

RED FLAG LAW ESSAYS

By

Julius Wachtel

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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

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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

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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 12/18/11

CATCH AND RELEASE

Sometimes there really is no substitute for common sense

By Julius (Jay) Wachtel. “If you’re talking about somebody who the rap sheet in front of you shows is potentially a dangerous person, has a gun, has a criminal history, common sense says don’t let him out until you make one phone call.” New York City [Mayor Michael Bloomberg’s criticism](#) was directed at Evelyn Laporte, a Brooklyn judge who had brushed aside a prosecutor’s request to set \$2,500 bail and released a man arrested on drug possession and child endangerment charges on his own recognizance.

Yet the suspect, Lamont Pride, 27, [wasn’t an unknown quantity](#). Officers had caught him packing a knife a couple months earlier, a tangle that cost Pride a day in jail. Authorities in Pride’s home town, Greensboro, North Carolina had [recently secured felony warrants](#) accusing Pride of shooting a man in the foot as they quarreled over a woman. Pride, who allegedly used a .22 pistol, was charged with assault with a deadly weapon with intent to inflict serious injury, felony conspiracy, and possession of a firearm by a felon, the latter relating to a prior conviction for armed robbery, an offense for which he served 13 months in prison.

Now here’s the part that’s hard to swallow. Greensboro’s warrants [specified “in-state extradition only.”](#) Police and prosecutors would later explain that they didn’t consider Pride a flight risk and thought “he could still be in the area.” So why not authorize extradition? One can guess that in these times of strapped budgets there were second thoughts about sending officers to another state to bring back a local ne’er-do well, particularly if injuries, as in this case, were minor and the victim was no one special.

The story doesn’t end there. When NYPD arrested Pride for drugs and child endangerment an officer called Greensboro PD to confirm that they wouldn’t extradite. That fact was passed on to Judge Laporte, who also got a look-see at Pride’s long rap sheet. But she O.R.’d him anyway. Still, NYPD wasn’t done. A detective called Greensboro a few days later. Whatever transpired during that little chat clearly had an impact, and on November 8 North Carolina’s warrant was amended to authorize extradition.

Alas, it was too late. Pride skipped his New York City court appearance and was nowhere to be found. On December 12, NYPD officer Peter J. Figoski, 47, a 22-year veteran and father of four, [responded to a report of a residential armed robbery](#). (It turned out to be a vicious attempt to rip off a local drug dealer.) While searching a dark

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apartment building officer Figoski and his partner were surprised by Pride, who allegedly pulled a 9mm. pistol and shot Figoski dead. Pride was caught during a foot chase.

Felons on the lam are always dangerous. On June 29, 2010 Dontae Morris allegedly [shot and killed Tampa police officers David Curtis \(I\) and Jeffrey Kocab](#) during a traffic stop. Morris, whose record includes arrests (but not convictions) for murder and weapons violations was released from prison two months earlier after serving a two-year term for possession and sale of cocaine. Only thing is, Morris had an active felony warrant for bad checks. “Right now we’re not going to start pointing the fingers of blame,” said Tampa PD Chief Jane Castor. “And frankly, it’s not going to bring the officers back.”

The deaths of officers Curtis and Kocab have been attributed to a complex tangle of bad decisions. Equally lethal results can flow from simple paperwork blunders. On January 23, 2011 “low-risk” parolee Thomas Hardy, 60, [shot Indianapolis police officer David Moore](#) during a traffic stop. Hardy was arrested after robbing a convenience store an hour later. Actually, Hardy shouldn’t have been on the street in the first place, as he had recently been arrested for felony theft. Regrettably, Hardy’s parole status hadn’t been entered into the computer, and he didn’t tell, so he was let go after arraignment.

Officer Moore succumbed to his injuries. Both his parents were cops. His father was a retired Lieutenant, his mother an active-duty Sergeant.

We’ve suggested in the past that bad decisions can be often attributed to a tendency to “dismiss, dismiss, dismiss.” Going to “extraordinary lengths to routinize information and interpret questionable behavior in its most favorable light” can have tragic consequences. Here are a few examples:

- Perhaps fearing that they might be branded as bigots, military authorities repeatedly ignored warning signs about [the radicalization of Nidal Hasan](#), the Army major who killed eighteen and wounded twenty-eight at Fort Hood.
- A lack of regulatory will and Federal law enforcement resources were clearly at work in the case of [Bernie Madoff](#), the record-breaking Ponzi artist whose decades-long scheme cost victims billions.
- Parolee [Phillip Garrido](#) enjoyed so much slack while under supervision that he was able to kidnap a young woman and, with help from his wife, confine her to a backyard pen for eighteen years as his sex slave.

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- After doing fifteen years for rape, Cleveland serial killer [Anthony Sowell](#) was ignored by police despite a string of odd and violent goings-on at his home involving various women, including one who supposedly “fell” from a window.
- And who could forget would-be underwear bomber [Umar Abdulmutallab](#), a self-made Nigerian terrorist whom American consular and intelligence authorities failed to place on the do-not fly list even after Umar’s father warned them that his radicalized kid was up to no good.

