal investigation is underway, but disciplinary action is not expected.

Akron, Ohio (June 27, 2022)

During the early morning hours of June 27 Akron police officers attempted to stop a vehicle for lack of a rear license plate and other violations. Its driver and sole occupant, Jayland Walker, 25, sped onto an expressway, and a pursuit ensued (click [here](#) for the official narrative and video compilation, and [here](#) for our edited version.)



"About forty seconds" into the chase officers reported that a gunshot was fired from the vehicle. Its sound and a "flash of light" are said to have been captured by body cameras. Mr. Walker soon exited the expressway and came to a stop. Clad in a ski mask, he stepped out from the passenger side and fled on foot. Several officers took up the chase and fired Tasers, but without apparent effect.

Momentarily, Mr. Walker paused and turned to face his pursuers. Officers instantly opened fire, and they kept shooting even as he fell to the ground. (An officer can be heard commanding "cease fire!") Mr. Walker was mortally wounded. [According to the autopsy](#), he suffered 41 entry wounds and five graze wounds. Twenty-six bullets were found in his body.

And no, Mr. Walker had *not* been carrying a gun. However, a pistol and a loaded magazine were found in his car (see right), and police reported that a cartridge casing consistent with the weapon was located near the spot where Mr. Walker supposedly fired a shot from his car.



It wasn't these cops' first run-in with Mr. Walker that day. [According to WTDN News](#), the officers observed his vehicle earlier but let it go. However, they soon learned that the same car had fled from police in a nearby community a day earlier. So when they came across the vehicle for a second time they were determined to intervene.

On July 3 Akron's mayor and police chief [conducted a press briefing and played video footage](#). Protests broke out the next day and the city instituted a nighttime curfew. Akron subsequently designated July 13 as a "[Citywide Day of Mourning for Jayland](#)

[Walker](#)". Several officers have been placed on "administrative leave" and Ohio's Bureau of Criminal Investigation is conducting an inquiry.

Salt Lake City, Utah (August 14, 2022)

During the early afternoon hours of Sunday, August 14, [South Salt Lake officers](#) grabbed an odd-behaving 35-year old man at a park and dropped him off at a detox facility to sober up. But Nykon Brandon didn't stick around. An employee of a Salt Lake City brewery soon informed 9-1-1 that a crazy sort had just attacked an employee. "Definitely mental health issues. So if you've got mental health resources, send them out."



Officer bodycam videos show a pair of Salt Lake City cops chasing a very large, highly agitated man who is running across the highway dressed in nothing but his briefs (click [here](#) for the official compilation and [here](#) for our condensed version.) As a cop



nears Nykon Brandon, 35, begins throwing punches. Soon all tumble to the ground and a violent struggle ensues. Momentarily a third officer joins in, and Mr. Brandon aggressively grabs for his gun (see right).



More cops quickly arrive. Officers finally gain control, apply handcuffs and place Mr. Brandon on his stomach. As they continue to hold him in this position – from the videos, the pressure seems moderate – they verbally try to calm Mr. Brandon down. But (and this isn't on the video) he soon stops breathing. [Officers administered Narcan and chest compressions](#). Alas, their efforts were unsuccessful and Mr.

Brandon died.

Many citizens excoriated Mr. Brandon's treatment by police. A Black Lives Matter representative argued that "stealing a beer does not equate to the death penalty." BLM also complains that no video evidence was provided that confirms any lifesaving attempts. [Police announced](#) that the final video wasn't released "out of consideration for Brandon's family".

Stockton, California (February 22, 2022)

Fixed surveillance cameras show that on February 22 Tracy Gaeta was recklessly motoring through Stockton. She sped the wrong way down a one-way street, struck the rear of a stopped police car, and ran a red light. (Click [here](#) for the official video compilation, and [here](#) for our edited version).



K-9 officer Kyle Ribera ultimately chased Ms. Gaeta's car into a dead end. But as he began to exit the patrol car, Ms. Gaeta shifted into reverse and rammed him. That knocked Officer Ribera back into the car and caused him to strike his head. He promptly emptied his pistol at Ms. Gaeta's vehicle, shattering its back window (see left).

Quickly reloading, Officer Ribera commanded "hands up." But Ms. Gaeta again drove backwards, swinging her car sideways so that her seat faced the cop's car. Officer Ribera promptly fired a second volley, which seemed aimed directly at the driver (see right). In all, [he reportedly discharged 33 shots](#). Ms. Gaeta's car stopped moving. Officer Ribera promptly summoned an ambulance.



Officer Ribera probably assumed that his antagonist was male. After all, the cop whose vehicle Ms. Gaeta first struck had repeatedly referred to its driver as a "he". As it turns out, the errant motorist was [a 54-year old grandmother from Sacramento](#). Her family was surprised to learn that she had wound up in Stockton, fifty miles from home. Their lawyer described Ms. Gaeta as a "victim of preventable police violence." He said that she had neither a "serious mental illness" nor a criminal record but was "depressed from a recent breakup." He insisted that "no matter what was going on with her — even if she had committed a heinous crime — [the officer] didn't have the right to shoot her."

Did the cop break the rules? [Stockton police regulations](#) require that officers "make every effort to avoid putting themselves into a position where they could be struck by a fleeing vehicle, requiring them to use a firearm to protect themselves." They may fire at moving vehicles only "to end an imminent threat to human life". Whether Officer Ribera was in compliance is still being sorted out. Still, he seems a well-regarded member of the force (click [here](#) for his appearance in a "COPS" segment) and to date no discipline has been imposed.

Discussion

These incidents came to our attention because of their poor, newsworthy endings. We don't claim that they broadly represent police-citizen encounters. Hopefully, they don't. After all, only one person threatened a cop with a weapon, and that was a kitchen knife. Yet three of the six citizens were shot dead. A fourth perished while under restraint, while the two who survived endured supposedly unwarranted beatings. We'll begin with the fatal encounters.

Otsego. We're reluctant to fault a deputy for shooting someone who lunges with a knife. Even when multiple officers are on scene, encounters with the emotionally disturbed (see, for example, the [November 2019 episode in Los Angeles](#)) are inevitably fraught. Whenever possible, the best approach to dealing with the mentally ill is to immediately gain physical control. So we're critical of the deputies' failure to promptly take custody of the youth, as his guardians apparently asked them to do.

Akron. This episode began with an attempted car stop that turned into a pursuit, during which the driver reportedly fired a shot. As the image shows, he ultimately stepped out wearing a full ski mask. That may have confirmed the fear that he posed a lethal threat. And when he suddenly stopped and swiveled, a nervous cop fired. As so frequently happens, that discharge apparently led his colleagues to open fire. Yet their antagonist turned out to be unarmed. He left his gun in the car.



Police personalities vary. “[Three Inexplicable Shootings](#)” suggests that “cops who are easily rattled, risk-intolerant, impulsive or aggressive are more likely to resort to force or apply it inappropriately.” Had Akron's officer been more level-headed, things might have turned out peaceably. Yet his city, as our opening graph indicates, is a fraught place. As we suggested in “[Speed Kills](#)”, “violent experiences...play a major role in fashioning the lens through which officers perceive and respond to threats.” Might a combination of personal characteristics and the nature of one's community virtually doom some cops to over-react?

How could it *not*?

Salt Lake City. We found nothing exceptional about the tackling of a naked, disturbed man. Police were clearly trying to “immediately take custody” before an innocent citizen got hurt. However, the officers were heavily criticized for placing Mr. Brandon – a *very* large man – on his stomach and keeping him there. After all, that's what supposedly led to the deaths of [Ronald Greene](#) and, one year later, [George Floyd](#). And

while the pressure applied on Mr. Brandon seems far less constant and severe than what happened in those cases, he nonetheless lost consciousness and died.

Autopsy results haven't been revealed, so we don't know whether Mr. Brandon had ingested drugs. If so, his wild, aggressive behavior would suggest that he had been in the throes of [excited delirium](#). If so, any struggle could have proven fatal. Verbally calming the man down, as the officers ultimately tried to do, was a good move. But placing non-combative persons in a side recovery position is also recommended. However, from the videos that have been released, there's no indication this was done.

Stockton. Would the K-9 cop have knowingly emptied his pistol at a crazed middle-aged grandmother? We've never been in that predicament, but our best guess is a resounding – no! Had the vehicle been in fact registered to Ms. Gaeta (we don't know), and had dispatchers passed that on, the K-9 officer may have reacted differently. Another cop, though, had already mistakenly referred to the driver as a “he.” So a lack of information – and particularly, *accurate* information – may have played a role.

On the other hand, Stockton is a very violent place – indeed, it's by far the worst of our group. Considering what already took place (remember, another police car had been struck) the cop may have gone into survival mode. As in Akron, officer personality may have propelled the use of lethal force.

Mulberry. When Ray Worcester was first confronted, the 27-year old Arkansas man reportedly punched a deputy in the head. That wasn't captured on video. But everything that followed was recorded by a bystander.

[Arkansas Governor Asa Hutchinson pronounced the beating](#) – for that's what it clearly *was* – as “reprehensible and “not consistent” with what cops are taught. To be sure, Mr. Worcester seems a violent sort. But the cops who delivered the blows came off as his badge-wearing equivalents. It's yet another example of cops [setting aside their craft](#) in favor of satisfying their inner demons. Yet as we entitled our essay about George Floyd, “[Punishment Isn't a Cop's Job](#).” Really, it's *not*.

