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## TRUST THE POLICE? THE MYTH OF PROTECT AND SERVE

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## TRUST THE POLICE? THE MYTH OF PROTECT AND SERVE

### Cover Page Footnote

Harvey Gilmore, Trust the Police? The Myth of Protect and Serve, 45 W. New Eng. L. Rev. 43 (2023)

# TRUST THE POLICE? THE MYTH OF PROTECT AND SERVE

HARVEY GILMORE\*

*On May 25, 2020, a shocked, appalled, and outraged global audience witnessed the murder of George Floyd by Minneapolis police officer Derek Chauvin. Floyd repeatedly told the officer he couldn't breathe while Chauvin had his knee pressed against his neck, literally choking the life out of Floyd. The resulting outrage and protests have thrust the issue of police brutality, particularly against people of color, into the national spotlight. This piece looks at the long history of egregious police conduct against people of color without suffering any legal reprimand. This has led to a longstanding distrust of law enforcement by many people of color that persists to this day.*

## INTRODUCTION

This piece will address how and why police officers tend to get away with committing some egregious acts of brutality against minorities while suffering little to no reprimand. This is because the legal system has procedures in place to protect police officers' wrong doing at the expense of the citizenry they swear to "protect and serve." Police officers routinely claim qualified immunity and reasonable fear of imminent harm to escape criminal culpability. These legal loopholes only strengthen the already indelible perception that the police almost always get away with it. As this piece will discuss, incidents of brutality have only served to aggravate people of color's long-standing distrust of law enforcement.

In the spring of 2020, while the world was in the grip of the global coronavirus pandemic, a stunned and outraged global audience saw—as it happened—Minneapolis police officer Derek Chauvin with his knee pressed against the neck of George Floyd for eight minutes and forty-six seconds.<sup>1</sup> Floyd was literally pleading to be able to breathe, while Chauvin, kneeling on Floyd, was relaxed and seemingly without a care in

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1. See Evan Hill et al., *How George Floyd Was Killed in Police Custody*, N.Y. TIMES (Jan. 24, 2022), <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html>.

the world.<sup>2</sup> Floyd died from asphyxiation on the spot.<sup>3</sup>

This incident thrust minority citizens' long-standing distrust of law enforcement into public consciousness and the international spotlight. Although Chauvin was ultimately convicted of several charges in Floyd's death,<sup>4</sup> this incident undoubtedly reopened some long-standing wounds for a population that already has little reason to trust law enforcement.

In addition to the specific incidents discussed in this piece, the deaths of Michael Brown in Ferguson, Missouri,<sup>5</sup> Walter Scott in South Carolina,<sup>6</sup> Eric Garner in Staten Island, New York,<sup>7</sup> Philando Castile in Minnesota,<sup>8</sup> Alton Sterling in Baton Rouge, Louisiana,<sup>9</sup> Terence Crutcher in Tulsa, Oklahoma,<sup>10</sup> and many others, at the hands of law enforcement have highlighted, and most definitely exacerbated, minority communities' long-standing distrust of police officers.

I am an African American male. I am also a college professor, a former accountant, and have a Juris Doctorate and two Masters of Law degrees from three different accredited law schools. That said, I am reasonably sure that when some police officers look at me—knowing nothing about me—they probably see nothing more than another gun-toting, drug-dealing thug.

Because of that, I admit up front, for the record, I do not trust any

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2. *See id.*

3. *See id.*

4. Dan Mangan, *Ex-Minneapolis Cop Derek Chauvin Sentenced to 22.5 Years in Prison for George Floyd Murder*, CNBC (June 27, 2021, 10:04 AM), <https://www.cnn.com/2021/06/25/derek-chauvin-sentencing-for-murder-of-george-floyd.html> [<https://perma.cc/BMD5-VEEJ>].

5. John Eligon, *No Charges for Ferguson Officer Who Killed Michael Brown*, *New York Times* (July 30, 2020), <https://www.nytimes.com/2020/07/30/us/michael-brown-darren-wilson-ferguson.html>.

6. Matthew Vann & Erik Ortiz, *Walter Scott Shooting: Michael Slager, Ex-officer, Sentenced to 20 Years in Prison*, NBC NEWS: U.S. NEWS (Dec. 9, 2017, 11:25 AM), <https://www.nbcnews.com/storyline/walter-scott-shooting/walter-scott-shooting-michael-slager-ex-officer-sentenced-20-years-n825006> [<https://perma.cc/ECE7-EZ2Z>].

7. Katie Benner, *Eric Garner's Death Will Not Lead to Federal Charges for N.Y.P.D. Officer*, *New York Times* (July 16, 2019), <https://www.nytimes.com/2019/07/16/nyregion/eric-garner-daniel-pantaleo.html>.

8. German Lopez, *Philando Castile Minnesota Police Shooting: Officer Cleared of Manslaughter Charge*, VOX (June 16, 2017, 4:15 PM), <https://www.vox.com/2016/7/7/12116288/minnesota-police-shooting-philando-castile-falcon-heights-video> [<https://perma.cc/XKE5-SS6Z>].

9. Eric Levenson, *Baton Rouge Police Chief Apologizes for Hiring the Officer Who Killed Alton Sterling*, CNN (Aug. 1, 2019, 4:20 PM), <https://www.cnn.com/2019/08/01/us/alton-sterling-baton-rouge-police> [<https://perma.cc/E66B-89ED>].

10. Justin Juozapavicius, *Jury Acquits Tulsa Cop in Shooting of Unarmed Black Man*, AP NEWS (May 18, 2017), <https://apnews.com/article/377a935a3b984258bac9b27486c32b82> [<https://perma.cc/7P97-LSGQ>].

police officer. I am certainly neither the first nor the last person of color to have this sentiment, especially considering the atrocious history between police officers and the minority communities they allegedly protect and serve.<sup>11</sup> We need look no further than police officers upholding racially discriminatory laws in the Jim Crow South in the days before civil rights.<sup>12</sup> We will always have the indelible images of Eugene “Bull” Connor’s police force opening water hoses and unleashing police dogs on law-abiding minority citizens peacefully marching for civil rights and the right to be treated with common decency.<sup>13</sup>

What was the imminent physical threat to those officers? How was it, at that point in time, those officers were under such apprehension of imminent physical harm they had to turn on the water hoses and let their dogs loose? Somebody needs to explain that one.

Yet, people of color have been asked repeatedly in the decades since then to believe law enforcement officers really and truly protect and serve people of color. Frankly, as I see it, it is very little wonder why people in minority communities are disinclined to believe that police officers have benevolent intentions toward them and are willing to help in times of need.

What is it about the police’s perception of people of color that they automatically assume the worst? Do they all look alike? Is every person of color automatically a drug dealer? A thug? A gun runner? A career criminal? Someone who’s only marketable skill is to braid hair in prison? In police officers’ estimation, has no person of color ever successfully pursued higher education? Or run a business? Or become a doctor, lawyer, accountant, college professor, corporate executive, or other professional? Or become a big city mayor?<sup>14</sup> Or become a governor?<sup>15</sup>

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11. See Alex Ragland, *A Review of “To Protect and Serve,”* GEO. UNIV. UNDERGRADUATE L. REV. (May 10, 2021) <https://guulr.com/2021/05/10/a-review-of-to-protect-and-serve/> [<https://perma.cc/2GJ7-S98V>] (stating “[t]he phrase “To Protect and to Serve” originated as the motto for the Los Angeles Police Department before being adopted by departments throughout the country).

12. See Connie Hassett-Walker, *The Racist Roots of American Policing: From Slave Patrols to Traffic Stops*, CHI. REP. (June 7, 2019) <https://www.chicagoreporter.com/the-racist-roots-of-american-policing-from-slave-patrols-to-traffic-stops/> [<https://perma.cc/4KX3-NYHG>].

13. See Jeremy Gray, *Bull Connor Used Fire Hoses, Police Dogs on Protestors (May 3, 1963) (videos)*, AL.COM (May 3, 2013, 10:00 AM), [https://www.al.com/birmingham-news-stories/2013/05/bull\\_connor\\_used\\_fire\\_hoses\\_po.html](https://www.al.com/birmingham-news-stories/2013/05/bull_connor_used_fire_hoses_po.html) [<https://perma.cc/UTZ2-HLQW>].

14. For example, Eric Adams in New York City. Katie Glueck, *Eric Adams Is Elected Mayor of New York City*, N.Y. TIMES (Nov. 3, 2021) <https://www.nytimes.com/2021/11/02/nyregion/eric-adams-mayor.html>.

15. For example, David Paterson in New York or L. Douglas Wilder in Virginia. *New York Leaders: Governor David A. Paterson*, N.Y. STATE, <https://empirestateplaza.ny.gov/breaking-barriers/david-a-paterson> [<https://perma.cc/KN3B-2SXV>]; *L. Douglas Wilder*, VA.

Or become President of the United States (Barack Obama)? Or even become a police officer?<sup>16</sup>

This piece will look at various notorious incidents that, in my view, give many Americans (myself included), irrespective of race, absolutely NO reason to trust anyone with a badge and a gun.<sup>17</sup> Part I introduces the issue of qualified immunity, which protects police officers from personal liability for their wrongful conduct. Part II discusses how claims of self-defense play a significant role in helping police officers avoid conviction in cases where they are accused of brutality. Part III details several heinous instances where police officers escaped criminal liability after being charged with crimes related to their misconduct. Part IV details instances where police officers fired at unarmed citizens, claiming they were armed. Part V discusses several incidents where police officers confronted violent offenders who were white, yet the officers in those cases did not shoot at them. Part VI looks at the confrontation between Police Sergeant James Crowley and Harvard Professor Henry Louis Gates, in Gates' own home, resulting in Gates being arrested for disorderly conduct. Part VII looks at my own experience with being racially profiled by police officers, which only increased my own distrust of police. Part VIII looks at a rare police apology for past misconduct issued at an International Association for Chiefs of Police Conference and the resulting controversy. Finally, Part IX looks at some wrongful death settlements and considers how the cities where police brutality occurs end up vicariously liable for the police officers' wrongful acts.