When funding is tight criminal justice agencies must economize. And yes, there are consequences. States have been granting early paroles by the bucketful, releasing inmates left and right to make room and save money. Yet predicting someone’s threat to society is chancy. In August [three top Wisconsin juvenile corrections officials were suspended](#) after police arrested three Milwaukee teens for a vicious robbery-murder. Two had been granted early releases while serving terms for violent crimes. One, now 18, did less than three years for directing a killing in which his adult codefendants got twenty years.

Decisions that can let potentially dangerous individuals go free should be taken in a reflective atmosphere with sufficient time to gather and evaluate all pertinent information. In the efficiency-obsessed atmosphere that pervades today’s criminal justice system that ideal is rarely reached. Pressures to economize can lead well-intentioned practitioners such as Judge Laporte to lose their way and forget why they’re there. It’s precisely for such reasons that Mayor Bloomberg’s admonition to use “common sense” should be taken to heart. Officers Figoski, Curtis, Kocab and Moore would ask for nothing less.

Posted 2/5/12

CATCH AND RELEASE (PART II)

An “evidence-based” pre-trial release program lands Milwaukee in a pickle

By Julius (Jay) Wachtel. Ever since NIJ adopted the “evidence-based” mantra it’s been *de rigueur* for governments at all levels to demand solutions that are founded in science and empirically verifiable. But in criminal justice, where it’s often hard to say what factors to consider in the first place, let alone how to measure their effects, thoughtlessly crunching data is risky.

For an example look no further than Milwaukee’s [brand-new pretrial release program](#). Developed by [Justice 2000](#), a small Milwaukee nonprofit founded in 2001 to promote the “safe release and community integration of criminal offenders,” it applies a set of measures to estimate the likelihood that a defendant might fail to appear or reoffend. Staff members collect information about the nature of the offense, criminal record, previous failures to appear, drug and alcohol use, mental impairment, community bonds and family ties from official records and personal interviews. Results are computed and furnished to a court commissioner who makes the final decision about bail and release.

Justice 2000’s director says that its protocol is based on a study of two years’ worth of release data, and that everything is done impartially. “We’re neutral, just supplying information and applying the tool.”

It’s not the first time that Justice 2000 has provided pretrial services. [In 2003 it took over](#) the city’s “Municipal Court Alternatives Program,” which offers persons cited for minor transgressions community service, drug treatment and counseling as alternatives to jail and fines. In 2004 the main outcome metric, fewer jail days, was 13,288, saving the city \$531,520 in housing costs.

Justice 2000’s new program is different. Just how different was apparent a few days ago when authorities announced that [Derrick Byrd](#) was returned to custody after a commissioner acting on Justice 2000’s recommendation released him on his own recognizance. What was the original charge? Robbery-murder.

Yes, that’s right: Milwaukee O.R.’d an accused murderer. Stunned prosecutors (they had asked for a \$150,000 cash bond) rushed to a judge, who looked things over and set bail at \$50,000. By then Byrd was gone, but he surrendered after checking in with

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Justice 2000 staff. His bail is now \$30,000, which he still can't pay. Incidentally, there's no doubt that he was involved in the crime, the murder last October of the owner of a recycling business. According to [a sketchy account](#), Byrd admitted that he participated in planning the heist but says that someone else pulled the trigger. Byrd reportedly has no prior criminal record and his lawyer says that he is willing to cooperate and point the finger at the real shooter.

Justice 2000's program has been in effect only since mid-January. Amazingly, Byrd isn't the only accused killer whom its staff has recommended for kid-gloves treatment. On January 24 police arrested [Chasity Lewis, 18](#), for reckless homicide. An admitted marijuana dealer, she told police that three boys tried to take drugs without paying and that one punched her. Doing what comes natural, she pulled a .22 pistol that she carried for protection and shot her assailant, a 16-year old boy, point-blank in the chest. Based on her lack of a prior record, school attendance and "steady home life," Justice 2000 recommended O.R. But for blowback from the Byrd case, she would have gotten it. (Instead, a commissioner set bail at \$20,000. Lewis remains in custody.)

All pre-trial release schemes are subject to two types of error. "Type 1" errors of overestimation (also referred to as false positives) lead to the detention of persons who would not have fled or committed another crime. "Type 2" errors of failure to include (also referred to as false negatives) cause the release of those who will likely flee or recidivate. According to Milwaukee County Sheriff David A. Clarke, Justice 2000's protocol seems purposely biased in favor of the accused. "There's a use for pretrial screening, but obviously this tool needs to be recalibrated," said Clarke, who suggested that "evidence-based decision making" and promises of saving money are sweeteners offered by those with a secret liberal agenda.

