

# **POLICE AND THE MENTALLY ILL ESSAYS**

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## A STITCH IN TIME

### *Could early intervention save officer and citizen lives?*

By Julius (Jay) Wachtel. Consider [a well-known, chronic offender](#) who habitually gathered with other like-minded souls to sell contraband. Then take into account [the reprobate's criminal record](#), which included three open criminal cases and about thirty arrests in as many years for offenses including assault, resisting arrest, grand larceny and, most recently, selling contraband cigarettes.

We're referring, of course, to [Eric Garner](#). During the first six months of 2014 his favorite place for selling loosies was the site of 98 arrests, 100 summonses and hundreds of complaints from citizens, merchants and the landlord of the apartment building where he and his buds gathered to peddle their wares. Two of those arrests were of Garner himself. When, in July, the cops moved in for a third time he tried to fight them off. At six-feet three and 350 pounds, the 43-year old scoundrel suffered from obesity, asthma and circulatory problems, so when an overexcited cop applied a chokehold the outcome seemed all too predictable.

Our second story, also from the Big Apple, reached its equally lethal conclusion last month. On October 18 officers were called to the apartment of [Deborah Danner](#), a 66-year old schizophrenic. Over the years police had repeatedly responded to complaints from other tenants about Danner's behavior. Although Danner was [estranged from her family and lived alone](#), her sister would usually show up and accompany everyone to the E.R.

This time things turned out differently. Danner, naked and agitated, flashed a pair of scissors at the sergeant who entered her bedroom. Although he convinced her to put the scissors down, she then rushed him swinging a baseball bat. He drew his gun and fired twice, killing her. [His tactics were quickly criticized](#) by the police chief and, most significantly, by Mayor de Blasio, who wondered why a Taser wasn't used. Hizzoner later lamented that Danner's sister had also been there:

She said she'd seen it done the right way and expected it to be done that way this time as well. You can only imagine the pain she feels having had to stand there and hear the shots fired and the recognition coming over her that she had lost her sister.

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You've guessed it – our third account is also from New York. But this time a cop died.

[Manuel Rosales](#) was a violent, deeply troubled youth. His father would later complain that despite the boy's behavior police and school authorities – he dropped out when he was seventeen – repeatedly let him slide by. By the time that Rosales turned thirty-five the self-professed gang member had been arrested seventeen times and served two prison terms for theft. His violent outbursts led his wife to leave him last year and secure a protective order, which Rosales evidently ignored.

On November 3, while out on bail for a July assault on his estranged spouse, [Rosales broke into her Bronx apartment](#) and took her and three others hostage. He was armed with a reportedly stolen .45 caliber pistol. Rosales left several hours later. Responding officers spotted his vehicle and gave chase. Rosales crashed his Jeep, and as his pursuers stepped from their vehicles he unexpectedly opened fire, killing Sgt. Paul Tuozzolo and seriously wounding Sgt. Emmanuel Kwo. Rosales was shot and killed.

Rosales had previously declared his intention to commit suicide by cop. He posted “this nightmare is coming to an end...goodbye” on Facebook one day before his rampage.

When confrontations turn lethal, tactics often draw blame. Except for the chokehold, Eric Garner would still be alive. Maybe, as Mayor de Blasio suggested, Deborah Danner could have been Tased. Yet a New York grand jury [refused to indict](#) the officer who allegedly choked Garner (he testified that he struggled to avoid being thrown through a plate glass window.) A full-page ad in the *New York Times*, placed by the NYPD Sergeants Benevolent Association (November 25, p. A-5) suggested that had Danner's bat struck the cop one might be asking why he didn't use his pistol.

Really, one can quibble about tactics until the cows come home. But here our focus is on prevention. And one thing is certain: while the motivations and mental states of Garner, Danner and Rosales were different, each had been a prodigious consumer of police services. And the consequences weren't always what one might expect:

- As the Big Apple roiled in the aftermath of Garner's death, [an exasperated NYPD supervisor](#) pointed to his kid-gloves treatment in the past: “We chased him; we arrested him. But once you've chased a guy, what's a warning going to do?”
- Official reluctance to commit Deborah Danner for mental health treatment [left her grieving cousin](#), himself a retired cop, deeply frustrated: “They [police] have been here numerous, numerous times over the years. Debbie was sick since she

was in college. They have to do a better job of handling mental illness.”

- Even Rosales, a twice-convicted felon, kept getting breaks. After his arrest earlier this year for assaulting his ex-spouse (and ignoring a protective order, to boot) [he was released on a measly \\$1,000 bond](#), far below the \$25,000 recommended by prosecutors.

A stiff sentence early on might have helped extinguish a pattern of behavior that repeatedly brought Garner into conflict with police. Danner, who had clearly presented a threat to herself and others for over a decade, could have been forcibly hospitalized years earlier. Harsh, perhaps, but far preferable to getting shot. Had the judge acceded to the D.A.’s request for a stiff bond, Rosales would have likely remained locked up, and both he and Sgt. Tuozzolo would still be alive.

Acting decisively when it matters can make a difference. No, we’re not suggesting a return to [“broken windows” policing](#), which has a well-earned reputation for needlessly provoking conflict. Neither is our approach a version of [“predictive policing](#),” which uses crime data to identify [“hot spots”](#) where offending is likely to occur. Instead, our focus is on *individuals*, specifically those whose documented behavior indicates they are at great risk of harming themselves or others.

In an era where the tendency has been to ease punishments, acting pre-emptively may be a hard sell for budgetary reasons alone. Making good decisions may also require information that’s not readily available. Officers don’t consistently acquire – and police records systems don’t consistently store and catalog for ready retrieval – the quantity and quality of information necessary for making reasonably accurate predictions of violent behavior.

Assume that officers and record systems are brought up to the task. What then?

- First, there must be a process for filtering out persons who most need special attention from an admittedly noisy background. This would at a minimum include a substantial history of contacts and, most importantly, input from field officers, who are in the best position to decide whether (and to what extent) the admittedly subjective threshold of dangerousness has been breached.
- Secondly, there should be a non-nuclear option. [“Crisis intervention teams”](#) comprised of officers and medical specialists are widely used to respond to active incidents. Conceptually similar teams could be used proactively to visit and counsel individuals whose behavioral pattern, if left unchecked, might lead to

tragedy.

- Finally, there must be a process for selecting individuals whose behavior resists less coercive means, including pre-identifying available options. Mentally ill persons such as Deborah Danner could be flagged for formal commitment, while offenders such as Eric Garner might be “scheduled” for an arrest instead of a citation or warning.

To be sure, deciding just who merits special attention, and of what kind, invokes substantial liberty concerns. Of course, so does shooting someone, or being shot.

Posted 4/19/21

## FOUR WEEKS, SIX MASSACRES

*Would stronger gun laws help? We crunch the numbers.  
They're not reassuring.*



*For Police Issues by Julius (Jay) Wachtel.* When we left off in “[Two Weeks](#)” the toll was three massacres and twenty-two dead in seventeen days. But we had missed one. On March 29, a Maryland man [embarked on a vicious shooting spree](#). His gunfire claimed four lives, including those of his parents, and seriously wounded a fifth person. He then committed suicide. Joshua Green, 27, used two handguns that he bought and legally registered last year. He had no criminal record. So we changed the essay’s title to “Two Weeks, *Four* Massacres.”

Then on April 8, as we began working on this essay, tragedy struck in South Carolina. [A former NFA player used two pistols](#) to slay an elderly physician and his wife and two of their grandchildren at a Rock Hill home. Phillip Adams, 32, also shot and killed a handyman. Adams had played pro football during 2010-2015 but left the sport after suffering several injuries, including at least two concussions. He clearly found the transition to ordinary life difficult. [Family and friends observed](#) that Adams was growing increasingly moody and temperamental and seemed to be “struggling with his mental health.” Of course, no one expected that he’d embark on a murderous spree.

But he did. Tracked by police to his parents’ home, the former athlete shot himself dead.

Then on April 15, when we thought this essay was really, *really* done, a young gunman toting two assault rifles [stormed an Indianapolis FedEx facility](#) (see image above) and opened fire, killing eight and wounding seven. Brandon Scott Hole then committed

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suicide. A former FedEx employee, the 19-year old [was placed on a brief “mental health hold”](#) last year after his mother warned police that he “might try to ‘commit suicide by cop’.” Hole then had a shotgun, which police seized and apparently did not return. But that didn’t slow him down. He went on to legally purchase one assault rifle in July and another in September. Although Indiana has a so-called “[Red Flag](#)” law that can be used to bar gun ownership by mentally disturbed persons (more on that later) it was apparently never invoked.

What could stem the slaughter? Many gun control advocates fiercely insist that stronger laws help. Given your writer’s past career as a Federal firearms agent, he’s not inherently hostile to that approach. Yet when we assessed the effects of gun law strength and related factors on gun deaths and murders four years ago [the results weren’t reassuring](#):

Our number-crunching confirmed statistically significant associations between gun laws, overall gun deaths and gun suicides, but not between gun laws and gun homicides. While our efforts are admittedly limited, they suggest that gun laws as implemented in the U.S. are far more apt at reducing gun deaths from non-criminal rather than criminal causes.

So we did it again. This time we used [Gifford’s widely-accepted scale](#) of gun law strength. Keeping ostensible causes and effects separate, here are our measures (“variables” in statistics-speak):

## Causal variables

- **Gun law strength.** [Giffords’ 2020 State gun law strength](#) (range 1-50). Giffords assigns #1 to the State with the strongest laws, and #50 to the State with the weakest. We flipped that around. Scaled low law strength to high law strength.
- **Gun ownership.** [RAND 2016 gun ownership by State](#) (proportion of adults living in a household with a firearm in 2016). Scaled low proportion of gun owners to high.
- **Percent residents in poverty, by State.** [From the Census](#). Scaled few to many.

## Effects variables

- **2019 homicide rates/100,000 pop., by State.** [From the CDC](#).

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- **2019 firearm murder rates**/100,000 pop., by State. [From the UCR.](#)
- **2019 firearms mortality**/100,000 pop., by State. [From the CDC.](#)
- **2019 firearms suicide**/100,000 pop., by State. [From the CDC.](#)
- **2017-2021 number of persons shot (killed or wounded) in mass shootings** (four or more shot on a single occasion) / 100,000 pop., by State. [From the Gun Violence Archive.](#) Due to missing or questionable data eight states were excluded. We also did not factor in the [2017 Las Vegas massacre](#), which killed sixty and wounded 411.

Correlation analysis (the  $r$  statistic) was used to assess the relationships between pairs of variables. Here's a brief discourse:

**Explanation:**  $r$ 's are on a scale of -1 to +1. If the  $r$  is zero the variables aren't associated, meaning that as the scores of one change the other does its own thing. If the  $r$  is either 1 or -1 the relationship is in lockstep. If the  $r$  is positive, the scores of the variables increase and decrease together; if it's negative, as the scores of one variable increase, the scores of the other decrease. Lesser  $r$ 's (say, .2 or -.2) denote weaker relationships, thus less synchronicity in the variables' movements. Due to the nature of the data we omitted the asterisks (\*) that report an  $r$ 's "significance." However, in our experience any  $r$  that's .50 or greater, whether positive or negative, definitely bears attention.

	Homicide	Gun homicide	Gun suicide	Gun death	Mass shoot
Homicide	-	.95	.25	.75	.76
Gun homicide	.95	-	.15	.65	.87
Gun suicide	.25	.15	-	.82	.04
Gun death	.75	.65	.82	-	.47
Mass shoot	.76	.87	.04	.47	-

We first assessed the relationships among the "effect" variables. As expected, each was "positive," meaning their scores increased and decreased together. Many of the relationships were also strong, meaning that the scores changed in substantial synchrony. That's particularly true for homicide and gun homicide, which seem like two measures of the same thing

(nearly 3 out of four murders in 2019 [were committed with firearms](#).) As expected, gun suicides, which accounted for about sixty percent of gun deaths in 2019 (23,941 / 39,707, click [here](#) and [here](#)) are strongly related to overall gun deaths. Mass shootings were also very strongly related to gun homicides, thus homicides overall.



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We then brought in the “causal” variables: gun law strength, gun ownership and percent of residents in poverty. Here’s the matrix with everyone on board:

		Homicide	Gun homicide	Gun suicide	Gun death	Mass shoot	Gun law strength	Gun Owner	Pct Poverty
<b>Causes</b>	Gun law strength	-.33	-.20	-.76	-.73	-.23	-	-.84	-.44
	Gun ownership	.26	.17	.84	.75	.16	-.84	-	.33
	Pct poverty	.74	.72	.30	.64	.63	-.44	.33	-
<b>Effects</b>	Homicide	-	.95	.25	.75	.76	-.33	.26	.74
	Gun homicide	.95	-	.15	.65	.87	-.20	.17	.72
	Gun suicide	.25	.15	-	.82	.04	-.76	.84	.30
	Gun death	.75	.65	.82	-	.47	-.73	.75	.64
	Mass shoot	.76	.87	.04	.47	-	-.23	.16	.63

Stronger gun laws are supposed to reduce crime. And maybe they do. All the  $r$ 's for gun law strength are negative. As gun laws get tougher, each of the effect measures (say, gun deaths) declines. And as gun laws weaken, the other measures increase. But the strengths of the relationships varies. Gun law strength seems only moderately associated with homicide overall ( $r=-.33$ ) and its relationships with gun homicides ( $r=-.20$ ) and mass shootings ( $r=-.23$ ) are relatively weak. On the other hand, gun law strength is strongly associated with both gun suicides ( $r=-.76$ ) and gun deaths ( $r=-.73$ ).

State gun suicide rates			
Gun law strength	-.76	Gun owner	.84
Control for gun Ownership		Control for gun law strength	
Gun law strength	-.20	Gun owner	.57

But there may be a statistical fly in the ointment. Gun law strength has a very robust, negative relationship with gun ownership rates ( $r=-.84$ ). Problem is, strong associations between variables can exaggerate the apparent strength of their relationships with other variables. So we turned to partial correlation. We begin on the left side of the graph, which reports the relationship between gun suicide rates and gun law strength. Note that when we “control for” (exclude the influence of) gun ownership, the relationship between gun suicides and gun law strength plunges from  $r=-.76$  to  $r=-.20$ . Switch to the right side, which describes the relationship between

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gun suicide rates and gun ownership. Once we exclude the influence of gun law strength, the association between gun suicides and gun ownership falls from  $r=.84$  to  $r=.57$ . What remains, though, is still a good-sized  $r$ . Our takeaway is that gun ownership rates seem to be a substantially more powerful influencer of gun suicides than gun law strength.

State gun death rates			
Gun law strength	-.73	Gun owner	.75
Control for gun Ownership		Control for gun law strength	
Gun law strength	-.30	Gun owner	.35

Let's do the same with gun death rates. Once gun ownership gets the boot, the association between gun deaths and gun law strength drops precipitously, from  $r=-.73$  to  $r=-.30$ . Same thing happens when we exclude the influence of gun law strength from the association between gun death rates and gun ownership. Bottom line: when it comes to gun deaths, gun law strength and gun ownership are somewhat important, but perhaps much less so than what one might expect.

And things get more interesting. Check out this matrix. Gun law strength and gun ownership are weakly associated with the three variables that reflect guns' criminal misuse: homicides, gun homicides and mass shootings. Those "effects" seem far better explained by another "cause." Can you find it?

	Homicide	Gun homicide	Gun suicide	Gun death	Mass shoot	Gun law strength	Gun Owner	Pct Poverty
Gun law strength	-.33	-.20	-.76	-.73	-.23	-	-.84	-.44
Gun ownership	.26	.17	.84	.75	.16	-.84	-	.33
Pct poverty	.74	.72	.30	.64	.63	-.44	.33	-

Good job! Yes, it's poverty. Essays in our [Neighborhoods special topic](#) have long examined this social condition, which many criminologists consider a key underlying factor in crime and violence. Check out the relationships between poverty and homicide, poverty and gun homicide, poverty and gun deaths and poverty and mass shootings. Each  $r$  is positive and strong, meaning that as poverty increases, so do the others, and in nearly lock-step fashion.

Everyone knows that many poor neighborhoods are burdened by gun violence. So here's a "lever," right? Well, not so fast! After all, the apparently strong relationships between poverty and its soulmates could be a instant replay of what happened earlier. Poverty has moderately strong relationships with both gun ownership and gun law

strength. Is it possible that their influence is exaggerating poverty's relationships with other variables? Once again let's turn to partial correlation.

Look at the left graph. "Controlling" for either gun ownership or gun law strength hardly affects the " $r$ " between homicide deaths and poverty. It remains very strong. Ditto gun homicides and poverty.

State homicide rates				State gun homicide rates			
Poverty rates		.74		Poverty rates		.72	
Control for gun ownership		Control for Gifford gun law strength		Control for gun ownership		Control for Gifford gun law strength	
Poverty rates	.72	Poverty rates	.70	Poverty rates	.71	Poverty rates	.71

The next two graphs convey about the same story. Controlling for gun law strength slightly reduces the association between gun death rates and poverty, but it remains robust at  $r=.52$ . And the strong relationship between mass shootings and poverty is unaffected.

State gun death rates				Mass shootings – persons shot rates			
Poverty rates		.64		Poverty rates		.63	
Control for gun ownership		Control for Gifford gun law strength		Control for gun ownership		Control for Gifford gun law strength	
Poverty rates	.63	Poverty rates	.52	Poverty rates	.63	Poverty rates	.62

So what's the takeaway? Here are the perpetrators of the six massacres in our series:

- **March 16:** [Robert Aaron Long, 21](#), used a 9mm. pistol he bought that morning to murder eight at three Atlanta-area massage parlors
- **March 22:** [Ahmad Al Aliwi Alissa, 21](#), used an AR-556 "pistol" to murder ten at a Boulder, Colorado supermarket. He also carried a 9mm pistol

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- **March 29: Joshua Green, 27**, (mentioned here) used two handguns to murder four persons in Maryland
- **March 31: Aminadab Gaxiola Gonzalez, 44**, used a 9mm. pistol to murder four persons at a Southern California business
- **April 8: Phillip Adams, 32**, (mentioned here) used two pistols to murder five persons at a private residence in South Carolina
- **April 15: Brandon Hole, 19**, (mentioned here) used two assault rifles to murder eight persons and wound seven at an Indianapolis FedEx facility

Best we can tell, none of the gunmen – and all *were* male – was a convicted felon or had ever been committed to a mental institution. Best we can tell none was prohibited by either Federal law or, indeed, the law of *any* State from owning or acquiring the firearms they misused. That includes California, which Giffords commends for having [the strictest gun laws in the U.S.](#)

Is it really that hopeless? Let's go through some of the "levers".