#### I. THE QUESTION OF QUALIFIED IMMUNITY: THE FIRST WAY THE POLICE GET AWAY WITH IT

What is qualified immunity? In a nutshell, qualified immunity is a doctrine that protects police officers from personal liability while

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MUSEUM OF HIST. & CULTURE, <https://virginiahistory.org/learn/l-douglas-wilder> [<https://perma.cc/F9JT-Q9LF>].

16. For example, Eric Adams before he became mayor of New York City. Glueck, *supra* note 14.

17. See Trisha Ahmed, *City Where George Floyd Was Killed Struggles to Recruit Police*, DETROIT NEWS (Oct. 22, 2022, 11:09 AM), <https://www.detroitnews.com/story/news/nation/2022/10/22/george-floyd-killed-minneapolis-police-recruit-struggles/69582670007/> [<https://perma.cc/6H8N-HX9J>]. See also Andrew Deziel, *Rebuild Trust Between Law Enforcement and Our Communities*, LONSDALE AREA NEWS-REV. (Feb. 14, 2022), [https://www.southernminn.com/lonsdale\\_area\\_news\\_review/news/article\\_0404421e-64a8-532b-b856-a2f4c472e059.html](https://www.southernminn.com/lonsdale_area_news_review/news/article_0404421e-64a8-532b-b856-a2f4c472e059.html) [<https://perma.cc/BFC2-56MV>]; Jessica Gomez, *Restoring Trust Between Law Enforcement and Our Communities*, OR.360 MEDIA (Dec. 14, 2021), <https://theoregonway.substack.com/p/restoring-trust-between-law-enforcement> [<https://perma.cc/87BE-RJ7V>].

performing their official duties.<sup>18</sup> Unfortunately, over time qualified immunity has morphed into a provision that no matter how heinous a police officer's conduct might be, a police officer can pretty much do no wrong in the eyes of the law.<sup>19</sup>

Why is qualified immunity a significant roadblock when trying to hold police officers accountable for their wrongdoing? Supreme Court precedent places a nearly impossible burden of proof on a plaintiff seeking to overcome a police officer's qualified immunity.<sup>20</sup> The burden of proof has the victim somehow proving that the law enforcement official knowingly violated the victim's clearly established rights, and committed the wrongful act anyway.<sup>21</sup> Qualified immunity thus protects public officials from liability as long as the act in question "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."<sup>22</sup>

I submit, as per the cases discussed below, that Timothy Stansbury had a clearly established right to attend a house party. Sean Bell had a clearly established right to attend a bachelor party to celebrate his upcoming wedding. Amadou Diallo had a clearly established right to stand on a public sidewalk in front of his apartment building. Their ability to exercise their clearly established rights was permanently ended in an unconscionable way by law enforcement—the very people who were supposed to "protect and serve" them.

As I see it, the problem with this particular characterization of qualified immunity is that, as shown in the cases discussed in this piece, the victims' clearly established rights were heinously violated by police officers. Police officers who knew what they were doing at the time—and

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18. See, e.g., *Harlow v. Fitzgerald*, 457 U.S. 800, 819 (1982) (holding that public officials are immune from civil liability where they would reasonably be expected to know their actions infringed on an established right); *Malley v. Briggs*, 475 U.S. 335, 341 (1986) (stating that officers are protected by qualified immunity except where they act "incompetently" or in plain violation of the law); *Anderson v. Creighton*, 483 U.S. 635, 638–39 (1987) (listing cases).

19. See Kimberly Kindy, *Dozens of States Have Tried to End Qualified Immunity. Police Officers and Unions Helped Beat Nearly Every Bill*, WASH. POST (Oct. 7, 2021, 6:00 AM) [https://www.washingtonpost.com/politics/qualified-immunity-police-lobbying-state-legislatures/2021/10/06/60e546bc-0cdf-11ec-aea1-42a8138f132a\\_story.html](https://www.washingtonpost.com/politics/qualified-immunity-police-lobbying-state-legislatures/2021/10/06/60e546bc-0cdf-11ec-aea1-42a8138f132a_story.html) [perma.cc/PUR7-X62P] (stating "qualified immunity allows rogue officers to brutalize citizens without paying a personal price").

20. See *Harlow*, 457 U.S. at 818 (holding qualified immunity does not apply if the plaintiff can show the government official violated "clearly established statutory or constitutional rights."); *Malley*, 475 U.S. at 341 (stating, to avoid the protections of qualified immunity, plaintiffs must show government officials knowingly violated the law).

21. See *Harlow*, 457 U.S. at 818; *Malley*, 475 U.S. at 341.

22. *Harlow*, 457 U.S. at 818. A right is "clearly established" if it is "sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson*, 483 U.S. at 640.

did it anyway! Apparently, this interpretation of qualified immunity gives law enforcement the green light to be as bad as they want to be—with zero personal accountability. This is just wrong!

If this is truly the case, and a police officer's wrongdoing only splashes vicarious civil liability back onto the municipality the officer worked for at the time of the alleged incident, such officers might consider themselves untouchable. This means those officers can selectively mistreat certain targeted citizens under the color of law, have very little risk of criminal conviction, and the municipality—and by extension that municipality's taxpayers—ends up paying the tab for those officers' wrongdoing. And the worst thing that can happen to the offending officer is that they get discharged from the police force. There is something very wrong with a legal system where certain citizens must be on guard not only against ordinary criminal activity, but also against the criminal actions of the very people who are supposed to “protect and serve” them.

In the case of *Jamison v. McClendon*,<sup>23</sup> District Court Judge Carlton W. Reeves pointed out the following:

Clarence Jamison wasn't jaywalking.<sup>24</sup>

He wasn't outside playing with a toy gun.<sup>25</sup>

He didn't look like a suspicious person.<sup>26</sup>

He wasn't suspected of selling loose, untaxed cigarettes.<sup>27</sup>

He wasn't suspected of passing a counterfeit \$20 bill.<sup>28</sup>

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23. 476 F. Supp. 3d 386 (S.D. Miss 2020).

24. “That was Michael Brown.” *Id.* at 390 (citing Max Ehrenfreund, *The Risks of Walking While Black in Ferguson*, WASH. POST (Mar. 4, 2015, 3:33 PM) <https://www.washingtonpost.com/news/wonk/wp/2015/03/04/95-percent-of-people-arrested-for-jaywalking-in-ferguson-were-black/> [<https://perma.cc/W6N2-HHTC>]).

25. “That was 12-year-old Tamir Rice.” *Id.* (citing Zola Ray, *This Is the Toy Gun That Got Tamir Rice Killed 3 Years Ago Today*, NEWSWEEK (Nov. 22, 2017, 2:56 PM), <https://www.newsweek.com/tamir-rice-police-brutality-toy-gun-720120> [<https://perma.cc/R7JM-Y7EW>]).

26. “That was Elijah McClain.” *Id.* (citing Claire Lampen, *What We Know About the Killing of Elijah McClain*, THE CUT (September 1, 2021), <https://www.thecut.com/2021/09/the-killing-of-elijah-mcclain-everything-we-know.html> [<https://perma.cc/U393-LV6B>]).

27. “That was Eric Garner.” *Id.* (citing Associated Press, *From Eric Garner's Death to Firing of NYPD Officer: A Timeline of Key Events*, USA TODAY (Aug. 20, 2019, 10:49 AM), <https://www.usatoday.com/story/news/2019/08/20/eric-garner-timeline-chokehold-death-daniel-pantaleo-fired/2059708001/> [<https://perma.cc/YP6V-KSCM>]).

28. “That was George Floyd.” *Id.* (citing Jemima McEvoy, *New Transcripts Reveal How Suspicion Over Counterfeit Money Escalated into the Death of George Floyd*, FORBES (July 8, 2020, 7:33 PM), <https://www.forbes.com/sites/jemimamcevoy/2020/07/08/new-transcripts-reveal-how-suspicion-over-counterfeit-money-escalated-into-the-death-of-george-floyd/?sh=299d351246ba> [<https://perma.cc/SN8F-6F7M>]).



He didn't look like anyone suspected of a crime.<sup>29</sup>

He wasn't mentally ill and in need of help.<sup>30</sup>

He wasn't assisting an autistic patient who had wandered away from a group home.<sup>31</sup>

He wasn't walking home from an after-school job.<sup>32</sup>

He wasn't walking back from a restaurant.<sup>33</sup>

He wasn't hanging out on a college campus.<sup>34</sup>

He wasn't standing outside of his apartment.<sup>35</sup>

29. "That was Philando Castile and Tony McDade." *Id.* (citing Andy Mannix, *Police Audio: Officer Stopped Philando Castile on Robbery Suspicion*, STARTRIB. (July 12, 2016, 7:55 PM), <https://www.startribune.com/police-audio-officer-stopped-philando-castile-on-robbery-suspicion/386344001/> [<https://perma.cc/4YYM-9JUC>]; Meredith Deliso, *LGBTQ Community Calls for Justice After Tony McDade, a Black Trans Man, Shot and Killed by Police*, ABC NEWS (June 2, 2020, 10:55 PM), <https://abcnews.go.com/US/lgbtq-community-calls-justice-black-trans-man-shot/story?id=71022981> [<https://perma.cc/4EH6-KZJR>]).

30. "That was Jason Harrison." *McClendon*, 476 F. Supp. 3d 386 at 390 (citing Byron Pitts et al., *The Deadly Consequences When Police Lack Proper Training to Handle Mental Illness Calls*, ABC NEWS (Sept. 30, 2015, 4:13 PM), <https://abcnews.go.com/US/deadly-consequences-police-lack-proper-training-handle-mental/story?id=33023577> [<https://perma.cc/A7D2-ZWCP>]).

31. "That was Charles Kinsey." *Id.* (citing *Florida Policeman Shoots Autistic Man's Unarmed Black Therapist*, BBC: NEWS (July 21, 2016), <https://www.bbc.com/news/world-us-canada-36859305> [<https://perma.cc/2SLJ-ASRA>]).