Politics aside, it may be that when it comes to murder, trying to strike the usual cost-benefit, Type 1/Type 2 balance doesn't work. When Justice 2000 played in the sandbox of municipal court the consequences of being wrong (i.e., Type 2 errors) were minimal. In general criminal court, though, releases carry far weightier implications. Predicting recidivism is a frustratingly inexact science. As we pointed out in "[Reform and Blowback](#)," when a dangerous someone is let go and maims or kills, there's no trying to explain why they were released.

Bottom line: releasing shooters on their own recognizance is a huge step into the unknown. It's a new, quantum world, with hazy parameters and unpredictable consequences.

Well, maybe not all *that* unpredictable. In "[Risky Business](#)" we discussed the dangers of chasing after defendants who go on the lam. Warrant service is an extremely

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dangerous business that all-too frequently leads to shootouts and dead cops. Of course, officers serving warrants are at least forewarned. Imagine what can happen when patrol officers inadvertently come across a dangerous wanted person. “[Catch and Release](#)” featured two such examples:

- In December 2011 Lamont Pride, a robber wanted for a shooting in North Carolina, [shot and killed NYPD officer Peter J. Figoski](#). Pride had been arrested by NYPD twice in recent months, most recently on a drug charge for which he failed to appear. He was released on low bail both times because the North Carolina warrant didn’t authorize extradition.
- In June 2010 Dontae Morris, a felon with arrests for murder and weapons violations, [shot and killed Tampa police officers David Curtis and Jeffrey Kocab](#) during a traffic stop. Morris, who had been recently released from a prison term for sale of cocaine, had an active warrant for bad checks.

Just how Milwaukee came to endorse release practices that could lead to O.R.’s for murder suspects will be fodder for discussion for years to come. Partnering with what clearly seems to be an advocacy group (in 2010 Justice 2000 merged with [Community Advocates](#)) may have been imprudent. Budget-conscious county officials might have been seduced with promises of cost savings and freeing up bed space. Perhaps the appeal of an “evidence-based” based strategy was too hard to resist.

But don’t just trust *Police Issues*. It’s been a year since Malcolm K. Sparrow’s superb [research article](#) cautioned against assuming that “evidence-based” approaches can yield practicable solutions to the real-life dilemmas encountered by police. Those that prove useful, he said, tend to be rebranded variants of what cops have already done. Dr. Sparrow counseled academics to heed the advice of practitioners, as they’re the real experts at the game. Last May [judges in St. Louis, Missouri](#) took that notion to heart. Sick and tired of gun violence, they started setting \$30,000 bail, full amount cash only, on everyone caught illegally packing guns. No surprise, most remained locked up. Homicides promptly began to drop, and the year ended with 114, 20 percent less than in 2010 and the fewest since 2004. Researchers now studying the program think that it holds special promise.

Milwaukee, meet St. Louis.

Posted 1/3/10

DOING NOTHING, REDUX

*What's more frightening than terrorism?
Relying on analysts to prevent it.*

What we are focused on is making sure that the air environment remains safe, that people are confident when they travel. And one thing I'd like to point out is that the system worked...The passengers and crew of the flight took appropriate action...Within literally an hour to 90 minutes of the incident occurring, all 128 flights in the air had been notified to take some special measures...So the whole process of making sure that we respond properly, correctly and effectively went very smoothly.

By Julius (Jay) Wachtel. Homeland Security chief Janet Napolitano's pitiful attempt to deflect blame for letting a bomb-carrying terrorist board a U.S.-bound plane didn't work. Only a day later, as [Al Qaeda openly gloated](#) about an operation that "penetrated all modern and sophisticated technology and devices and security barriers in airports of the world," the would-be spinmeister was forced to concede that the system had really *not* worked, at least not in the way that really matters.

Unfortunately, it will take a lot more than a Presidential scolding to improve flight security. It seems that [the vaunted "system" installed after 9/11](#) is hopelessly porous, with all measures short of a strip search having proved incapable of stopping determined evildoers. Although Homeland Security insists that every security checkpoint will soon be equipped with machines that can detect liquid explosives, PETN, the substance used in this episode (and earlier, by shoe bomber [Richard Reid](#)) is a powder. Canines and wildly expensive electronic sniffers that can detect vapors from PETN and other explosives are tied up screening checked baggage. Meanwhile deployment of phenomenally costly full-body scanners is on hold due to privacy concerns.

What about intelligence? Weren't analysts sitting at glowing terminals supposed to be the solution? Indeed, America's first line of defense, the [FBI Terrorist Screening Center](#), maintains a "Consolidated Terrorist Watchlist" listing 550,000 persons suspected of terrorist ties. Most are foreigners. For reasons of efficiency [TSA usually checks passenger lists](#) against two subsets of individuals considered to pose the greatest threat, a "no-fly" list of 4,000 persons who are flat-out prohibited from boarding commercial aircraft, and a larger group of 14,000 "selectees" who must be thoroughly

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searched. (For the controlling Government regulations click [here](#). Numbers given are the latest reported.)