- **Mental health.** Four shooters – Long, Alissa, Adams and Hole – had serious mental issues of which friends and family were well aware. Twenty States have ["Red Flag" laws](#) that empower courts to issue ["extreme risk protection orders"](#) that authorize police to seize guns from potentially dangerous individuals. Applications for these orders can be made by law enforcement officers and, in seven States, by family members. Alissa, Hole, Gonzales and Green lived in states with Red Flag laws (Hole's Indiana requires that police apply.) Of course, obtaining such orders is time-consuming. Serving them [can also be risky](#). And getting family members to inform authorities or cooperate is no easy task.
- **Waiting periods.** Of the six states in our series, [only California imposes a waiting period](#) that delays the delivery of guns purchased at retail (it's ten days.) Gonzalez, the lone California resident, used guns that he reportedly owned for some time. That doesn't necessarily mean waiting periods are useless. Long, whose rampage began only hours after buying a gun, resides in Georgia, which has no waiting period. Had he been forced to wait a week or so, he might have "cooled off" or reconsidered.
- **Minimum age.** [Federal laws](#) prohibit licensed gun dealers from selling handguns to persons under twenty-one and long guns (rifles and shotguns) to

persons under eighteen (18 USC 922[b][1]). [A handful of states](#) have more stringent provisions for long-gun buyers. For example, [California](#) only allows dealers to sell bolt-action type rifles to persons under twenty-one, and then only if they have a hunting license. However, no state restricts the purchase or possession of firearms by otherwise qualified persons who have reached full adulthood meaning twenty-one. Hole, the only killer younger than twenty-one, was of legal age to buy long guns of any kind in Indiana and nearly everywhere else.

- **Gun lethality.** Four killers used handguns; two, Alissa and Hole, were armed with assault weapons. (As we mentioned in [our previous essay](#), Colorado classified Alissa's firearm, really a short-barreled AR-15, as a "pistol.") That post also addressed the lethality of modern-day handguns and the vicious effects of the ammunition used by assault weapons. Yet even in supposedly gun-hostile California, legislators invariably build in loopholes that lessen the impact of gun control laws on enthusiasts and the firearms industry. Given that propensity, when it comes to guns with fearsome ballistics our response is always the same: "[Ban the Damned Things!](#)"

Full stop: what about "regular" gun violence? While six massacres and thirty-nine dead innocents in four weeks is deplorable, those numbers don't begin to approach the everyday toll of criminal and gang-related gunplay in America's urban areas. Indeed, a *Chicago Tribune* columnist [recently complained](#) that the "outcry over recent violence in Atlanta, Colorado and California" ignores the incessant gun violence that plagues her community:

But 15 people were shot at a party in Chicago's Park Manor neighborhood on March 14 (two days before the Atlanta-area shootings) and eight people were shot outside a Wrightwood neighborhood storefront on March 26 (four days after the Boulder shooting and five days before the Orange shooting)...What does it say that the violence here is so rarely included in larger discussions — in the media, among politicians — about mass shootings and the trauma they inflict on our nation?

For more about that, check out "[The Usual Victims](#)." Work your way through some of the related posts. Incredible!

No, we're not suggesting that gun laws are useless. Even an  $r$  of  $-.20$  (that's the raw relationship between gun law strength and gun homicides) is *something*. So tinker with laws and regulations all you want. To make a real impact, though, we must look to the

fundamentals. As our [Neighborhoods](#) essays repeatedly point out – and as the data clearly suggests – economic deprivation is deeply linked to the violence that besets many American neighborhoods. For our most recent essay on point, check out “[Fix Those Neighborhoods!](#)” And while you’re at it, don’t forget to read “[Memo to Joe Biden](#),” recently published in John Jay’s *[The Crime Report](#)*.

Reducing the toll from gun violence, whatever its form, calls for a return to the fundamentals. What is a “society” all about? How can we strengthen the bonds between humans regardless of their income, social standing, place of residence, ethnicity, or skin color? How can we place America’s downtrodden places on the path to prosperity? We don’t have any quick answers, but that “[Marshall Plan](#)” we so frequently peddle could be a good start.



Posted 8/5/11

## HOMELESS, MENTALLY ILL, DEAD

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

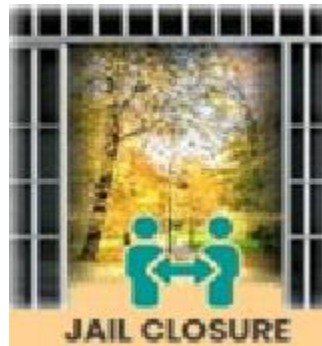
commander's office, that clearly depicts an officer striking Thomas with the butt of the Taser and drop-kicking him in the throat. On the next day that same cop supposedly bragged about delivering a beating. His comments weren't well received by other officers, who already shunned their colleague over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

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

Posted 5/30/23

## IS DIVERSION THE ANSWER?

***California authorized a new approach.  
Los Angeles ran with it. But, yes, there are limits.***



*For Police Issues by Julius (Jay) Wachtel.* If you’ve labored in the criminal justice workplace, closing a major city’s principal jail (even if only “eventually”) while “ensuring public health and safety” might seem a reach. But the goal of Los Angeles County’s [Justice, Care, and Opportunities Department](#) (JCOD), which was formed last year, didn’t arise from thin air. In January 2019 California enacted [Penal Code section 1001.36](#), which authorizes trial court judges to grant pretrial diversion for up to two years in all but the most serious crimes (murder, voluntary manslaughter and rape are among the disqualifying) to persons who are seriously mentally ill.

What’s needed? The burden of proof falls on the defense. It must submit an expert opinion that the accused suffers from a mental disorder recognized by the [DSM](#), including “bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia.” What’s more, the malady must have been “a significant factor in the commission of the charged offense” and is amenable to treatment. Prosecutors are free to object, and jurists get a broad escape clause:

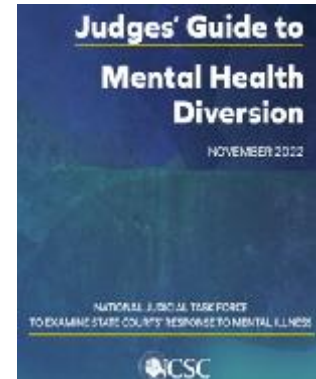
(b)(1)(F) The court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community. The court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, *and may consider the defendant's*

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*violence and criminal history, the current charged offense, and any other factors that the court deems appropriate (emphases ours).*

Prospective patients must agree to a comprehensive plan, which can include treatment in a residential facility, and their progress must be regularly reported. If they succeed, charges are dismissed; if they fail or commit another crime, their prosecution is revived.

With progressively-minded District Attorney George Gascon in charge, mental health diversion seems a particularly good fit for Los Angeles. (Check out [the video](#) on the DA's website). But mental health diversion isn't just something that progressively-inclined California dreamt up. In 2019 a Federal entity, the [State Justice Institute](#), awarded more than a million dollars to the [National Center for State Courts](#) (NCSC) "to develop resources, best practices and recommend standards" for dealing with mentally ill persons who commit crimes ([grant SJI-19-P-019](#)). NCSC's final report, "[Judge's Guide to Mental Health Diversion](#)," came out in November. Throughout, its tone is unfailingly favorable:



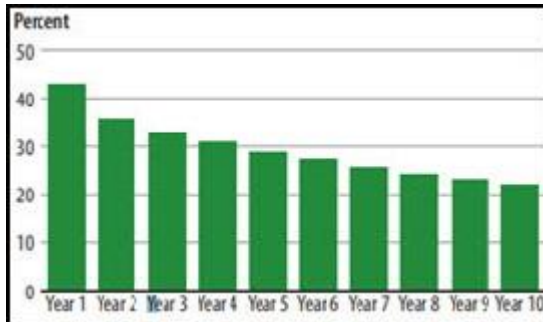
The incarceration of people with serious mental illness, often for minor crimes, is expensive and results in negative outcomes for the individuals, their families, and their communities. Even short stays in jail often make mental illness symptoms worse and increase the likelihood of recidivism. In response, courts and communities are increasingly looking to design and implement diversion strategies that identify those individuals who can and should be steered away from the criminal justice system, and toward appropriate treatment.

Indeed, the notion of diversion has taken hold in jurisdictions across the U.S. (For examples in Florida and Kansas, click [here](#) and [here](#).) But what do statistics show? Does diversion work? Does it reduce recidivism? Violent crime? Alas, L.A. County's [October 5, 2022 report](#) indicates that methods to statistically "evaluate which programs and interventions are operating as intended and which have a disparate impact" remain on the drawing board (p. 48). Bottom line: none of the gushing opinions are supported with numbers. And there's no relief in sight.

In fact, what figures there *are* suggest that the practice [faces immense challenges](#). On May 11, 2022 the Men's Central Jail held 12,977 inmates. Of these, seventy percent (9,150) had been charged with or convicted of a violent felony, and forty-six percent (6,025) awaited trial. Of the latter group, "most" were accused of a "serious or violent" felony. Based on these sobering facts, the county's jail closure team concluded that judges were unlikely to simply let folks go:

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While the Court is ultimately responsible for making release decisions, it is unlikely to release large numbers of individuals held on serious or violent felony charges — which includes the majority of people currently held in the County jail system — without significant investment and expansion of the infrastructure available to support a person if released (Attachment III, p. 2).



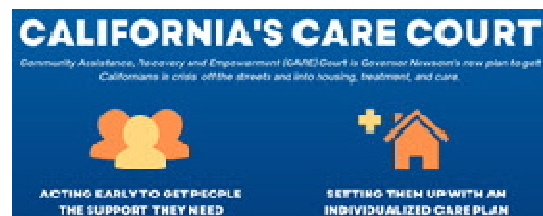
crimes were most likely to commit one again.

Problem is, as we recently reported in “[A Broken System](#)”, that “infrastructure” seems far from sturdy. A 2021 BJS report, “[Recidivism of Prisoners Released in 24 States in 2008](#)”, revealed that 81.9 percent of releasees were rearrested within ten years; 39.6 percent for a violent crime and 47.4 percent for a property crime (Table 11). Those charged with violent

[L.A. County’s program](#), which launched in 2019, [has reportedly served 1,500 clients](#) during its four-year run. Three-hundred-fifty “graduated”, and seventy percent of those who remain are supposedly “on track”. Of the graduates, only five percent have again faced charges (so far). For drop-outs, recidivism stands at ten percent.

Nick Stewart-Oaten, the lawyer who authored the diversion law, feels that these are promising numbers. But how could it be otherwise? Given the rules on who can apply, judges’ stringent selection practices, and the considerable oversight that’s exercised over active clients, one should expect minimal recidivism. (That it’s somewhat higher for drop-outs makes perfect sense.) As things stand, mental health diversions are relatively few. In the real world, it could hardly be otherwise. A key issue that none of the content-rich websites and reports deems worthy to address – the views and feelings of the victims of violence – is undoubtedly a key obstacle. Imagine the political repercussions should a wealthy or politically-influential victim of violence discover that their assailant was “let go.”

And that brings us to our final point. Set aside the propaganda: unless diversions increase a hundred-fold, they can’t substantially reduce the number of “[Fearful, Angry, Fuzzy-Headed and Armed](#)” persons who enter the criminal justice system. For that, prevention is key. Giving mentally-disturbed, violence-inclined persons the equivalent of “rapid diversion” *before* they strike is the purpose of California’s spanking-new [CARE Courts](#). To be



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launched this October [in seven counties](#), it will focus on adults who suffer from schizophrenia and other psychoses. Referrals can come from a variety of sources, including families, first responders and social service agencies. Clients get public defenders, and judges can impose treatment plans that last up to two years. Medication can be refused, but failure to succeed can set off the existing, old-fashioned involuntary commitment process.

As one might expect, CARE's compelled nature has drawn considerable blowback from civil libertarians. After all, de-institutionalization has been the watchword for decades. Yet, as we suggested in "[Are We Helpless to Prevent Massacres?](#)", a land awash in AR-15's and such might benefit from a bit of coercion. Sure enough, "[Red Flag](#)" laws sometimes get the gun. But underlying mental health issues often remain unaddressed.

Will CARE fill that gap? Ask us in a couple of years. Meanwhile, keep your head down!

Posted 10/21/20

## L.A. WANTS “CAHOOTS.” BUT WHICH “CAHOOTS”?

*Some politicians demand that officers keep away from “minor, non-violent” crime*



For *Police Issues* by Julius (Jay) Wachtel. “[Ideology Trumps Reason](#)” and “[A Conflicted Mission](#)” blamed ideological quarrels for hobbling America’s ability to regulate its borders and control the pandemic. Here we turn to ideology’s insidious effect on crime control, as politicians capitalize on the social movement inspired by [the death of George Floyd](#) to push half-baked plans that would replace police officers with civilians.

For an example we turn to Los Angeles, where [the City Council recently approved](#) a proposal by its “Ad Hoc Committee on Police Reform” to establish “[an unarmed model of crisis response](#).” As presently written, the measure would dispatch civilian teams instead of cops to “non-violent” 9-1-1 calls that “do not involve serious criminal activity” and have at least one of six “social services components”: mental health, substance abuse, suicide threats, behavioral distress, conflict resolution, and welfare checks.

Approved by unanimous vote on October 14, [the move was endorsed](#) the very next day by none other than...LAPD!

The Los Angeles Police Department fully supports the City Council's actions today to establish responsible alternatives to respond to nonviolent calls that currently fall to the Department to handle. For far too long the men and women of the Department have been asked to respond to calls from our community that would be more effectively addressed by others.

So how does George Floyd fit in? Although he’s not mentioned in the actual motion, Mr. Floyd is prominently featured in [an extensive report](#) prepared by the Council’s legislative analyst:



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Following the nationwide protests over the murder of George Floyd in Minneapolis, calls for a reduced role of law enforcement in nonviolent calls has been reiterated. The need for alternative unarmed models of crisis response has grown out of concerns related to the increased rates of arrest and use of force by law enforcement against individuals dealing with mental illness, persons experiencing homelessness, or persons of color. Armed response has been noted to be incompatible with healthcare needs or the need for other services, including service for the unhoused community.

Analyst Andy Galan isn't out on a limb. On the very day the motion passed, its most prominent signatory, [former council president Herb Wesson, Jr.](#) argued that George Floyd would still be alive and well had civilians handled the situation instead of cops:

Calling the police on George Floyd about an alleged counterfeit \$20 bill ended his life. If he had been met with unarmed, trained specialists for the nonviolent crime he was accused of, George Floyd would be turning 47 years old today. This plan will save lives.

Is he right? Might non-cops have done better? [Here's a partial transcript](#) of the 9-1-1 call:

Caller: Um someone comes our store and give us fake bills and we realize it before he left the store, and we ran back outside, they was sitting on their car. We tell them to give us their phone, put their (inaudible) thing back and everything and he was also drunk and everything and return to give us our cigarettes back and so he can, so he can go home but he doesn't want to do that, and he's sitting on his car cause he is awfully drunk and he's not in control of himself.

Mr. Wesson suggests that Mr. Floyd met all three conditions of the proposed model. His behavior was not (at first) violent. And assuming that stealing cigarettes is no big deal, neither was there any "serious criminal activity." As for that "social service need," the complainant reported that Mr. Floyd was "not in control of himself." Check, check, check.

Alas, it's only after the fact that one often learns "the rest of the story." As a chronic drug user with a [criminal record](#) that includes armed robbery, Mr. Floyd was hardly a good candidate for civilian intervention. Watch [the video](#). His odd, unruly behavior led the first cop with whom he tangled to conclude, probably correctly, that the small-potatoes thief was in the throes of [excited delirium](#). Really, had Mr. Floyd complied instead of fought, that hard-headed senior officer we criticized wouldn't have entered the picture and things could have ended peaceably.



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No, guns and badges aren't always necessary. Yet when a shopkeeper calls and complains they've just been swindled (Mr. Floyd copped some smokes with a fake twenty) and the suspect's still around, dispatching civilians, and only civilians, seems a stretch. Gaining compliance from someone who's been bad isn't always easy. Even "minor" evildoers might have a substantial criminal record. Or maybe a warrant. Seemingly trivial, non-violent offending is potentially fraught with peril, and as your blogger has personally experienced, situations can morph from "minor" to potentially lethal in an instant. At the bottom of our list (though not necessarily in terms of its importance) 9-1-1 callers might feel slighted should they be denied a uniformed police presence.

Considering the negatives, one can't imagine that any law enforcement agency would endorse handing off response to "minor" crimes to civilians. That's not to say that mental-health teams can't be useful. [LAPD has long fielded SMART teams](#) that include specially-trained police officers and a mental health clinician. They're used to supplement beat cops in select, highly-charged situations that could easily turn out poorly. Far more often, though, officers tangle with homeless and/or mentally ill persons who don't require the intense, specialized services of a SMART team but whose shenanigans could tie things up for extended periods. It's for such situations, we assume, that the chief would welcome a civilian response.

That's where [Eugene's "CAHOOTS" initiative](#) comes in. It's the model the city council recommended for adoption in L.A. Here's another extract from the analyst's report:

CAHOOTS...teams consist of a medic (a nurse, paramedic, or EMT) and a crisis worker...Responders are able to provide aid related to crisis counseling, suicide prevention, assessment, intervention, conflict resolution and mediation, grief and loss counseling, substance abuse, housing crisis, first-aid and non-emergency medical care, resource connection and referrals, and transportation to services.

Sounds great, right? But there's a Devil in the details. Read on (*italics ours*):

The CAHOOTS response staff are not armed and do not perform any law enforcement duties. *If a request for service involves a crime*, potentially hostile individual, or potentially dangerous situation, the call is referred to the EPD.

Oops. Here's how an Oregon CAHOOTS team member [described its protocol](#) (*italics ours*):

The calls that come in to the police non-emergency number and/or through the 911 system, if they have a strong behavioral health component, if there are calls

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that do not seem to require law enforcement *because they don't involve a legal issue* or some kind of extreme threat of violence or risk to the person, the individual or others, then they will route those to our team....

Police-citizen encounters have become grist for a mill of ideologically-driven solutions that overlook the complexities and uncertainties of the police workplace. George Floyd is but one example. Our [Use of Force](#) and [Conduct and Ethics](#) sections have many others. Say, the tragic case of [Rayshard Brooks](#), the 27-year old Atlanta man who was shot dead after he fired at a cop with the Taser he grabbed from the officer's partner. That incident, which happened in June, began with a call from a local Wendy's complaining that a driver was asleep and blocking the drive-through lane. (Incidentally, that's not even a crime.) The encounter began amicably. But when the seemingly pleasant man failed a field sobriety test and realized he was being arrested for drunk driving he went ballistic and a vicious struggle ensued. (Click [here](#) for the videos.)

