



POLICE AND THE LAW

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The National Police Association's free Law Enforcement education series is designed for home school, classroom, or independent learning. As part of our nonprofit educational mission, it prepares you for careers in public safety. This series is authored by [Chief Joel F. Shults, Ed.D.](#)

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The Briefing

“OK everyone settle down. We need to review our use of force policy today. There have been reports that some of you are trying to defend yourselves and avoid disabling injuries. The higher-ups wanted to remind you that death, traumatic brain injury, getting stabbed, being run over, exposure to bodily fluids, and other minor wounds are part of the job you signed on for.

“Please remember when you are writing your reports that being scared is not to be cited as a reason to use force. Wilson, you got a question?

“Sarge that’s never been a reason to use force. There must be an articulable threat that a reasonable person would believe presents an imminent danger of death or serious bodily harm to self or others.”

“Enough legal mumbo jumbo, Wilson. Use the superpowers God gave you when you pinned your badge on. Next item, write this down, no deadly force is to be used for the following categories of persons: anyone under 21 years of age or over 60 years of age, or any physical, emotional, or mental impairment. Also, anyone whose initial contact was because of a minor offense, including traffic violations, no matter whether they use a weapon when you approach them, should be arrested using force. Be aware that anyone who was going to make something of themselves the day after your contact is also to be treated gently. For example, if they were going to enroll in college, enter a drug treatment program, get counseling, or start going to

church, you need to cut them a break so they can be a better person. Also, if it is their birthday, the first day of their new job, the night before their wedding, or just had a baby they are also exempt from being arrested with force.

“What now, Wilson?”

“Sarge, we still have some qualified immunity if we make a mistake in a situation nobody has ever faced before, right?” No, Officer Wilson, you are in one of the states that did away with qualified immunity. Immunity only applies to the Governor, the legislature, the judges, the prosecutors, and other first responders. Not cops. Besides, everyone knows that based on last week’s four-hour course on de-escalation that the laws of physics and human behavior have no place in law enforcement. Just because somebody doesn’t drop their knife or gun after a half-dozen cops have their guns drawn yelling “drop it!” doesn’t mean you couldn’t have talked them into the social worker’s van if you really wanted to.

“And let’s keep those helmets, vests, shotguns, and protective gear in the trunk, people. We don’t want to make anybody nervous today. Being prepared with equipment is clearly an act of aggression that just causes people to burn down buildings. Let’s keep that for the night shift officers. Some of you are failing to diagnose mental illness, what kind of drugs or medications a person is on, and whether or not they are basically a good person. Let’s sharpen those psychic skills!

“We also continue to have officers across the country shooting at cars. Remember our policy is that if you don’t get out of the way of someone trying to kill you or others, it is your fault if you get hurt. Once again, I remind you that the laws of physics and limitations of the human body do not apply to police work. Besides violating policy, officers are subject to being sued if the felonious driver gets away and hurts somebody else. If you can’t talk down the driver of a two-ton piece of metal traveling at 60 miles per hour, then maybe you shouldn’t be in the police business.

“OK, pop quiz: what is the first thing you do if you are being shot at? Anybody...ugh, Wilson?”

“Call for assistance, get behind cover and concealment, and give clear verbal commands to the suspect?”

“Wrong. The first thing you have to do is make sure you turn your body cam on. We have to stop thinking about protecting ourselves and others from harm during these milliseconds when you have to make life and death decisions. Instead of reaching for your radio or unholstering your weapon, you have to remember to flick that switch to get your body cam on. Otherwise, we’ll have to assume that you’re hiding something and the whole event must have been something that you caused to happen. If you get shot and die or become disabled, the news will be finished with that story in a day or two. But if you have no video of the shooting and, God forbid the person you shot back at is one of the exempted persons who are allowed not to be fought with or shot, that could cause some real public relations problems for a long time.”

“Now, if there are no further questions, let’s get out there, stay in your cars and avoid having any contact with anybody today.”

Officer Accused of Murder Released

Many agencies have removed vascular neck restraints from police officers' toolboxes. Officer Christopher Smelser of the Las Cruces, New Mexico, used the restraint on Antonio Valenzuela who died about an hour later.