Oak Lawn. Officer bodycams reveal that police initially treated Mr. Abuatelah courteously. In our opinion, far *too* courteously. Although he exited the vehicle with a (closed) bag slung over a shoulder, it went initially unexamined, and his pat-down (left image) seemed at best cursory. A lack of meaningful restraint allowed the teen to bolt (right image), setting off a foot chase that ended with what critics describe as a beating.

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We don't agree. During the struggle officers likely sensed by touch that Mr. Abuatelah's bag might hold a gun. Bodycam videos support their claim that the blows were intended to get the youth to let go of the bag. But he resolutely held on. That forced a third cop to come in and jolt him with a Taser. Notably, while there's



been plenty of criticism of the cops, [more than a few citizens](#) have also come out in their support.

Here, our reaction is much the same as in Otsego. While officers should seek to promote voluntary compliance, being overly casual invites misbehavior. Taking prompt control of individuals and situations can avert the need to use force. And that, too, is what the "craft of policing" is all about.

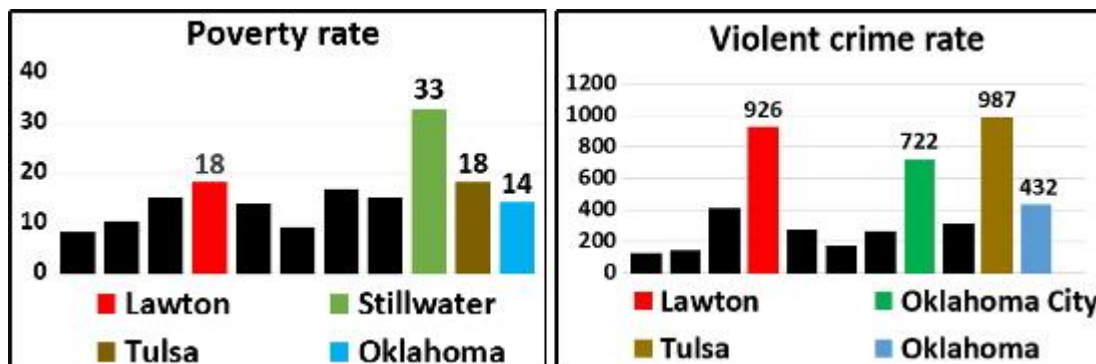
Posted 8/15/22

WHAT WERE THEY THINKING? AND...WHY?

Violent communities frighten their inhabitants. And their cops.

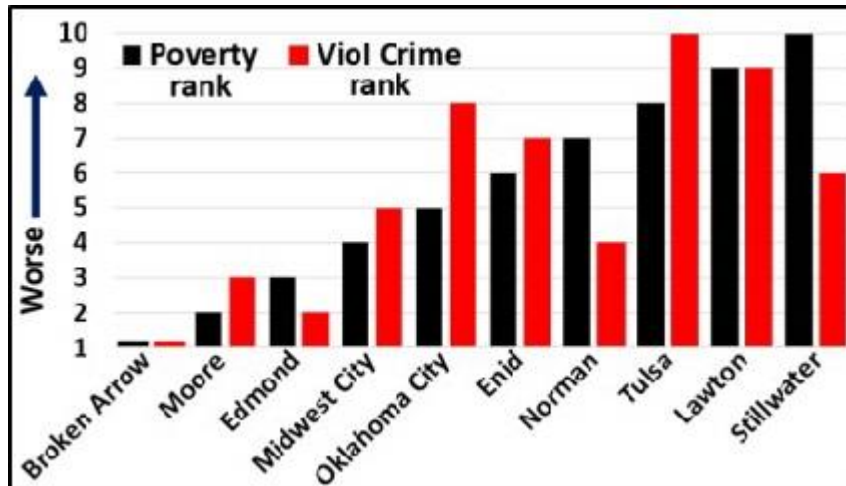


For Police Issues by Julius (Jay) Wachtel. Lawton would seem a promising place. With a population just short of one-hundred thousand, the sixth-largest city in Oklahoma is a military/industrial hub, home to Ft. Sill and a major Goodyear plant. Yet with a median household income of \$47,690 and 18.4 percent poverty rate, [Lawton substantially lags](#) behind the “Sooner State’s” \$53,840 MHI and 14.3% poverty rate. Economy-wise, Lawton winds up second-worst of Oklahoma’s ten largest cities.



It’s also second-worst when it comes to violence. [UCR crime data](#) suggests that the community is a truly dangerous place. Lawton’s 2019 violent crime rate of 926/100,000 was more than twice Oklahoma’s 432 and second only to Tulsa’s 987. And when it comes to murder Lawton was the worst of the bunch: its sixteen homicides in 2019 produced a rate of 16.3, well beyond Tulsa’s 13.7 and nearly two and one-half times the state’s 6.7. (We used the UCR as the FBI’s “Crime Data Explorer” remains a work in progress.)

Over the years we’ve repeatedly noted that poverty and violence are closely linked. This graph orders Oklahoma’s ten largest cities by poverty (black bars, least poor on the left). As poverty increases, what’s the trend for violence (red bars)?



Well, Lawton clearly has problems. But why obsess about them? Because on December 5, 2021 the city was the site of a particularly offensive police shooting. Indeed, the bodycam footage is so shocking that we didn't place a copy on our website. (It's available on Lawton PD's YouTube channel. Click [here](#).)

[According to the Comanche County District Attorney](#), Lawton police responded to a caller who said that a man who was the subject of a protective order had entered a residence, was armed with a gun, and wouldn't let the person who obtained the order leave. That intruder turned out to be Quadry Sanders, 29. Officers Robert Hinkle and Nathan Ronan responded. On arrival they used their P.A. to announce their presence. A woman – the “protected” person, Mr. Sanders’ wife – shortly exited the home and crossed the street to meet with police.

Mr. Sanders then walked outside and quickly ran back in. The following stills, which we produced from officer bodycam video (Mr. Sanders’ head is purposely blurred) show what happened when he left a second time. (Check out the photo of the residence at top. That refrigerator and trash can were in the carport, to the right of the front door.) On this occasion Mr. Sanders is carrying a ball cap (left image). An officer, reportedly Hinkle, approaches, yelling commands. Mr. Sanders turns as if to go back in and the cop’s view becomes restricted by the refrigerator (center image). As the officer keeps coming Sanders pauses and his right hand moves to his midsection (right image).



Officer Hinkle instantly sidesteps the appliance and repeatedly fires (four shots, according to the D.A.) Sanders is struck and goes down. As he struggles to rise officer Hinkle fires again, reportedly seven times. Officer Ronan then fires four times. In all, Mr. Sanders was struck by twelve rounds. He died soon after arriving at the hospital. And no, he hadn't been carrying a gun.

Following an investigation by State authorities, [officers Hinkle and Ronan were fired January 7](#). On May 6th. they were charged with manslaughter in the first degree, which is punishable by [a minimum prison term of four years](#). They were released on \$25,000 bond.

We've often probed police shootings. See, for example, our two-parter, "When Must Cops Shoot?" [\(I\)](#) and [\(II\)](#). Cops have limited resources and, often, a dearth of information; especially, accurate information. Yet they're expected to resolve – peacefully, if at all possible – conflicted, rapidly evolving situations. To be sure, that might require they "slow down." And as we harped in "[Speed Kills](#)," taking the time to correctly assess things can work to everyone's benefit. Alas, not all situations afford the luxury of time. There are other complications. Some citizens might be reluctant to comply with police, and a niggling few may prove determined to misbehave. What's more, cops are human, and we know the foibles *that* implies. Given the complexity of their working environment, the availability of guns and other weapons, and, in some communities, the constant drumbeat of violence, it's little wonder that officers will occasionally get it wrong. *Lethally* wrong.

Let's apply some of these concepts to what happened in Lawton. [According to police](#), in addition to mentioning the protective order, the 9-1-1 caller complained that "Sanders was waving a gun inside the house." That was of course passed on to the officers.

Was the information accurate? [According to \(former\) cop Hinkle's defense lawyer](#), the officers had been "repeatedly" called to the home because of Mr. Sanders' behavior. They thought that he was reaching for a gun in his pants. And a gun *was* found on a table inside the house.

However, the seemingly compelling Sanders=bad guy scenario may have been somewhat exaggerated. [Local T.V. station KSWO reported](#) that court records indeed confirmed that Mr. Sanders was pending prosecution for spousal abuse. *But the protective order had expired*. In fact, his wife told reporters that the couple intended to reconcile, and that she had asked Mr. Sanders to come over and expel an unwanted visitor. Assumedly, it was that "visitor" – their relationship to Mr. Sanders' wife is to us unknown – who dialed 9-1-1.

Case Number	Name	Date Filed
2011M316(County)	Sanders, Quadry Malik	10/11/2011
2011M305(County)	Sanders, Quadry Malik	09/30/2011
2011M289(County)	Sanders, Quadry Malik	09/12/2011
2011M135(County)	Sanders, Quadry Malik	05/31/2011
2013M641(County)	Sanders, Quadry Malik	03/11/2013
2013M421(County)	Sanders, Quadry Malik	02/19/2013
2012T5255(County)	Sanders, Quadry Malik	10/10/2012
2011M2081(County)	Sanders, Quadry Malik	08/04/2011
2010M3614(County)	Sanders, Quadry Malik	12/21/2010

Our review of court files reveals that between 2010 and 2013, while residing in Colorado, Mr. Sanders was repeatedly fined, placed on probation and received brief jail terms for a range of misdemeanor offenses, including criminal mischief, shoplifting, assault,

harassment, disorderly conduct, resisting an officer, flight to avoid prosecution and failure to appear (see left). His misbehavior apparently continued in Oklahoma. A search returned through the [State portal](#) revealed that between February 2015 and October 2021 Mr. Sanders was arrested by Lawton police on at least three occasions for various misdemeanors, including domestic assault and resisting arrest.