It turns out that just like Mr. Floyd, Mr. Brooks had a history of violence and was on felony probation. Oops.

Back to L.A., where the Council's incarnation of CAHOOTS sits on Mayor Eric Garcetti's desk. Hizzoner once opined that Mr. Floyd was "[murdered in cold blood](#)," so one figures that he also hankers for change. But given the realities of the streets – and the need to keep retailers and 9-1-1 callers happy – we suspect that the mayor will artfully massage things so that cops continue to be dispatched to "minor, non-violent" crimes. That, in any event, was obviously what Police Chief Michel Moore expected when he endorsed Oregon's version of Cahoots.

Of course, the City Council would have to swallow its collective pride. Thing is, council members aren't appointed – they're elected. Los Angeles is a big place with a complex socioeconomic mix. Lots of residents have expressed a desire for change, and they hold the power of the vote. So we'll see.

Posted 3/24/21

## ONE WEEK, TWO MASSACRES

*An Atlanta man buys a pistol. Hours later eight persons lie dead.*



*For Police Issues by Julius (Jay) Wachtel.* According to the World Health Organization, “[compulsive sexual behavior disorder](#)” is an [impulse control disorder](#) “characterized by a persistent pattern of failure to control intense, repetitive sexual impulses or urges.” In the U.S., though, the levers of power are held by the American Psychological Association. And it’s repeatedly refused to officially recognize a like syndrome, “[hypersexual disorder](#),” as a bonafide mental disorder. APA’s dictionary, though, does offer a catchy definition of yet another wannabe, “[sexual addiction](#)”:

The defining features of a sexual addiction include sexual behavior that is out of control, that has severely negative consequences, and that the person is unable to stop despite a wish to do so. Other features include persistence in high-risk, self-destructive behavior; spending large amounts of time in sexual activity or fantasy; neglect of social, occupational, or other activities; and mood changes associated with sexual activity.

Whatever one calls Robert Aaron Long’s condition, there’s no doubt that the twenty-one year old resident of Atlanta was obsessed with sex. A former roommate at a local rehab facility where Long spent several months receiving treatment for sex addiction [said that his buddy was “tortured”](#) by his compulsive thoughts, and especially so because he was very religious. Long complained that he simply couldn’t stay away from massage parlors, which he frequented for sex: “He’d feel extremely guilty about it. He’d talk about how he was going to harm himself.” Yet Long also shared good things about his upbringing. A favorite memory was of getting a gun when he was ten.

Long's "passion for guns and God" was mentioned in [The Daily Beast](#). His since-deleted Instagram account reportedly featured the tagline "Pizza, guns, drums, music, family, and God. This pretty much sums up my life. It's a pretty good life."

Apparently, not so much. Long's parents had reached [the end of their ropes](#). Fed up with their son's obsession with pornography and his repeated visits to parlors for "massages with happy endings," they kicked him out of the house. That supposedly happened on March 15. On the very next morning Long bought a 9mm. pistol at a gun store. Like most buyers, he apparently quickly passed the Fed's automated "[Insta-Check](#)." Georgia [doesn't have](#) its own waiting period or background check, so Long promptly left with the gun.

[His murderous spree](#) began within hours. It would claim eight lives. Long's first stop was in the Atlanta suburb of Acworth, where he burst into Young's Asian Massage. His fusillade left four dead: owner Xiaojie Tan, 49, masseuse Daoyou Feng, 44, handyman Paul Andre Michel, 54, and customer Delaina Yaun, 33. Long also shot and seriously wounded Elcias Hernandez-Ortiz, a passer-by. He then drove to Atlanta's "Cheshire Bridge" area. Long opened fire inside Gold's Spa and, across the street, at Aromatherapy Spa. In all, [four employees](#) were killed: Yong Ae Yue, 63, Hyun Jung Grant, 51, Soon Chung Park, 74, and Suncha Kim, 69.

Informed that their son was wanted, Long's parents told police that his car had a tracking device. A highway patrol officer spotted the youth and performed a pit maneuver. [Long's car spun out](#) and he promptly surrendered. His pistol was in the car. Word is he was on his way to Florida, where he intended to continue his murderous spree.

Six of Long's victims were of Asian descent. That brought on a torrent of speculation that Long, who is White, was motivated by racial animus. But while pundits have feverishly cited the tragedy as the undeniable product of racism, we haven't come across any reliable information that Long was a bigot. Indeed, he insisted that he wasn't a racist but was angry at the spas for feeding his sexual obsessions. They were, [he allegedly told the cops](#), "a temptation that he wanted to eliminate."

Indeed, such "temptations" abound in the Cheshire Bridge area where Gold's and Aromatherapy are located. [According to the Atlanta Journal-Constitution](#) the zone has been long known as the city's "unofficial red light district" (click [here](#) for the paper's earlier, comprehensive account about the area's notoriety.) During 2011-2013 [Atlanta police arrested ten employees](#) of Gold's Spa who "offered to perform sexual acts on undercover officers for money." Each of the arrested was female, and several [listed the spa as their place of residence](#). [According to USA Today](#) all three massage parlors are

listed on erotic review site “[Rubmaps](#),” and user comments mention their special “benefits.” Young’s Asian Massage is supposedly being investigated for prostitution, and police received complaints about possible sex work and exploitation at the other two spas as recently as 2019. Yet city officials insist that as far as they know the businesses operate legally.

So we’ll leave it at that. Our focus is on a concern that your writer, a retired ATF special agent, can personally attest to: the ease with which deeply-troubled persons can “legally” acquire guns at retail. Posts in our [Gun Massacres special topic](#) have repeatedly discussed the problem. Long seemed clearly in the grips of a mental crisis. But he wasn’t a felon. He was never involuntarily committed to a mental institution nor formally adjudged mentally defective. So nothing in [Federal law](#) prohibited him from buying a gun, impulsively or otherwise.

Many States have adopted [a variety of measures](#) to address such gaps. Some extend the prohibition on gun possession to certain categories of misdemeanants. And/or expand the definition of disabling mental conditions to include voluntary treatment. And/or impose mandatory “waiting periods” before firearms can be delivered. A few have even enacted “[Red Flag Laws](#)” (also known as “extreme risk protection laws”) that empower judges, based on information from police and family members, to order the confiscation of guns from risky individuals

When it comes to Long, though, none of that was available. Georgia, whom the [Giffords](#) gun-control group regularly awards an “F”, [has not enacted any restrictions](#) that go substantially beyond Federal gun laws. It doesn’t offer a way to [preemptively seize guns](#). Neither does it impose [a waiting period](#) on gun deliveries. It’s basically “walk in with the loot, walk out with the heat”.

Had he been forced to wait ten days before picking up the gun, would Long have still carried out the massacre? Could a delay have blunted its impulsive underpinnings? Might a deeply-troubled young man have rethought his intentions? It’s impossible to say, but at the very least eight people would have stood a chance of staying alive.

But Long didn’t have to wait, and the consequences are plain to see.

In past years we’ve written about other gunslinging youths with long-standing mental issues of which family and friends were well aware. For example, [Elliot Rodger](#). A 22-year old college dropout, he had received mental treatment since childhood. Rodger eventually settled in Isla Vista, a Santa Barbara (CA) neighborhood populated by students. He would soon produce and share a lengthy and chilling “manifesto” that [excoriated co-eds for spurning him sexually](#):

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I will punish all females for the crime of depriving me of sex. They have starved me of sex for my entire youth, and gave that pleasure to other men. In doing so, they took many years of my life away.

During 2012-2013 Rodger bought three 9mm. pistols at two gun stores and practiced with them at a range. On May 23, 2014, two weeks after a call from his worried parents prompted a visit by Sheriff's deputies (they were satisfied he was o.k. and left) Rodger stabbed three students to death. He then went on a shooting rampage, killing three more students and wounding thirteen. Rodger then shot himself dead.

Then there's [Jared Lee Loughner](#). Also twenty-two, and also a one-time student – [he had been expelled from an Arizona college](#) for erratic behavior – Loughner opened fire with a 9mm. pistol at a January 8, 2011 Tucson political event. Six fell dead and thirteen were wounded. One of the latter was then-Representative Gabrielle Giffords (D-Az), who went on to found the well-known gun control group whose website we referenced above. Loughner bought his gun at a local gun shop five weeks earlier. On the morning of the massacre he went to get ammunition but his odd behavior [led one store to turn him away](#) (he got what he wanted at another store.) After his arrest Loughner was placed on medication and confined to a mental ward. He ultimately pled guilty and was sentenced to “forever.”

Just like Long, Elliot Rodger and Jared Loughner readily bought guns at a store. Both were free of felony convictions. While each was (like Long) a longtime mental basket case, neither had been committed to a mental institution nor formally adjudged as mentally defective. Both had reached that magical age – twenty-one – that qualified them to purchase a handgun. (Eighteen is the Federal minimum for buying a rifle or shotgun at a store.)

Before Boulder happened we intended to present data – we've put together some fascinating numbers – that probes the effects (if any) of waiting periods and such on State homicide rates. But things have changed. So once we collect enough information about the Colorado massacre we'll be back with Part II. Hopefully that will conclude the series.



Posted 4/17/23

## PILING ON

***Swarming unruly citizens and pressing them to the ground invites disaster***



*For Police Issues by Julius (Jay) Wachtel.* On March 31, 2020, two months before the murder of George Floyd forever tarnished American policing, a resident of Southern California lost his life in an appallingly similar way.

During the early morning hours of March 31, 2020 a pair of California Highway Patrol officers [stopped Mr. Edward Bronstein](#), a thirty-eight year old Burbank man, on suspicion of drunk driving. He was detained and transported to a CHP station. On arrival, officers asked his consent for a blood draw. (That may have been due to previous DUI's. See below.) But Mr. Bronstein refused, so [they obtained a telephonic warrant](#) and summoned a nurse.

Seven CHP officers were involved. Five were hands-on. A sixth stood to the side, and a Sergeant videoed the encounter. (Click [here](#) for our condensed, captioned and backlit version, and [here](#) for the full-length CHP video). Officers placed Mr. Bronstein on his knees and tried to get him to change his mind. But Mr. Bronstein wouldn't, so they pressed him to the ground. Mr. Bronstein was instantly scared and "promised" he would comply. But an officer said "too late."

These images depict what happened next. About 1:25 min. into the CHP video, one



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officer is shown pressing down on Mr. Bronstein's neck area with his knee (we outlined its approximate shape). Less than a minute later (2:09 on the video) Mr. Bronstein begins screaming "I can't breathe." An officer replies "then stop yelling." The blood draw began about 2:50 mis. in. By 3:10 mis. Mr. Bronstein seemed unresponsive. But the procedure continued. At about 4:30 mis. the nurse checked for a pulse in various places, then tried to slap Mr. Bronstein awake. After nine minutes had passed the officers raised Mr. Bronstein's torso, and the nurse used a stethoscope to check for a heartbeat. About 13:30 mis. someone utters "heart attack". Active resuscitation measures don't visibly begin until nearly fifteen minutes into the encounter. That's about *twelve minutes* after Mr. Bronstein seemingly passed out.

["Violent and Vulnerable"](#) discussed the syndrome of "excited delirium," which the emergency medical community formerly applied to highly agitated persons, typically under the influence of drugs (see the American College of Emergency Physicians' 2009 ["White Paper on Excited Delirium Syndrome"](#)). When physically restrained, some cease breathing altogether or go into cardiac arrest. But the [EMS World](#) white paper that we originally linked is no longer online. It's been replaced by ["A New Lens on Excited Delirium."](#) According to the site editor, concern had developed that "excited delirium" had become "a catchall diagnosis that obscures other causes of death" and allows police to excuse the physical abuse of minorities (i.e., the George Floyd episode).

Still, agitated persons continued to perish. [A 2021 report](#) by the American College of Emergency Physicians (ACEP), offers a new, improved syndrome: "hyperactive delirium":

Hyperactive delirium with severe agitation, a presentation marked by disorientation and aggressive words and/or actions, is an acute life-threatening medical condition that demands emergency medical treatment...(pg. 2)

Fine. So was "hyperactive delirium" a factor in Mr. Bronstein's death? [ACEP's website](#) notes that (just like the bad, old "excited" delirium) forceful intervention can play a key role:

...Hyperactive delirium syndrome is a life-threatening constellation of symptoms manifested as a clinical syndrome. The combination of vital sign abnormalities, metabolic derangements, altered mental status/agitation, and potential physical trauma raises serious concerns for impending danger. Patients with this condition are at high risk of...secondary physical trauma that may result from physical restraint to allow for evaluation of the patient by emergency personnel.



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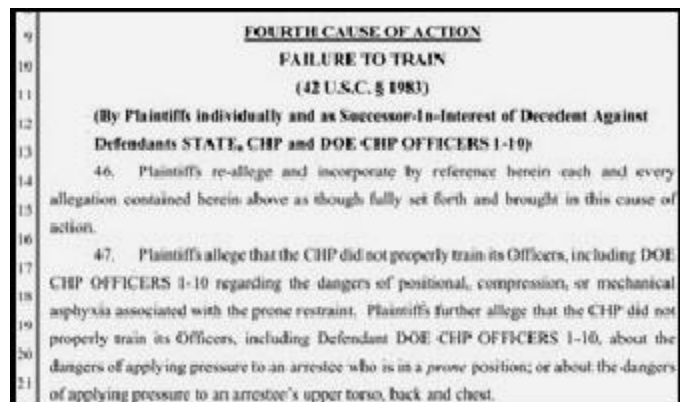
What's more, drugs make things worse. "Hyperactive delirium with severe agitation, as well as hyperadrenergic physiological states, commonly results from stimulant intoxication and may be caused solely by exposure to this class of drugs." (pg. 7)

For Mr. Bronstein, it was apparently "all of the above." According to the [L.A. County Coroner](#), the cause of death was "acute methamphetamine intoxication during restraint by law enforcement." A highly agitated man who was under the influence of a powerful, mood-altering drug had a gaggle of officers press on his chest. Given Mr. Bronstein's fragile condition – call it "hyperactive delirium" if you wish – that application of force likely interfered with his breathing and brought on cardiac arrest.

Leaving out any mention of "delirium", excited or otherwise, this causal chain forms the basis of [a Federal civil rights lawsuit](#) filed by Mr. Bronstein's family against the state, the CHP, and each of the officers (2:20-cv-11174-FMO-JEM). Here's a brief extract from its "Fourth Cause of Action, Failure to Train" (pg. 10):

Plaintiffs allege that the CHP did not properly train its Officers, including DOE CHP OFFICERS 1-10 regarding the dangers of positional, compression, or mechanical asphyxia associated with the prone restraint.

Plaintiffs further allege that the CHP did not properly train its Officers...about the dangers of applying pressure to an arrestee who is in a prone position; or about the dangers of applying pressure to an arrestee's upper torso, back and chest.



A recent filing indicates that a settlement is in sight, and a hearing to approve it is scheduled for October.

Full stop. It's not just civil litigation that the officers face. On March 28, 2023, just three days shy of the *three-year* mark, a new D.A., George Gascon, [charged the R.N. and the seven CHP officers](#) with violating [Penal Code section 192\(b\)](#), involuntary manslaughter, a felony, in this case "the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection". Each officer was also charged with [section 149, a misdemeanor](#) that applies whenever an officer "under color of authority, without lawful necessity, assaults or beats any person." Here's an extract from the [D.A.'s online announcement](#):

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...Bronstein initially refused the blood draw, but then agreed to comply as officers pushed him to the ground...Six officers are accused of forcing a handcuffed Bronstein to the ground and pinning him down as Baghalian drew his blood. While pinned down, Bronstein repeatedly told officers he could not breathe. As the blood draw continued, Bronstein became unresponsive. He was kept facedown for approximately six more minutes...Approximately 10 minutes after he became unresponsive, the officers attempted CPR, but Bronstein never regained consciousness and was later pronounced dead.

Mr. Bronstein's encounter with the CHP happened before the Floyd episode, when the risks of pinning recalcitrant subjects to the ground were not widely recognized outside of the medical community. That, of course, has changed. [Commenting on the officers' prosecution](#), Acting CHP Commissioner Sean Duryee emphasized that training and field practices have been substantially upgraded:

Following this incident, CHP leadership updated agency policies to prevent officers from using techniques or transport methods that involve a substantial risk of positional asphyxia...The CHP has also conducted training for all uniformed employees to help them recognize individuals experiencing medical distress. The CHP is exploring alternatives to administering mandated chemical tests when people arrested on suspicion of driving under the influence refuse to submit to testing, as required by law.

Policing is an inherently fraught enterprise, and [getting citizens to voluntarily comply](#) can be tough. Mr. Bronstein might have been a particularly tough nut to crack. Our search of Los Angeles Superior Court case files revealed that a man with the same first and last name, and same birth year and month, had three DUI and three driving on a suspended license convictions between 2001-2012. (There were also convictions for battery on a peace officer and domestic violence.) Prior DUI's may be why CHP officers insisted on a blood draw, then telephoned a judge when Mr. Bronstein refused to submit voluntarily. But even when told that there was a court order, Mr. Bronstein said "no."

*Police Issues* doesn't hesitate to criticize cops when they do wrong. Our essay about the George Floyd episode, "[Punishment Isn't a Cop's Job](#)," was posted *nine days* after the lethal encounter. Try as we might, though, we can't summon that conviction here. True enough, a CHP officer's "too late" retort expressed considerable annoyance with Mr. Bronstein. Still, the officers observably tried to play nice, and a nurse was present throughout. In our view, there was an absence of the hostile tenor evident in, say, how ex-MPD cop Derek Chauvin treated George Floyd. So we're disturbed that charges are being levied so long after the fact, and by a new D.A., George Gascon, [a self-avowed](#)

[progressivist](#) whose efforts to constrain his prosecutors' vigor have inspired [several recall attempts](#) and [caused considerable discord within his office](#). (Click [here](#) for the D.A.'s news release about the Bronstein episode.)



D.A. Gascon's emphasis on police accountability has led to the reopening of other old cases. Among those is the [recent filing of charges](#) against two Torrance, Calif. Police officers for the 2018 shooting death of a suspected car thief, an episode for which they had been formally cleared by the prior D.A., Jackie Lacey.