32. "That was 17-year-old James Earl Green." *Id.* (citing Robert Luckett, *OPINION: In 50 Years from Gibbs-Green Deaths to Ahmaud Arbery Killing, White Supremacy Still Lives*, JFP.MS (May 8, 2020, 4:02 PM), <https://www.jacksonfreepress.com/news/2020/may/08/opinion-50-years-gibbs-green-deaths-ahmaud-arbery/> [<https://perma.cc/DY6K-ENLF>]; Robert Luckett, *50 Years Ago, Police Fired on Students at a Historically Black College*, N.Y. TIMES: OPINION (May 14, 2020), <https://www.nytimes.com/2020/05/14/opinion/Jackson-state-shooting-police.html>; Rachel James-Terry & L.A. Warren, *'All Hell Broke Loose': Memories Still Vivid of Jackson State Shooting 50 Years Ago*, CLARION LEDGER (May 15, 2020, 5:00 AM), <https://www.clarionledger.com/story/news/2020/05/15/jackson-state-shooting-gibbs-green-1970-survivors-50-years-later/3107411001/> [<https://perma.cc/YH6S-HGP6>]).

33. "That was Ben Brown." *Id.* (citing *Benjamin Brown - Notice to Close File*, U.S. DEP'T OF JUSTICE: C.R. DIV. (Mar. 24, 2017), <https://www.justice.gov/crt/case-document/benjamin-brown-notice-close-file> [<https://perma.cc/T3KF-Z2ZT>]; Jackson State Univ., Ctr. for Univ.-Based Dev., *The Life of Benjamin Brown, 50 Years Later*, W. JACKSON (May 11, 2017), <https://westjxn.com/2017/05/11/the-life-of-benjamin-brown-50-years-later/> [<https://perma.cc/MW2Z-Q5HF>]).

34. "That was Phillip Gibbs." *Id.* at 391 (citing James-Terry & Warren, *supra* note 37).

35. "That was Amadou Diallo." *Id.* (citing *Police Fired 41 Shots when They Killed Amadou Diallo. His Mom Hopes Today's Protests Will Bring Change.*, CBS NEWS (June 9, 2020, 11:11 PM), <https://www.cbsnews.com/news/amadou-diallo-kadiatou-protests-george-floyd-police/> [<https://perma.cc/DME9-Z9E9>]).

He wasn't inside his apartment eating ice cream.<sup>36</sup>

He wasn't sleeping in his bed.<sup>37</sup>

He wasn't sleeping in his car.<sup>38</sup>

He didn't make an improper lane change.<sup>39</sup>

He didn't have a broken tail light.<sup>40</sup>

He wasn't driving over the speed limit.<sup>41</sup>

He wasn't driving under the speed limit.<sup>42</sup>

No, Clarence Jamison was a Black man driving a Mercedes convertible.<sup>43</sup>

So, what happened to Clarence Jamison? The court noted further:

As he made his way home to South Carolina from a vacation in Arizona, Jamison was pulled over and subjected to one hundred and ten minutes of an armed police officer badgering him, pressuring him,

36. "That was Botham Jean." *Id.* (citing Bill Hutchinson, *Death of an Innocent Man: Timeline of Wrong-Apartment Murder Trial of Amber Guyger*, ABC NEWS (Oct. 2, 2019, 6:24 PM), <https://abcnews.go.com/US/death-innocent-man-timeline-wrong-apartment-murder-trial/story?id=65938727> [<https://perma.cc/UDV3-6NB8>]).

37. "That was Breonna Taylor." *Id.* (citing Amina Elahi, 'Sleeping While Black': Louisville Police Kill Unarmed Black Woman, NPR (May 13, 2020, 6:33 PM), <https://www.npr.org/2020/05/13/855705278/sleeping-while-black-louisville-police-kill-unarmed-black-woman> [<https://perma.cc/83KE-UMSV>]).

38. "That was Rayshard Brooks." *Id.* (citing Jacob Sullum, *Was the Shooting of Rayshard Brooks 'Lawful but Awful'?*, REASON (June 15, 2020, 3:30 PM), <https://reason.com/2020/06/15/was-the-shooting-of-rayshard-brooks-lawful-but-awful/> [<https://perma.cc/4TMK-HFQP>]).

39. "That was Sandra Bland." *Id.* (citing Ben Mathis-Lilley & Elliott Hannon, *A Black Woman Named Sandra Bland Got Pulled Over in Texas and Died in Jail Three Days Later. Why?*, SLATE (July 16, 2015, 9:30 PM), <https://slate.com/news-and-politics/2015/07/sandra-bland-death-texas-black-driver-pulled-over-for-lane-change-dies-in-custody.html> [<https://perma.cc/7VKY-8A9Y>]).

40. "That was Walter Scott." *Id.* (citing Michael E. Miller et al., *How a Cellphone Video Led to Murder Charges Against a Cop in North Charleston, S.C.*, WASH. POST (Apr. 8, 2015, 6:22 AM), <https://www.washingtonpost.com/news/morning-mix/wp/2015/04/08/how-a-cell-phone-video-led-to-murder-charges-against-a-cop-in-north-charleston-s-c/> [<https://perma.cc/7VU6-JYJL>]).

41. "That was Hannah Fizer." *Id.* (citing Luke Nozicka, 'Where's the Gun?': Family of Sedalia Woman Killed by Deputy Skeptical of Narrative, KAN. CITY STAR (June 15, 2020, 2:52 PM), <https://www.kansascity.com/news/state/missouri/article243535622.html>).

42. "That was Ace Perry." *Id.* (citing Jodi Leese Glusco, *Run-in with Sampson Deputy Leaves Driver Feeling Unsafe*, WRAL NEWS (Feb. 14, 2020, 10:22 PM), <https://www.wral.com/run-in-with-sampson-deputy-leaves-driver-feeling-unsafe/18953226/> [<https://perma.cc/S8WF-G79R>]).

43. *Id.* at 390–91.

lying to him, and then searching his car top-to-bottom for drugs. Nothing was found. Jamison isn't a drug courier. He's a welder. Unsatisfied, the officer then brought out a canine to sniff the car. The dog found nothing. So nearly two hours after it started, the officer left Jamison by the side of the road to put his car back together. Thankfully, Jamison left the stop with his life. Too many others have not.<sup>44</sup>

After all that, the court had to sustain the police officer's motion granting him qualified immunity for his horrible treatment of Clarence Jamison.<sup>45</sup> I wonder what Clarence Jamison's impression of law enforcement might be after he was denied justice for his ordeal at the hands of this police officer.

Yes friends, qualified immunity is one way police officers get away with their bad acts. And then, even when cases do end up going to trial, police officers are still frequently acquitted. Often, the primary theory of the defense is self-defense.

## II. WHEN IS SELF-DEFENSE OVERKILL?

The law generally accepts that an individual has the right to self-defense. Self-defense is defined as "the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion"<sup>46</sup> I understand as well as anyone that a police officer may find himself in a situation where he has to make the split-second, life-or-death decision to use deadly force to protect himself.<sup>47</sup> However, this does not mean police officers are entitled to claim self-defense when they have used excessive force.

It is also true in criminal law that once the danger to an individual's physical safety has passed, the right to defend oneself expires.<sup>48</sup> In other words, the party who was defending himself cannot become the aggressor after the perceived danger has passed.<sup>49</sup> As far as a police officer's right to defend himself is concerned, I would ask how far that right extends before the officer's use of force becomes excessive and potentially

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44. *Id.* at 391.

45. *See id.* at 424.

46. MODEL PENAL CODE § 3.04(1) (AM. L. INST. 1962).

47. MODEL PENAL CODE § 3.07(1) (AM. L. INST. 1962) ("the use of force upon or toward the person of another is justifiable when the actor is making or assisting in making an arrest and the actor believes that such force is immediately necessary to effect a lawful arrest.").

48. *See* N.Y. PENAL LAW § 35.15 (Consol. 2023); 33 Am. Jur. 2d *Proof of Facts* § 3, Westlaw (database updated October 2023).

49. *See* NY PENAL LAW § 35.15 (2) (Consol. 2023).

deadly—no longer able to be considered self-defense.

Let us assume, for example, I am walking down the street and a police officer is approaching me from the opposite direction. I just happen to have my hand in my pocket reaching for my car keys. Does the police officer have the right to assume I am reaching for a gun, and, fearful for his physical safety, shoot me first before I would have “shot” at him? I surely hope not.

That said, what measures are in place to stop that officer from saying he had a reasonable fear for his safety when I simply placed my hand in my pocket? This begs the question: what is so inherently dangerous about sticking my hand in my pocket, reaching for my car keys? Where else would one have his car keys? This hypothetical also begs another question: what constitutes “reasonable” fear in the mind of a police officer?<sup>50</sup> “Reasonable” is by definition “[f]air, proper, or moderate under the circumstances.”<sup>51</sup>

Is it reasonable for a police officer to believe every person of color who has his hand in his pocket is presumptively reaching for a gun? I certainly hope not. That kind of mindset is paranoid at best, and racist at worst. As I mentioned earlier, not every person of color is presumptively a gun-toting, drug-dealing thug looking to rob, rape, and pillage.

While police officers must make split second decisions about whether or not to fire, they are also trained to handle dangerous situations and to also be able to think on their feet. But because of the very dangerous circumstances of police work, it is all the more necessary that police officers act within reason, depending on the circumstances. The threat analysis they must conduct is simple:

If a police officer has an objectively reasonable fear of an imminent threat to his life or serious bodily harm, he or she is justified in using deadly force. And not just his life, but any life. “Objectively reasonable” is a standard set by the Supreme Court in 1989 when it said that a police officer’s use of excessive force must be seen in the context of what reasonable officers would do in the same situation, given the danger and stress of police work.<sup>52</sup>

In the case of Amadou Diallo, the threat analysis did not add up. The four police officers fired forty-one shots at him, hitting him nineteen

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50. The correct inquiry into the reasonableness of a police officer’s actions is whether, under the circumstances, it was “objectively reasonable” to act as the police officer did. *Graham v. Connor*, 490 U.S. 386, 397 (1989).