Alas, Umar Abdulmutallab was only on the master list, so when he got to the airport he was treated just like you and me (assuming that you're not a bad guy, of course.) [Why he wasn't flagged for a more thorough search](#) demonstrates just how fragile a process security screening really is.

A Nigerian national from a rich family, Abdulmutallab was enrolled at a prestigious London university between 2005-2008 and presided over the student Islamic society. On graduation he acquired an American multiple-entry visitor's visa, good for two years, and briefly vacationed in Houston. In January 2009 he attended a college in Australia. In May he tried to renew his British student visa using the name of a bogus college that was known to serve as a front for illegal immigration. That got him permanently barred from Great Britain. No matter – by August he was in Yemen, purportedly to study Arabic. Before dropping from sight he sent his parents text messages mentioning his radical intentions and saying that his family should forget about him. His alarmed father alerted his own government and went to the American embassy, where he met with officers from the State Department and CIA. But the kid remained unmolested. After meeting with an Al Qaeda cell in Yemen, he returned to Nigeria and flew to Amsterdam, where he boarded his final flight to the U.S.

As one might expect this episode has provoked a great deal of finger-pointing. Britain never told the U.S. that it placed the youth on a no-entry list. Despite the father's anguished warning the State Department didn't revoke the son's visa. Neither did the CIA tell the FBI that it had opened a file on Abdulmutallab. An NSA alert about an Al Qaeda attack that was to be carried out by an unnamed Nigerian national was filed and forgotten. And so on.

Now wait a minute: wasn't creating a new über-agency, the Department of Homeland Security, intended to correct the lapses in coordination and information sharing that supposedly contributed to 9/11? Sure. But while less-potent bureaucracies such as Customs, Immigration and the Secret Service got yanked from their former homes and placed under a single umbrella, the three national security organizations that really matter – the FBI, CIA and NSA – have way too much political clout and to this day remain virtually independent.

Yes, the system is hopelessly fragmented. But should that be blamed for what took place? As we pointed out in [Missed Signals](#), there is simply so much data and so little opportunity to do anything about it that anything other than an obvious red flag tends to

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get discounted. Really, the notion that those at the end of the information superhighway can successfully detect fast-moving conspiracies in time to avert a catastrophe is frightfully naive. Warnings that foreigners have it in for America aren't exactly in short supply. Analysts didn't know Abdulmutallab and they surely hadn't spoken to his father. It's a credit to the FBI that it placed the youth on any list at all.

In truth, the best opportunity to detect a threat isn't at a centralized analytical bureau that might as well be in another Galaxy – it's in the field. Just how often do wealthy former government ministers walk in to warn foreigners about their own sons? Had officers at the American embassy in Nigeria made a few calls and consulted a few databases they might have easily come up with enough to nix Abdulmutallab's visa, if not more.

But they didn't.

Had airport security officers or airline employees in Nigeria or Amsterdam paid attention to someone who was flying to the U.S. without checked baggage, on an airline ticket paid for in cash, they might have prevented a terrorist's boarding.

But they didn't.

When the everyday pressures of business are overwhelming it's awfully easy to rationalize things away – in effect, to do nothing. Let's review the closing paragraph from [Missed Signals](#):

Rare events such as mass murder are difficult to predict precisely because they *are* rare. Our best shot at preventing them lies in avoiding the urge to routinize and in paying close attention to the unusual and offbeat, like naked women falling from the sky and military officers e-mailing with terrorists.

We were referring to Cleveland serial killer [Anthony Sowell](#) and Fort Hood shooter [Nidal Hassan](#). Umar Farouk Abdulmutallab wouldn't come until later.

Posted 11/15/09

MISSED SIGNALS

*In hindsight everything's simple.
But policing takes a lot more than hindsight.*

By Julius Wachtel, (c) 2010

So much violence, so little time! While the (virtual) ink from “[Hidden in Plain Sight](#)” was still wet we were shaken by horrific news from Cleveland, where police were unearthing human remains at the home of registered sex offender [Anthony Sowell](#). As digging continues eleven bodies have been found, all female. So far the identities of ten are known. Ranging in age 25 to 52, most were reportedly addicts and sex workers. Sowell, who had been released in 2005 after doing fifteen years for rape, had apparently lured them in with drugs and liquor.

How was he caught? It wasn't because police and public health authorities followed up on complaints about a [horrible stench](#) emanating from the residence (they didn't).

It wasn't because [a woman accused Sowell](#) of choking and raping her last November. (Sowell was arrested but the case was dismissed, apparently because the victim didn't seem credible.)

It wasn't because [a deputy checking up on sex offenders](#) got suspicious when he stopped by to chat with Sowell last month. (The officer didn't enter the home. Maybe it smelled too bad. Anyway, there was no need, as Sowell was reporting as required. A psychologist even declared that he was unlikely to reoffend!)