Ideological issues aside, an underlying dilemma remains. Forcefully restraining a combative person is highly problematic, and particularly so if pressure – perhaps even moderate pressure – is applied to one's chest. Forget L.A. Skip to present-day Virginia. Consider what happened to [Mr. Irvo Otieno](#). On March 3 Henrico County deputies arrested the deeply troubled man for burglary. An emergency mental health order landed him in the hospital. He then assaulted three deputies and wound up in jail.

Three days later deputies took Mr. Otieno to a state mental facility. Their prisoner proved combative, so they used pepper spray and shackled the man's hands and feet. And on arrival, the deputies literally "piled on." Here's Commonwealth Attorney



Ann Cabell Baskerville's reaction to the [video](#):

They're putting their back into it, leaning down. And this is from head to toe, from his braids at the top of his head, unfortunately, to his toes.

Mr. Otieno wound up on his stomach and reportedly remained under pressure for twelve minutes. He never regained consciousness.

State's Attorney Baskerville swung into action. Accusing the seven deputies and three hospital security officers of "smothering" Mr. Otieno to death, she promptly charged them with second-degree murder. As one would expect, [concerns have been raised](#) that's

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overly severe. However, in Virginia second-degree murder includes accidental killings that are caused by “[extreme recklessness](#)”. Perhaps the prosecutor is frustrated, as we are, that a full *three years* after the killing of George Floyd, some officers are still “piling on.”

Whether or not one subscribes to “hyperactive delirium,” it seems beyond question that forcefully restraining a disturbed person places them at risk. In the real world of policing, that’s often unavoidable. But taking an agitated someone to the ground and exerting pressure on their torso can disrupt breathing and circulation. Tasers and pepper spray can make things worse. For those whose bodily functions have been degraded by drug use or health issues, that can be more than enough to tip them into cardiac arrest. And unless *that’s* instantly recognized, resuscitation attempts may prove futile.

What to do? Combative persons should be placed on their knees to apply handcuffs or restraints. Agreed, that may not always work well in practice. It will also require retraining. But there are no perfect solutions. Even if side positioning is intended, “going to the mat” is an invitation to disaster. And the days of “piling on” are really, *really* over.

Posted 11/4/18

## PREVENTING MASS MURDER

***With gun control a no-go, early intervention is key.  
Might artificial intelligence help?***

*By Julius (Jay) Wachtel.* “We’re under fire! We’re under fire! He’s got an automatic weapon and firing at us from the synagogue. Every unit in the city needs to get here now!” Broadcast by one of the first officers at Pittsburgh’s “Tree of Life” synagogue, [the stunning message](#) graphically conveys the unimaginably lethal threat that just one of America’s well-armed citizens gone wrong can pose to the public and the police.

On Saturday morning, October 27, Robert Bowers, a 46-year old loner, [armed himself with an AR-15 rifle and three Glock .357 pistols](#) and burst into the Tree of Life, gunning down eleven congregants and wounding two. He then opened fire on arriving patrol officers and [wounded two](#) who approached on foot. Two SWAT team members would eventually encounter Bowers on the third floor; during an exchange of gunfire [both sustained multiple gunshot wounds](#). According to the police chief, that officer [might have bled to death](#) had a colleague not applied a tourniquet. Bowers was also wounded, although not as seriously. While being cared for he reportedly said “that he wanted all Jews to die and also that they (Jews) were committing genocide to his people.”

Apparently, those whom Bowers claimed as “his people” are white supremacists. This [“isolated, awkward man](#) who lived alone and struggled with basic human interactions” secretly wallowed in a vicious subculture, frequently posting flagrantly bigoted comments disparaging Jews on [“Gab,”](#) a social media site popular with extremists:

The vast majority of [Bowers’] posts are anti-Semitic in nature, using language like “Jews are the children of satan,” “kike infestation,” “filthy EVIL jews” and “Stop the Kikes then worry about the Muslims.” Other posts repeat standard white supremacist slogans, such as “Diversity means chasing down the last white person.”

Bowers, who has a concealed-carry license, waxed enthusiastically about guns and [posted photos of his Glocks](#). Police found three more handguns and two rifles in his residence and [a shotgun](#) in his vehicle. To law enforcement, though, the sometime truck driver was a cipher. “At this point,” said the local FBI head, “we have no knowledge that Bowers was known to law enforcement before today.”

Cesar Sayoc is different. Before his arrest on October 26 for [mailing more than a dozen explosives-laden packages](#), the 56-year old bodybuilder/male stripper [accumulated a criminal record](#) that included a conviction for grand theft as well as arrests for theft, battery, fraud, drugs and, in 2002, threatening to settle a dispute with a bomb, a transgression that ultimately earned him a year's probation.

As one might suspect, Sayoc's personal life was a mess. Estranged from his birth family, divorced and bankrupt, he was living in a beat-up van [festooned with pro-Trump messages](#). Sayoc promoted far-right conspiracy theories and lambasted liberals on social media. In contrast to Bowers, though, [Sayoc posted on major platforms: Facebook and Twitter](#). His rants had recently turned downright scary:

He directed a tweet at Ms. Waters, the California Democrat, with a photo of what appeared to be her house. The message read: "see you soon." He sent another to Eric H. Holder Jr., an attorney general under Mr. Obama, that read, "See u soon Tick Tock." And he told Zephyr Teachout, a Democrat who ran unsuccessfully for attorney general in New York, that he had a surprise waiting for her. "We Unconquered Seminole Tribe have a special Air boat tour lined up for you here in our Swamp Everglades," he wrote. "See u real soon. Hug your loved ones."

Complaints to Twitter went unheeded. (It has since apologized.) After Sayoc's arrest [family members and their lawyer came forward](#). Among other things, they bemoaned the absence of a "safety net" that might have kept their kin from plunging into the abyss.

Compared with Bowers and Sayoc, [Scott Beierle](#), the deranged middle-aged Florida man who killed two and wounded five in a Tallahassee yoga studio on November 2, was really, *really* different. We say "was" because Beierle ended things by committing suicide. We emphasize "really" because he was not your archetypal terrorist. Beierle's complaint wasn't about politics or religion: it was that women refused to pay him attention, at least of the erotic kind. So he fought back with a series of YouTube videos that championed the "[Incel](#)" (involuntary celibacy) movement and praised its late spiritual master, the murderous [Elliot Rodger](#), who in 2014 killed six and injured more than a dozen before committing suicide.

Beierle didn't simply convey beliefs – he personalized his messages, disparaging and threatening women by name (e.g., "could have ripped her head off."). Neither was his deviant behavior just online. University and local police had twice arrested Beierle for grabbing women from behind, but charges were eventually dismissed. His odd behavior was noticed by others. A former college roommate said that Beierle seemed mentally unstable [but not to the point of involving the authorities](#):



He was very weird and made everyone uncomfortable. It worried me at the time. There was concern for sure. But there wasn't enough evidence, and I would have been wasting the police's time if I had made any kind of report. I had nothing.

What could have been done?

- As current law goes, not much. Felons and persons who have been adjudicated as mentally defective are barred from having guns. By these standards, neither Bowers nor Beierle was prohibited. Sayoc, who had a substantial criminal record, didn't use guns.
- Our pages (see, for example, "[Massacre Control](#)") have discussed various approaches to keeping America safe. One of our favorites is limiting gun lethality. Most recently in "[Ban the Damned Things!](#)" we pointed out the unparalleled killing power of assault-type rifles, whose fearsome ballistics have increasingly forced police to deploy armored cars. Even so, making highly lethal firearms available to the public seems coded into America's DNA. No matter how many massacres take place, that's unlikely to change.
- President Trump [suggested posting armed guards](#) at religious services. Of course, the most likely outcome of a shootout between a stunned guard and a determined, AR-15 toting assailant is still (you guessed it) a massacre. Perhaps fewer might have been shot at the synagogue, or the yoga studio, had one or more of those present been packing guns. On the other hand, crossfire by agitated gunslingers might have likely caused even more casualties.

So, case closed? Not so fast. "[A Stitch in Time](#)" argued for identifying those whose "documented behavior indicates they are at great risk of harming themselves or others" and [applying measures](#) such as home visits, counseling and mental "holds" preemptively, *before* they strike. To be sure, that essay's human examples – Eric Garner, Deborah Danner, Manuel Rosales – were long-term chronic disrupters, well known to local cops. Beierle might fit that mold. But picking out villains inspired by ideology such as Bowers and Sayoc may, as we suggested in "[Flying Under the Radar](#)," prove a challenging task:

Cast too wide a net and you'll be overwhelmed, swamping the system, irritating honest citizens and possibly infringing on their rights as well. Select too few and should a bomb go off you'll be criticized for overlooking what critics will quickly point out should have been obvious from the start.

On the “positive” side, Beierle, Bowers and Sayoc each used social media. Their posts brimmed with violence and hate. To be sure, parsing through the countless online messages generated each day might seem an overwhelming task. That’s where artificial intelligence (AI) might help. A recent NIJ report, [“Using Artificial Intelligence to Address Criminal Justice Needs”](#) discusses the use algorithms to analyze large, crime-related datasets. For example, video images can be scanned to “match faces, identify weapons and other objects, and detect complex events such as accidents and crimes in progress or after the fact.”

AI also holds out the promise of “predicting” crime: “With AI, volumes of information on law and legal precedence, social information, and media can be used to suggest rulings, identify criminal enterprises, and predict and reveal people at risk from criminal enterprises.” To that end, [a recent award](#) (“Combating Human Trafficking Using Structural Information in Online Review Sites”) funds the development algorithms that could identify victims and traffickers, in part by analyzing user posts in sex “review” websites:

Machine learning models will be trained using a ground truth dataset based on online reviews recovered and processed using these keywords. The resulting models will then be trained and optimized to detect and classify online reviews, according to criteria such as trafficking, adult, and child.

Along these lines, it seems likely that algorithms could be devised to analyze social media posts and law enforcement, criminal and gun registration records and compare their contents to established “truths” derived from actual episodes of terrorism. Leads could of course be used to kick off or inform investigations, and we expect that in one form or another some of this is already being done. But our emphasis here is preventive, to use leads generated by AI or other means to expose ne’er-do-wells who have been flying under the radar so that interventions such as those mentioned in [“A Stitch in Time”](#) can be applied.

Sounds good. But we live in a democracy. What about liberty interests? [A recent article in Smithsonian](#) warns that AI’s application to crime mapping has led critics to complain that using past patterns to devise algorithms creates the risk of “bias being baked into the software”:

The American Civil Liberties Union [ACLU], the Brennan Center for Justice and various civil rights organizations have all raised questions about the risk of Historical data from police practices, critics contend, can create a feedback loop through which algorithms make decisions that both reflect and reinforce attitudes about which neighborhoods are “bad” and which are “good.”



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Still, no one is forced to reside – or post – in the “neighborhoods” of Gab, Facebook and Twitter. Reacting to the handiwork of Bowers, Sayoc and their many forebears (we can now add Beierle to the mix) *New York Times* columnist Frank Bruni complained that the web has become a “delivery system” for grotesque notions that encourage twisted minds to do the unthinkable:

It [the web] creates terrorists...I don't know exactly how we square free speech and free expression — which are paramount — with a better policing of the internet, but I'm certain that we need to approach that challenge with more urgency than we have mustered so far. Democracy is at stake. So are lives. (“[The Internet Will Be the Death of Us](#),” 10/30/18)

What's to be done? If we're certain that ordinary citizens will have invariably steady minds *and* hands, we can encourage gun-carry. Well, good luck with that. Yet with serious gun control out of favor little else of promise remains. That's where early intervention comes in. Here's hoping that the lamentable deficit in “urgency” identified by Mr. Bruni gets fixed real soon so that acting *before* the fact gets a chance to work before the next madman strikes.

Posted 11/21/18, edited 11/29/18

## RED FLAG AT HALF MAST (PART I)

*California's Gov nixes expanded authority to seize guns from their owners*



*By Julius (Jay) Wachtel.* How can guns be taken away from reportedly unstable, possibly dangerous owners? [A dozen-plus states](#) have passed laws that authorize judges to issue so-called “Red Flag” orders (more formally, “Gun Violence Restraining Orders” and “Extreme Risk Protection Orders.”) California’s version, in effect since January 2016, comes in three flavors. Two are ex-parte, requiring pleadings by one side only. Both last 21 days: an emergency order, based on a police request, and a non-emergency ban based on testimony and evidence presented by police and/or close family members. Should petitioners wish to renew either order or secure a year-long ban, a hearing must be called so that both sides can be heard.

As things stand in the Golden State, only law enforcement officers or immediate family members ([that apparently includes roommates](#)) can apply for an order of whatever kind. Feeling that to be too limiting, the Legislature recently sent the Governor [a bill](#) that would have expanded the roster of authorized petitioners to include “an employer, a coworker, or an employee of a secondary or postsecondary school that the person has attended in the last 6 months.” But on September 26 Governor Jerry Brown vetoed the proposal:

All of the persons named in this bill can seek a gun violence restraining order today under existing law by simply working through law enforcement or the

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immediate family of the concerning individual. I think law enforcement professionals and those closest to a family member are best situated to make these especially consequential decisions.

Then, a mere six weeks after the Guv said “no,” disaster struck. On November 7, 2018, [Ian David Long](#), 28, walked into an L.A.-area bar packed with college students, pulled a .45 caliber pistol and opened fire. By the time the Marine Corps combat vet pulled the trigger on himself twelve innocent souls were dead, among them Ventura Co. Sheriff’s Sergeant Ron Elus, the first officer on scene.

Sadly, while his horrifying act was unanticipated, the protagonist’s identity didn’t come as a complete surprise. Long’s tantrums [had spurred repeated visits by deputies](#) to the residence where the unemployed, deeply troubled young man and his mother lived. Last year, an officer summoned to the home observed that Long was “somewhat irate and acting irrationally.” But a mental health team decided there was insufficient reason to detain him. More recently, neighbors reported that Long went on a rampage that “sounded like he was tearing down the walls of the house.” Taken as a whole, the circumstances – repeated instances of crazy behavior, calls to police, no decisive action or inquiry about guns – seem remarkably similar to the precursors of [the bloodbath in Santa Barbara](#). Yet by the time of Long’s murderous acting out, California’s Red Flag law, which was intended to prevent such things, had been in effect for nearly three years.

Well, mom must have known that her son was armed and dangerous. Why hadn’t *she* petitioned the court? Likely for that very reason. California’s [official courts website](#) cautions against turning in one’s kin and strongly advises family members to let the police do the deed:

You can ask for a firearms restraining order against a close family member if you are afraid they may hurt themselves, or another person, with a gun. If you are in this situation, it is best to ask the police or other law enforcement to ask for the firearms restraining order...The officer will take the person’s firearms and ammunition while giving them a copy of the order. You should only ask for an order yourself if the police (or other law enforcement agency) will not do it and you are very concerned.

[According to The Trace](#) thirteen states have Red Flag laws authorizing judges to order allegedly dangerous persons to give up their guns: California, Oregon and Washington in the West; Illinois and Indiana in the Midwest; Connecticut, Delaware, Maryland, Massachusetts, New Jersey, Rhode Island and Vermont in the East; and Florida in the South.

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What's driven these laws? Waves of senseless killings. Connecticut was first out of the gate [with a statute](#) drafted in response to the March 6, 1998 murder of four co-workers by a mentally troubled employee of the state lottery. While the bill wound its way through the legislature, two heavily-armed teens killed thirteen and wounded twenty-one at [Colorado's Columbine High School](#), a tragedy that resounded throughout the nation. That reportedly settled things, and Connecticut's governor signed the measure on June 29, 1999.

[Five more states](#) joined the parade this year: Florida, Maryland, New Jersey, Rhode Island and Vermont. [Florida's statute](#) was propelled by the Valentine's Day massacre at [Marjorie Stoneman High School](#), in a Miami suburb. [NRA A-rated Republican legislators](#) quickly drafted a Red Flag measure, which the state's Republican governor signed into law on March 9. Most recently, [Maryland's law](#) (it took effect this October) came on the heels of [a series of killings](#): a school shooting in March that left two students dead, an armed attack on a newspaper office in June with five casualties, and the killing of three fellow employees by a mentally ill woman who then committed suicide.

State gun violence orders carry a variety of legal and evidentiary requirements. (For a precise state-by-state rundown, click [here](#).) California's provisions take a middle ground, facilitating an urgent response but imposing safeguards when deciding for the longer term. For example, its [emergency ex-parte \(one-sided\) 21-day order](#) requires police to offer "reasonable cause" that the respondent "poses an immediate and present danger of causing personal injury to himself, herself, or another." Like most such laws, it also stipulates that "less restrictive alternatives" must have been considered and ruled out. [Non-emergency orders](#) (these are also 21 days and ex-parte but can be initiated by immediate family members) carry a burden of "substantial likelihood." [Imposing a full one-year ban](#) requires a full hearing as well as "clear and convincing evidence" of dangerousness. (For a rank-ordered analysis of legal standards click [here](#).)

Indiana is somewhat of an exception. Its Red Flag law authorizes officers who believe that an individual presents "an imminent risk" [to pre-emptively seize firearms](#) (but not conduct a search) without a warrant. They must then promptly obtain a judicial endorsement and proceed in the normal fashion.

Of course, ordering someone to give up their guns doesn't assure compliance. In twelve Red Flag states police who encounter uncooperative subjects must obtain a search warrant to look for guns, an additional process that carries its own burden of probable cause. In contrast, orders obtained in [Connecticut](#) are effectively search warrants:

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Upon complaint...to any judge of the Superior Court, that [there is] probable cause to believe that (1) a person poses a risk of imminent personal injury to himself or herself or to other individuals, (2) such person possesses one or more firearms, and (3) such firearm or firearms are within or upon any place, thing or person, such judge may issue a warrant commanding a proper officer to enter into or upon such place or thing, search the same or the person and take into such officer's custody any and all firearms.

Judges are directed to refer candidates to mental health proceedings when appropriate.

Connecticut leaves the entire process to the police. Otherwise *who* can petition for an order varies. [According to the Giffords Law Center](#) Florida, Rhode Island and Vermont limit applicants to police. Eight states (California, Illinois, Delaware, Maryland, Massachusetts, New Jersey, Oregon and Washington) allow, or will soon allow, immediate family members to file petitions as well. Maryland's taken a step beyond, letting mental health workers kick things off as well. But no one goes any further.