51. *Reasonable*, BLACK’S LAW DICTIONARY (11th ed., 2019).

52. Michael Wines & Frances Robles, *Key Factor in Police Shootings: ‘Reasonable Fear’*, N.Y. TIMES (Aug. 22, 2014) <https://www.nytimes.com/2014/08/23/us/ferguson-mo-key-factor-in-police-shootings-reasonable-fear.html>.

times.<sup>53</sup> Mathematically, that averages to more than ten shots per officer. Theoretically, this has to mean that while shooting at the unarmed Diallo merely standing in front of his apartment building, each cop emptied his revolver, reloaded his gun, and resumed shooting.<sup>54</sup> Or, in the alternative, the police officers each fired more than one gun at Diallo. Either way, there is no denying that the math was just plain fatal. At some point, Diallo was already immobilized and mortally wounded as the officers kept shooting. This begs the question: under what circumstances could those officers possibly continue to fear for their safety after Diallo was immobilized and no longer a threat to them?

A similar situation occurred seven years later, when Sean Bell was shot and killed by police officers while he was leaving his bachelor party.<sup>55</sup> The police officers fired fifty shots at Bell's car.<sup>56</sup> One of the police officers, Michael Oliver, fired thirty-one of those shots and even reloaded his gun.<sup>57</sup> Bell, like Diallo, was unarmed.<sup>58</sup> I have to ask again, after the initial fusillade of shots, with no return fire from the car, what compelled those officers to keep shooting? If there is no return fire, would it not be "objectively reasonable" to believe there is no longer a danger and continuing to shoot is excessive?. I would have to presume that the danger had passed by then.

Additionally, think back to the notorious videotaped incident where Rodney King was beaten nearly senseless by four Los Angeles police officers AFTER he was beaten to the ground and lay there, unable to get up.<sup>59</sup> Were these police officers so afraid of a beaten and bludgeoned man, so fearful of imminent physical harm, they just had to keep swinging their nightsticks at his head? Judging from the videotape of the incident, there was certainly no imminent threat that justified those police officers'

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53. Jane Fritsch, *The Diallo Verdict: The Overview; 4 Officers in Diallo Shooting Are Acquitted of All Charges*, N.Y. TIMES (Feb. 26, 2000), <https://www.nytimes.com/2000/02/26/nyregion/diallo-verdict-overview-4-officers-diallo-shooting-are-acquitted-all-charges.html> [<https://perma.cc/N38Q-75TS>].

54. The police officers who shot Diallo carried service revolvers, which hold six rounds. See Donna De La Cruz, *NYPD Won't Punish Diallo Cops*, ABC NEWS, <https://abcnews.go.com/US/story?id=93437&page=1> [<https://perma.cc/RYS2-YYMN>]; Lee P. Brown, *The Choice of Handguns for Police Officers: Revolvers or Semi-Automatics*, N.Y.C. POLICE DEP'T, <https://www.ojp.gov/pdffiles1/Digitization/145560NCJRS.pdf> [<https://perma.cc/H66U-ZALV>].

55. See Tara Palmeri & Daniel Prendergast, *Former Cops Still Reeling 7 Years After Sean Bell Horror*, N.Y. POST (Nov. 30, 2013, 5:23 AM), <https://nypost.com/2013/11/30/former-cops-still-reeling-7-years-after-sean-bell-horror/> [<https://perma.cc/PLH2-P8J9>].

56. *Id.*

57. *Id.*

58. *Id.*

59. History.com Editors, *LAPD Officers Beat Rodney King on Camera*, HISTORY: THIS DAY IN HISTORY (Mar. 2, 2021) <https://www.history.com/this-day-in-history/police-brutality-caught-on-video> [<https://perma.cc/686N-5VZN>].

continued beating of King after he was already subdued. However, the police officers involved in King's beating were acquitted of all criminal charges.<sup>60</sup>

### III. THE INDELIBLE, CONTINUING PERCEPTION THAT THE POLICE GOT AWAY WITH IT

#### A. *Amadou Diallo*

On February 4, 1999, four white police officers approached Amadou Diallo, an African immigrant, while he was standing in front of his building.<sup>61</sup> When Diallo reached for his wallet, presumably to identify himself, the four officers fired forty-one shots at Diallo, hitting him nineteen times, and ultimately killing him.<sup>62</sup> The officers claimed self-defense, believing that Diallo was reaching for a gun.<sup>63</sup> It turned out Diallo was unarmed.<sup>64</sup> In a subsequent jury trial, the officers were acquitted of all charges.<sup>65</sup>

#### B. *Sean Bell*

On November 25, 2006, police officers fired fifty shots at Sean Bell and two of his friends after leaving a bachelor party.<sup>66</sup> Bell was killed and his two friends were injured in the fusillade.<sup>67</sup> One of the officers, Michael Oliver, fired thirty-one of the shots and even reloaded his gun.<sup>68</sup> The officers claimed that one of the men had a gun, but no gun was recovered at the scene (where have we heard that before?).<sup>69</sup>

Interestingly, in the years since, the police officers involved have spoken about how they are allegedly still traumatized after that night's events.<sup>70</sup> While this may be true and they are doing the best they can to live with it, they are all conveniently omitting one very important detail: those police officers have the rest of their lives to learn how to live with their so-called "mistake." Sean Bell does not.

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60. See Sety Mydans, *The Police Verdict; Los Angeles Policeman Acquitted in Taped Beating*, N.Y. TIMES, Apr. 30, 1992, <https://www.nytimes.com/1992/04/30/us/the-police-verdict-los-angeles-policemen-acquitted-in-taped-beating.html>.

61. Fritsch, *supra* note 59.

62. *See id.*

63. *Id.*

64. *See id.*

65. *Id.*

66. Palmeri & Prendergast, *supra* note 61.

67. *Id.*

68. *Id.*

69. *See id.*

70. *See id.*

### C. *Timothy Stansbury*

On January 23, 2004, Timothy Stansbury, a nineteen-year-old black man, was heading to a party with two of his friends.<sup>71</sup> Unfortunately, the building where the party was located had a frequently broken intercom system, resulting in much more difficult access to the building.<sup>72</sup> Thus, Stansbury and two of his friends took a shortcut across the rooftop from Stansbury's building to the building where the party was taking place.<sup>73</sup> Police officer Richard Neri was on regular patrol, near the building.<sup>74</sup> As Stansbury opened the door, Neri shot and killed Stansbury without identification or warning.<sup>75</sup>

The killing outraged the city, and even New York City police commissioner Raymond Kelly declared "there appear[ed] to be no justification for the shooting."<sup>76</sup> Unfortunately, in the face of all of that, a grand jury did not indict Neri, and Neri suffered no criminal recrimination.<sup>77</sup> In fact, the only "penalty" that Neri suffered was a thirty-day suspension from duty and the permanent loss of his gun.<sup>78</sup> In my opinion, Neri, unlike Stansbury, got very lucky.

### D. *Clifford Glover*

On April 28, 1973, Officer Thomas Shea, investigating an alleged robbery, shot and killed Clifford Glover.<sup>79</sup> Glover was ten years old.<sup>80</sup> "The bullet entered his lower back and came out at the top of his chest. He was shot square in the back, with his body leaning forward. He was running away."<sup>81</sup>

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71. See Liyah Kaprice Brown, *Officer or Overseer: Why Police Desegregation Fails as an Adequate Solution to Racist, Oppressive, and Violent Policing in Black Communities*, 29 N.Y.U. L. REV. & SOC. CHANGE 757, 757 (2005).

72. *Id.*

73. *Id.*

74. Peter Daniels, *Grand Jury Exonerates New York Cop Who Shot 19-Year-Old Youth*, WORLD SOCIALIST WEB SITE (Feb. 25, 2004), <http://www.wsws.org/en/articles/2004/02/nypd-f25.html> [<https://perma.cc/G36M-SN55>].

75. *Id.* (incorrectly identifying Stansbury as "Stansfield" when discussing this aspect of the story).

76. *Id.*

77. *Id.*

78. See Daryl Kahn, *Officer in 2004 Fatal Shooting Is Given a 30-Day Suspension*, N.Y. TIMES (Dec. 31, 2006), <https://www.nytimes.com/2006/12/31/nyregion/officer-in-2004-fatal-shooting-is-given-a-30day-suspension.html>.

79. See Jim Dwyer, *A Police Shot to a Boy's Back in Queens, Echoing Since 1973*, N.Y. TIMES (Apr. 16, 2015), [http://www.nytimes.com/2015/04/17/nyregion/fired-at-queens-boy-fatal-1973-police-shot-still-reverberates.html?\\_r=1](http://www.nytimes.com/2015/04/17/nyregion/fired-at-queens-boy-fatal-1973-police-shot-still-reverberates.html?_r=1).