It wasn't because [a woman told police](#) that shortly after the deputy left Sowell choked and raped her, then offered her money to keep quiet. (She supposedly didn't show up for an interview.)

And it wasn't because [a naked woman landed on the street](#) after “falling” from Sowell's upper-floor window. (She reportedly refused to talk to officers who went to see her at the hospital.)

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In the end Sowell's September victim finally met with the cops. What she said led them to obtain [arrest and search warrants](#). Once inside the home, their noses led them to two bodies. Hmm, something suspicious here!

Only days after the grim discovery in Cleveland another mass killing rocked the nation. This one happened all at once. On November 5, 2009 a thirty-nine year old Fort Hood psychiatrist went on a shooting spree, killing thirteen and wounding twenty-eight. [Major Nidal Malik Hasan](#) now stands charged with capital murder.

Hasan had a troubled history. According to a former classmate at the Medical University of the Armed Services, [he frequently expressed opposition](#) to the wars in Iraq and Afghanistan and considered himself "a Muslim first and an American second." Hasan once gave a lecture on "whether the war on terror is a war against Islam." When students challenged him about the topic's relevance (it was an environmental health course) Hasan got "sweaty and nervous and emotional."

After graduating in 2003 Hasan was an intern and resident at Walter Reed Medical Center. If anything, [his clashes with colleagues](#) got worse. Hasan seemed distracted. He was often late for work and made himself unavailable even while on call. [Co-workers](#) said that he was occasionally belligerent and belittled colleagues. [Hasan's detached attitude](#) and extremist orientation (he gave a bizarre lecture in which he remarked that "the Quran teaches that infidels should have their heads cut off and set on fire") led colleagues to worry about his mental health. Indeed, superiors considered terminating Hasan's residency, but the procedures were onerous and they were afraid he would accuse them of religious bias. In the end Hasan was dealt with in the time-tested manner: he was promoted (to Major) and transferred to Fort Hood.

While at Walter Reed [Hasan exchanged e-mails](#) with radical cleric Anwar al-Awlaki. Designated by the U.S. as a "global terrorist," the imam lives in Yemen, where he went after leading a Virginia mosque that Hasan attended. Picked up by routine intercepts, the e-mails were forwarded to a Joint Terrorist Task Force. Agents apparently contacted a top official at Walter Reed, who surmised that the messages were in connection with Hasan's research on post-traumatic stress. Concluding that the e-mails were innocuous, the task force closed its file. But what did they really know about Hasan? Had they been told that his PowerPoint presentation on post-traumatic stress included a slide with the purported Muslim warrior creed, "we love death more than you

love life”? Were they aware that he was trying to get an early separation because of alleged religious persecution?

Neither Walter Reed nor the task force were in a position to investigate an odd duck at Fort Hood. That was a job for Army intelligence or CID. But they weren't alerted, so the puzzle remained unassembled. Even had they looked they would have missed a key fact: [Hasan had recently purchased a handgun](#). And not just any handgun, but an unusually expensive, [highly lethal, high-capacity cop killer](#) that was never intended for civilian use. Of course, since the Feds and Texas lack centralized gun registries, there was no way to know that Hasan bought a gun short of asking him or visiting gun stores.

Everyone (like your blogger) who's kicked off an intelligence program knows to prepare for an avalanche. Whether information arrives electronically or through word of mouth, there are hardly enough resources to examine data let alone pursue more than a tiny fraction of leads.

That embarrassment of riches affects everyone, from the pointy-heads at police HQ to the cop on the beat. Cast your net too broadly and you'll invariably commit a rash of "Type 1" errors, sending out trivial leads and squandering your credibility. Narrow your search and you'll get bit by "Type 2" errors, missing worthwhile targets like Sowell or Hasan whom any idiot should have known to investigate.

Police are expected to accomplish *something*. As [we've pointed out](#), catching real terrorists is tough, so it's not surprising that given limited resources the Feds might choose to "rope in" dummies. More generally, the tendency to reach for low-lying fruit is manifested in a preference for so-called "actionable" intelligence, meaning that the underlying offense is self-evident or nearly so. Put simply, until a victim signed on the dotted line Sowell was just another of the umpteen weasels polluting Cleveland's troubled Imperial Avenue neighborhood. Hasan? He wasn't even on radar.

It's a truism that Type 2 errors of omission usually go undetected, so the chances of being seriously embarrassed by not acting are small. Sowell and Hasan were exceptions. Their dangerousness wasn't appreciated because the default strategy is to dismiss, dismiss, dismiss. Unless there's an obvious violation, officers may go to extraordinary lengths to routinize information and interpret questionable behavior in its most favorable light. Consider for example the [Madoff scandal](#), where the Feds overlooked blatant inconsistencies and ignored detailed tips in a rush to "prove" that all was well.

