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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

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.

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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. 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.](#)

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.