80. *Id.*

81. *Id.*

Adding insult to injury, the police walkie-talkie transmissions recorded Shea's partner Walter Scott, uttering "Die, you little bastard."<sup>82</sup> Another voice on the transmission yelled "The good guys won!"<sup>83</sup> Shea was acquitted by a jury of eleven white males and one black female.<sup>84</sup>

E. *Michael Brown and Ferguson's Pattern of Profiling/Shakedown*s

After the events of Michael Brown's shooting, the Justice Department performed a painstaking review of policing in Ferguson.<sup>85</sup> What the review turned up was staggering, but not shocking either.<sup>86</sup> "The town, [the Department] concluded, was characterized by deep-seated racism. Local authorities targeted black residents, arresting them disproportionately and fining them excessively."<sup>87</sup> Once again, this can lead one to justifiably ask if the police motto of "protect and serve" is as consistent across the board as law enforcement would have us believe. I submit that it is, at best, suspect.<sup>88</sup>

F. *Drunken Racist Cops and their Protector, Rudy Giuliani*

In addition to police officers generating mistrust in minority communities, there can also be city administrators who perpetuate systemic conditions that allow officers to violate citizens' rights with impunity. One such example is former New York City Mayor Rudy Giuliani, portrayed as a crime-fighting superhero after the events of 9/11.<sup>89</sup>

However, there are many, myself included who believe that Giuliani is not the most racially enlightened mayor the city has ever had, and probably set back relations between the New York City Police and minority communities, already tense to begin with, for decades to come.<sup>90</sup>

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82. See David J. Krajicek, *Justice Story: NYPD Cop Kills Boy, 10; Officer Acquitted of Murder but Fired from Force*, DAILY NEWS, (Mar. 11, 2012, 1:30 AM), <http://www.nydailynews.com/new-york/justice-story-nypd-kills-boy-10-officer-acquitted-murder-fired-force-article-1.1034120> [<https://perma.cc/7L2V-E2VQ>].

83. *Id.*

84. Dwyer, *supra* note 85.

85. See *Investigation of the Ferguson Police Department*, U.S. DEP'T JUST.: CIV. RTS. DIV. (Mar. 4, 2015), [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf) [[perma.cc/W6VX-WUHB](https://perma.cc/W6VX-WUHB)].

86. See Jake Halpern, *The Cop*, NEW YORKER (Aug. 3, 2015), <https://www.newyorker.com/magazine/2015/08/10/the-cop> [<https://perma.cc/Q64Y-QGVC>].

87. *Id.*

88. See *Investigation of the Ferguson Police Department*, *supra* note 91.

89. See Michael Powell, *In 9/11 Chaos, Giuliani Forged A Lasting Image*, N.Y. TIMES (Sept. 21, 2007), <https://www.nytimes.com/2007/09/21/us/politics/21giuliani.html>.

90. See Donna Lieberman, *Rudy Giuliani Was Never Really 'America's Mayor'*, NYCLU (Dec. 4, 2020), <https://www.nyclu.org/en/publications/rudy-giuliani-was-never->



One very infamous incident took place in front of City Hall, while David Dinkins, New York City's first black mayor, and Giuliani's immediate predecessor was in office. During some contentious negotiations over a new collective bargaining agreement between the City and the police union, several thousand police officers had protested outside of City Hall.<sup>91</sup> As former Mayor Dinkins recounted in his autobiography:

Upset over a wage dispute and my support for the Civilian Complaint Review Board, ten thousand off duty cops converged on Lower Manhattan. Six thousand demonstrated peacefully. The others went out of control. The *New York Times* reported that four thousand police officers "swarmed over barricades, blocked the entry to City Hall, and later marched onto the Brooklyn Bridge, where they tied up traffic for nearly an hour." . . .

Many were drunk, and many were outright racist in their behavior. The crowd of police officers, almost entirely white, all of them men and women who were assigned the responsibility of protecting and serving all of New York's people, carried signs reading, MAYOR, HAVE YOU HUGGED YOUR DEALER TODAY? . . .

Two black Brooklyn City Council representatives were abused during the riot. Una Clarke, a petite woman, was forcibly stopped by a beer-drinking off duty officer, in uniform but without a badge . . . " , while trying to cross Broadway. "I showed him my credentials," she told *Newsday*, and he said 'I don't care who the f— k you are, you are not going across the street.'" The officer said to his sidekick, "This nigger says she's a member of the City Council." . . .

This behavior has no place in New York's streets, homes, or anywhere else, let alone being perpetrated by our police. If some officers would use racial slurs and yell "Niggers!" in full view of cameras, the public and their superior officers, then I feared how they would behave when they were out in the streets. They behaved like hooligans. It was dangerous for our city for such people to have a badge and a gun. Any responsible public official would condemn it. Rudy Giuliani, not yet a candidate for mayor but clearly waiting for his opportunity, chose to stand on a flatbed truck with the president of the Patrolmen's Benevolent Association, Phil Caruso, and egg on the demonstrators . . . Rudy Giuliani was out there all but inciting the

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really-americas-mayor [<https://perma.cc/3EDZ-GPK3>] (stating "racial bias, fear-mongering, and police brutality were the hallmarks of Giuliani's mayoralty.").

91. DAVID N. DINKINS & PETER KNOBLER, *A MAYOR'S LIFE: GOVERNING NEW YORK'S GORGEOUS MOSAIC* 341 (1st ed. 2013).

police to riot.<sup>92</sup>

Rudy Giuliani would go on to become New York City’s Mayor for two terms,<sup>93</sup> and during his time in office, his staunch defense of the police suggested that the police could do no wrong, no matter what.<sup>94</sup> This was despite the infamous police shootings of Amadou Diallo and Patrick Dorismond,<sup>95</sup> and the gruesome sodomy and torture of Abner Louima.<sup>96</sup> As quick as he always was to support police no matter what, the “law and order” mayor<sup>97</sup> was just as conspicuously—and notoriously—silent anytime a law-abiding minority citizen’s civil liberties were routinely violated by his beloved police force.<sup>98</sup>

Nearly a quarter century after the fact, this incident only adds to the fact that trust for police in minority communities is practically nonexistent. If a law-abiding citizen of color needs help with a flat tire, or needs directions to the nearest subway station, or worse, has someone trying to break into his home, should he really believe help is going to come from a police officer who seemingly believes that all blacks are niggers? I for one would love to hear somebody—anybody—in law enforcement try to answer that question. Then again, I think any answer law enforcement would try to come up with would be hollow at best, and maybe disingenuous at worst.

#### G. *Brooklyn District Attorney Slaps Victim’s Family in the Face*

Criminal prosecutors are often said to work hand-in-hand with law enforcement. This is because prosecuting attorneys control who gets

92. *Id.* at 341–43.

93. See History.com Editors, *Rudy Giuliani*, HISTORY (Nov. 26, 2019), <https://www.history.com/topics/21st-century/rudy-giuliani> [<https://perma.cc/G6G4-W7QB>].

94. See, e.g., Thomas J. Lueck, *Giuliani Defends Police Against Federal Finding of Racial Profiling*, N.Y. TIMES (Oct. 6, 200), <https://www.nytimes.com/2000/10/06/nyregion/giuliani-defends-police-against-federal-finding-of-racial-profiling.html>.

95. See William K. Rashbaum, *Undercover Police in Manhattan Kill an Unarmed Man in a Scuffle*, N.Y. TIMES (Mar. 17, 2000), <http://www.nytimes.com/2000/03/17/nyregion/undercover-police-in-manhattan-kill-an-unarmed-man-in-a-scuffle.html> [<https://perma.cc/5CWX-T3Z8>].

96. See Alan Feuer & Jim Dwyer, *City Settles Suit in Louima Torture*, N.Y. TIMES (July 13, 2001), <http://www.nytimes.com/2001/07/13/nyregion/city-settles-suit-in-louima-torture.html> [<https://perma.cc/W3RS-TEHK>].

97. This term, “law and order mayor” was used to refer to Giuliani because “law and order” served as his mantra. See Amanda Luz Henning Santiago, *How Rudolph Giuliani Became New York City’s Mayor*, CITY & STATE: N.Y. (Oct. 15, 2019), <https://www.cityandstateny.com/politics/2019/10/how-rudolph-giuliani-became-new-york-citys-mayor/176823/> [<https://perma.cc/RN5P-YCSM>].

98. See Nat Hentoff & Nick Hentoff, *Rudy’s Racist Rants: An NYPD History Lesson*, CATO INST. (July 14, 2016), <https://www.cato.org/publications/commentary/rudys-racist-rants-nypd-history-lesson> [<https://perma.cc/29WX-FSPS>].

charged, what crime they get charged with, recommend sentences, and, occasionally, offer plea deals. Unfortunately, this symbiotic relationship between criminal prosecutors and police officers can sometimes deny justice to those egregiously harmed by police misconduct. The following is such an example.

On November 10, 2014, while patrolling an apartment building at the Pink Houses in Brooklyn, rookie police officer Peter Liang was in a stairwell with his gun in hand when a steel door slammed, allegedly startling Liang.<sup>99</sup> Liang's gun discharged and a bullet ricocheted off a wall and struck Akai Gurley in the chest.<sup>100</sup> Gurley died from his injuries.<sup>101</sup> Liang was subsequently convicted in a jury trial for second degree manslaughter,<sup>102</sup> which carries a jail sentence of up to fifteen years.<sup>103</sup>

However, when Liang went up for sentencing, then-Brooklyn District Attorney, the late Kenneth Thompson, recommended Liang not serve any jail time for causing Gurley's death.<sup>104</sup> In an article he wrote for the *New York Daily News*, Thompson defended his recommendation to the judge by suggesting that sending Liang to jail does not promote public safety:

[My office] had an obligation to recommend a sentence that, while recognizing the gravity of the crime and its tragic consequences, also took into account whether the defendant's incarceration was necessary to ensure public safety.<sup>105</sup>

Yet, in that same article, Thompson pointed out the recklessness and irresponsibility of Liang's actions, stating that Liang was "a young officer

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99. Emily Saul et al., *NYPD Cop Peter Liang Dodges Prison for Killing Akai Gurley*, N.Y. POST (Apr. 19, 2016, 3:11 PM), <https://nypost.com/2016/04/19/nypd-cop-peter-liang-gets-community-service-for-killing-akai-gurley/> [<https://perma.cc/B873-QQCF>].

100. *Id.*

101. *Rookie NYPD Officer Peter Liang Indicted In Fatal Shooting of Akai Gurley*, CBS NEWS (Feb. 10, 2015, 8:31 PM), <https://www.cbsnews.com/newyork/news/wcbs-880-rookie-nypd-officer-peter-liang-indicted-in-fatal-shooting-of-akai-gurley-family-attorney-says/> [<https://perma.cc/X4D5-GY4Y>].