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Doing nothing is easy to justify. According to the spokesperson for the Cleveland sheriff, the deputy who talked with Sowell didn't go in the house because he didn't have the authority. Hasan was promoted because kicking him out might have triggered controversy. Absent an underlying crime – Sowell's murders were as yet undiscovered; Hasan's were still to be committed – neither case offered an obvious entry point or investigative path. Intending no pun, there was plenty of reason to dig, but the calculus of political, bureaucratic and individual needs mitigated against anyone picking up a shovel.

As we suggested in "[Hidden in Plain Sight](#)," disorganized, poverty-stricken neighborhoods are particularly challenging. Sowell preyed on victims who were indisposed to turn to police, and if they did, were unlikely to be believed. Citizens besieged by violence had long given up trying to wake up the city to their plight, while overburdened cops looked on even the oddest circumstances, like women tumbling from windows, as just another symptom of the miserable conditions on their beat.

In the end, it's that last observation that offers the hint of a remedy. Rare events such as mass murder are difficult to predict precisely because they *are* rare. Our best shot at preventing them lies in avoiding the urge to routinize and in paying close attention to the unusual and offbeat, like naked women falling from the sky and military officers e-mailing with terrorists.

Solving cases retrospectively is easy. Developing the ability to anticipate crime and work *prospectively* is the real trick.

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.”

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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](#):

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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.

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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](#).

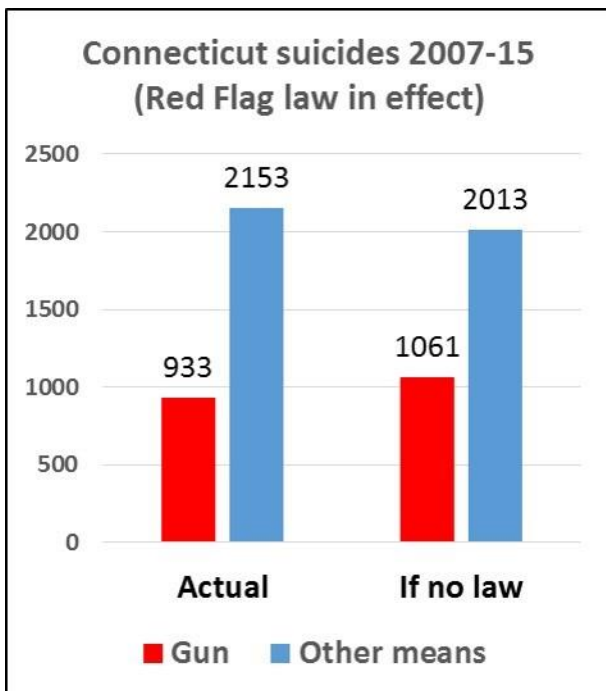
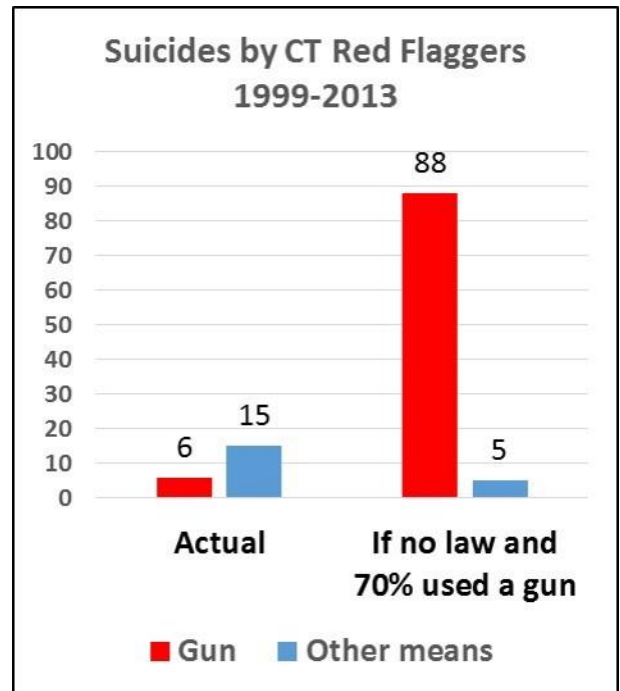
A study published in [Law and Contemporary Problems](#) examined the statute’s effects between its enactment and June, 2013. During this period judges issued 762 Red Flag warrants. Twenty-one of the named defendants subsequently committed suicide, six by gun and fifteen by other means (e.g., pills).

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.