Had California expanded its list of authorized petitioners to include co-workers and school employees it would have been treading new ground. But some claim that the state fails to use the authority it currently has. A week before Governor Brown issued his veto, [an expansive review](#) by the *Los Angeles Times* revealed that California judges issued "fewer than 200" gun violence restraining orders during 2016-17, the law's first two years (no distinction was made as to type of order.) As one might expect, Los Angeles County, by far the state's most heavily populated at ten-million plus, claimed the largest share: 32, or about one per month. Second place went to Santa Barbara County. Notably, with a population less than 1/20th. L.A.'s, it issued twenty-one notices. Given that the county was the setting for the [2014 Isla Vista massacre](#), which led to the law's enactment, its enthusiastic use of the statute is unsurprising. Clearly, context matters. More recently, amidst a wave of mass shootings, [Maryland judges fielded 114 applications](#) for gun violence orders during October, the law's first month of operation. Seventy respondents were ordered to surrender their guns, and thirty-six ultimately lost their rights for up to one year.

Still, as Maryland quickly discovered, vigorously enforcing Red Flag laws itself carries some risk. On November 5th. Anne Arundel (MD) police [served an order](#) filed by a woman against her 60-year old brother. He answered the door while armed, "became irate" and wrestled with a cop for the gun, which discharged during their struggle. The other officer then shot him dead.

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One assumes this won't be the last incident of its kind. So are Red Flag laws worth it? For a review of studies about their effectiveness, and our take on their conclusions, be sure to come back for Part II!



Posted 12/5/18

## RED FLAG AT HALF MAST (PART II)

### *Preventing more than suicide may carry serious risks*

*By Julius (Jay) Wachtel.* State and Federal laws [generally prohibit gun possession](#) by the adjudicated mentally ill and by subjects of a domestic violence restraining order. According to [a nationally-representative survey](#) of 5,653 persons 18 and older, about 10½ percent of the adult population self-reports substantial “anger traits” and keeps guns at home, while about 1.6 percent self-reports such traits and carries a gun (those required to do so by their job were excluded.) However, only a very small slice of this problematic group – 13.2 percent of the angry, gun-at-home cohort and only 16.3 percent of the angry gun-packers – has been hospitalized for a mental health problem, thus automatically denying them the right to have guns. It’s their far greater number of non-adjudicated, gun-possessing peers that “Red Flag” laws are meant to address.

Unlike Red Flag laws that simply command alleged possessors to give up their guns (if needed, search warrants must be separately obtained), [Connecticut’s](#) statute, which was first out of the gate in 1999, directs officers to conduct a search and seize the guns they find. It was at first applied sparsely, generating about 20 seizure orders a year. But its use jumped after the [2007 Virginia Tech massacre](#), with 100 warrants in 2011, 139 in 2012, 183 for the full year 2013, [and 150 or more during each subsequent year through 2017](#).

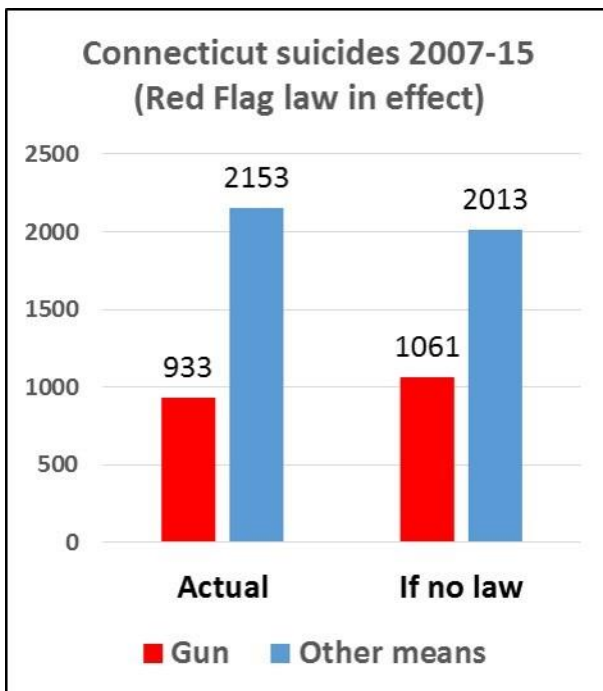
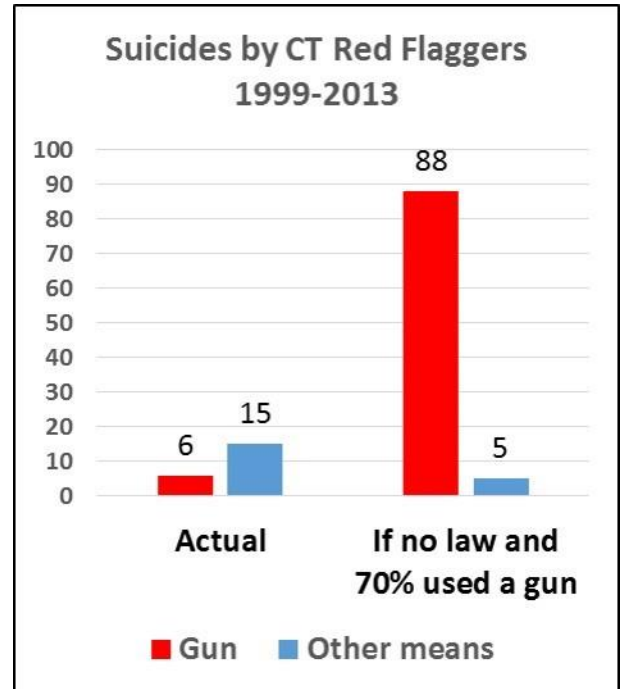
A study published in [Law and Contemporary Problems](#) examined the statute’s effects between its enactment and June, 2013. During this period judges issued 762 Red Flag warrants. Twenty-one of the named defendants subsequently committed suicide, six by gun and fifteen by other means (e.g., pills).

What did the law accomplish? Persons served with warrants who thereafter committed suicide were less likely to do so with guns (6/21, 29 percent) than adults of the same gender in the general population (35 percent), and far less often than gun owners (65 percent.) Applying what’s known about the efficacy of suicide methods, researchers estimated that Red Flaggers attempted suicide 142 times post-seizure, seven times with a gun and 135 times by other means. After an elaborate process, the authors concluded that one life was saved for every ten to twenty seizures. Computations that led to the less effective estimate (1/20) were based on the suicidal inclinations of Connecticut gun owners at large, while the other extreme (1/10) reflected the fact that

Red Flaggers were at special risk, with a suicide rate forty times that of the general population.

Guns are a particularly effective means of killing oneself, so the law's deterrent effect on gun slinging seems a good thing. Just how good was it? Had members of the group *not* been "flagged," retaining their access to firearms and lethal inclinations, they might have turned to guns in, say, seventy percent of suicide attempts. If so, there would have been eighty-two additional gun deaths and ten fewer by other means, yielding a total of ninety-three fatalities instead of twenty-one.

*Psychiatric Services* ([abstract online](#)) recently published a study that analyzed the effectiveness of Red Flag laws in Connecticut and Indiana. Using a quasi-experimental approach, it compared their post-enactment suicides to control groups of non-Red Flag law states whose pre-law characteristics were weighted to provide a close initial match.

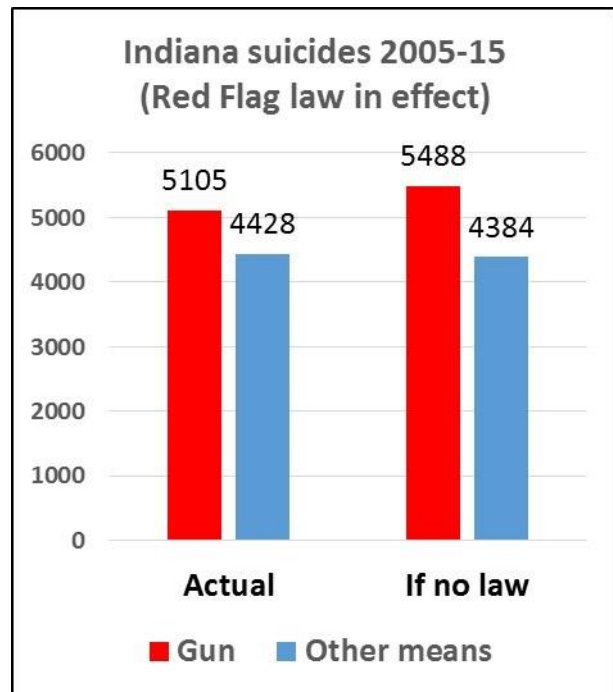


As we mentioned in [Part I](#), Connecticut's unique [Red Flag law](#) authorizes search and seizure. Its effect on suicide was separately computed for two periods: enactment to 2007 and 2007 to 2015, when enforcement sharply increased because of the [Virginia Tech massacre](#). For the first period, the authors reported 1.6 percent fewer firearm suicides than the control group but 5.7 percent more suicides by other means. For the second period the corresponding figures were a 13.7 decrease (matched by few control states) and a 6.5 percent increase (common among the control states). Compared to the controls, the authors estimated that during 2007-2015, when Connecticut suffered 3086 suicides, 933 by gun and 2153 by other

means, its Red Flag law prevented 128 of the former but caused 140 of the latter, increasing the overall toll by twelve, or about .4 percent ( $3086 - 12 / 12 \times 100$ ).

Indiana's Red Flag approach (also reported in [Part I](#)) is more conventional. Its gun to non-gun displacement effect also seemed far milder than Connecticut's. During a ten-year post-law period (2005-2015) the state suffered 9533 suicides, 5105 by gun and 4428 by other means. Compared to the control group, its Red Flag law reportedly prevented 383 gun suicides while causing 44 non-gun suicides, yielding a net decrease of 339 suicides, or about 3.4 percent ( $9533 + 339 / 339 \times 100$ ).

In all, the study praised the tendency of Red Flag laws to reduce gun suicides but warned of increases in non-gun suicides, which seemed particularly pronounced in Connecticut.



Alas, what Red Flag laws can't seem to extinguish is the urge to kill oneself. When deeply troubled persons want to commit suicide, discouraging their access to firearms is not an effective long-term solution. In any event, suicide isn't what these laws were originally intended to prevent. From the very beginning their avowed purpose has been to stamp out the scourge of mass killings that have shaken America to the core.

Yet Red Flaggers aren't your archetypical criminal. Convicted felons and some categories of violent misdemeanants, including those convicted of domestic violence or subject to a domestic violence protective order, [are already prohibited](#) from having guns by state and/or Federal laws. Same goes for persons [who have been formally adjudicated](#) as mentally defective (click [here](#) for a Federal gun law summary then scroll down for the state law chart.) Red Flaggers, on the other hand, are neither fully "criminal" nor fully "crazy." Indeed, their marginal status is precisely why gun seizure laws have come to be. And while the process is conceptually simpler than civil commitment, what's required to use these "obscure" laws may be [far from trivial](#):

Do I think [the law] when it was written, when it was drafted, and how it had been utilized pre-Sandy Hook—was effective? No, I don't believe it was effective. Why? It was an obscure statute. It was something that was labor-intensive. It was

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something that required an affiant, a co-affiant, supervisor's review, State's attorney's office review, and approval and a judge's signature and then, of course, execution on that warrant....(p. 196)

That sentiment, expressed by a former cop, was ridiculed by a police "administrator" who insisted what the entire Red Flag process could be easily accomplished "within a few hours' time":

I mean, most of it is a [three to five] line narrative. You know, "We got a report of a guy wanted to commit suicide. I showed up, he was sitting in the corner with a loaded .357. He said to me, he wanted to commit suicide. I talked to him and he put it down...." The judge's phone rings at two o'clock in the morning, it's us, and one of us drives over there with a warrant. He reviews it, signs off on the bottom of it, we go back and we take all the guns. In the meantime, officers are sitting at the location where all the guns are, and securing it...We get the warrant signed, we go back to the house and we collect everything related to the gun....

These words perplexed your blogger, who spent more than a few hours on the street (albeit, in pre-Red Flag days.) Tying up a beat for hours may be theoretically possible in some places, on a very slow day. One can't imagine trying to do it in smaller cities, where an entire "shift" might mean three cops, or in larger jurisdictions when there's been a shooting or other violent crime and calls are coming in.

There's an even more vexing issue, which neither journal article probed. Prompted by the June 28 [murder of five employees](#) at an Annapolis newspaper, Maryland enacted a Red Flag law, which took effect on October 1. As we mentioned in [Part I](#), on November 5, in the same Maryland county, an officer shot and killed the subject of a seizure order who got into a wrestling match with the cop's partner over a gun.

Stirring up potentially dangerous people is, well, potentially dangerous. Yet Red Flag laws may never meet their goal of preventing a mass shooting unless their use is vastly expanded. But doing it legally *and* safely calls for robust levels of police staffing, with tactical units readily available to lend a practiced hand. Even then, the environment in which cops work is notoriously [chaotic](#). No matter the precautions, crank things up and someone *will* get hurt, or worse, and sooner rather than later. Red Flag laws may be "obscure" for a very good reason.

Posted 4/23/18

## THERE'S NO "PRETENDING" A GUN

***Sometimes split-second decisions are right, even when they're wrong***

*By Julius (Jay) Wachtel.* During the past decade this blog has commented on more than a few episodes of subpar policing that led to the loss of life. While some might argue that citizens often contribute to their own demise – see, for example, the post immediately below – in this imperfect world people frequently do crazy stuff. To avoid needlessly using force, and particularly lethal force, officers must regularly accept considerable risk, and fortunately most do. When in our opinion they should have but didn't, we've said so. When cops don't feel they can wait to collect more information, a tragic ending may be unavoidable. To be sure, "split-second" decisions are sometimes inevitable, but it's not Monday-morning quarterbacking to suggest that lives can be saved when officers pause for facts to surface, backup to arrive and hot heads (on all sides) to cool.

That, in essence, was our conclusion in "[A Reason](#)." Sometimes, though, the decision-making calculus is so unforgiving that deferring action – what we call "[making time](#)" – is out of the question. Consider what NYPD officers faced on April 4 when [three separate 9-1-1 callers reported](#) that a man was running around Brooklyn streets accosting passers-by with a gun, or at least with something that looked like a gun. Horrifying [video surveillance footage](#) assembled by NYPD confirms that these accounts were spot-on correct. As the episode ends the suspect suddenly pauses, takes up a shooting stance and aims his object at an undepicted target in the distance. That's where the video abruptly ends, but one can well imagine what happened next.

According to police, Saheed Vassell, a 35-year old bipolar man [was taking aim at responding officers](#) with a short length of metal pipe that had a knob on one end. They instantly opened fire with *real* guns, killing him. Area residents who knew Saheed considered him harmless; they guessed his pretend gun was something he picked up while walking around. His father, with whom he lived, said that Saheed was normally friendly and helpful but had been repeatedly hospitalized for mental problems, occasionally after run-ins with police. Saheed was not known to have a real gun, and beat cops reportedly did not consider him dangerous. Investigation of the shooting was turned over to the New York Attorney General.

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On June 6, 2017 a 9-1-1 caller alerted Los Angeles police about a man who was walking around with a gun and otherwise behaving oddly. Patrol officers [soon spotted a pedestrian](#) who matched the odd-duck's description. He held what to them looked like a pistol in his hands. According to the officers, Eric Rivera, 20, ignored their commands to drop the gun; instead, he walked towards them and raised the object as though aiming it. They leaped out of their patrol car and fired, killing him. In his hurry to exit the driver failed to apply the parking brake, and the police vehicle wound up running over the man.

No firearm was found. However, officers recovered a “green and black colored plastic toy water gun.” After a protracted investigation [police chief Charlie Beck determined](#) that the shooting had been prompted by “an imminent threat of serious bodily injury or death” that made it impossible for officers to take the time to de-escalate. It was thus “in policy.” His decision was seconded by the Los Angeles Police Commission, which ruled the shooting justifiable. (Although the board has often been at odds with the chief over his agency's use of force, in this instance its five members acted unanimously.)

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As might be expected, both killings sparked vociferous calls for change. One day after Vassell's shooting, [hundreds of demonstrators took to New York streets](#), calling for police reform and the officers' prosecution. Rivera's family [picketed the D.A.'s office](#) for twenty-six weeks, demanding that the LAPD officers (like Rivera, both are Hispanic) be prosecuted. A Federal lawsuit alleging that police used excessive force is pending.

Toy and other pretend guns have figured in many tragic police-citizen encounters. Perhaps the most widely publicized such incident took place four years ago when a Cleveland officer [shot and killed Tamir Rice](#), a 12-year old boy who was pointing a pellet gun at visitors to a recreation center. NYPD's shooting of Vassell is also not the first time that police have mistaken a non-gun object for a gun. “[First, Do No Harm](#)” recounts the December, 2010 incident involving Douglas Zerby, a drunk, unarmed 35-year old man who for reasons he would take to his grave pointed a pistol-grip water nozzle at cops responding to a man-with-a-gun call.

Prior posts (see “Related Posts,” below) have suggested various measures that can help minimize or avoid the use of force. Alas, the shootings of Vassell and Rivera present a special difficulty, as the apparent threat they posed to officers and citizens was so immediate and extreme that stepping back and trying to “de-escalate” seems clearly inappropriate.



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So what *was* the right thing to do? “[A Very Hot Summer](#),” which looked into a variety of fraught police-citizen encounters, suggested it may be best “to integrate patrol into all enforcement activities, to assure that someone familiar with the territory and its inhabitants is always present.” [None of the officers who shot at Vassell](#) was a beat cop: three were part of a plainclothes anti-crime unit and the fourth, a uniformed officer, was with a crime hot-spots team. Shocked residents suggested that officers who knew Vassell might have handled things differently. They may be right. Problem is, while Vassell was running around unmolested, pointing a pretend gun at innocent persons, cops who might have made a difference were elsewhere. Really, beat officers are often busy on calls, so one can never count on their presence. And when the cops did show up, the situation they encountered was so urgent that it ruled out calling, say, a [mental health crisis intervention team](#), as it would have required officers to wait and not intervene until specialists arrived.

What about prevention? Little is known about Rivera’s state of mind. Police had categorized Vassell as “emotionally disturbed,” and over time he did receive some mental health treatment. Considering his persistently odd behavior, though, the mental health follow-through seemed clearly lacking. As we noted in “[Homeless, Mentally Ill, Dead](#),” the much-ballyhooed transition from state mental hospitals to community treatment was never adequately funded, leaving legions of mentally ill – such as Vassell – on the streets, with at best sketchy treatment and oversight.