102. Chris Fuchs, *NYPD Officer Peter Liang Guilty of Second-Degree Manslaughter in Akai Gurley Killing*, NBC NEWS (Feb. 11, 2016, 7:45 PM), <https://www.nbcnews.com/news/asian-america/nypd-officer-peter-liang-guilty-second-degree-manslaughter-akai-gurley-n516796> [<https://perma.cc/V8DW-8ML6>].

103. NY PENAL LAW § 125.15 (Consol. 20232014); NY PENAL LAW § 70.00(2)(c) (Consol. 2023).

104. Emily Saul, *DA Recommends Ex-NYPD Cop Peter Liang Not Serve Jail Time in Fatal Shooting*, N.Y. POST (March 23, 2016), <https://nypost.com/2016/03/23/brooklyn-da-to-recommend-liang-not-serve-jail-time-for-stairwell-shooting/> [<https://perma.cc/B873-QQCF>].

105. Ken Thompson, *Ken Thompson: Justice for Akai Gurley Doesn't Equal Jail Time for Peter Liang*, N.Y. DAILY NEWS (Apr. 19, 2016, 6:57 PM), <http://www.nydailynews.com/opinion/thompson-justice-gurley-doesn-equal-jail-liang-article-1.2607738> [<https://perma.cc/L6UQ-YBF3>].

who recklessly killed an innocent man,” and “Liang’s criminally reckless actions took the life of a young father and robbed a family and community of their loved one.”<sup>106</sup>

This begs the question: if Liang was as reckless—albeit unintentional—as he was proven to be in causing Gurley’s death, does keeping Liang out of jail really result in justice for Gurley’s family? What if a private citizen had inadvertently discharged a firearm and unintentionally killed a police officer? Is that not also second-degree manslaughter? And would a jail sentence not be an appropriate punishment for that individual?

In the end, Liang’s conviction was reduced to the lesser crime of criminally negligent homicide, still a felony conviction, but one that carries a maximum prison sentence of only four years under New York law.<sup>107</sup> The presiding judge followed the recommendation of Thompson and sentenced Liang to only five years of probation and 800 hours of community service; no jail time.<sup>108</sup> Needless to say, Liang got off cheap.

Unsurprisingly, Gurley’s family blasted Thompson’s proposal of no jail time for Liang.<sup>109</sup> One relative railed, “[h]is blood is on Ken Thompson’s hands, on Peter Liang’s hands. His blood is on the entire justice system’s hands.”<sup>110</sup> This relative continued, “[s]o you’re telling me it’s OK for a black man in America, good ol’ America, to get murdered, and these officers who took an oath to serve and protect are not being held accountable?”<sup>111</sup>

In my opinion, the story of Peter Liang and Akai Gurley continues to add to the indelible perception that the police got away with it for the umpteenth time, and justice is denied to a minority community yet again. Here we have a police officer who was actually convicted of a felony in a jury trial only to have the district attorney recommend that he not serve any jail time. If he is not going to serve jail time anyway, why bother prosecuting?

Sure, Peter Liang has a felony conviction on his record, and was fired by the New York City Police Department.<sup>112</sup> But Liang is yet another cop

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106. *Id.*

107. NY PENAL LAW § 125.10 (Consol. 2023); NY PENAL LAW § 70.00(2)(e) (Consol. 2023).

108. Saul et al., *supra* note 105.

109. Christina Carrega et al., *Akai Gurley’s Family Outraged After Brooklyn DA Kenneth Thompson Recommends House Arrest, No Jail Time, For Ex-NYPD Cop Peter Liang*, N.Y. DAILY NEWS (Mar. 24, 2016, 4:09 AM), <http://www.nydailynews.com/new-york/nyc-crime/brooklyn-da-recommends-no-jail-time-ex-cop-peter-liang-article-1.2575264> [<https://perma.cc/A28B-8RYC>].

110. *Id.*

111. Saul, et. al., *supra* note 105.

112. *See id.*

who gets to go home to his family to try to live with his “mistake.” Akai Gurley’s girlfriend, his mother, and his daughter are forced to live with Liang’s “mistake.” *AKAI GURLEY CANNOT*.

#### H. *William F. Roemer, Jr.’s Story*

Scripture teaches us “there is nothing new under the sun.”<sup>113</sup> In his excellent book *Accardo: The Genuine Godfather*, the late former FBI agent William Roemer tells this story about yet another police officer shooting a black man who turned out to be unarmed.<sup>114</sup>

This 1970s incident involved Tucson Police Officer Skip Woodward, who approached the vehicle of an individual he suspected of being involved in a crime in the area.<sup>115</sup> When Woodward approached the vehicle, the man “made a move towards his glove compartment. Officer Woodward, making a quick decision on the spot, perceived that he was reaching for a gun. He shot the man, seriously wounding him.”<sup>116</sup> The shooting victim claimed that he was reaching to turn his car radio down so he could hear what Officer Woodward was saying.<sup>117</sup> There was no gun found in the victim’s glove compartment, and Officer Woodward was never charged.<sup>118</sup> Interestingly, Roemer’s own independent investigation of the incident found it was a “righteous shooting” and Woodward had “the right to do what he did.”<sup>119</sup> What a surprise. Those law enforcement agencies really stick together, don’t they?

#### IV. “BUT I THOUGHT HE HAD A GUN:” THE POLICE OFFICER GET OUT OF JAIL FREE CARD

I will be the first to admit that a police officer has the right to defend himself, and must make an instantaneous life-or-death decision. I understand that. With that said, if anyone reading this thinks my hypothetical about a cop shooting at me while I’m reaching for my car keys was either facetious or far-fetched, consider the following.

On November 6, 1997, Federal Deputy Marshal William Cannon shot and injured Andre Burgess because he thought the silver object in Burgess’ hand was a gun. It turned out to be a Three Musketeers candy

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113. *Ecclesiastes* 1:9 (New King James).

114. WILLIAM F. ROEMER, JR., *ACCARDO: THE GENUINE GODFATHER* 349 (Ballantine Books 1996) (1995).

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

bar.<sup>120</sup> Cannon was not indicted by the Queens grand jury.<sup>121</sup>

On June 4, 1999 Latanya Haggerty was shot and killed by police officer Serena Daniels while she was sitting in a car.<sup>122</sup> Daniels claimed that she saw a “silvery, shiny object” in Haggerty’s hand and believed it to be a gun.<sup>123</sup> However, all of the witnesses at the scene, including another police officer, actually saw a black cell phone and not the alleged shiny object in Haggerty’s hand.<sup>124</sup> Similarly, Daniels was never prosecuted on any criminal charges for Haggerty’s death.<sup>125</sup>

Even acknowledging that there could have been a mistake in judgment, or even insufficient evidence to show a racially biased motive in many of these cases, doesn’t negligence count for anything? Negligence is by definition, “the failure to use such care as a reasonably prudent and careful person would use under similar circumstances.”<sup>126</sup>

As police officers do have the state-sanctioned power of life and death decisions, I think it is fair to wonder if a little due diligence on the part of police officers is too much to ask. As shown in the above examples of police officers holding their fire where white suspects are concerned, one can certainly reasonably believe that the victims of the police shootings discussed here would have had longer life spans had those officers not been so negligent.

Again, I acknowledge that a police officer has to make an on-the-spot, split second decision whether to fire his weapon. But I believe police officers MUST also be held to a higher standard of due care in the performance of their duties, especially where life and death are potentially at stake. It is painfully obvious that even in January 2023, police officers have disproportionately used deadly force against persons of color, many times in situations where the justification to use deadly force is, at best, suspect.

Even if a racially motivated intent is not a factor supported by evidence, causing another’s death by failing to exercise the requisite standard of care can result in a charge of criminally negligent homicide. New York’s Penal Law, for example, understands criminally negligent

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120. Cynthia Lee, *But I Thought He Had a Gun - Race and Police Use of a Deadly Force*, 2 HASTINGS RACE & POVERTY L.J. 1, 14 (2004).

121. *Id.* at 15.

122. Todd Lighty, *Untold Story of Haggerty Shooting*, CHI. TRIB. (Sep. 12, 1999, 12:00 AM), <https://www.chicagotribune.com/news/ct-xpm-1999-09-12-9909120226-story.html> [<https://perma.cc/58JM-K75Z>].

123. *Id.*

124. *Id.*

125. Amelia Gruber, *No Charges in 1999 Police Shootings*, NWI.COM (May 29, 2002), [http://www.nwitimes.com/uncategorized/no-charges-in-police-shootings/article\\_ff94d419-0a22-501b-b3cb-5ed081b9a46d.html](http://www.nwitimes.com/uncategorized/no-charges-in-police-shootings/article_ff94d419-0a22-501b-b3cb-5ed081b9a46d.html) [<https://perma.cc/MKV2-R984>].

126. BLACK’S LAW DICTIONARY 537 (6th Ed., 1990).

homicide as causing someone's death by acting in a manner that was reckless, inattentive, or careless.<sup>127</sup> Once again, for police officers to escape conviction on even a lesser charge of criminally negligent homicide lends itself to the continuing perception that when an officer kills a person of color, whether negligently, recklessly, or even with racially motivated intent, the legal system is seemingly "rigged" (to use one of Donald Trump's favorite words) to favor the police officer. And still again, we as people of color are asked to put our faith in those very same police officers to protect and serve . . . us.

#### V. INCIDENTS WHERE NO SHOTS ARE FIRED AT WHITE PERPETRATORS

With all of the lurid stories of police officers firing a grievous multiplicity of fatal shots at unarmed, law-abiding citizens of color, police officers show some amazing restraint and magnanimity when it comes to apprehending known killers who just happen to be Caucasian. Here are a few recent cases in point.