Given the officers' prior contacts with Mr. Sanders and what they knew about his past, the man likely presented a threat. Add in what they *thought* they knew – that he had (again!) violated a protective order and was supposedly “waving a gun” – and that hand dropping to the beltline might have acquired special meaning. After all, violence and gunplay are no strangers to Lawton. Neither are threats to police. Indeed, only one year had passed since [officer Ronan had shot and killed an armed man](#).

And that brings us to the cops. [According to KSWO](#), officer Nathan Ronan was a Lawton cop for four years and had no reprimands on file. [Lawton police chief James Smith concluded](#) that the man officer Ronan shot and killed in January 2021, Zonterious Johnson, had exchanged gunfire with another person and, during a subsequent foot chase, threatened officer Ronan with a 9mm. pistol. Officer Ronan's actions were investigated by State agents and local prosecutors and he was cleared of wrongdoing.

Officer Robert Hinkle, who was the first to fire on Mr. Sanders and discharged the most shots, was a five-year veteran. [According to KSWO](#) his disciplinary record consisted of three suspensions, “all of which pertained to damaging a police unit [i.e., a vehicle].”

Mr. Sanders was a Black man. Might race have figured in his killing? Former officer Hinkle, who fired first, is also Black. His partner, former officer Ronan, is White. In “[Black on Black](#)” we discussed the 2019 death of Mr. George Robinson, a Black 62-year old resident of violence-ridden Jackson, Mississippi. Three officers, each a Black man, spotted Mr. Robinson as he apparently sold drugs from his car. Their rough treatment of

Mr. Robinson allegedly caused a fatal brain bleed, [and each cop wound up being charged with second-degree murder](#). ([Two were ultimately acquitted](#) and one was convicted, [but of manslaughter](#).)

Updates to that post mention similar episodes elsewhere. But speculating about race is just that: speculation. Still, it's true that needlessly lethal episodes typically take place in poor, violence-stricken neighborhoods and the victims are often persons of color. Officer skillsets vary, and it may be that some cops, Black and White alike, let their frustrations override their better judgment. Here's a bit of self-plagiarism from "[Black on Black](#)":

We approached this incident as we do all: tabula rasa. Still, when your author paused while building fancy tables to consider his own experiences carrying a badge, Mr. Robinson didn't strike him as much of a threat. Jackson's cops, though, work in a very unforgiving environment. When the now-indicted officers happened on someone who seemed to be taking advantage of the city's troubles, their exasperation may have led to an overly aggressive response. One that caused an old man to fall and crack his skull... Might Jackson's struggle with crime and violence affect how its officers deal with citizens? Could it sometimes lead to poor decisions? Really, how could it not?

Ditto, Lawton.

Posted 5/25/08

WHEN COPS KILL

Individual differences are key to understanding why some cops shoot

By Julius (Jay) Wachtel. This much is known. During the early morning hours of May 11, 2008 someone opened fire outside a fast-food restaurant in Inglewood, California, a working class community adjoining the L.A. Airport. Patrol officers who happened to be nearby saw a man jump into the back of a car. The vehicle then headed in their direction. Whether it was moving slowly, as witnesses say, or speeding right at them, as the officers claim, is a matter of controversy. Thinking that the man who got in the car fired the shots, and fearing they were in harm's way, the officers opened fire, wounding two of the vehicle's occupants and killing a third.

As it turned out, no one in the oncoming car had done anything wrong. Within days the Inglewood police chief expressed her condolences but stopped short of apologizing. "I won't go so far as to call it a mistake. The process that the officers went through had a very tragic outcome."

This much is known. During the late evening hours of May 17, 2008, police officers responded to a hardscrabble neighborhood in north Long Beach, California on a 911 call about someone behaving erratically. On arriving they spotted a thin, shirtless, middle-aged man wandering around. Whether he "charged" them, as the officers insist, or was minding his own business, as witnesses claim, is a matter of controversy. Unfazed by a Taser strike and baton blows, the man punched an officer in the face and grabbed his stick. As they tumbled to the ground the cop's partner pulled his gun and fired, with lethal results.

It turned out that the dead guy was a diagnosed schizophrenic whom other officers had previously handled without serious difficulty. By all accounts he was a harmless pest. Just before the fatal encounter he gave a gift basketball to a local kid; tragically, the youth ran over and watched him die.irate residents surrounded the officers and only dispersed when reinforcements arrived. Police were criticized for not dispatching a mental health unit. Whether one was available wasn't said.

Cops hate to admit error. But assuming that 19-year old Michael Byoune didn't deserve to be shot dead for riding in a car, and that 46-year old Roketi Su'e didn't deserve to be shot dead for being crazy, that's exactly what these episodes were: mistakes. And they didn't just "happen". In the first example officers acting on incomplete information wrongly identified someone as a perpetrator, leading them to

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interpret innocent behavior as threatening. In the second case there wasn't even a crime to begin with, only a mentally disabled person of the type that patrol officers successfully deal with every day. Why these particular cops couldn't handle the 120-pound man without shooting him is yet to be explained.

Acting in the absence of good information, jumping to conclusions and making tactical errors are bad enough by themselves: when these three sins are combined the consequences can be deadly. Officers aren't robots; differences in personality, experience and training can make them respond differently. Some may escalate force too quickly, others not quickly enough. Still, most are *very* careful about using guns; if they weren't every traffic violator who reached for a wallet before being asked would wind up dead.

What to do? Here are some commonsensical approaches to preventing needless shootings:

- Being a *real* professional means dealing with the good *and* the bad *and* the ugly. Engage officers in continuous dialogue about lethal force. Dispassionately examine screw-ups. Provide moral support but don't make excuses.
- Adopt the "best practices" model from private enterprise. Officers make excellent decisions to *not* use deadly force all the time. Reward them! Praise examples of good work at roll-call; use them to set behavioral standards and for training.
- Don't ignore individual differences. A minority of officers use a majority of force. Personality traits such as impulsivity must be proactively sought out and addressed, hopefully before hiring, no later than during field training.
- Policing is a contact sport. Insure that officers can always go *mano-a-mano* through regular physical combat training.
- Rethink pay plans. Day in, day out, it's patrol work -- not investigations, not SWAT -- that's the more mentally and physically challenging. Demand that street officers stay in good shape and compensate them accordingly.
- Police work is done in an uncertain environment. Making it perfectly safe for cops can make it perfectly dangerous for everyone else. Those loath to take personal risks should be encouraged to look for a different line of work.

To advance the profession one thing is crucial: shed the cloak of denial. All those efforts spent building bridges to the community can be rendered moot in the instant it takes to squeeze that trigger.

Posted 7/26/08

WHEN COPS KILL (PART II)

Why are some officers repetitively involved in questionable shootings?

Here are the [words](#) that lit up Ohio: “Cleveland police officer Jim Simone has an alarming record of killing people. If anyone else gunned down five people, we'd call him a serial killer.” That's how *Plain Dealer* columnist Regina Brett kicked off her July 16 piece about a 60-year old street cop who's shot at twelve people in his 35-year career and killed five, most recently an ex-con with a long rap sheet.

Here's [how that happened](#). While off duty, officer Simone was in a bank when another customer passed an “I've got a gun, give me money” note to a teller. As the robber fled Simone chased him, and when the suspect climbed into an idling truck he ordered him to freeze. According to Simone, the man reached down instead. That's when he fired. It turned out that the robber was unarmed and that the truck was his. Simone is under restricted duty while the shooting is investigated.

As one might expect, most of Cleveland, including the *Plain Dealer's* own staff, disagreed with columnist Brett. Here's how columnist [Phillip Morris](#) put it:

“There are some who wonder why Cleveland police officer Jim Simone, who has killed more civilians than possibly any officer in the city's history, is being hailed as a hero in some quarters. The answer is really quite simple. He is a hero.”

Columnist Brett has since [chatted](#) with Simone. What's his explanation for all those shootings? He cares, and he's a hard worker: “I go to work with the intention of finding some bad guys.” But this suspect didn't display a gun. Why did he shoot? Because he felt threatened: “If you put me in jeopardy -- whether that jeopardy is real or imagined -- I have to defend myself.” While not retracting her remarks, the columnist apologized for not speaking with Simone before publishing her original piece. But not to worry: as soon as he's back on the streets she'll accompany him on a ride-along!

Two-thousand fifty-four miles to the west, in sunny Inglewood, California, another cop felt threatened. *For the second time in two months* Inglewood police officer Brian Ragan [shot and killed](#) a man, this time while responding to a family disturbance in an apartment house. When Ragan and three other officers knocked a 38-year old man came to the door. He had a gun; when he allegedly raised it, Ragan fired. It now seems

that it was the wrong apartment -- the victim, a well-regarded postal worker, lived alone. The gun was registered in his name.