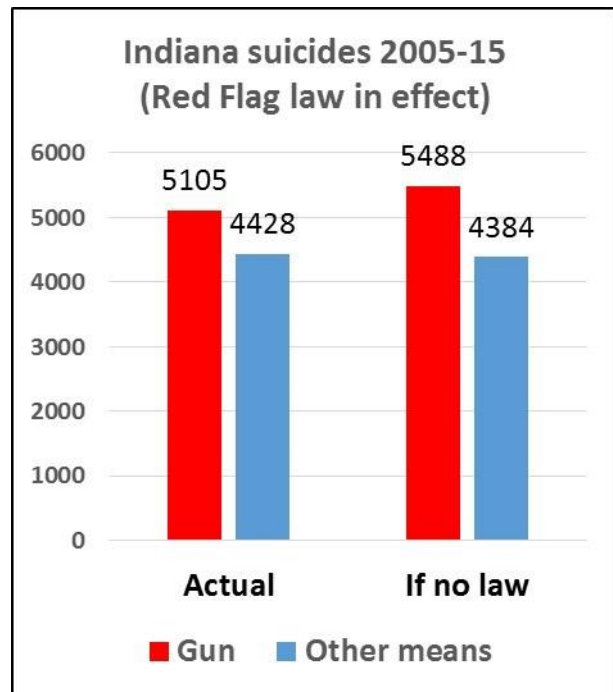
As we mentioned in [Part I](#), Connecticut’s unique [Red Flag law](#) authorizes search and seizure. Its effect on suicide was separately computed for two periods: enactment to 2007 and 2007 to 2015, when enforcement sharply increased because of the [Virginia Tech massacre](#). For the first period, 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

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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 3/6/18

ROUTINELY CHAOTIC

Rule #1: Don't let chaos distort the police response. Rule #2: See Rule #1.

By Julius (Jay) Wachtel. “She was too fast for me.” Taking the stand at his trial for murder, manslaughter and negligent homicide, [that's how NYPD Sgt. Hugh Barry explained](#) winding up in a situation that ultimately forced him to pull the trigger, mortally wounding Deborah Danner, 66, a diagnosed paranoid schizophrenic. Only a day later Mayor DeBlasio [declared the officer at fault](#): “The shooting of Deborah Danner is tragic and it is unacceptable. It should never have happened.” Police Commissioner James O’Neill agreed: “That’s not how we trained. We failed.”

On October 18, 2016 officers were dispatched to the apartment building where Ms. Danner lived and occasionally lost control. [Sgt. Barry testified](#) that when he arrived Ms. Danner was ensconced in her bedroom, a pair of scissors in hand. He said he convinced her to put the scissors down and come out, but she soon became recalcitrant. Fearing she’d go back for the scissors, he tried to grab her, but the panicked woman slipped away. So he chased her back into the bedroom, and got confronted with a baseball bat. Sgt. Barry testified that Ms. Danner ignored repeated commands to drop the object, then aggressively stepped towards him and began her swing.

In our earlier comments about the case ([A Stitch in Time](#) and [Are Civilians Too Easy on the Police?](#)) we referred to NYPD’s lengthy and, in our opinion, [confusingly written protocols](#). In all, these rules apparently prescribe that unless a mentally ill person’s actions “constitute [an] immediate threat of serious physical injury or death to himself or others” officers should limit their response to establishing a “zone of safety” and await the arrival of their supervisor and an emergency services unit.

Well, a sergeant got there, and he didn’t wait for the specialists. With the Big Apple still reeling from [Eric Garner’s death at the hands of a cop](#) two years earlier, the mayor and police commissioner probably figured that accepting responsibility and promising reform was the wisest course. Ditto for the D.A. While [she vigorously insisted](#) that her decision to prosecute was based on the facts, and nothing but, expressions of concern by Black Lives Matter and other activists might have helped spur [Sgt. Barry’s indictment seven months later](#).

As one would expect, the charges – and their severity – caused an uproar in cop-land. Here’s how the NYPD Sergeant’s Benevolent Association [disparaged](#) the “political prosecution”:

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Police Commissioner James O’Neill stated that “we failed” when describing the fatal shooting of Deborah Danner, an emotionally disturbed woman who attacked Sgt. Hugh Barry with a baseball bat. The reality is that Commissioner O’Neill “lied” because, in the split-second that Sgt. Barry had to make a momentous decision, he followed department guidelines...

Here’s how a union member saw it:

...There is nothing easier than to be a Monday morning quarterback. This is an absolute joke, my thoughts and prayers are with all of you guys in particular Sgt. Barry. I am quite confident justice will prevail in this situation...

While their arrival was staggered (Sgt. Barry reportedly came in next to last), five patrol officers and two paramedics ultimately handled the call. According to a reporter who sat through the trial, [their testimony clashed](#):

Two emergency medical technicians and five police officers have testified over the last two days of trial, giving differing accounts of what happened. It is not unusual for witnesses to a shooting to remember things differently, though in this trial, some of the inconsistencies have been striking.

“Striking” seems an understatement. [A paramedic testified](#) that she was conversing with Ms. Danner when the supervisor arrived. Sgt. Barry didn’t contact her, and officers soon butted in, causing the agitated woman to scurry back to the bedroom. However, four officers insisted that the medics never actually entered the apartment, while the fifth, Officer Camilo Rosario, said that the EMT who spoke with Ms. Danner [retreated to the front door](#) when Sgt. Barry arrived. Officer Rosario’s account also differed from Sgt. Barry’s. Officer Rosario said he informed his supervisor about the scissors and Ms. Danner’s refusal to voluntarily go to the hospital. So they soon decided to go to the bedroom to fetch her. Officer Rosario, who was right behind Sgt. Barry, agreed that Ms. Danner threatened with a bat, and that’s when the shooting happened.