First, on the same day of Timothy Stansbury's death, police in the Bensonhurst section of Brooklyn, in response to a report of an armed man in the subway, encountered Keven Tester, a white male.<sup>128</sup> When they entered the subway, Tester fired three shots at the responding officers.<sup>129</sup> Interestingly, the responding officers did not return fire.<sup>130</sup> Instead, the officers called for backup and were able to talk Tester into relinquishing his gun.<sup>131</sup> Tester was then subdued without incident.<sup>132</sup>

Secondly, in the summer of 2011, David Laffer, a drug addict, walked into a Long Island drugstore to rob prescription medications from the store. During the robbery, Laffer shot and killed, execution-style, two employees and two customers inside the store.<sup>133</sup> After a three-day manhunt, Laffer and his wife, who drove the getaway car from the murder scene,<sup>134</sup> were arrested at the couple's Long Island home.<sup>135</sup> The couple

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127. NY PENAL LAW § 125.10.

128. Brown, *supra* note 72, at 757, 758.

129. *Id.* at 758.

130. *Id.*

131. *Id.*

132. *Id.*

133. See Selim Algar, *LI Pharmacy Shooter Gets Five Consecutive Life Terms, Wife Gets 25 Years*, N.Y. POST (Nov. 10, 2011, 5:25 PM), <https://nypost.com/2011/11/10/li-pharmacy-shooter-gets-five-consecutive-life-terms-wife-gets-25-years/> [<https://perma.cc/5NEE-CEDG>].

134. See Larry Celona, *Cops Arrest Suspect in Long Island Drug Store Killings, Later ID'd in Police Lineup*, N.Y. POST (June 22, 2011, 2:35 PM), <https://nypost.com/2011/06/22/cops-arrest-suspect-in-long-island-drug-store-killings-later-idd-in-police-lineup/> [<https://perma.cc/M4ZE-V7EM>].

135. *Id.*

was arrested very quietly and without incident.<sup>136</sup> One eyewitness to the arrest remarked: “It was totally quiet. It was unbelievable the way [police] did it. Four cars pulled up. They had him in cuffs within a couple minutes.”<sup>137</sup> Evidently, these cops did not see the need to fire their weapons at a robber who was the suspected executioner of four innocent people.

Next, in the fall of 2014, Eric Frein shot two Pennsylvania state troopers and killed one of them.<sup>138</sup> This sparked a manhunt that lasted for forty-eight days before Frein was finally captured.<sup>139</sup> When law enforcement surrounded Frein, he meekly surrendered.<sup>140</sup> Once again, the arresting officers in this case did not pull their triggers, in this case against a man who killed one of their own.

Finally, in the notorious case of Dylann Roof, after he was arrested for his carnage at the Mother Emanuel AME Church in South Carolina, which left nine people dead,<sup>141</sup> he too was arrested without incident.<sup>142</sup> The police officers then took Roof to Burger King for lunch.<sup>143</sup>

This begs the next question: if a person of color were suspected of killing nine Caucasian people in New York’s St. Patrick’s Cathedral, would police officers be so restrained and magnanimous in their response? Based on the very acrimonious relationship between law enforcement and communities of color, I surely doubt it, and believe a very different result would have played out.

When one juxtaposes these stories against the stories of Amadou Diallo, Sean Bell, and Timothy Stansbury, the inconsistency of the application of police “justice” is truly unnerving. Laffer, Frein, and Roof, actual killers, are quietly apprehended, as was Tester, who actually shot at the police. Yet, the police saw fit, . . . obviously in their infinite wisdom, no doubt, to unload their weapons against Diallo, Bell, and Stansbury, law-abiding UNARMED citizens who did absolutely nothing wrong. I would ask if those cops are any better than the actual killers Laffer, Frein, and Roof. I am hard-pressed to believe that they are.

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136. *Id.*

137. *Id.*

138. *See Accused Cop Killer Captured After Weeks-Long Manhunt*, N.Y. POST, (Oct. 30, 2014, 6:54 PM), <https://nypost.com/2014/10/30/accused-cop-killer-captured-after-weeks-long-manhunt/> [<https://perma.cc/2XHA-6P2B>].

139. *Id.*

140. *Id.*

141. *See Jason Silverstein, Cops Bought Dylann Roof Burger King After His Calm Arrest: Report*, DAILY NEWS (June 23, 2015, 4:03 PM), <http://www.nydailynews.com/news/national/dylann-roof-burger-king-cops-meal-article-1.2267615> [<https://perma.cc/FB4S-ACW9>].

142. *Id.*

143. *Id.*



VI. PROFESSOR HENRY LOUIS GATES AND SERGEANT JAMES CROWLEY

According to the Model Penal Code, disorderly conduct is defined as follows:<sup>144</sup>

Section 250.2. Disorderly Conduct.

(1) *Offense Defined.* A person is guilty of disorderly conduct if, with *purpose* to *cause* public inconvenience, annoyance or alarm, or *recklessly* creating a risk thereof, he:

(a) engages in fighting or threatening, or in violent or tumultuous behavior; or

(b) makes unreasonable noise or offensively coarse utterance, gesture or display, or addresses abusive language to any person present; or

(c) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

“Public” means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

The Massachusetts General Statutes also defines disorderly conduct as:

Common night walkers, common street walkers, both male and female, persons who with offensive and disorderly acts or language accost or annoy another person, lewd, wanton and lascivious persons in speech or behavior, keepers of noisy and disorderly houses, and persons guilty of indecent exposure shall be punished by imprisonment in a jail or house of correction for not more than 6 months, or by a fine of not more than \$200, or by both such fine and imprisonment.<sup>145</sup>

This is the offense Harvard Professor Henry Louis Gates was charged with after his altercation with Police Sergeant James Crowley.

On July 16, 2009, returning home from a trip, Professor Gates was having trouble with the lock on his front door.<sup>146</sup> As Professor Gates and his driver struggled to push the door open, a neighbor witnessed the men at the door and, assuming the men to be burglars, called the police.<sup>147</sup>

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144. MODEL PENAL CODE § 250.2 (AM. L. INST. 1962)..

145. Mass. Gen. Laws Ann. c. 272, § 53 (2022).

146. Elayne E. Greenberg, *Dispute Resolution – Lessons Gleaned from the Arrest of Professor Gates and “The Beer Summit,”* 25 ST. JOHN’S J. CIV. RTS. & ECON. DEV. 91, 93 (2010).

147. *Id.*

Responding to the call, Sergeant Crowley found Professor Gates inside the house. An argument ensued and Sergeant Crowley arrested Professor Gates for disorderly conduct.<sup>148</sup> Happily for Professor Gates, the charge was later dropped.<sup>149</sup>

I find it unconscionable that Professor Gates was arrested for a misunderstanding even after he presumably proved to Sgt. Crowley that it was indeed Professor Gates' own home. If a noted college professor can be subject to arrest for arguing with a police officer—in his own home, mind you—what reasonable chance does any innocent person of color have in *any* disagreement with a police officer? Not much, I'm afraid. When I first learned the details of what happened, my first question was whether this incident would have the same result if Sergeant Crowley went to the home of someone like Alan Dershowitz or Elena Kagan, also well-known Harvard professors (and in Kagan's case, a future United States Supreme Court Justice). Again, I doubt it. Some might consider this last point to be speculative, but I firmly believe that police treat persons of color far differently than they treat other people. History has already shown hostile police encounters with minorities to be more than mere outliers.

#### VII. MY OWN EXPERIENCES WITH POLICE OFFICERS THAT ONLY CONFIRM MY LONG STANDING DISTRUST

On Sunday, May 28, 2006, I graduated from Touro Law School with my 2nd law degree, and my mom and my brother went with me to the commencement. The ceremony took place at Lincoln Center in Manhattan, which is in a pretty upscale neighborhood. I was about to pull into a parking lot across the street, and there were 3 cars in front of me. The other 3 cars went in without incident, but when I got to the entrance, a cop comes out of nowhere and "requests" that I open my trunk. I didn't have anything in the trunk but I was not about to let his "request" go unchallenged.

I got out and asked the cop to let me speak to his commanding officer immediately, which was my right. When the commanding officer came to my car, I explained to him in no uncertain terms that 3 other cars before me went into the parking lot without incident, and if the junior officer did not have probable cause to stop and search those cars, he did not have probable cause to stop me, either. After all, when did it become suspicious to drive into a public parking lot? That's when they backed off and let me go on my way (the B that I got in Criminal Procedure certainly came in handy that day) . . . and I never did open my trunk. As we were walking

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148. *Id.* at 94.

149. *Id.*

out of the parking lot, the commanding officer then had the audacity to tell me that he and his partner do not racially profile. I responded that if what he said was really true, he would not have needed to say it. In retrospect, I wish I had the presence of mind to have taken both their names and badge numbers down because I would have sent a nasty letter to the police commissioner, and I would have gone to the press with it as well.

I also had an earlier experience with a budding police officer where I let her know where I stood as far as police are concerned. This was in early 2000, right after the four cops who fired forty-one bullets at Amadou Diallo were acquitted of all charges, including manslaughter and criminally negligent homicide. The budding police officer happened to be a student in my Saturday morning tax class. One day after class ended, she asked to speak with me privately. She explained that she would have to drop the class because it was conflicting with her obligations at the police academy.

I then asked her if she really wanted to be a police officer, particularly in light of the Diallo verdict plus the fact that many people do not trust law enforcement, especially in the Bronx where the Diallo shooting had just happened. She responded by asking me if I was one of those people who did not trust the police. I responded by telling her that when she graduated from the academy, if she ever saw me inside a burning building, she should do me a favor and *leave me there*.

#### VIII. A (RARE) POLICE APOLOGY

In October 2016, a noteworthy event took place during the annual meeting of the International Association of Chiefs of Police (IACP) in San Diego.<sup>150</sup> IACP President Terrence Cunningham “apologized on behalf of police officers for their role in eroding the sense of trust between police and minority communities at the organization’s annual conference.”<sup>151</sup> In a rather stunning statement, Cunningham readily admitted that the numerous incidents of police shooting people of color, along with the historical police enforcement of legalized segregation, has created a decades-long environment of fear and distrust of law enforcement in minority communities. “Cunningham said those shootings, coupled with historical police enforcement of legalized segregation, has created ‘a multi-generational, almost inherited’ sense of mistrust.”<sup>152</sup>

Cunningham went on to mention that both police and minority

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150. Chelsea Bailey, *Police Organization Apologizes for Mistreatment of Minorities*, NBC NEWS (Oct. 18, 2016, 4:11 PM), <http://www.nbcnews.com/news/us-news/police-organization-apologizes-mistreatment-minorities-n667886> [https://perma.cc/UG9L-L2GQ].