In May, as LiberalPig [previously reported](#), Ragan and another officer shot and killed a passenger in a vehicle whose occupants they mistakenly associated with a shots-fired incident. Now there's a \$25 million lawsuit. Meanwhile officials [are asking](#) why he was allowed to return to the field so quickly. Expressing "sincere regret" for the latest death (she called the earlier one a "tragedy"), Police Chief Jacqueline Seabrooks explained that officer Ragan was cleared by a psychologist so there was no reason to keep him on limited duty.

And that's not all. On July 1st. other Inglewood officers [chased a known gang member](#) into an alley after witnessing a drug deal. Police claim he was noncompliant. When he allegedly reached into his waistband they fired, killing him. Apparently he too was unarmed.

It's little consolation to a dead person's family and friends that officers made an honest mistake. Are there ways to reduce the possibility of lethal errors? Here are three things to consider:

Environment matters. Although Cleveland (pop. 461,000) has four times as many residents as Inglewood (115,000), both are demographically similar, with one in four citizens living [below poverty level](#). Both cities are also plagued by gangs and violence. In 2007, according to preliminary data, Cleveland's [murder rate](#) was 20.5/100,000, while Inglewood's was 16.5 (in 2006 it was an alarming 31.16). Cops in Cleveland and Inglewood clearly have a far harder time of it than officers in Beverly Hills, where one murder means a bad year. Police behavior reflects the environment, so one can expect that Cleveland and Inglewood cops will be more likely to interpret ambiguous situations as threatening and react accordingly.

Organizations matter. In recent years Inglewood and its police department have been hit with waves of [accusations](#). Inglewood's Mayor currently faces felony conflict-of-interest charges, while several cops are under Federal investigation for accepting sexual favors from massage parlors. Seabrooks, a former Santa Monica PD captain, was hired to clean up the mess. But after three officer-involved shooting deaths in as many months, none "clean," critics, including the [Los Angeles Times](#), complain that she's in over her head.

By and large, police officers work independently. Controlling their behavior is never easy; when departments are as rudderless as Inglewood seems to be, it's virtually impossible. In these days of police unionism it takes a strong and respected Chief to

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motivate officers while keeping them in line. Go too far in one direction and they'll be reluctant to act for fear of punishment; go too far in the other and you'll have a department-full of independent contractors marching to the beat of their own drummer.

Finally, *individuals matter*. [Jim Simone's comment](#) that "fear will make you respond" was particularly revealing. Considering the situations that officers regularly face, where things are often not what they seem, they must be able to tolerate considerable risk. In fact most do; if they didn't our streets would be lined with dead citizens. An overwhelming majority serve out their careers without killing anyone. That's not an indication, as some have implied, that they're slackers. On the contrary, it's evidence that they're sufficiently skilled, levelheaded and risk-tolerant to do their jobs without needlessly taking life.

Those "supercops" that some in Cleveland seem to long for are a sure bet for trouble. Leave policing to trained, thoughtful professionals, and leave Dirty Harry for the movies.

Posted 3/7/23

WHEN WORLDS COLLIDE

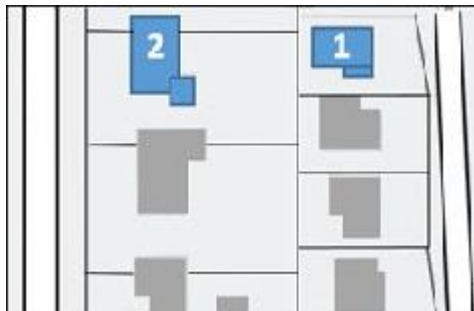
Wary cops, uncompliant citizens and troubled communities



For Police Issues by Julius (Jay) Wachtel. What's undisputed is that during the mid-morning hours of Tuesday, February 21, Hemet, Calif. police officers went to a single-family residence "in the 800 block of South Harvard Street" to investigate a theft. While an officer was in this home's rear yard (we'll call it house #1) he unexpectedly came across an adult male in the rear yard of an "adjacent" residence (we'll call that house #2). He was armed with a handgun. The cop promptly shot the man dead.

That man's name was Christian Drye. He was 30 years of age and lived in house #2 with his wife, Shameka, and their five children.

Hemet PD's [brief online post](#) and a flurry of accounts in the media mostly agree on the basics. But the latter offer some troubling details furnished by the victim's wife. [According to NBCLA](#), Shameka Drye said that Hemet officers came to their home (house #2) because "someone involved in a theft sneak" was supposedly in their backyard. But her husband refused to grant them permission to enter "without a search warrant." Instead, he said that he had a legal, registered gun and would go check himself. Officers supposedly let him while giving "zero warning".



This "warning," we assume, would have been that officers at house #1 might be troubled by a non-cop's armed presence. And there was another complication. What's missing from the accounts we've read is that the homes aren't side-by-side. House #1 is on Harvard Street. But the victim's

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residence, house #2, is on a parallel street. A see-through fence separates the rear yards. That placed the two sets of cops far apart, creating a disconnect that could greatly complicate things should stuff happen.

Like a cop at house #1 noticing the sudden appearance of an armed man at the rear of house #2.

Considering the outcome, we “assume” that the officers at house #2 didn’t alert their colleagues at house #1 about Mr. Drye, or not quickly enough to avoid a tragic misunderstanding. His spouse has filed a lawsuit and we’re certain that this issue will be fleshed out in time. In any event, Mr. Drye’s behavior greatly complicated an already-fraught landscape. His armed appearance likely startled the officer in the other yard. He probably felt threatened by the man’s proximity, and perhaps by the manner in which he carried his gun.

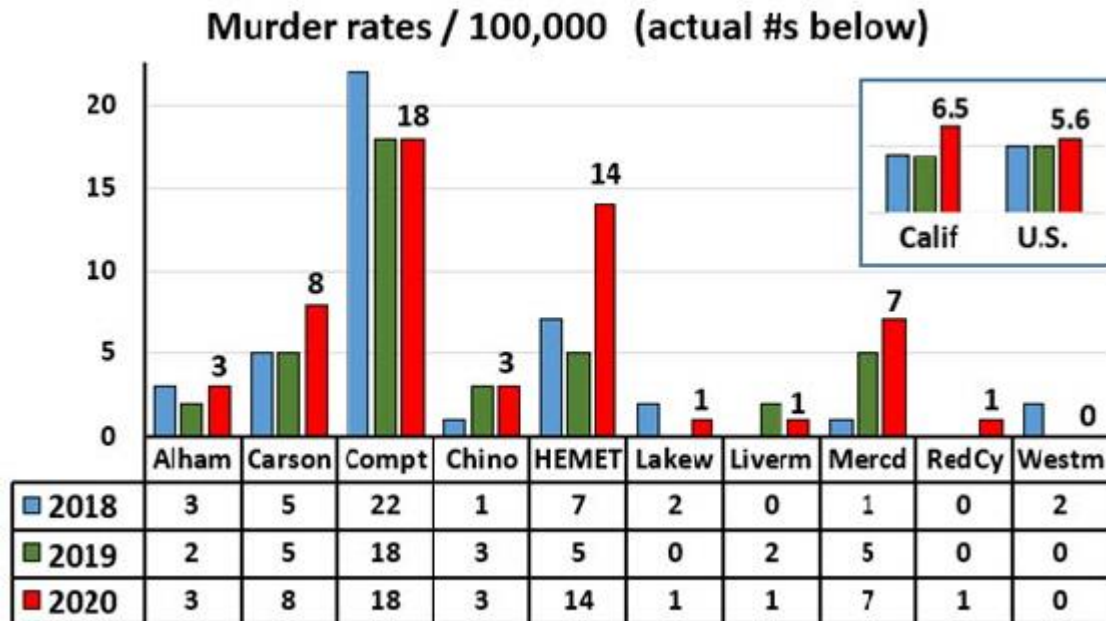
It wouldn’t be the first time that a cop has fired reflexively. In “[Three \(In?\)explicable Shootings](#)” we discussed the July 2017 killing of Justine Ruszczyk, a 9-1-1 caller who was shot dead by a Minneapolis cop who was startled when she slapped the trunk of his police car while unexpectedly walking up. That officer ([he wound up serving three years](#) for manslaughter) was reportedly hired despite concerns by psychiatrists. As in other examples we’ve mentioned, he may have been an unsuitable candidate from the start. Considering the reluctance of many citizens to voluntarily comply, being a cop calls for an abundance of risk tolerance. Impulsivity and aggressiveness can truly be shortcuts to disaster.

We know nothing about the officer who shot Mr. Drye. What’s more, it’s never only about individuals. Environment also matters. [A recent CNN piece](#) serves as a powerful reminder that Minneapolis – the city whose officers’ lousy behavior gave rise to the police defund movement – has long grappled with crime and violence. (Its well-known sobriquet is “Murderapolis”). Within its unforgiving atmosphere, senior officers, including [Derek Chauvin](#), were assigned to guide the newbies. As the city eventually discovered, the unholy combination of poor mentorship and “[highly charged, violence-laden environments](#)” can truly sabotage the craft of policing.