Sgt. Barry conceded that containing Ms. Danner within a “zone of safety” and awaiting the arrival of an emergency services team might have been possible. He also turned away (we think, correctly) the suggestion he should have used a Taser, as CED’s are neither suitable nor intended for use as defensive weapons. Of course, Sgt. Barry wasn’t being prosecuted for violating policy but for needlessly taking Ms. Danner’s life. In the end, the judge (it was a bench trial) felt that prosecutors did not meet their stiff burden, [and he acquitted Sgt. Barry](#) on all counts.

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In “[Are Civilians Too Easy on the Police?](#)” we suggested that the case was purposely overcharged so that jurors who may have been reluctant to severely sanction a cop had a lesser offense on which to convict. That’s probably why Sgt. Barry opted to be tried by a judge. He is [presently on desk duty](#) awaiting an internal hearing. Unless he can convincingly argue that his decision not to wait for specialists was correct – that Ms. Danner posed an imminent threat to herself or others – his future with NYPD seems bleak.

In science the “ideal case” is a made-up example that typifies the situation under study. But when it comes to failed encounters between citizens and police there’s little need to concoct scenarios. Our [Use of Force](#) and [Strategy and Tactics](#) sections brim with accounts of policing gone wrong (for a few recent examples click [here](#)). Indeed, handling chaos is what cops do. What they try to avoid – usually, successfully – is letting the messiness of the real world infect their response so it turns into what officers sneeringly refer to as a “cluster”.

To be sure, there is no shortage of guidance for handling fraught situations. Experts [routinely advise](#) that officers who encounter troubled persons “[de-escalate](#)” and slow things down, giving themselves an opportunity to think things through and [making time](#) for supervisors and specialists to arrive. Well, they may not have called it “de-escalation,” but that commonsense approach is what good cops have always done. Regrettably, what advice-givers can’t supply is more cops. Lots of bad things can happen during a shift, from nasty domestic disputes to robberies and shootings, so care must be taken to leave some uniforms available. Given limited resources (anybody out there got too many cops?) calls must be handled expeditiously and without needlessly tying up specialized teams. As a one-time police sergeant, your blogger thinks that’s what Sgt. Barry was trying to do. Really, a supervisor, five officers and two EMT’s on a single call would be pretty darn good most anywhere.

Might things have turned out differently had an officer Tasered Ms. Danner early on? Possibly. NYPD’s rules specifically allow (i.e., encourage) using CED’s “to assist in restraining emotionally disturbed persons.” Properly deploying the devices, though, can be tricky. At least two officers must be directly involved. Subjects should be relatively still, offer an ample target area and not be heavily clothed. Applying multiple doses or zapping the infirm, elderly or mentally disturbed (Ms. Danner fits at least the last two categories) [can prove fatal](#). CED’s are useful, but far from an unqualified solution.

Fine. Humankind is frail. Chaos rules the streets. There is a surplus of wackos and a shortage of cops. One-size-fits-all solutions are rare. So, Dr. Jay, what do *you* suggest?

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We won't belabor the subject of critical incident response, which has been exhaustively addressed by authoritative sources (for two examples click [here](#) and [here](#).) Instead, let's advance a couple of points that are frequently missing from the conversation.

First, as to early intervention. "[A Stitch in Time](#)" emphasized the pressing need to detain mentally disturbed persons for examination and treatment as soon as they become a cause for police concern. That's especially true for individuals such as Deborah Danner who live alone. If that seems harsh, consider that waiting until the third episode may, as with Ms. Danner, turn into a death sentence.

Secondly, we must stop thinking of police as a quasi-military force. Those of us who have been in both occupations know that military operations are typically conducted in groups. Policing is decidedly not. While police also have sergeants, lieutenants and what-not, life-changing decisions are regularly made by twenty-somethings with a badge, acting completely on their own. By the time supervisors such as Sgt. Barry arrive on scene a lot has usually transpired. From our reading of news reports, Officer Rosario seemed to be especially well-informed, having observed Ms. Danner's behavior from the early stages of the incident through her interaction with the EMT. But he apparently deferred to the judgment of his late-arriving superior, who promptly grabbed for the woman, and ultimately shot her, within five minutes of arrival.

What to do? Police protocols should place those most familiar with a situation – typically, the first officer(s) on scene – in charge, at least until things have sufficiently stabilized for a safe hand-off. Officer Rosario and his colleagues had been monitoring the disturbed woman and waiting her out. Had Sgt. Barry taken on a supportive role, as supervisors routinely do, and let her alone, a heart-warming Hollywood ending might have been far more likely.