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LESSONS OF FERGUSON

When cops and aggressive citizens tangle, lethal results often follow

By Julius (Jay) Wachtel. What happened in Ferguson is far from rare. Posts in our “Use of Force” section offer many examples of the use of lethal force by police against aggressive but unarmed citizens. Here are four examples:

- August 11, 2014. Two LAPD gang enforcement officers approached a 25-year old male on foot. They were unaware that he was mentally ill. According to police, the man tackled one of the officers and went for the cop’s gun. Both officers opened fire, and killed the man. However, a citizen witness denied that a struggle took place. The incident remains under review.
- January 14, 2011: Two LAPD officers responding to a disturbance call came across a large, naked 25-year old man (he happened to be a former NFL prospect) “yelling and behaving erratically.” He ran off. When officers closed in he repeatedly punched them in the face and head, then supposedly grabbed for a gun. That’s when an officer shot him dead. The killing was ruled justified.
- March 20, 2010: Two LAPD officers heard a loud noise while on patrol. They spotted a 27-year old man on foot. He seemed to be fiddling with something. The cops pulled up and ordered the man to stop. Instead he walked towards them and reached into his waistband. An officer shot him dead. It turns out that the man, who was learning disabled, had a cellphone in his hands. The officers received “conditional reprimands.”
- May 17, 2008: Long Beach (Calif.) police responded to a 911 call about an “absolutely insane” person. They approached a shirtless, middle-aged man. Officers said he charged them. Despite a Taser strike and baton blows, he punched a cop in the face and grabbed his baton. As they tumbled to the ground the other officer shot and killed the man. His action was deemed appropriate. Some citizen witnesses denied that a struggle took place.

In the unpredictable environment of the streets, cops must make critical judgments on the fly. Citizens who are non-compliant or, worse, physically aggressive potentially set the stage for a tragedy. When the learning-disabled man (see the third example) failed to heed a cop’s warning to stop his advance, then reached into his clothing, anything that came out was likely to be construed as a gun. When Michael Brown, who punched officer Wilson and tried to take his gun turned and allegedly came at the pursuing cop, he may have seemed like a lethal threat.

How can officers avoid using deadly force? One way is to back off and wait for help. As we pointed out in a prior post, one-on-one foot pursuits are inherently dangerous. It may have been better for officer Wilson to let Brown go until backup arrived. Of course, doing so is not always appropriate, as it can transfer the risk to passers-by and help a suspect avoid capture.

Another approach, which we've also discussed at length, is to deploy non-lethal devices such as pepper spray or a Taser. Here we must depart from officer Wilson's decision not to carry a conducted energy device. Still, using a Taser while working solo is potentially risky; if the darts miss or are deflected by outerwear, and the suspect keeps coming, there may be not an opportunity to go for a club or gun.

Officers working alone are at a serious disadvantage. As the episode in Ferguson demonstrates, backup is not instantaneous. Some articles in the police literature conclude that conflicted situations are more likely to be safely and peacefully resolved when a second officer is present.

On the other hand, as the above examples demonstrate, simply having more cops on scene is no panacea. (Keep in mind that our "sample" is not unbiased, as LAPD mostly uses two-officer cars.) In any case, deployment decisions usually yield to budgetary constraints. One-officer cars cover twice the area of two-officer cars, at about the same cost. In most communities, and particularly cash-strapped towns like Ferguson, the former are here to stay.

If officers must work alone, they should at least get timely information about potential threats. According to a transcript of radio traffic, the Ferguson dispatcher alerted units that "a black make in a white shirt" stole a box of cigars from a store (Track 349.) No other details were given. So when unit 22 (officer Wilson) encountered a man in a white shirt (Michael Brown, sauntering down the middle of the road,) he wasn't certain that Brown was the thief. Neither could he know that Brown's blood levels of THC, the active ingredient in marijuana, was sufficient to impair his judgment. Had officer Wilson known that it was Brown, and that Brown had strong-armed the store clerk and pushed him against a wall, he would have likely waited for backup. Indeed, given Brown's behavior, it's probably a good thing that the cop didn't immediately step out of his car and approach him on foot.

When a suspect's name is known, officers and dispatchers may be able to provide important behavioral clues. Some jurisdictions even enter information about mentally impaired persons into their dispatch system. Unfortunately, officer Wilson did not know Brown, and would not learn of his identity until it was too late.

Did race influence the outcome? Crossed signals are probably less likely between citizens and cops of the same race. However, Michael Brown might not have been swayed by persuasion regardless of a cop's ethnicity. He was high on THC and demonstrably aggressive, having just shoplifted a box of cigarillos and physically bullied the clerk who confronted him. Cooperating with a police officer of any race would have meant a quick trip to jail, and Brown didn't seem in the mood for that.

Nothing in the record suggests that Brown was shot because he was black. Still, it's always preferable that a police department's racial and ethnic makeup resemble the composition of the community it serves. As those involved in police hiring well know, the competition for qualified

minority candidates is intense. Smaller jurisdictions are at a marked disadvantage. With limited finances, they prefer to hire trained, certified and experienced officers from other agencies (officer Wilson is himself an example.) However, snagging laterals who also happen to belong to a minority group is not easy. To redress the racial imbalance in its police, Ferguson must begin by expanding the force. It will have to advertise, create a pool of applicants, select the most qualified, pay to train and certify them, then assign the new rookies to a senior officer for the twelve or eighteen months of experience they'll need before going solo.

To be sure, taking such steps is a lot harder than jawboning and pointing fingers. It's certainly not cheap. Neither is it guaranteed to prevent tragic encounters such as between officer Wilson and Michael Brown. But if we're looking for a lasting improvement, there is really no alternative.