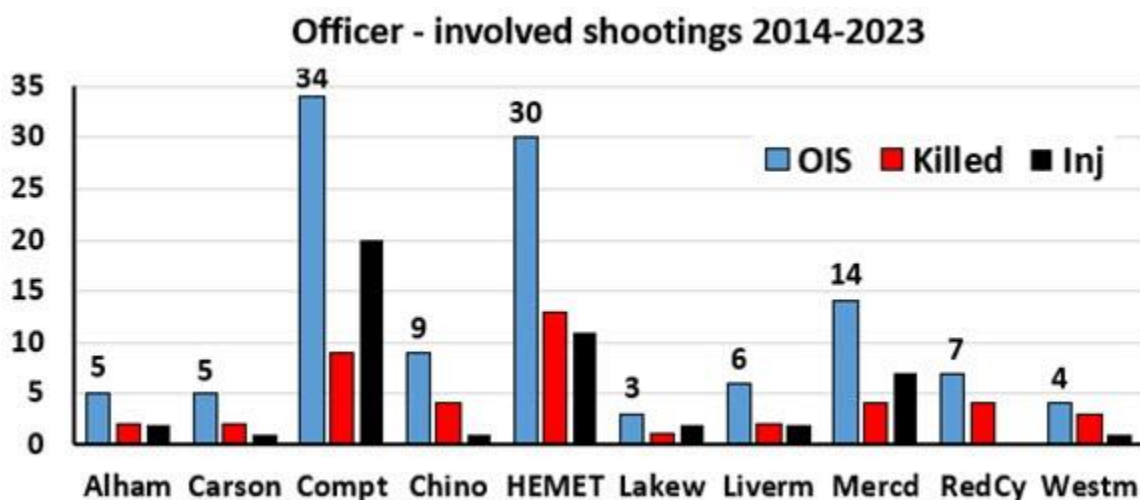
So what’s *Hemet* all about? Located in a rural area of Riverside County, about eighty miles southeast of Los Angeles, the [working-class city of about ninety-thousand](#) is 22.7 percent White, 23.3 percent Black and 25.6 percent Hispanic. Alas, its residents endure an unusually high poverty level of 23.7 percent, about twice Riverside County’s 11.6 percent and California’s 12.3 percent overall. As one might expect, Hemet’s lousy economics augur a substantial burden of crime and violence. Indeed, [USA.com’s crime index](#) ranks it 412 worst, crime-wise, out of 466 California cities.

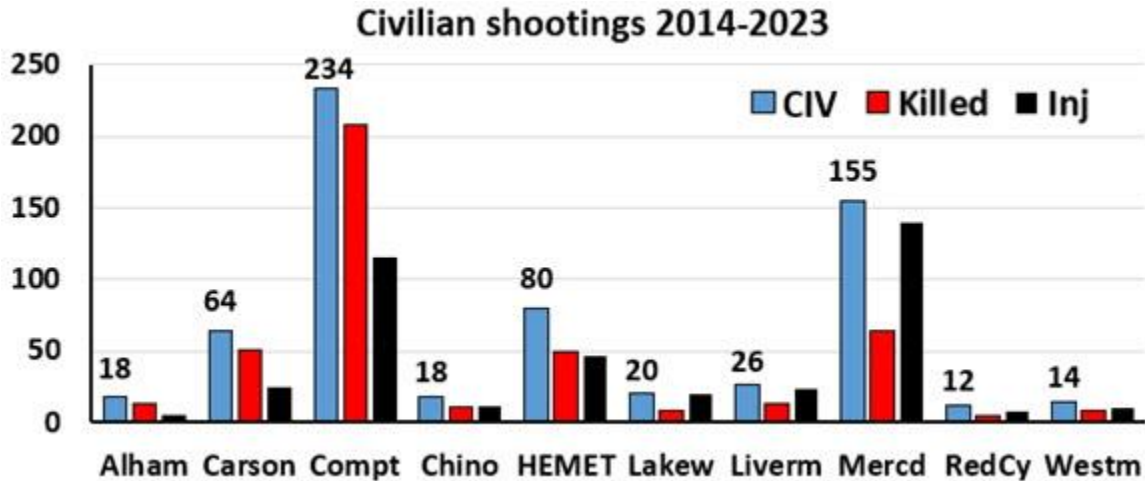
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[According to the UCR](#), Hemet's violent crime rate, and particularly its homicide rate, have long been elevated. This graph uses 2018-2020 UCR data to compare Hemet murder-wise with California, U.S. and a random sample of nine California cities with populations from 80,000-100,000.



In line with its substantial murder rate, Hemet suffers from lots of gunplay, lethal and otherwise. These two graphs reflect a decade's worth of officer-involved and civilian shooting incident data from the [Gun Violence Archive](#):





And the Archive can add [another civilian-on-civilian murder](#) to Hemet's toll. It happened on February 22, one day after police killed Mr. Frye. What's more, it's not only the city's innocents who fall victim to their deranged fellow residents. On January 21, the eve of Lunar New Year, [Hemet septuagenerian Huu Can Tran burst into a dance studio](#) in Monterey Park, about an hour's drive away. Armed with an assault-style pistol, he opened fire on a crowd with which he had once mingled, killing ten and wounding ten others. Tran later committed suicide.

It's not that *Police Issues* has an issue with the city. In a decade-and-a-half, none of our posts as much as mentioned Hemet. So when we heard about Mr. Drye's tragic killing, we promptly turned to (what else?) Google. And what it revealed was quite disconcerting. Consider, for example, this [October 7, 2019 headline](#) from a well-known area media outlet, the *Palm Springs Desert Sun*:

**Hemet, named one of "America's Most Miserable" cities,
has struggled since the Great Recession**

Who named it that? None other than *Business Insider*. Check out its [September 28, 2019 feature story](#), which ranks Hemet as no. 44 in its list of "The 50 most miserable cities in America, based on Census data."

Yikes. First responders are well aware of a city's foibles. Hemet's police officers know full well that their city's rough edges present an elevated personal risk for both citizens and cops. Note that sobering frequency of officer-involved shootings, which falls just short of notoriously violent Compton (of which we *have* often written.) Could such things affect workplace attitudes? How could they not? Still, whatever their environs, the craft of policing demands that officers accept considerable personal risk. Here's a bit of self-plagiarism from one of our very first posts, "[When Cops Kill \(Part II\)](#)":

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Considering the situations that officers regularly face, where things are often not what they seem, they must be able to tolerate considerable risk. In fact most do; if they didn't our streets would be lined with dead citizens. An overwhelming majority serve out their careers without killing anyone. That's not an indication, as some have implied, that they're slackers. On the contrary, it's evidence that they're sufficiently skilled, levelheaded and risk-tolerant to do their jobs without needlessly taking life.

Again, we know nothing about the officer who fired that shot. We're troubled, though, by the account given by Mr. Drye's wife. Did the officers at house #2 let her husband grab a gun and head to the back door without raising a stink? After all, they *had* to know what could happen. Or did Mr. Drye ignore their admonitions and behave as impulsively as the cop who gunned him down?

Over the years, our [Use of Force](#) and [Neighborhoods](#) posts have cautioned about the lethal combination of uncompliant citizens and edgy cops that besets down-on-their-luck places like Hemet. Alas, in our badly polarized society, changing citizen hearts and minds is probably a non-starter. But cops might listen to reason. Addressing (and, hopefully, *preventing*) catastrophes such as what happened in Hemet requires honest, deep discussions about the police workplace and the personalities of both citizens and cops. And these examinations must become a topic not just for training, but for roll-calls and everyday chatter.

Want a place to start? Here's an essay. No charge!

Posted 9/7/20, updated 9/18/20

WHITE ON BLACK

Should Black citizens fear White cops?



For Police Issues by Julius (Jay) Wachtel. Jackson, Mississippi's capital city, is mostly Black. Ditto its cops. So if citizens are better off dealing with cops of their own race, a frail, elderly Black resident should have survived a minor encounter with three Black cops. But as we reported in "[Black on Black](#)" Mr. George Robinson didn't.

This time we'll explore the citizen/cop combination that's provoked protests across the U.S. For examples we'll offer two: the August 23rd wounding of Mr. Jacob Blake, a Black resident of Kenosha, Wisconsin, by a White police officer, and the killing of Mr. Dijon Kizzee, a Black resident of a Los Angeles suburb, shot dead by White Sheriff's deputies on August 31st.

Here's an extract from a [tweet](#) posted by Wisconsin Governor Tony Evers on August 23rd, about three hours after a White Kenosha cop shot and crippled Mr. Jacob Blake:

Tonight, Jacob Blake was shot in the back multiple times, in broad daylight, in Kenosha, Wisconsin. Kathy and I join his family, friends, and neighbors in hoping earnestly that he will not succumb to his injuries....While we do not have all of the details yet, what we know for certain is that he is not the first Black man or person to have been shot or injured or mercilessly killed at the hands of individuals in law enforcement in our state or our country.

However compelled Governor Evers may have felt to denounce the police, his swift opinionating virtually guaranteed that something important would be left out. And it was. When their handiwork went tragically astray, three White cops were trying to arrest the 29-year old Black man on [a recently-issued warrant](#) for felony sexual assault. A Black woman who was apparently Mr. Blake's former domestic partner accused him of [breaking into her home](#) while she slept, sexually assaulting her, then leaving with her car and a credit card.