Perhaps there’s an intermediate step. “[A Stitch in Time](#)” suggested that dedicated police/mental health teams could proactively monitor and assist individuals whose behavior, like Vassell’s, has led to multiple contacts with the authorities. Those who merit it could be flagged for treatment and, if necessary, commitment. In fact, [such services do exist](#). Unfortunately, resources are limited and intervention takes time to arrange. They’re not the answer for sudden, serious meltdowns such as Vassell (and, probably, Rivera) experienced. In such cases, it’s always up to the cops.

What else can be done? What’s often missing from these discussions is the role of the community. The block. The next-door neighbor. [Here’s what a local resident had to say](#) at Vassell’s funeral:

I truly think it’s a community problem. That’s the reason why he’s this way, because nobody came and pulled him to the side and say “Yo what are you doing, that’s wrong. Yo what’s going on? Stop that.” No one.

“Making time” and “de-escalating” are useful concepts. While perhaps articulated in other ways, they’ve been around since the birth of policing. Sometimes, though, they’re besides the point. Would it have been O.K. for cops to hang back and mull things over

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had Vassell and Rivera *really* been armed? In our oftentimes violent environment, officers sometimes *must* act. And when it comes to guns, there really *is* no pretending.

Posted 4/4/21

## TWO WEEKS, FOUR MASSACRES

*A troubled Colorado man buys a “pistol.”  
Six days later ten innocents lie dead.*



*For Police Issues by Julius (Jay) Wachtel.* “[No family should ever have to go through this again in the United States.](#)” Imagine waiting with your adult son and two granddaughters in a Covid vaccination line when a shooter in a tactical vest bursts in and unleashes a fusillade, gunning down a patron only steps away. By the time that 21-year old gunman Ahmad Al Aliwi Alissa surrendered, [ten lay dead](#) in and around a Boulder, Colorado supermarket. Among them was police officer Eric Talley. A father of seven, the fifty-one year old officer [was first to arrive on scene](#), and as he burst in to save lives he suffered a gunshot wound to the head.

And no, that’s not too much information. Officers and ordinary citizens are often imperiled by [inordinately lethal projectiles](#) discharged by weapons thoughtlessly marketed for civilian consumption. According to police, Alissa had been armed with two weapons: a 9mm. handgun he apparently didn’t fire and the Ruger AR-556 “pistol” (see image above) [he discharged during the assault](#). Purposely configured by its manufacturer to skirt bans on assault weapons and such, the AR-556 is essentially a short-barreled AR-15 [with a brace instead of a stock](#). Chambering the same powerful 5.56/.223 cartridges as the weapon it mimics, it fires a bullet whose mass and extreme velocity enables it to penetrate walls and doors as if they didn’t exist. [Ditto the protective vests](#) typically worn by cops on patrol. Here’s an outtake from our [2019 op-ed](#) in the *Washington Post*:

California, six other states and the District “ban” assault weapons. But these laws skirt around caliber. Instead, they focus on a weapon’s physical attributes. For example, California requires that semiautomatic firearms with external baubles such as handgrips have non-detachable magazines and limits ammunition capacity to 10 rounds.

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As we argued, those characteristics aren't the real reason why assault-style weapons are so dangerous. That's fundamentally a matter of ballistics. High-energy, high-velocity .223-, 5.56- and 7.62-caliber projectiles have unbelievable penetrating power. And should these bullets strike flesh, they produce massive wound cavities, pulverizing blood vessels and destroying nearby organs. Rifles can deliver the mayhem from a distance. That's what happened in 2017 [when an ostensibly law-abiding gambler](#) opened fire with AR-15-type rifles from his Las Vegas hotel room, *killing 58 and wounding more than four-hundred.*

We're not just concerned about rifles. The muzzle energy of ammunition fired by today's 9mm. pistols can be twice or more that of the .38's and .380's that were popular when your writer carried a badge. While ordinary police vests are able to defeat most 9mm. rounds, should they strike an unprotected area their wounding capacity makes their old-fashioned counterparts seem like toys.

Alissa's brother [worried that his sibling was mentally ill](#). He complained about being followed and ranted online that his phone had been hacked. Alissa frequently displayed an aggressive side. His high school wrestling career ended the day he lost a match. Exploding in fury, [he threatened to kill his teammates](#) and stormed out. His only known criminal conviction stemmed from a classroom incident in which he "cold-cocked" a student who had supposedly "made fun of him and called him racial names." Alissa was convicted; he drew community service and a year's probation.

Unfortunately, that was only a misdemeanor. As in [Federal law](#), prohibitions on gun purchase and possession in Colorado only extend to those [convicted of felonies and misdemeanor crimes of domestic violence](#). Bottom line: Alissa was legally entitled to buy that so-called "pistol." And just like Georgia, where [mass killer Long](#) resided, Colorado [doesn't impose a waiting period](#). So once Alissa cleared the background check he was free to take his treasure with. And promptly did.

In Part I we mentioned that Georgia [got an "F" from Giffords](#). In contrast, [Colorado was awarded a "C+"](#). The Mountain State does offer a few more safeguards. While Georgia relies solely on the FBI background check, Colorado also runs a State check. Colorado police and family members [can also petition courts to disarm potentially dangerous gun owners](#). Alissa, though, wasn't a felon. Neither was he ever formally accused of presenting an armed threat. And as far as that AR-556 goes, Colorado law [doesn't address assault weapons](#).

Admittedly, it would take a highly restrictive statute to ban the AR-556. Even California, whose gun law strength is rated by Giffords as [number one in the U.S.](#), allows versions of the AR-556 with longer barrels and fixed magazines (click [here](#) for an

example.) But [the 2018 massacre at Florida's Parkland High School](#) led the City of Boulder [to virtually ban such weapons](#) altogether. In a bizarre coincidence, [that law was nullified](#) this March 12 by a Boulder County judge who agreed with pro-gun advocates that when it comes to guns, state laws rule. In any event, Alissa purchased the AR-556 [at a store in Arvada](#), the Denver suburb where he and his parents reside.

As we carped in [our op-ed](#) and in “[Going Ballistic](#),” <GC19 Going Ballistic> firearms lethality is, first and foremost, about ballistics. And those of the AR-556 are truly formidable. Yet not even California, which Giffords [ranks #1 in law strength](#), pays any



attention to this pressing issue. And while the Golden State has enacted much of what Giffords calls for (its full wish list is [here](#)), California citizens are still getting gunned down. On March 31st., just as we were trying to put the wraps to this essay, a middle-aged Southern California man burst into a local shop with whom he had a “business and personal relationship” and opened fire with a

9mm. pistol, [killing four and critically injuring one](#). Among the dead was a nine-year old boy. His killer, Aminadab Gaxiola Gonzalez, 44 had locked the gates of the complex when he went in to carry out the massacre. He was seriously wounded by police.

Unlike Georgia's Robert Long or Colorado's Ahmad Al Aliwi Alissa, Gonzalez had a criminal record. In 2015 [he was charged by Orange County, Calif. authorities](#) with multiple counts including cruelty to a child. He ultimately pled guilty to misdemeanor battery and served one day in jail. Our court record search confirmed that two criminal cases were filed against Gonzalez within a two-day span in April 2015: one was an “infraction,” the other a misdemeanor. According to authorities, his conviction for the latter was expunged in 2017 after he successfully completed probation. Alas, even tough ol' California doesn't prohibit persons with expunged records from having a gun. So by all appearances, Mr. Gonzalez was free to gunsling to his heart's delight.

Where does this leave us peace-loving folks? Would we be safer if background checks were required for private party transfers? If waiting periods were the rule? If cops and family members could petition for gun seizures? If rifles couldn't have removable magazines? If there were strict limits on ammunition capacity? If manufacturers couldn't use nonsensical tweaks to magically transform assault rifles into handguns? Gun-control advocates say yes, absolutely. Stronger gun laws, they're convinced, reduce gun violence. And they insist that the data bears them out.

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Is that true? We'll have a look at the numbers next time in, alas, Part III.



Posted 7/8/20, edited 7/9/20

## VIOLENT AND VULNERABLE

*Some combative citizens may be at heightened risk of death*



*For Police Issues by Julius (Jay) Wachtel.* It wasn't a chokehold that felled Robert Heston on that fateful Saturday afternoon some fifteen years ago. After going berserk, attacking his elderly parents and thrashing their home, Mr. Heston was in no mood to cooperate with Salinas (Calif.) police. He resisted violently, and [they responded with a score of Taser strikes](#). But once the cuffs went on Mr. Heston stopped breathing. He remained unconscious and died in the hospital on the following day.

Mr. Heston [had a substantial record of arrests](#) for drug use, drunkenness, disorderly conduct and assault, so he wasn't exactly an unknown. Yet nothing in his past or in his conduct that day would justify killing him. So the onus landed square on the cops – and, collaterally, on the tool (the Taser) to which they turned. And yes, there was a lawsuit, which ultimately drew nothing from the authorities but yielded a small judgment against Taser.

Why did Mr. Heston die? Litigation generated a series of post-mortems. Their findings were set out in great detail in [an expert's report](#). They were also summarized in Amnesty International's [ground-breaking study of Taser-linked deaths](#). Here's an extract:

The first...autopsy findings listed the Taser as a cause of death...a second report...listed an enlarged heart as cause of death and the Taser as contributory causes. The third and final report...determined that cause of death was multiple organ failure due to cardiopulmonary arrest; due to methamphetamine intoxication; *excited delirium*; left ventricular enlargement and fibrosis, with contributory causes: Rhabdomyolysis, secondary to multiple Taser application.

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We italicized “excited delirium” for a reason. [Here is how that term is defined](#) by medical specialists:

Excited delirium refers to a clinical situation that is characterized by a series of typical features that include agitation, aggression and paranoia, intolerance to pain, unexpected physical strength, failure to tire despite constant physical activity, lack of clothing, rapid breathing, profuse sweating, elevated temperature, an attraction to glass or mirrors, and failure to respond to police or medical directives.

As that article mentions, the syndrome, commonly referred to as “ExDS” has been stigmatized because some consider it a handy way to excuse police abuses. ([For a comprehensive accusation](#) to that effect check out this article in *Slate*.) Still, ExDS first appeared in nineteenth century medical literature as “Bell’s mania,” so its origin long predates current controversies in policing. And while some find it odious to attribute poor outcomes to anything other than officer misconduct, respected players in the policing community – say, [IACP’s Law Enforcement Policy Center](#) – have determined that ExDS is very much real.

More importantly, that’s also the view of the [emergency medicine community](#). In a highly detailed 2009 “[White Paper Report on Excited Delirium Syndrome](#),” the American College of Emergency Physicians concluded that ExDS “is a real syndrome of uncertain etiology...characterized by delirium, agitation, and hyperadrenergic autonomic dysfunction, typically in the setting of acute on chronic drug abuse or serious mental illness.” Two years later [an article](#) in the *Journal of Emergency Medicine* described the demeanor of persons in the throes of ExDS:

Patients present to police, Emergency Medical Services, and the emergency department with aggressive behavior, altered sensorium, and a host of other signs that may include hyperthermia, “superhuman” strength, diaphoresis, and lack of willingness to yield to overwhelming force. A certain percentage of these individuals will go on to expire from a sudden cardiac arrest and death, despite optimal therapy.

As one might expect, ExDS is also well known to [emergency medical responders](#):

The hallmark of ExDS is agitation and violent behavior in a patient with altered mental status. Patients with ExDS often have superhuman strength, do not respond to physical compliance techniques due to increased tolerance to pain, and are highly resistant to physical restraint. On physical exam, patients will present with hyperthermia, tachycardia and tachypnea.

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Officers, though, aren't clinicians. They don't work in anything that approaches a controlled environment. So while ExDS may indeed be "a medical problem masquerading as a police call" (that's what [an NIJ-sponsored report](#) calls it), the chaotic nature of street encounters may limit officers' willingness to let the fuse keep burning. After all, who says there won't be "bomb" at the other end? Bottom line: all that "superhuman strength" and unwillingness "to yield to overwhelming force" that accompanies a full-blown instance of ExDS will inevitably provoke a forceful police response.

Unfortunately, the U.S. lacks a national law enforcement use of force dataset. (In 2019 the FBI launched an effort to capture data about police use of firearms and any uses of force that caused death or serious bodily injury. For more about that click [here](#).) However, two common tools – pepper spray and conducted energy devices (CED's, e.g., "Tasers") – have been examined in some detail. [NIJ has little positive to say](#) about pepper spray. It's not considered an effective way to prevent violence and has actually been blamed for increasing officer injuries. On the other hand, [NIJ has reported that](#) CED's can reduce harm to both citizens and police.

Yet CED's also have problems. [A 2017 Reuters study](#) reported there had been more than one-thousand deaths attributed to their use. However, the authors blamed strikes to the chest for most of the toll. [According to PERF](#), though, some people are especially vulnerable to CED's. Among them are persons in the midst of an episode of ExDS:

Some populations currently believed to be at a heightened risk for serious injury or death following an ECW application include pregnant women, elderly persons, young children, visibly frail persons or persons with a slight build, persons with known heart conditions, persons in medical/mental crisis, and persons under the influence of drugs (prescription and illegal) or alcohol. Personnel should be trained about the medical complications that may occur after ECW use and should be made aware that certain individuals, *such as those in a state of excited delirium*, may be at a heightened risk for serious injury or death when subjected to ECW application or other uses of force to subdue them. [Emphasis ours]

Now that "excited delirium" has again reared its nasty head, consider the case of Zachary Bearheels. Here's a condensed version, self-plagiarized from "[Three \(In?\)explicable Shootings](#)":

Omaha officers came across a morbidly obese, mentally disturbed 29-year old man licking a store window. He accepted water and was let go. He was subsequently booted off a bus and caused a ruckus outside a store. Two officers got him into a squad car to go in for a mental check, but their sergeant said no.

Bearheels then broke free. Two other cops jumped in. They repeatedly Tasered Mr. Bearheels and struck him on the head. Zachary Bearheels went “motionless” and died at the scene. [A coroner later ruled](#) that his death was “associated with excited delirium (psychomotor agitation, hallucinations, speech and thought disturbances, reduced response to painful stimuli, bizarre and combative behavior, and hyperthermia), physical struggle, physical restraint, and use of conducted energy device.”

Many essays in our “use of force” section discuss instances that clearly line up with the syndrome. Consider, for example, the shooting death of [Michael Brown](#), which set off major protests and helped propel a national dialogue about the use of force against blacks. But as we pointed out in “[Lessons of Ferguson](#),” Mr. Brown was not blameless. [Convenience store videos](#) depict him shoplifting cigarillos and strong-arming a clerk who tried to stop him from leaving (1:12-1:35). Witnesses confirmed that Mr. Brown acted aggressively towards the officer who ultimately killed him. (The officer claimed that Brown punched him in the face and tried to take his gun.) And [an autopsy revealed](#) sufficient cannabinoids in Brown’s blood to impair judgment.

Fast-forward to...today. ExDS-like patterns are evident in two notorious recent episodes: the police killings of [George Floyd](#) and [Rayshard Brooks](#). No, we’re not saying that the officers who encountered them acted appropriately. (For our in-depth assessments check the posts.) But we *are* saying that factors associated with ExDS syndrome helped set the stage for the deplorable outcomes.

- Mr. Floyd and Mr. Brooks had substantial criminal records. Mr. Brooks was on felony probation.
- When faced with arrest, Mr. Floyd and Mr. Brooks suddenly turned non-compliant and violently engaged officers in protracted physical battles. Knock-down, drag out fights do happen in policing, but they’re definitely not typical.
- Mr. Floyd’s death is commonly attributed to choking. [His autopsy](#), though, revealed “no life-threatening injuries.” Instead, the diagnosis cites blunt force injuries, serious pre-existing medical conditions (e.g. severe arteriosclerosis, hypertension), and a substantial amount of drugs in his blood, including fentanyl and meth. *Notably, one of the rookies involved in the arrest, officer Thomas Lane, voiced concern during the struggle that Mr. Floyd was suffering from “excited delirium or whatever”* (see “[Punishment](#)” and 7/9 update, below.)

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- A field breath alcohol test indicated that Mr. Brooks was intoxicated. He had fallen asleep in his car in a drive-through lane, so something was clearly amiss. Manner of death was reported as two gunshot wounds to the back. No toxicology results or other medical information has been released.

In-custody deaths are frequently attributed to purposeful choking by police. Undoubtedly some have happened. But [a recent New York Times review](#) of seventy arrestees who died after telling police that they couldn't breathe paints a far more complex picture:

Not all of the cases involved police restraints. Some were deaths that occurred after detainees' protests that they could not breathe — perhaps because of a medical problem or drug intoxication — were discounted or ignored. Some people pleaded for hours for help before they died...In nearly half of the cases The Times reviewed, the people who died after being restrained, including Mr. Williams [Byron Williams, Las Vegas], were already at risk as a result of drug intoxication. Others were having a mental health episode or medical issues such as pneumonia or heart failure. Some of them presented a significant challenge to officers, fleeing or fighting.

While this account seems almost a roadmap to excited delirium, the *Times* makes no mention of the syndrome. Still, its analysis is eerily consistent with findings reported in the American College of Emergency Physicians' "[White Paper](#)" on ExDS:

There are well-documented cases of ExDS deaths with minimal restraint such as handcuffs without ECD use. This underscores that this is a potentially fatal syndrome in and of itself, sometimes reversible when expert medical treatment is immediately available.

In an extensive "law enforcement section" the paper's authors warn of the risks posed by persons in the grips of ExDS. But they also point out that virtually any technique or physical aid that's commonly used to control violent persons, including pepper spray, batons and joint locks, can prove lethal:

Given the irrational and potentially violent, dangerous, and lethal behavior of an ExDS subject, any LEO interaction with a person in this situation risks significant injury or death to either the LEO or the ExDS subject who has a potentially lethal medical syndrome.

What about simply stepping back? That's something we've repeatedly counseled (see, for example, "[First, Do No Harm.](#)") According to the authors, though, it may not be

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feasible to let persons who exhibit the symptoms of ExDS calm down on their own, “as this may take hours in a potentially medically unstable situation fraught with scene safety concerns.” Officers who encounter excited delirium are thus caught in the horns of a true dilemma, as any substantial application of force might kill. All they can realistically do is recognize when ExDS might be present, try to tailor their response accordingly, and call for EMS. And even if they do it all correctly, they’re hardly out of the woods:

This already challenging situation [ExDS] has the potential for intense public scrutiny coupled with the expectation of a perfect outcome. Anything less creates a situation of potential public outrage. Unfortunately, this dangerous medical situation make perfect outcomes difficult in many circumstances.

