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DOES RACE MATTER? (Part I)

Police killings of black persons roil the nation

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

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

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

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

Controversies about such shootings may be leading prosecutors to act in situations they might have once ignored or left for the civil courts to untangle. Outcomes are proving mixed. In November 2014 a Maryland judge sentenced suburban cop [Johnnie Riley](#) to five years imprisonment after a jury convicted him of first-degree assault for shooting a handcuffed, fleeing man in the back, leaving him paralyzed. But not all such cases have borne fruit:

- Last week jurors acquitted a suburban Pennsylvania officer of manslaughter for shooting and killing David Kassick, a 59-year old white person who was lying on the ground, brought down by Taser darts while fleeing on foot from a traffic stop.

- In August prosecutors dismissed voluntary manslaughter charges against Charlotte, North Carolina police officer [Randall Kerrick](#) after jurors deadlocked 8-4 in favor of acquittal. Two years earlier, Kerrick shot and killed Jonathan Ferrell, an unarmed black man who was pounding on doors of private residences after a late-night car accident.
- In April a jury acquitted Chicago PD detective [Dante Servin](#) of involuntary manslaughter for shooting and killing a black woman two years earlier. Servin, while off-duty, had been aiming at the victim's companion, a rowdy male who allegedly charged at him, and whom Servin mistakenly believed was armed.

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

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

Law enforcement officers are authorized to use deadly force to protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or, prevent a crime where the suspect's actions place person(s) in imminent jeopardy of death or serious bodily injury; or, prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall, to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury. The reasonableness of an officer's use of deadly force includes consideration of the officer's tactical conduct and decisions leading up to the use of deadly force.

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

Let's turn to the issue of present concern: police shootings of black people. In "[Lessons of Ferguson](#)" we speculated that "crossed signals" between cops and citizens are less likely when both parties are of the same race. It also seems commonsensical that racially representative police forces are more likely to enjoy good relations with minority communities. Yet in many areas – say, Ferguson, [with only three black](#)

[officers](#) (out of 52 total) for a city that is two-thirds black – there are relatively few black cops. A [recent analysis of 2013 data](#) for 269 police agencies serving populations of 100,000 or more revealed that blacks are underrepresented by an average of 6.4 percent. In twenty-six localities where blacks are in the majority, the average gap increases to 14.5 percent. Gaps are most pronounced in medium-sized communities, reaching 45.4 percent in Daly City, California, 44.1 percent in Edison Township, New Jersey, and 42.4 percent in Fremont, California. However, in the larger cities the gaps vary. Black police officers are underrepresented by 6.6 percent in Chicago and 6.5 percent in New York City, but are overrepresented by 1 percent in Dallas, 1.1 percent in Seattle, 1.4 percent in Boston, 2.8 percent in Los Angeles, 3.5 percent in San Francisco, 10.6 percent in Washington D.C. and 15.6 percent in Miami.

Every year the FBI publishes [statistics of killings by police](#). Aside from being incomplete – participation is voluntary, and many agencies contribute sporadically or not at all – the data only reflects situations (nearly all are shootings) where someone died, the killing was deemed justifiable, and the decedent was a “felon.” Keeping the limitations in mind, *ProPublica* used the data to analyze police killings during 1980-2012 (click [here](#) and [here](#)). On the one hand, they found that black youths, ages 15-19, were from 9.1 to 21 times more likely than white youths to be shot dead by police. On the other, they discovered that seventy-eight percent of the “felons” killed by black officers (they accounted for ten percent of shootings) were also black.

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

Stay tuned!