Mr. Blake remained free. On August 23rd the victim called police [to complain that he was back](#). According to the Wisconsin Department of Justice, which is investigating the use of force, "Police Department officers were dispatched to a residence in the 2800 block of 40th Street after a female caller reported that her boyfriend was present and was not supposed to be on the premises." [An account posted by the police union](#) adds that

Mr. Blake "was attempting to steal the caller's keys/vehicle." Here's our best assessment of what then took place:

- Officers arrived. [Radio messages](#) indicate that they knew of the warrant. Three officers tried to intercept Mr. Blake as he walked to his car. [According to the police union](#) Mr. Blake supposedly "forcefully fought with the officers, including putting one of the officers in a headlock."
- Mr. Blake apparently freed himself and kept walking. [Two officers fired their Tasers](#) but without apparent effect. A bystander who didn't see what, if anything, Mr. Blake carried said that [officers commanded Mr. Blake](#) to "drop the knife!"
- Two bystander videos depict the last part of the encounter. (Click [here](#) and [here](#).) Pistols drawn, officers followed Mr. Blake around his vehicle to the driver's side. As he approaches the door an officer grabbed him by the shirt (see above image) and when the still-noncompliant man stepped in the cop fired seven times into his back. Police claim they recovered a knife from the vehicle's floorboard, and state investigators reported that Mr. Blake admitted it was his.

Mr. Blake's lower body was paralyzed and he remains hospitalized. As for the sexual assault, he pled not guilty via video, posted a \$10,000 bond and waived a preliminary hearing. [Trial could take place](#) as early as November.

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Demonstrations and violence followed. As did visits by President Trump and his challenger, Mr. Joe Biden. Their views were predestined to clash. Focusing on the violence, the President praised law enforcement and the National Guard and [denied that racism had infected policing](#). As for Mr. Blake's shooting, his opinions seemed decidedly mixed:

Shooting the guy in the back many times. I mean, couldn't you have done something different? Couldn't you have wrestled him? You know, I mean, in the meantime, he might've been going for a weapon. And, you know, there's a whole big thing there.

In a controversial follow-on Mr. Trump likened what the officer did to a golfer who "chokes" while attempting a "three-foot putt."

Mr. Biden took a different tack. Focusing on the issue of race, he met with Mr. Blake's family, and in an hour-plus speech at a local church the candidate [bemoaned the plight of Black Americans](#) who must deal with White police: "I can't understand what it's like to walk out the door or send my son out the door or my daughter and worry about just because they're Black they may not come back."

During the afternoon hours of August 31st L.A. County sheriff's deputies were patrolling Westmont, an unincorporated neighborhood in the hard-stricken South Los Angeles area [when they came across a bicyclist](#) reportedly committing an unspecified moving violation. And when they flagged him down he dropped the bike and took off on foot, jacket in hand. ([Update](#): In a 9/17 news conference Sheriff's officials said that Mr. Kizzee had been riding on the wrong side of the street.)

A blurry security camera video depicts deputies chasing a large, burly man as he runs down a sidewalk. There's a protracted, violent tangle during which a deputy said he was punched in the face. Dijon Kizzee, 29, managed to free himself and resumed fleeing. Deputies said that's when he dropped the bundle he was carrying. A gun supposedly fell out, and Mr. Kizzee moved as if to grab it (but didn't). Mr. Kizzee then resumed fleeing (see image) but managed only one long stride before two deputies – [a supervisor and a trainee](#) – opened fire. Mortally wounded, Mr.



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Kizzee fell to the ground. ([Update](#): In a 9/17 “news briefing” Sheriff’s officials said that Mr. Kizzee picked up the gun and had it in hand when the deputies fired.)

Deputies discharged as many as fifteen shots. The handgun Mr. Kizzee allegedly possessed was recovered.

Gunfire by Kenosha police paralyzed Jacob Blake, likely permanently. Gunfire by L.A. Sheriff’s deputies killed Dijon Kizzee. Why did officers turn to lethal force?

We’ll start with Kenosha. With a population of about 100,000, [in 2018 its violent crime rate](#) of 338.2 came in slightly better than the national figure (368.9). That year its murder count was...four. In 2019 killings zoomed all the way to...five. So unlike, say, [Jackson](#) or, as we go on, South L.A.’s Westmont neighborhood, its cops should have little reason to feel they’re at war.

According to Kenosha police chief Daniel Miskinis [it was a combination of things](#). An outstanding arrest warrant may have produced a “heightened awareness” that, together with Mr. Blake’s resistance and possession of a knife, “changed the dynamics” of the encounter. Meaning, it made officers more likely to act defensively or, put another way, aggressively.

To be sure, individuals count. That warrant was for a crime of violence. And this wasn’t the first time that Mr. Blake had violently misbehaved. [According to a court file](#) reviewed by *USA Today*, in 2015 Racine (Wis.) police arrested Mr. Blake after he pulled a gun in a bar and became “combative” when confronted by officers. A firearm was recovered and he was charged with five counts. However, it seems that everything was ultimately dismissed. (For a detailed account of the incident click [here](#).)

What about the cop? Other than being White, [officer Rusten Sheskey](#) was thirty-one years old, had seven years on the job, and lacked any substantial disciplinary record. He also seemed very community-oriented. Indeed, [a year-old newspaper profile](#) depicted him in a very favorable light. Here’s an outtake from his comments during the interview:

What I like most is that you’re dealing with people on perhaps the worst day of their lives and you can try and help them as much as you can and make that day a little bit better. And that, for the most part, people trust us to do that for them. And it’s a huge responsibility, and I really like trying to help the people. We may not be able to make a situation right, or better, but we can maybe make it a little easier for them to handle during that time.

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Square that with shooting someone in the back. Your writer can't. Neither, apparently, can Mr. Joe Biden, [who quickly called](#) for the officer and his colleagues to be prosecuted.

[L.A.'s Westmont area](#) (2010 pop. 31,853), where the encounter between Sheriff's Deputies and Mr. Kizzee took place, is no Kenosha. Only three months earlier [deputies shot and killed](#) an 18-year old murder suspect who reportedly fired on them as he tried to get away. Westmont's most recent [six-month violent crime rate](#) of 413/100,000 (its projected full-year rate would be 826, more than twice Kenosha's) places it as the 27th most violent of Los Angeles' 272 neighborhoods. As one would expect, Westmont is also poor. A full *thirty percent* of its residents live in poverty, [nearly three times the U.S. figure](#) of 11.8 percent.

Might the implicit threat that Westmont presents affect officer decisions? Cops must frequently weigh the consequences to themselves and others of acting swiftly against delaying or trying to "de-escalate." Of course, the consequences of laying a wrong bet can be profound. [Let's self-plagiarize](#):

In the uncertain and often hostile environment of the streets, officers can find it impossible to quickly choreograph and implement a peaceful response. Bottom line: "slowing down" requires that cops occasionally accept considerable risk. Should their judgment be off, they can be easily hurt or killed. That's not ideology: it's just plain fact.

Officer temperaments vary. Crucial characteristics such as impulsivity and risk tolerance are all over the map. Citizen personalities also run the gamut. Factor in the violence, gun-slinging and lack of voluntary compliance that besets hard-hit areas, and the answer to our question seems clear: how could Westmont's nasty aura *not* count?

We know nothing about the deputies involved other than their ranks. However, plenty is known about Mr. Kizzee. [According to family members](#) he was an "unemployed plumber" who had served time in prison but "was trying to find his way." We obtained his criminal record through the [Los Angeles Superior Court website](#). Here's a condensed

CASE NO.	DATE	CHARGES	DISPO	SENTENCE
ATPMA079162-01	6/16/20	Bringing drugs into jail, battery on an officer	Pending	
XCNBA464078-01	1/3/18	Possession of firearm by prohibited person	Nolo (guilty)	28 mos. state prison
ATP8AN03322-01	3/23/18	Felony spousal abuse	Nolo (guilty)	180 days jail
SBAYA093627-01	1/16/16	Evading police; gun poss. by prohibited person	Nolo (guilty)	16 mos. state prison
XNOMA054124-01	9/21/11	Sale of meth, felony resisting	Nolo (guilty)	4 yrs. jail, 5 yrs. prob.

version:

Mr. Kizzee was a convicted felon. He also had felony charges pending when officers confronted him. As a felon, he was prohibited from possessing a gun, a crime for which he had already been twice convicted. He also had a track record of fighting police and trying to evade capture. Had he been again caught with a gun he would have likely been locked up for a very long time.

Kenosha's cops knew there was an active felony warrant for Mr. Blake. And when they stepped in he reacted violently. Taser strikes also had no more effect on Mr. Blake than on [Rayshard Brooks](#), the Atlanta man who fell asleep in a Wendy's drive-through. As for Mr. Kizzee, he also reacted violently. At this point we don't know whether either suspect was under the influence of drugs, but their conduct resembles that of others, such as Mr. Brooks and [George Floyd](#), whose "superhuman strength" and "lack of willingness to yield to overwhelming force" are characteristic of a syndrome that the [International Association of Chiefs of Police](#) and the [American College of Emergency Physicians](#) recognize as "excited delirium" (for more on that and a list of references click [here](#).)

So what *can* be done? Deploying a less-lethal alternative such as a Taser comes to mind. Unfortunately, darts are difficult to place and can be defeated by clothing. Conducted energy devices have proven ineffective on highly excited characters. They're also clumsy and time-consuming to properly deploy, and perhaps impossibly so should encounters turn dynamic. What's more, drawing a Taser leaves an officer with nothing substantial in hand should someone draw a gun. Given the ubiquity of armed characters such as Mr. Kizzee, that's a risk officers may be reluctant to take.

Fine. But is there a way to *prevent* the need to use a weapon? As essays in our "[Compliance and Force](#)" section (e.g., "[Making Time](#)", "[De-escalation](#)") frequently point out, not every situation calls for police intervention, and not every refusal to comply requires a forceful response. "Slowing things down," say, by using verbal skills, can prevent tragic misperceptions, such as thinking someone is going for a gun when they're actually reaching for a cell phone. It also affords an opportunity for backup officers, supervisors and crisis intervention teams to arrive.