151. *Id.*

152. *Id.*

communities have to somehow find a way to move on from the injustices of the past: “Today’s officers are not to blame for the injustices of the past. If either side in this debate fails to acknowledge these fundamental truths, we will be unlikely to move past them.”<sup>153</sup>

Predictably, there were those in police circles who were less than thrilled with Cunningham’s commentary. Most notably, Lt. Bob Kroll, head of the Police Officers Federation of Minneapolis (interestingly, considering George Floyd) who stated:

Our profession is under attack right now and what we don’t need is chiefs like him perpetuating that we are all bad guys in law enforcement. I think it’s an asinine statement. We’ve got officers dying on almost a daily basis now because of this environment, and statements like that don’t help.<sup>154</sup>

I would ask Lt. Kroll this: if he takes that much umbrage at the perception in his town and elsewhere that everyone in law enforcement are “bad guys”, *what exactly are he and his fellow officers doing to combat such a perception, along with the resulting fear and mistrust?* What are the police doing in his town to try to calm tensions between them and the minority communities they allegedly protect and serve? By the way, I would also ask Lt. Kroll the following: *What exactly is it about an acknowledgement of and apology for historical social injustice at the hands of law enforcement that was so asinine?* I would love to hear his response. In the meantime, Kroll calling Cunningham’s statement “asinine” does nothing but pour gasoline on the fire, and only aggravates the perception that police are the enemy in minority communities.

There are those who would argue that if relations between the police and communities of color are to ever be reconciled, one has to start somewhere, and the apology here would at least be a good starting point. That might even be true in theory. I say, however, after seeing repeated incidences of minorities racially profiled, falsely arrested, brutalized, and even wrongfully killed in my own lifetime, only to see the perpetrating police officers get away with it time and time again, with no recrimination whatsoever, such an apology is for me *woefully too little and FAR TOO LATE*. I say this simply because the single most important question law enforcement officials need to answer (and I believe has consistently FAILED to answer) is this: *considering law enforcement’s atrocious history why should we, as law-abiding citizens of color, ever believe law enforcement will ever be there to help us in our time of trouble?*

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153. *Id.*

154. Elliot Spagat, *Reactions Are Mixed to Police Leader’s Apology*, AP NEWS (Oct. 18, 2016), <http://www.startribune.com/reactions-are-mixed-to-police-leader-s-apology/397407021/> [<https://perma.cc/FG2A-PF4D>].

## IX. FINANCIAL SETTLEMENTS

While many of the police officers I have discussed were able to escape criminal culpability in their respective cases, the municipalities that they worked for had to pay out sizeable monetary amounts to settle the wrongful death lawsuits filed by the victims' surviving family members. Cases in point, just to name a few:<sup>155</sup>

1. The City of Chicago paid Latanya Haggerty's family \$18 million.
2. The City of New York paid Eric Garner's family \$5.9 million.
3. The City of North Charleston, S.C. paid Walter Scott's family \$6.5 million.
4. The City of Ferguson paid \$1.5 million to Michael Brown's family.
5. The City of New York settled with Abner Louima for \$8.7 million.<sup>156</sup>

While these financial settlements do impose vicarious financial liability on the municipalities for the wrongs perpetrated by the police officers in question, the financial settlements are rather *de minimis* when compared to the perpetual suffering of those families who have lost loved ones at the hands of law enforcement. This fact also applies to those individuals who have survived police encounters and are perhaps traumatized or otherwise negatively affected for life.

While municipalities do have money in their budgets (I hope) to cover contingent liabilities in the event this should happen, do these financial settlements really help to lessen the trauma and distrust of law enforcement, or are these contingent liabilities merely accepted by the police municipal employers as merely part of the cost of doing business? Not only that, do these settlements give any reasonable assurance that municipalities do a better job of vetting police recruits? Or ensuring that similar incidents do not occur in the future? Or perhaps better training officers to treat citizens as individuals and not presumed suspects? Unfortunately, I do not hold out much hope.<sup>157</sup>

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155. Evan Frost, *A Look at Recent Settlements in Fatal Police Encounters*, PHILLY TRIB. (Jun. 27, 2017) [https://www.phillytrib.com/news/a-look-at-recent-settlements-in-fatal-police-encounters/article\\_8762fa85-1f1e-5872-bb27-9366b5e82285.html](https://www.phillytrib.com/news/a-look-at-recent-settlements-in-fatal-police-encounters/article_8762fa85-1f1e-5872-bb27-9366b5e82285.html) [https://perma.cc/2UH2-HSNT].

156. Tom Hays, *Louima to Receive \$8.7M in Torture Suit*, ABC NEWS (Jul. 12, 2001), <https://abcnews.go.com/US/story?id=92902> [https://perma.cc/57EK-HKMN].

157. See Keith L. Alexander, Steven Rich & Hannah Thacker, *The Hidden Billion-Dollar Cost of Repeated Police Misconduct*, WASH. POST (Mar. 9, 2022), <https://www.washingtonpost.com/investigations/interactive/2022/police-misconduct-repeated-settlements/> [https://perma.cc/GY6U-NV5P]. See also, Amelia Thompson-DeVaux, Laura Bronner, & Damani Sharma, *Cities Spend Millions on Police Misconduct Every Year. Here's*

## CONCLUSION

I lived and worked in New York City for most of my professional life. The police cars in the city have the inscription “*Courtesy, Professionalism, Respect.*” I readily admit that I am personally insulted every time I see that phrase. I have no reason to believe that phrase applies to persons of color when there are too many stories of police officers routinely harassing law-abiding minority citizens with impunity.

Hoping this never happens, this is my open request to any police officer I come into contact with:

- 1) If you see me on the side of the road with a flat tire or a smoking engine, just drive on by. You may presume that Triple A is on the way to help me.
- 2) If you see me in any need of assistance, don’t ask if I need help because I don’t trust any of you to help me. Again, you have my permission to drive by.
- 3) If you see that I’m lost and need directions, I’ll figure it out, thank you very much.

Why? I have absolutely no reason to believe that any police officer will protect and serve me if I need help, thus I will take my chances.

Let us not forget, for every cop killed in the line of duty, there is at least one matching story of Diallo, Bell, Stansbury, Scott, Gurley, et al. And those are only the stories that *we know about*. How many other stories are out there about people of color brutalized or killed by overzealous or even openly racist police officers that might have been swept under the rug, never to see the light of day?

After a lifetime of seeing the police automatically assume the worst of people of color, mistreat *law-abiding* citizens of color, manufacture probable cause after the fact, and get away with it far more often than not, the police automatically get neither compassion nor the benefit of the doubt from me.

Undoubtedly, there are those who will respond by saying that it is easy to bash a cop until you need one, and I’ve had some rather heated conversations with people in law enforcement on that very point. My response that it is extremely difficult for a law-abiding citizen to trust a police officer when that police officer seemingly has an automatic presumption of wrongdoing against those citizens.

The next response of the law-and-order types will be not to demonize an entire group of police officers because of the unconscionable actions

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*Why It’s So Difficult to Hold Departments Accountable*, FIVETHIRTYEIGHT (Feb. 22, 2021), <https://fivethirtyeight.com/features/police-misconduct-costs-cities-millions-every-year-but-thats-where-the-accountability-ends/> [https://perma.cc/UF3K-HKFS].

of a few. But the following are recent incidents that rebut that point and do not put police officers in the positive light that they seek so much. First, Los Angeles police officer Houston Tripping died in what was supposedly a training exercise accident, but the family attorney alleges that he was killed by fellow officers, who staged the accident as retaliation for his investigating some of his fellow officers who were implicated in a rape case.<sup>158</sup>

Even more recently, a videotape surfaced of five Memphis police officers who were seen yanking Tyre Nichols out of his car and beating him senseless, less than one block from his home. Nichols died from his injuries a few days later.<sup>159</sup>

Finally, police seemingly demonize entire minority communities for the reprehensible actions of a few, as shown above. In addition, even an apology is very poor consolation for those who have been wrongly victimized by law enforcement. For them, their encounter with a “bad apple” is *ONE TIME TOO MANY*. Again, I ask how does law enforcement expect those individuals who have been wrongfully targeted and brutalized to give law enforcement the benefit of the doubt? Is there not a presumption of innocence for those people?

I repeat that this is a sorry state of affairs when I, a law-abiding citizen with no criminal history, and no such proclivity, have to be wary of muggers, robbers, carjackers and police officers with equal intensity. When the only forces seemingly out there are the (1) bad guys with badges and guns and (2) the other bad guys, how can one believe otherwise? Again, I am not the only person who feels this way. This is now a normal reaction of many people who have been profiled and brutalized by police officers to a point far beyond discourse. . .let alone reconciliation. As much as it pains me to say this, *I will take my chances*. Thus, I firmly believe that in minority communities, the idea of “protect and serve” is selective at best, and mythical at worst. I openly defy anyone in law enforcement to convince me otherwise.

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158. Vanessa Romo, *An LAPD Officer Who Was Killed in a Training Exercise Was Targeted, a Lawyer Alleges*, NPR (Oct. 8, 2022, 5:00 AM), <https://www.npr.org/2022/10/08/1127580159/houston-tipping-lapd-death-lawsuit> [https://perma.cc/Z7SP-LCLC].

159. Rick Rojas & Jessica Jaglois, *Five Officers Charged with Murder in Memphis Police Killing*, N.Y. TIMES (Feb. 1, 2023), <https://www.nytimes.com/2023/01/26/us/tyre-nichols-memphis-police.html> [https://perma.cc/J96V-7BEL].