That paper was published during the halcyon days of 2009. More than a decade later its concerns about “potential public outrage” should policing prove lethally imperfect seem all too sentient. In these deeply polarized times it’s far wiser to blame poor outcomes on the cops, and *only* the cops. So if you’re an educator and decide to “pocket” this essay, we understand. We’re not offended!



Posted 10/31/20

## WHEN *MUST* COPS SHOOT? (PART I)

***Four notorious incidents; four dead citizens. What did officers face?***



*For Police Issues by Julius (Jay) Wachtel.* Many of our readers teach in college and university criminology and criminal justice departments. (That, indeed, was your blogger's last gig.) So for an instant, forget policing. Think about your last evaluation. Was the outcome fair and accurate? Did it fairly reflect – or even consider – the key issues you faced in the classroom and elsewhere?

If your answers were emphatically “yes” consider yourself blessed. The academic workplace is a demanding beast, with a “clientele” whose abilities, attention span and willingness to comply vary widely. And we’re not even getting into administrative issues, say, pressures to graduate as many students as possible as quickly and cheaply as possible. Or the personalities, inclinations and career ambitions of department chairs. (If you’re one, no offense!) Bottom line: academia is a unique environment. Only practitioners who face it each day can truly understand the forces that affect what gets accomplished and how well things get done. Actually, that’s true for most any complex craft. Say, policing.

So what is it that *cops* face? Let’s dissect four recent, notorious examples. Two involved mentally troubled men with knives, one a rowdy ex-con packing a gun, and one a young, non-compliant couple whose male half had amassed a substantial criminal record and was apparently wanted by police.

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### Los Angeles, November 19, 2019

Last November a citizen alerted an LAPD patrol sergeant that [a man was running around with a knife](#) (photos above.) [Officers soon encountered](#) a highly-agitated 34-year

old male flaunting a “seven-inch kitchen knife.” Officers took off after him on foot (click [here](#) for the officer bodycam video).

During the chase one cop reportedly fired a Taser but without apparent effect. Soon the man paused. As his pursuers tried to keep their distance, Alex Flores swiftly advanced on one. His knife was in his right hand, with the blade pointed in and tucked under his forearm. After Mr. Flores ignored repeated commands to stop the officer shot him dead.

At a police commission hearing [Mr. Flores’ grieving mother and sister argued](#) that he wasn’t a criminal but a mentally ill man struggling with paranoia. “What type of system do you all serve?” his sister demanded to know. “Clearly this was a racist murder.”

### **Philadelphia, October 26, 2020**

During the early morning hours of October 26 two Philadelphia police officers [responded to a call](#) about a “screaming man” with a knife.



Walter Wallace, Jr., 27, was flaunting his weapon on a second-floor porch, and when he spotted the officers he promptly came down the steps. Pursued by his mother, he briskly chased the cops into the street (left and center photos). Ignoring commands to drop the weapon, he kept on coming. So the officers shot him dead (right photo. For a bystander video click [here](#).)

Mr. Wallace’s parents said that their mentally-disturbed son had been acting up despite being on medication. Indeed, police had already been at their home *three times* that very day. Their final call, they insisted, [was for an ambulance, not the police](#). “His mother was trying to defuse the situation. Why didn’t they use a Taser?” [asked the father](#). “Why you have to gun him down?” According to the police commissioner neither officer had a Taser, but the agency has been trying to get funds so that they could be issued to everyone.

## San Bernardino, California, October 22, 2020

During the late evening hours of October 22 San Bernardino (CA) police were called about a large, heavyset man who was “[waving around a gun](#)” and “[jumping on vehicles](#)” in a liquor store parking lot.



A lone cop arrived. Spotting the suspect, he drew his pistol and yelled “hey man, come here” (left photo). But the six-foot-three, three-hundred pound man would have none of it. Disparaging the cop for drawing the gun, Mark Bender, 35, announced “I’m going to the store” and kept walking (right photo).



Although the officer was vastly outsized he tried to physically restrain Mr. Bender, and the fight was on (click [here](#) for the officer bodycam video and [here](#) for a bystander video.)

As the pair struggled on the ground, Mr. Bender pulled a 9mm. pistol from his pockets with his right hand (left and center photos). The cop instantly jumped away (right photo) and opened fire. Mr. Bender died at the hospital. His gun was recovered.



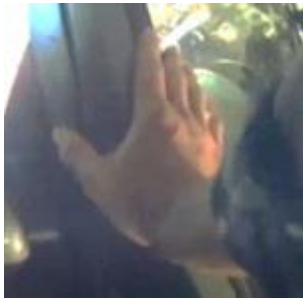
Police reported that Mr. Bender was a convicted felon [with a lengthy criminal record](#). According to the [Superior Court portal](#) he was pending trial on a variety of charges including burglary, resisting police and felony domestic violence.

## Waukegan, Illinois, October 20, 2020

About midnight, October 20th, a Waukegan (IL) officer [interacted with the occupants of a parked car](#). According to the city’s initial version, an unidentified officer responded to a report of a suspicious car, but as he arrived the vehicle suddenly left. Another officer found it parked nearby. When he approached on foot the car went into reverse. Fearing

he would be run over, the officer opened fire, badly wounding the driver, Tafara Williams, 20, and killing her passenger, Marcellis Stinnette, 19.

Given from the hospital where she is recovering, Ms. Williams' account [was starkly different](#). She and Mr. Stinnette were sitting in her vehicle, in front of their residence, when a cop drove up. He knew her boyfriend's name and said he recognized him "from jail." She asked if they could leave, then slowly drove off when the officer stepped back. But when she turned into another street her car was met by gunfire. Bullets struck her and Mr. Stinnette and caused the vehicle to crash. An officer kept firing even though she yelled they had no gun. "My blood was gushing out of my body. The officer started yelling. They wouldn't give us an ambulance till we got out the car."



Ms. Williams denied any wrongdoing. She doesn't know what prompted the attack. "Why did you just flame up my car like that? Why did you shoot?" Once videos were released, however, [what actually happened clearly varied from both accounts](#), and most dramatically from



Ms. Williams'. [Bodycam video](#) from the officer who first encountered the couple reveals that he recognized Mr. Stinnette and announced that he was wanted on a warrant. But when the cop walked around to the passenger side (left photo shows his hand on the car) and told Mr. Stinnette that he was under arrest the vehicle abruptly sped away (right photo.)



We now turn to dashcam video from the second police car([click here](#).) That officer took over the pursuit as the fleeing vehicle evaded the original responder.



After running through a stop sign the vehicle turned right and ran off the road to the left (left photo). The officer abruptly stopped at the left curb alongside the vehicle (right photo) and exited his car. Gunfire soon erupted. His bodycam wasn't on, so the officer's claim that Ms. Williams backed up at him can't be visually confirmed. But he accused her of that moments later once he had turned on his bodycam ([click here](#) for the clip.) This officer [was promptly](#)

[fired](#) for not having the bodycam on and for other unspecified policy and procedural violations.

Was Mr. Stinnette in fact a wanted person? We lack access to warrant information, but it seems likely. He had accumulated [a substantial felony record in Waukegan](#) during 2019, including separate prosecutions for “stolen vehicle,” “burglary” and “escape,” and the details we reviewed online suggest that he had failed to comply with conditions for release (click [here](#) for the basic case printout.) As for Ms. Williams, she was the sole defendant in a May 2019 “criminal trespass” that was ultimately not prosecuted (Lake Co. Circuit Court case #19CM00001381.) We know of no other record. But her “flame up my car” comment leaves us wondering.

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To be sure, retrospective vision is one-hundred percent. Things could always have been handled better. Yet from the perspectives of the craftspersons who were saddled with the initial burden – meaning, the cops – each encounter posed a substantial risk to themselves, their colleagues, and innocent citizens. Unruly folks running around with knives or guns is never a good thing. And although no weapon was involved, check out the Waukegan [pursuit clip](#). Sixteen seconds in, Ms. Williams blew a stop sign. Consider what might have happened had there been an oncoming vehicle in the cross street.

Still, was deadly force necessary? Shooting someone dead is an inherently repulsive notion that seems acceptable only under the most pressing of circumstances, when innocent lives are at risk and no feasible alternatives are in hand. And even when a shooting seems justifiable, can we take steps to avoid a repeat? Over the years our [Strategy and Tactics](#) and [Compliance and Force](#) sections have discussed a wide variety of practices intended to keep cops and citizens (yes, the naughty *and* the nice) from hurting one another, or worse. Of course, special resources may be called for. And there will always be issues with human temperament and citizens’ disposition to comply.

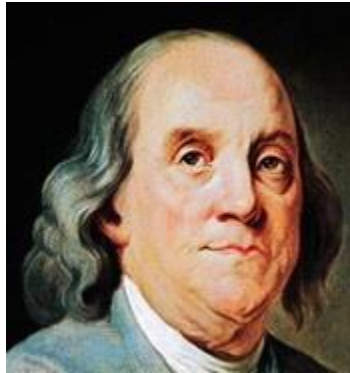
Our next post will bring such notions forward and apply them to each incident. In the meantime, please share your thoughts, and we’ll include them – anonymously, of course – in Part II. Until then, stay safe!



Posted 11/11/20

## WHEN *MUST* COPS SHOOT? (PART II)

*“An ounce of prevention...” (Ben Franklin, 1736)*



*For Police Issues by Julius (Jay) Wachtel.* [Part I](#) described four problematic encounters that officers ultimately resolved by gunning someone down. Each citizen had presented a substantial threat: two flaunted knives, one went for a gun, and another reportedly used a vehicle as a weapon. Yet no one had been hurt before authorities stepped in. Might better police work – or perhaps, none at all – have led to better outcomes?

Let's start with a brief recap:

- Los Angeles: A 9-1-1 call led four officers to confront a “highly agitated” 34-year old man running around with a knife. A Taser shot apparently had no effect, and when he advanced on a cop the officer shot him dead.
- Philadelphia: A knife-wielding “screaming man” whose outbursts led to repeated police visits to his mother’s residence chased two officers into the street. As in L.A., he refused to drop the weapon, and when he moved on a cop the officer fired.
- San Bernardino, California: A lone officer confronted a large man who was reportedly waving a gun and jumping on parked cars. He refused to cooperate and a violent struggle ensued. During the fight the man reached for a gun. So the cop shot him dead.
- Waukegan, Illinois: A woman suddenly drove off when a cop tried to arrest her passenger/boyfriend on a warrant. Another cop chased the car, and when it ran

off the road the officer approached on foot. He quickly opened fire, supposedly because the car backed up at him. Its driver was wounded and her passenger was killed.

Consider the first two instances. Agitated, mentally disturbed men went at cops with knives. Might a Taser strike have stopped them in their tracks? A decade ago, when Tasers were an up-and-coming tool, their prospects seemed limitless. Don't physically tangle with an evil-doer. Don't beat them with a club. Zap them instead! But as we discussed in a two-parter ("Policing is a Contact Sport," [I](#) and [II](#)) that enthusiasm was soon tempered. Some citizens proved highly vulnerable to being zapped, and a substantial number died.

Other issues surfaced. A 2019 in-depth report, "[When Tasers Fail](#)," paints a decidedly gloomy picture. Recounting [a series of episodes](#) in which Tasers failed to stop assailants, including some armed with knives, it concluded that Tasers – and particularly its newest versions – was far less reliable than what its manufacturer claimed. For the relatively clumsy and uncertain tool to be effective its pair of darts must pierce the skin (or come exceedingly close) and be separated by at least one foot. That requires an accurate shot from a moderate distance. Even then, darts can be pulled out, and officers usually get only two shots before having to replace the cartridges. Even when darts are accurately placed, some persons are unfazed when struck while others become even more violent. A use-of-force expert adept with Tasers [conveyed his colleagues' change of heart](#):

When electronic defense weapons first came on the market, the idea was that they would be used to replace lethal force. I think that was sort of a misnomer.

Tasers were never meant to keep *cops* from being killed. That's always been a job for firearms. Even then, nothing's guaranteed. When an angry someone armed with a knife is only a few feet away (supposedly, less than 21 feet) a cop [may have insufficient time](#) to unholster his weapon and shoot. Even with a gun in hand, firing under pressure [often proves inaccurate](#). Bottom line: when facing a deadly threat, drawing one's pistol well in advance, per the officers in Los Angeles and Philadelphia, is essential.

Yet Los Angeles, which deploys two-officer units, had *four* cops on hand. Couldn't they have effectively deployed a Taser before the suspect closed in? Actually, during the chase one cop apparently tried, but the suspect was running, and there was no apparent effect. LAPD's overseers at the Police Commission ultimately [ruled that the shooting was appropriate](#). But they nonetheless criticized the officers for improperly staging the encounter. Police Chief Michel Moore agreed. In his view, the sergeant should have organized the response so that one officer was the "point," another the "cover," and another in charge of less-than-lethal weapons. Chief Moore was referring to a well-



known strategy, “[slowing down](#).” Instead of quickly intervening, cops are encouraged to take the time to organize their response and allow backup officers, supervisors and crisis intervention teams to arrive.

Might “slowing down” have helped to defuse what happened in San Bernardino or Waukegan?

- As San Bernardino’s 9-1-1 caller reported, the bad guy was indeed armed with a gun. He also vastly outsized the officer and the struggle could have easily gone the other way (click [here](#) for the bystander video.)

That the cop *didn’t* “slow down” probably reflected his worry about the persons in the liquor store where the suspect was headed. Waiting for backup would have risked their safety. So for that we commend him. Still, it’s concerning that he was left to fend for himself. Cities that deploy single-officer cars – and these are in the clear majority – normally dispatch multiple units on risky calls. Lacking San Bernardino’s log we assume that other officers were tied up. There’s no indication that the actual struggle was called in, so dispatch might have “assumed” that all was O.K. Really, for such circumstances there’s no ready tactical or management fix. Assuring officer and citizen safety may require *more* cops. And at times like the present, when taking money from the cops is all the rage, good luck with that.

- Waukegan was different. Neither of the vehicle’s occupants posed a risk to innocent citizens. But the officer who originally encountered the couple tried to do everything, including arresting the passenger, on his own. That complete self-reliance was duplicated by the cop who chased down the car. His lone, foot approach was unfathomably risky. Additional units could have provided cover, a visible deterrent and a means of physical containment. After all, the first officer was apparently still available. But the second cop didn’t wait, and the consequences of *that* decision have resonated throughout the land. No doubt, “slowing down” would have been a good idea.

Could the L.A. and Philadelphia cops have waited things out? Watch the videos (click [here](#) for L.A. and [here](#) for Philly.) Both situations posed a clear, immediate risk to innocent persons. Agitated suspects who move quickly and impulsively can defeat even the best laid plans and create a situation where it’s indeed “every officer for themselves.” Worse yet, should a bad guy or girl advance on a cop before they can be “zapped,” other officers may have to hold their fire, as discharging guns or Tasers in close quarters can easily injure or kill a colleague. [And such things do happen](#).

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So what about doing...nothing? In Waukegan there was really no rush. Waiting for another day might have easily prevented a lethal outcome and the rioting that followed. That, in effect, is the “solution” we peddled long ago in “[First, Do no Harm.](#)” <UF11> Here’s how that post began:

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

To be sure, that gentleman was threatening no one and seemed unarmed. So the medical tenet *primum non nocere* – first, do no harm – is the obvious approach. But police in Aurora, Colorado have substantially extended its application. [Here’s how CBS News described](#) what happened in the Denver suburb on two consecutive days in early September:

...Aurora police officers twice walked away from arresting a 47-year-old man who was terrorizing residents of an apartment complex, even after the man allegedly exposed himself to kids, threw a rock through one resident’s sliding glass door, was delusional, was tasered by police and forced the rescue of two other residents from a second floor room in an apartment he had ransacked.

According to a deputy chief, backing off was appropriate and prevented injuring the suspect or the cops. After all, officers ultimately went back and took the man into custody without incident. Yet as a Denver PD lieutenant/CJ professor pointed out, innocent citizens were twice abandoned and left at risk. “It was a serious call to begin with since it involved a child...I would not have left the guy two successive days, probably not even after the first call.”

Aurora’s laid-back approach remained in effect. On September 24 a team of officers [staked out the residence of a suspected child abuser](#) who had a no-bail domestic violence warrant from Denver. He refused to come out and was thought to be well armed. So the cops eventually left. They later discovered that the man had an outstanding kidnapping warrant. But when they returned he was gone. And at last report he’s still on the lam.

Read that news clipping’s letters to the editor. Not all were complementary. Police undoubtedly feel torn. But [the killing of George Floyd](#) struck a chord and led to rioting in the city. You see, [one year earlier](#), while Aurora’s cops were still operating under the old, more aggressive approach, [they tried to detain](#) a Black pedestrian who was acting oddly. Elijah McClain, 23, forcefully resisted. A carotid hold rendered him unconscious,

and he died several days later. In June the State ordered an investigation into the agency's practices, and a wrongful death lawsuit is pending.

Yet we're reluctant to suggest doing nothing as a remedy. Imagine the reaction should an innocent person be injured or killed after cops back off. And while we're fond of "[de-escalation](#)," the circumstances in our four examples seem irreparably conflicted. Consider the suspects in San Bernardino and Waukegan. Both had substantial criminal records and faced certain arrest: one for carrying a gun and the other for a warrant. Yet officers nonetheless tried to be amiable. (Click [here](#) for the San Bernardino video and [here](#) for Waukegan.) In fact, being too casual may have been part of the problem. Our personal experience suggests that gaining voluntary compliance from persons who *know* they're going to jail calls for a more forceful, commanding presence.

Great. So is there *any* approach that might have averted a lethal ending? "[A Stitch in Time](#)" suggests acting preventively, preferably *before* someone runs around with a gun or brandishes a knife. Police departments around the country have been fielding crisis-intervention teams with some success (see, for example, our recent discussion of [the "Cahoots" model](#).) New York City is presently implementing a mental health response [that totally cuts out police](#); that is, unless "there is a weapon involved or 'imminent risk of harm.'" As even Cahoot's advocates concede, once behavior breaches a certain threshold even the most sophisticated talk-oriented approach may not suffice.

And there's another problem. While we're fans of intervening before situations explode, in the real world of budgets and such there's usually little substantial follow-through. We're talking quality, post-incident treatment, monitoring and, when necessary, institutionalization. Such measures are intrusive and expensive, and that's where things break down. That means many problematic citizens (e.g., L.A., Philly, San Berdoo, Waukegan) will keep misbehaving until that day when...

Full stop. Officers resolve highly conflicted situations every day as a matter of course. But unlike goofs, which get big press, favorable outcomes draw precious little attention and no respect. Yet knowing how these successes came to be could be very useful. (Check out [the author's recent article](#) about that in *Police Chief*.)