Sounds good. But when circumstances turn dynamic, trying to "de-escalate" can give evil-doers the opportunity to go for a gun. And it's not just cops who may be placed at risk. Failure to contain a dangerous person can easily imperil innocents. Officers must also assess how a response squares with law and policy and, perhaps just as importantly,

comports with the views of the colleagues on whom they depend for support. Should things turn out poorly, flouting accepted practice can shred one's reputation. What's more, officer personalities vary. As plentiful examples attest (see, for example, "[Speed Kills](#)") when things turn dicey some cops have proven so risk-averse or impulsive that they were simply incapable of holding off.

Back to Mr. Blake. Consider the options should even the best cop in the world encounter someone that obstinate and violent. Had he got away there would have likely been a vehicular pursuit, with all the attendant risks to both citizens and police. Choosing *not* to pursue would have by no means eliminated the danger he posed. Locating and safely arresting a forewarned fugitive ties up prodigious resources and, as your blogger can personally attest, carries exceptional personal risks as well. It's for reasons such as these that in the practical, everyday world of policing, dangerous characters aren't simply "let go."

To be sure, we're just scratching the surface. From choosing whether to intervene, to deciding how best to proceed, the police decision-making calculus can prove exceedingly complex. Alas, most of us reside in pleasant, middle-class environments and rarely interact with the dangerous, non-compliant folks whom officers encounter every day. So in these ideologically charged times, our "yes, but" sentiments will probably have little effect. Even so, if we'd like to minimize poor outcomes such as the crippling of Mr. Blake or the death of Mr. Kizzee, let's work to expand our understanding of *how* policing happens, and *why*. Then by all means, let's set out to improve the practice of this fascinating and highly demanding craft. Click [here](#) for a place to start.

Posted 4/14/13

WHO WANTS TO BE A MILLIONAIRE? (L.A. Edition)

Officer missteps come with big price tags

By Julius (Jay) Wachtel. If you're willing to risk a posthumous reward there's no need to spend your bucks on Powerball. Just give the cops a hard time. Federal law (42 USC 1983) lets citizens who feel they have been wronged by police sue in U.S. District Court for violations of their Constitutional rights. Interested? Here are some recent civil verdicts in the Los Angeles area:

- [September 2012](#): In 2005 LAPD officers chased a drive-by suspect on foot, then shot him multiple times when he turned around. All the cops found was a cell phone. Left a near-paraplegic, the suspect was convicted of the drive-by in 2009 and paroled last year. He then sued. Jurors awarded \$5.7 million.
- [October 2012](#): In 2009 a mentally ill 39-year old woman knocked an officer to the ground with a wooden board. His partner fired, striking her three times. Officers followed up with a Taser shot. Jurors called their acts "malicious" and awarded \$3.2 million.
- [November 2012](#): Also in 2009 LAPD officers encountered an older, disabled man while searching a home. They handled him roughly, applying handcuffs so tightly that he was left permanently injured. Jurors awarded \$1.6 million, plus \$70,000 in punitive damages against an officer.
- [November 2012](#): In 2009 L.A. County sheriff's deputies boxed in a drunk driver who rammed two parked cars. The driver jammed his vehicle into reverse, striking a patrol car and knocking a deputy down. His colleagues then fired a barrage of sixty-one rounds, killing the man. Jurors awarded his widow \$8,756,000.
- [December 2012](#): *Twenty-four million dollars.* That's what the City of Los Angeles must pay for the December 2010 shooting of a teen whose air gun – he was playing with friends – was mistaken for a real weapon. The boy was paralyzed, and jurors agreed that the officer who fired the shot had been negligent.

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- [March 2013](#): In a similar incident in 2009 deputies shot a 15-year old boy who was holding what turned out to be a toy gun. Fortunately, the youth recovered. Jurors recently awarded him \$1.1 million.
- [April 2013](#): We previously posted about [Douglas Zerby](#). In December 2010 Long Beach police responded to a call about an intoxicated man with a gun. Officers fired twelve rounds, killing him. The “gun” turned out to be a water nozzle. Zerby’s family was recently awarded \$6.5 million.

As one might predict, all the above verdicts were denounced by police and city leaders. [Here’s what LAPD Chief Charlie Beck said](#) after the \$24 million judgment: “If our officers delay or don’t respond to armed suspects, it could cost them their lives.” [Here’s his comment after](#) losing the \$3.2 million case: “I don’t expect my officers to be hurt or killed by someone before they act” (he also announced that internal and external review boards had cleared the officers. What he didn’t point out is that the department conducts the actual investigations.)

Most cops accept considerable risks. They have to. Given the uncertainties of policing and the propensity of citizens to behave oddly, bodies would otherwise line the streets by the end of each shift. To be sure, officer skills vary. Some cops are more levelheaded than others. But tragic outcomes are not unavoidable. They’re certainly not foreordained.

Your writer likes to tell students that officers should comport themselves as though their chief is in the right front seat. Yet if their public pronouncements are to be taken at face value, Chief Beck and Sheriff Baca would be useless as ride-alongs. Perhaps they’re afraid that encouraging reflection and self-criticism might endanger their careers. Both are surely aware of the example of former LAPD Chief Bernard Parks, a strict disciplinarian whose contract wasn’t renewed, supposedly because of pressures from the police union.

Tolerating lousy police work might make a chief popular with the troops, but it’s certainly no solution. Despite evidence that some of his officers were seriously out of control, [Seattle PD Chief John Diaz kept looking the other way](#). Citizens finally had enough, sparking a Federal civil rights inquiry and [forcing the chief into retirement](#). Closer to home, [citizen protests over a spate of police shootings](#) led to the recent resignation of Anaheim’s city manager and the sudden retirement of police chief John Welter.

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Meanwhile the problem/denial cycle persists. Consider [LAPD's recent mistaken shooting](#) of two women pizza delivery persons during the manhunt for ex-cop Chris Dorner. Chief Beck called it “a tragic misinterpretation” by officers who were under “incredible tension.” That lame excuse [didn't sit well](#) with everyone. After all, properly handling “incredibly tense” situations is what we *expect* officers to do.

Attending to the quality of policing is what we *demand* from their chiefs.

Posted 1/4/22

WHO'S IN CHARGE?

***An eager cop rushes in and opens fire.
He kills the suspect. And an innocent child.***



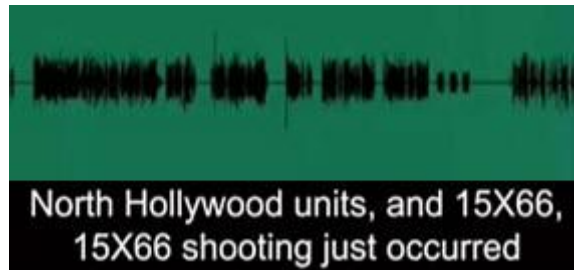
For Police Issues by Julius (Jay) Wachtel. One cannot envision a more soul-crushing example of well-intentioned policing gone horribly wrong. On December 23, Daniel Elena Lopez, 24, a convicted felon under local supervision, [pushed his bicycle into a North Hollywood Burlington clothing store](#) where 14-year old Valentina Orellana-Peralta and her mother were selecting a dress for the girl's forthcoming quinceanera. Wielding a lock and chain, Lopez rampaged around the store, [prompting employees to call 9-1-1](#) and order customers to leave. Valentina and her mother apparently took cover in a dressing room. Within minutes a bullet fired by an officer pierced a wall and struck the youngster in the chest. She died in her mother's arms.



Let's begin by using LAPD's officer bodycam videos to describe what took place. (For the agency's full, 35-minute compilation release click [here](#). For our condensed, 8-minute version click [here](#).)

At the start of the 9-1-1 call, a Burlington employee reported that an intruder with a bike was assaulting people with a lock and chain. But another employee then mentioned – and confirmed when asked – that the man was armed and had fired a gun.

As it turns out, Lopez did *not* have a gun. During the early stages of his rampage, Lopez repeatedly swung the lock and chain, and its impact on walls and such may have sounded like gunfire. In any event, this incorrect, misleading and, one can imagine, highly disturbing information was passed on to responding officers.



On arrival, a police supervisor spoke with a Burlington employee. The worker (his face is obscured in the video) said that the intruder had gone “pantless” (a store video shows Lopez stripping to his underwear) and was “smashing things around” with a bike lock. He said nothing about a gun, nor did the officer ask.



Burlington’s in-store cameras depict Lopez’s arrival. Chain and lock slung over his shoulder, he wheels in a bicycle, takes it up the escalator, then dumps it on the ground. Customers take notice of the oddball and give him a wide berth.



Lopez walks around, flinging the chain at objects and at people. He then goes back downstairs, discards his trousers and briefly exits the store.

Lopez quickly returns and rides the escalator back up to the sales floor. Employees had sought to evacuate the premises, but some customers apparently remained. Lopez spots one of the exceptions and attacks her with the chain. He then drags his victim through the aisles, pausing to inflict additional beatings.



By then officers are already in the store. They begin closing in. But their formation is soon taken over by a latecomer, Officer Jones. His bodycam depicts him grabbing an AR-style rifle from a police car, bolting up the escalator, then imploring a moving column of cops to “slow down” so he can “take point with the rifle.” And he quickly does.



Officer Jones charges ahead. Unnerved by his aggressive tenor, a fellow cop yells at him to “slow it down.” But he doesn’t. And as Jones reaches the victim, who is lying on the ground, he’s beseeched to “hold up.” But he doesn’t.



Jones instantly swivels and fires three shots, mortally wounding Lopez, who is at the end of an aisle (see opening image). Alas, one of the bullets pierces the wall behind Lopez and fatally wounds the child.

[LAPD](#) and [media sources](#) have identified Jones as a regular patrol officer. His access to an assault-type rifle, though, indicates that he’s received specialized training. So he must know that their projectiles exhibit highly lethal properties at great range, readily

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penetrating walls and other obstacles and producing massive, lethal wound cavities nearly anywhere they strike. We've discussed these fearsome ballistics in prior posts (see, for example, "[Ban the Damned Things!](#)").

Of course, modern police handguns are also quite powerful. A misplaced pistol round might have pierced the wall and caused injury. What's concerning, though, is that officer Jones seemed determined throughout to respond quickly, and with force. Still, in a city where criminal gunplay is frequent, officers take unqualified admonitions such as "shooting just occurred" very much to heart. So if blame is to be assessed, some of it must fall on the shoulders of the Burlington staffer who incorrectly informed 9-1-1 that the intruder was armed and had fired a gun.

Yet other officers may not have shared Officer Jones' heightened degree of concern. Consider, for example, that the police supervisor mentioned above didn't ask the employee with whom he spoke about guns or gunfire. It's possible that other Burlington staffers had already told officers that they didn't see a gun or hear any shots. Jones, though, joined a formation that had already assembled and entered the store. His late arrival may have deprived him of critical information and led to an exaggerated view of the threat that Lopez actually posed.

That's conjecture. What isn't is that officer personality really, really counts. We've often written about [confirmation bias](#). If officer Jones was disposed to perceive the existence of threats and to act pre-emptively, this "bias" might have "confirmed" (in his mind) the severity of the circumstances that he faced. And if Jones was on the impulsive end of the continuum, so much the worse. "[Speed Kills](#)" and "[SWAT is a Verb](#)" describe episodes in which poorly-informed, late-arriving officers jump in and make needlessly lethal decisions. Yet officer Jones is an [Officer II](#), an ordinary, non-supervisory rank. So we're surprised that a supervisor didn't hold him back. And appalled that, given the weapon's characteristics, a cop would "take point" (officer Jones' words) indoors with an assault rifle.

As it turns out, LAPD's manual regulates rifle deployments. Here's an extract from [Vol. 4, pg. 2005, sec. 245.50](#) (UPR means "urban police rifle," SSA means shotgun slug ammunition):

The UPR and/or SSA shall only be deployed by a UPR or SSA certified officer upon approval from a supervisor. Each deployment shall be in accordance with Department policy, such as during a spontaneous field incident, and only when there is reason to believe a suspect is (*) Wearing protective body armor; or, (*) Armed with or has immediate access to a high-powered weapon which surpasses the capability of the weapons normally carried by field personnel; or, (*) Armed

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and situated in a distant or fortified location which affords the suspect(s) a tactically superior position, in which the deployment of a UPR or SSA reasonably appears necessary to neutralize the threat posed by the suspect(s).

While these rules convey LAPD's awareness of the "UPR's" lethality, they make no distinction as to where it *can* be used. One reason might be that only its projectiles can be relied on to defeat the protection offered by ballistic vests, should a suspect be wearing such a garment. Lopez, though, wasn't.

[We don't endorse](#) addressing every possible issue with a rule. But the ability of projectiles fired by AR-15 type rifles to travel great distances and pierce obstructions in their path merits strict regulation of their deployment, including the supervisory "pre-approval" that LAPD seemingly requires. Or does it? Here's the rest of that paragraph:

Exception: When a UPR or SSA certified officer encounters an immediate life threatening situation which meets the deployment criteria and sufficient time does not exist to obtain supervisory approval, he/she may deploy the UPR and SSA without prior supervisory approval.

We don't know whether officer Jones' decision to bring the rifle was pre-approved. Ignoring colleagues' objections, he rushed to the front of the line. Giving no warning, he wheeled and fired the instant Lopez came into view, as though positive that his quarry was armed.

But he wasn't. Officer Jones then learned that he had killed not one person but two. We can't begin to imagine the impact of that discovery on Jones or his colleagues, nor of the torment that Valentina's family and friends have endured. The alarm's gone off. A serious change in police rules and practices is in order. This is a wake-up call that must *not* be missed.

Posted 2/16/16

WORKING SCARED

***Fearful, ill-trained and poorly supervised cops
are tragedies waiting to happen***

By Julius (Jay) Wachtel. Keeping one's gun holstered is a sine qua non of policing. It's not just to avoid offending citizens. As experienced cops well know, and as hapless officers regularly discover, a gun needlessly in the hand is an accident waiting to happen. [In an episode](#) that took place only days ago, a Los Angeles County sheriff's shot himself in the calf while pursuing car theft suspects on foot.

Such events aren't rare. Guns accidentally go off in police stations, cop's garages, and during marksmanship sessions at the range. Sometimes the consequences are more than embarrassing. [One small-town police chief](#) has sheepishly admitted shooting himself twice. (For a host of examples plug "officer accidentally shoots himself" into Google.)

It's not only cops who get hurt. Not long ago [a Colorado officer](#) slipped on the ice and accidentally wounded the man he was pursuing. Of course, when the person shot is a crook or was aggressive, blame is easy to deflect; after all, policing is a tough job, and had the suspect behaved to start with, they'd be just fine. That rationale was used, with some success, to minimize the culpability of [an Oakland transit cop](#) who mistakenly drew and fired his sidearm instead of the Taser he had meant to deploy. Tough-minded prosecutors charged the officer with murder, but jurors took pity and convicted him of involuntary manslaughter. In the end, the former officer served a bit over one year. A civil suit against him [went nowhere](#).

These circumstances recently reoccurred in Tulsa. While assisting in an arrest, an elderly reserve deputy fired his gun, [killing a suspect](#) whom he intended to stun into compliance. [Prosecutors charged the volunteer](#) with the lesser form of manslaughter, which in Oklahoma carries a penalty of up to four years in prison or one year in jail. In an accidental shooting last November, [rookie NYPD officer Peter Liang](#), 27, entered a dark stairwell while patrolling a high-rise in the projects. He drew his pistol for protection. (Liang's partner, also a rookie, kept his gun holstered.) Liang would testify that he was startled by a noise and squeezed off a round. The bullet ricocheted off a wall and fatally wounded Akai Gurley, 28. He and his girlfriend had been using the stairs because the elevator was out. Last week a jury convicted officer Liang of manslaughter and official misconduct for failing to render aid. He faces up to fifteen years in prison. (His hapless partner was also fired, ostensibly for not providing aid to the dying man.)

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Mr. Gurley's death was unintended. Not so the November 2014 [shooting of Tamir Rice](#), the 12-year old Cleveland boy who flaunted a realistic-looking pellet gun. Neither Timothy Loehmann, the 26-year old rookie who shot him, nor his partner were charged.

Prior posts have identified factors that can lead to the inappropriate use of lethal force. Some cops may be insufficiently risk-tolerant; others may be too impulsive. Poor tactics can leave little time to make an optimal decision. Less-than-lethal weapons may not be at hand, or officers may be unpracticed in their use. Cops may not know how to deal with the mentally ill, or may lack external supports for doing so. Dispatchers may fail to pass on crucial information, leaving cops guessing. And so on.

Here we'll take a different approach. Comparing the accidental killing of Akai Gurley with the deliberate shooting of Tamir Rice, we'll examine whether these incidents are in fact as dissimilar as they seem.

First, officers Liang and Loehmann were both young and inexperienced. Including the academy, Liang had worked for NYPD less than eighteen months. Loehmann was on the Cleveland force only eight months. He was previously a cop in Independence, a small town south of Cleveland, but left after only one month on the street.

Substantial questions have been raised about both officers' suitability for police work. A *New York Times* reporter who was at Liang's trial [characterized the defendant](#) as "young, scared and unqualified to perform dangerous work..." Loehmann [was rejected by several agencies](#) before being hired by Independence. [According to a deputy chief](#), the recruit was "distracted" and "weepy" during firearms practice and seemed unlikely to improve:

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...

Loehmann resigned under pressure. Cleveland hired him anyway.

During academy training recruits are obsessively cautioned about officer safety. Lectures and practical exercises harp on the fact that being careless can cost a cop's life. Natch, in our gun-suffused land there is an unlimited supply of examples. (Indeed, while officer Liang's trial was in progress, two NYPD officers were shot and wounded while patrolling – you guessed it – a housing project stairwell. The judge disallowed testimony about the episode.)

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Few officers are as nervous as recent grads. Of course, people are constantly doing crazy stuff, so it falls to field training officers to calm their junior partners and keep them from shooting citizens for pulling a tissue to blow their nose. 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.

Alas, the hiring process isn't infallible. Even good screening measures fail. That's why it's essential to closely monitor recruits in the academy and during their first years in the field. That's not foolproof either. Every working officer knows cops who have poor people skills or are prone to overreact, leaving messes for colleagues to clean up. Fortunately, no one usually dies and things get papered over until next time.

Occasionally, though, there is no "next time."