We're not holding our breath. During this ideologically fraught era only one-hundred percent success will do. Consider this outtake from [a newspaper account](#) about the incident in San Bernardino:

During a news conference Friday morning, the police sought to portray [the suspect] as physically intimidating, listing his height and weight — 6 feet 3 and 300 pounds — and cataloging what they called his "lengthy criminal past,"

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prompting one bystander to remark, “What does that have to do with him being murdered?”

Alas, that attitude pervades the criminal justice educational community. Many well-meaning academics have been rolling their eyes for years at our admittedly feeble attempts to reach for explanations in the messy environment of policing. Their predominant P.O.V. – that poor outcomes *must* be attributed to purposeful wrongdoing – has apparently infected L.A. City Hall as well. At a time when “homicides and shootings soar to levels not seen in the city in a decade,” the City Council [just decided to lop \\$150 million off LAPD’s budget](#) and shrink its force by 350 sworn officers.

Was that move well informed? Did it fully consider the imperatives and constraints of policing? And just what *are* those? If you’re willing to think, um, *expansively*, print out our collected essays in [compliance and force](#) and [strategy and tactics](#). As long as you promise to give them away, they’re free!

Posted 8/1/17

## THREE (IN?)EXPLICABLE SHOOTINGS

### *Grievous police blunders keep costing citizen lives. Why?*

*By Julius (Jay) Wachtel.* On April 29 Balch Springs, Texas police officer Roy Oliver and his partner [entered a residence](#) where teens were reportedly drinking. Gunfire suddenly erupted nearby and the cops ran to investigate. Five youths also left and jumped into a car. For reasons that remain unclear, officer Oliver fired at them with a rifle that he had fetched from his cruiser. One round fatally wounded Jordan Edwards, 15.

Police chief Jonathan Haber quickly issued a news release claiming that the youths had driven at the officers. Body cam video soon proved the assertion false. Chief Haber apologized and fired officer Oliver.

Last month a Dallas grand jury [indicted officer Oliver](#), 37 for murder and aggravated assault. He was also charged with pulling a gun on a motorist who rear-ended his personal vehicle some months ago. Oliver, an Iraq vet and cop since 2011, [had been briefly suspended in 2013](#) for being vulgar and aggressive with prosecutors and in court. No other disciplinary actions against him are known.

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On June 4 Omaha police officers [encountered a disturbed man](#) licking a store window. Zachary Bearheels, 29, accepted water but refused further aid and was let go.

Bearheels continued behaving oddly. That evening he was kicked off an interstate bus, and during the early morning hours of June 5 he caused a ruckus outside a convenience store. Two officers eventually cajoled the 5-9, 250-pound man into the back of a squad car. A sergeant soon turned down their request to take Bearheels in for a mental check, so the officers decided to take him back to the bus station. But the unruly man broke loose and tried to flee.

That's when two other cops, Scotty Payne, 38 and Ryan Mc Clarty, 27 jumped in. During the ensuing struggle they delivered a stunning twelve five-second Taser jolts and numerous blows to the head. According to police chief Todd Schmaderer, who moved to fire both cops, "video showed Mr. Bearheels to be motionless on the final few strikes." Indeed, Bearheels was more than "motionless": he was dead. A coroner would later rule

the cause as “excited delirium,” a diagnosis that has been associated with [other episodes of repeated Taser strikes](#) on emotionally disturbed persons.

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What’s known for sure is that Minneapolis police officer Mohamed Noor [shot and killed Justine Ruszczyk](#) during the late evening hours of July 15. What’s puzzling is *why*. Ruszczyk, a local resident, had just called 911 to report overhearing a possible sexual assault. After hanging up she may have tried to draw the attention of officer Noor and his partner, Matthew Harrity, by slapping the trunk of their vehicle as it drove down the alley behind her residence. Officer Harrity, the driver, later told investigators that he heard a loud noise and observed Diamond at his side window. His partner apparently considered the woman a threat [and fired](#). Noor’s bullet struck the middle-aged Australian woman in the torso, inflicting a fatal wound.

Since completing probation in fall 2015 Officer Noor, 31 racked up three complaints. One, an incident in May where he allegedly used excessive force against a mentally ill woman, [has turned into a lawsuit](#). Officer Noor declined to be interviewed about the shooting and is represented by a lawyer.

Independent information about the incident is lacking, as neither patrol car nor officer cameras had been turned on. Meanwhile the chief, who said the shooting “should not have happened,” resigned under pressure and a major shake-up of the department is reportedly under way. One change already made is that officers must now activate body cameras on all 911 calls.

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[“The killing of Jordan Edwards shows again how black males — even children — are viewed as a threat.”](#) That headline (yes, *headline*) from the May 7 edition of the *Los Angeles Times* conveys what the editors clearly consider a given: that the killing of Edwards, a black youth, by officer Oliver was motivated by race. Among those quoted in the story is civil rights attorney Benjamin Crump, who on the day of Edwards’ funeral said “These [police officers] are trained professionals, who are supposed to make rational decisions, but they’re not. And yet again our children — I repeat, children — are paying the ultimate price.”

*Police Issues* has frequently commented on the use of lethal force against blacks. One such episode, which the *Times* also found pertinent, was the [November 2014 killing of Tamir Rice](#), a black 12-year old who was gunned down by a white Cleveland cop. (Rice

had flaunted an air pistol, and a grand jury refused to indict. Cleveland settled for \$6 million.)

Given America's legacy of bias, concluding that Jordan Edwards was shot because he was black might have seemed obvious to the *Times*. After all, while officers kill many more whites than blacks, the latter have been proportionately much more likely to fall victim to police gunfire (click [here](#), [here](#) and [here](#)). Contemporary research, though, has cut both ways. For example, a [recent in-depth report](#) of shootings by Houston officers concludes that *whites* were at substantially greater risk of being gunned down by cops.

In any case, the officers who shot Bearheels and Ruszczyk were black. So what matters other than race?

- Officer temperament is crucial. Cops who are easily rattled, risk-intolerant, impulsive or aggressive are more likely to resort to force or apply it inappropriately. In "[Working Scared](#)" we remarked that the cop who shot Tamir Rice was forced out from another department when a supervisor noticed that the rookie was inexplicably "distracted" and "weepy" during firearms practice.
- Good judgment and forbearance take time to develop. Pairing inexperienced cops may be a tragedy waiting to happen. [Minneapolis officer Noor](#) had been a cop only two years; his partner, officer Harrity, had one year of experience with MPD. Interestingly, the "loud noise" that may have provoked Noor to fire brings to mind the "loud noise" that [led one of a pair of rookie NYPD cops](#) to discharge a round in a darkened stairwell, fatally wounding a resident who was hoofing it because the elevator was out.
- Talk isn't enough. "[De-escalation](#)," a trendy new buzzword, is how most cops have always preferred to do business. But when beats are beset by guns and violence even the most adept communicators might need more than words. Prompt backup is essential. Less-than-lethal weapons must also be at hand and officers should be adept at their use.
- Practice makes perfect. [As we said not long ago](#), patrol shifts must train together. It's also essential that someone - an experienced officer, if not a supervisor - take charge and coordinate things whenever a use of force is likely.

We hate to label this post a call for "reform," as our analysis and prescriptions are nothing new. Yet an unending stream of unjustified police shootings have been threatening to turn *Police Issues* into a "use of force" blog. So, *please* (and not just for our sake) don't let that happen!



Posted 8/26/11

## POLICING IS A CONTACT SPORT (PART II)

***Tasers are useful. But they're not risk-free,  
and over-reliance is a problem.***

*By Julius (Jay) Wachtel.* During the early morning hours of Saturday, August 6, University of Cincinnati campus police [were summoned to a fight](#) in a residence hall. That's where they ran into Everett Howard. The youth, who seemed to be in an "altered mental state," advanced on the cops fists balled, and when he refused to stop they zapped him with a Taser, according to news reports only once. Howard collapsed. Paramedics tried to revive him but without success.

Howard, 18, an honors high school student, was enrolled in a college-prep program. Oddly, [he had apparently been Tasered before](#), in 2010, in an incident whose details haven't been disclosed.

Two hours later and about 500 miles away police in Kaukauna, Wisconsin responded to reports of someone screaming for help. When officers arrived [they observed a naked man running across a bridge](#), yelling that he was dead and covered with snakes.

Officers realized that they had a mental case and summoned an ambulance. But as they approached, the man ran off. To stop him they fired a Taser (how many times is unknown.) Gregory Kralovetz, 50, collapsed and died. Authorities surmise that he had been in a state of excited delirium brought on by drug intoxication, which is consistent with the fact that he had two convictions for possessing cocaine.

A few hours later and about 900 miles away paramedics in Manassas, Virginia responded to a 911 call by a woman whose brother-in-law was supposedly having a heart attack. The patient, Debro Wilkerson, 29, fought off firefighters, so [police were called](#). Wilkerson, who said he was on heroin and PCP, then repeatedly attacked the cops. He wound up getting zapped as many as three times before collapsing. He never came to.

So far there's no conclusive proof that Tasers kill. Deaths following the use of CEDs are infrequent, and when they happen police usually attribute them to other factors, such as "excited delirium" and drug intoxication. Proponents of the Taser are also quick to point out that research studies, including the NIJ report mentioned above, conclude that CEDs (also called ECWs, for "electronic control weapon") prevent injuries to cops and citizens alike.

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Even so, there's no denying the mounting number of Taser-associated fatalities. It's for this reason that the [Police Executive Research Forum](#) (PERF) and [NIJ](#) have recommended, among other things, that dosage be strictly limited. PERF has also identified categories of persons who are at special risk:

Some populations currently believed to be at a heightened risk for serious injury or death following an ECW application include pregnant women, elderly persons, young children, visibly frail persons or persons with a slight build, persons with known heart conditions, persons in medical/mental crisis, and persons under the influence of drugs (prescription and illegal) or alcohol. Personnel should be trained about the medical complications that may occur after ECW use and should be made aware that certain individuals, such as those in a state of excited delirium, may be at a heightened risk for serious injury or death when subjected to ECW application or other uses of force to subdue them.

NIJ's authors seem more favorably disposed to CEDs, concluding, perhaps a bit obstinately, that "the medical research to date does not confirm such claims [of causing fatalities]." However, a close reading of their literature review suggests that the devices can indeed be dangerous:

While the above review suggests CEDs are relatively safe when used on healthy at-rest and physiologically stressed subjects, medical researchers caution that CEDs are not risk free (National Institute of Justice, 2008; Vilke & Chan, 2007). Strote & Hutson (2008), for example, point out that CEDs may cause physiologic and metabolic changes that are clinically insignificant in healthy individuals but that could be harmful or even life-threatening in at-risk populations (e.g., obese subjects with heart disease and/or intoxicated on drugs who struggle with police).

Officers who lack CEDs have limited recourse when dealing with combative citizens: their hands, a club, and OC (pepper) spray. In the real world these are tricky to deploy and require getting in close. OC spray blows back. Whacking someone with a baton can lead to a fight, which is particularly risky for cops working alone. ([Forty were killed with their own sidearms](#) between 2000-2009.) It's no wonder that some officers might feel compelled to go for the gun, and the sooner the better. Consider two notable incidents last year, when cops without Tasers wound up shooting and killing knife-wielding drunks in [Los Angeles](#) and [Seattle](#), provoking days of serious disturbances in the former and a [DOJ "patterns and practices" investigation](#) in the latter (that officer was also fired.)

CEDs can save lives. To all but their most stalwart boosters it's obvious that they can also kill. For examples one need look no further than the deaths mentioned above, of

[Darryl Turner and Robert Heston](#), brought up last week, and, more recently, of [Kelly Thomas](#), a homeless and mentally ill California man whose July 5th. killing precipitated a political crisis in the city that hosts your blogger's university campus.

What to do?

One could restrict Tasers to situations that would normally merit using lethal force. If some should result in a citizen's death one could argue that they would have likely been killed anyway. Of course, whether cops should be encouraged to risk their own well-being in such cases is a matter of controversy. At this writing a report has come in of [an LAPD officer who was struck with a sharp cane](#) when he and a partner tried to use a Taser to subdue "a screaming man." The cop's injuries were minor; the suspect was shot dead.

There is no question that in sheer numbers the much greater usefulness of Tasers lies in helping resolve the many lesser physical confrontations that can nonetheless result in serious injury to citizens or police. Paradoxically, many or most of these episodes involve substance abusers, the mentally ill, and others who may be especially sensitive to the effects of CEDs. Obviously, that can make the calculus of costs and benefits quite complex.

So if Tasers are to be used in such cases, [PERF's dosage recommendations](#) seem very much in order. Officers need to train so that only one deploys the tool and that overall exposure doesn't exceed fifteen seconds. Along these lines it's important to note that some of the newer CEDs emit power as long as the trigger is depressed, requiring users to exercise exceptional self-control to deliver no more than the recommended dosage. (Taser International has resumed marketing the old type, which cycle for five seconds with each trigger pull.)

Not every encounter with an unruly citizen merits deploying a Taser. NIJ's authors warn that for some cops CEDs have become the proverbial hammer, and every threat the nail:

We noted above that CEDs can be used too much and too often. A critical research question focuses on the over-reliance of the CED. During our interviews with officers and trainers, we heard comments that hinted at a "lazy cop syndrome." That is, some police officers may turn to a CED too early in an encounter and may rely on a CED rather than the officer's skills in conflict resolution or even necessary hands-on applications.

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If some officers turn to CEDs because they're insufficiently skilled in "hands-on applications" we should work on improving those. Cops who can take down a suspect the old-fashioned way, by tackling him and slapping on the cuffs, are less likely to abuse the Taser. Sometimes good policing really is a contact sport.

Posted 12/12/07

**DISTURBED PERSON + GUN = KILLER  
DISTURBED PERSON + ASSAULT RIFLE =  
MASS MURDERER**

By Julius Wachtel, (c) 2010

This year marks the sixtieth anniversary of the AK-47, the weapon designed by the famous [General Mikhail T. Kalashnikov](#) to help Communists win the struggle against Western imperialism. From the jungles of Southeast Asia to the killing fields of America's inner cities, the simple, reliable weapon became an instant hit. Now the battleground has expanded into the epicenters of capitalist consumption. We're talking, of course, about shopping malls.

It's unlikely that the [19-year old gunman](#) who murdered five in a Nebraska mall last week knew anything about the political history of the gun in his grasp. What little is known paints him as a mentally disturbed teen playing out his demons in the established pattern: grab a gun and lots of ammo, go to a place where people gather and shoot as many innocent strangers as you can. Then reload.

What's to be done? Apparently, nothing. Thanks to permissive laws that make it virtually impossible to force anyone to accept treatment, the mentally ill are left to medicate themselves, or not, and the rest of us are left to duck and cover. (Anyone who thinks that's too harsh an assessment should go be a cop or social worker, then report back.)

If we can't do anything about individuals, what about guns? Oh, please! When a weak, loophole-ridden piece of legislation like the [Federal assault weapons ban](#) expires and even the Democrats applaud, there is absolutely no hope of regulating ourselves out of this mess. Now, it's true that a handful of States, including California, have laws that make high-caliber, high-capacity shoulder-fired weapons less available. But since these can be legally purchased elsewhere (e.g., Arizona, Texas, Nevada, Washington, etc.), with no ID required when buying from private parties or at gun shows, the impact of localized restrictions is negligible.

Wackos and assault rifles are an impossibly lethal combination. Handguns have limited range and their projectiles can usually be defeated by quality ballistic garments.

But rifle cartridges are far more powerful, imparting a velocity, hence energy, that allows most bullets beyond a .22 short to penetrate ordinary ballistic vests (those that can stop rifle rounds are far too heavy and cumbersome to wear on patrol). The large magazine capacities and high cyclic rates of civilian assault-type rifles can pin down anyone reckless enough to advance on a shooter. That's what LAPD discovered during the infamous [North Hollywood shootout](#) of February 28, 1997, when two bank robbers armed with a 9mm pistol and five semi-auto rifles (several made full auto, an illegal but often simple conversion) held off platoons of cops, wounding eight officers and five civilians.

According to the FBI, only 4% of [firearms murders](#) in the U.S. between 2002-06 were committed with rifles. But for [killings of police](#), the figure was 18%. Why are officers disproportionately vulnerable to long gun fire? FBI data reveals relatively few through-the-vest shots. But there's something else that makes rifles so lethal. It's the ability to accurately place a shot at distance, in the most vulnerable part of the body and the one most difficult to protect: the head. Between 1997-2006, 58% of officers killed by gunfire died from head or neck wounds (gun type wasn't specified.) A tragic, well-known Southern California example is the February 1994 murder of [LAPD Officer Christy Hamilton](#), struck above the vest with a .223 caliber round fired from an AR-15 rifle. Her assailant, a 17-year old youth who murdered his father, then committed suicide.

Many police agencies shifted tactics after Columbine. It's now common for cops to carry rifles, and when there is an "active shooter" they don't necessarily wait for SWAT. But impulsively going after a madman with a rifle is incredibly dangerous. If the bad guy takes cover and simply waits a dead or wounded officer is likely. Even if the good guys ultimately triumph, by the time that police arrive or the shooter kills himself it's usually too late.

So what's the solution? Only days after Nebraska a disaffected 24-year old wielding a rifle, two handguns, a pair of smoke grenades and a backpack full of ammunition shot nine and killed four in Colorado. His spree was finally brought to an end by an armed ex-Minnneapolis cop working as an armed security guard. Setting aside that it *was* a guard with police experience, the event was instantly seen as confirmation of the value of citizens carrying guns. But consider another example. In November 2005 [Brendan McKown](#), 38, a CCW permit holder with *no* police experience drew his pistol as Dominick Maldonado was shooting up the Tacoma Mall with an AK-47. Not wanting to kill a "kid," McKown put his gun away and tried to talk Maldonado into giving up. Maldonado aimed the rifle. McKown went for his pistol, but before he could get it out he was shot multiple times, leaving him a paraplegic. (In all, six citizens were shot; McKown was the most seriously injured. Maldonado got a life sentence.)

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In the end, neither SWAT teams nor armed citizens are a realistic solution to the threat posed by assault rifles. Thanks to our culture's infatuation with guns and politicians' reluctance to call a halt to the insane escalation of firepower, we're entering an era where no one is safe from angry young men and their killing machines. Do we really want our cities to turn into Baghdads? Whatever one's views on the Second Amendment, this cannot be what the Founding Fathers intended.