First, let's talk about the vascular neck restraint, also known as a carotid restraint, that has become a symbol of wanton brutality. Although there are various ways carotid restraints are taught, the use of the restraint technique was developed over fifty years ago with very few successful lawsuits or causes of death. Most suspects comply when the restraint is applied correctly, but if they do not voluntarily comply, the maneuver can be adjusted to cause unconsciousness for a brief time to allow an officer to apply handcuffs and complete the arrest of an actively resisting suspect.

The value of the neck restraint is that it is a non-deadly but effective control option that can preclude the use of a Taser, a nightstick, or hard hand strikes. Removing it as an option for police officers dealing with a resisting suspect forces the officer to move to a different, and potentially more injurious means to stop a suspect from actively fighting.

It is critical to note that the neck restraint is not a "chokehold" because no choking or strangulation is part of the execution of the method. In fact, training specifically requires the officer to cradle the vulnerable part of the front of the neck so that the leverage is

pressing against the carotid artery area of the side of the neck. It is the temporary deprivation of this blood flow that will cause the temporary unconsciousness of a fighting suspect. There is no value in cutting off a person's ability to breathe, temporarily or permanently, short of justification of deadly force.

Officer Smelser was charged with second-degree murder which, under New Mexico statute, requires a level of intent. In other words, the prosecutor must have believed that Smelser saw an opportunity to kill somebody, then attempted to crush their windpipe. When the case came before Judge Douglas Driggers, the judge ordered a directed verdict and freed the officer after just a half-hour of arguments.

Perhaps when the judge heard that Valenzuela had fled from officers after they attempted a traffic stop, that he then fled on foot from Smelser and another officer, that officers attempted to stop him by deploying two Taser attempts, and that Valenzuela had a high concentration of methamphetamine in his system, that maybe former Officer Smelser had no murderous malice in his heart when he struggled with Valenzuela who, by the way, had a warrant for violating his parole. The family of the felon got a few million dollars out of the event. Smelser got fired and earned a grand jury indictment for murder.

Once again, the false narrative (read that as lies) about police use of force has so permeated the public's mind as well as prosecutors who should know better and politicians who pass thoughtless legal impediments that police officers are not only robbed of effective policing methods but are subject to needless antagonism.

The City of Boston recently removed pepper spray, tear gas, and rubber bullets from riot control strategies for Boston police. Two police unions are suing to overturn the ordinance. Even in the wake of millions of dollars of wanton destruction in violent protests across the country, Boston is not alone in removing essential options that can be used properly and when appropriate to protect life and property. Other agencies have forbidden officers from wearing protective gear that looks “too aggressive”, have prohibited making a video record of unruly crowds, and have severely restricted what violations they can enforce.

The ripple effect of ill-conceived restrictions on police officers has already proven to be a disaster for public safety, evidenced by rising crime. The situation can be reversed only by examining recent changes with an eye toward justifying, by data and science, the handcuffs that have been applied to law enforcement.

Qualified Immunity and Quantum Physics

The recent Supreme Court decision in *Bond v. City of Tahlequah* that was informed, in part, by a brief from the National Police Association, speaks to the issue of qualified immunity in several important ways. One regards quantum physics, another politics.

In case you missed it, the case involves a couple of police officers responding to a 911 call from a woman whose ex has shown up causing trouble. When the officers arrived, the suspect retreated further into a garage and subsequently picked up a hammer, refusing all commands from the officers and presenting a lethal threat which the officers met with deadly force.

The officers were sued based on the premise that their presence and actions precipitated the suspect's behavior and were, therefore, a cause of his aggression that resulted in his death. Although it would seem to be a matter of common sense to hold people accountable for their own behavior, the case worked up to the U.S. Supreme Court from a 10th Circuit decision denying the officers qualified immunity.

So let's take the physics issue first. There is a theory in quantum physics that says there are infinite universes where every possibility is played out. We've seen variations of this idea on television and in movies. What if we had turned left instead of right? What if we wore a sweater instead of a jacket? What if the milk hadn't spilled? We may have some intuitive sense of this when we ponder whether we made the right decision in

marriage, career, finances. I worked at Walmart in college and was eligible to buy shares of stock at store number 63 in 1978. I could have been a millionaire!

Regardless of theories, our reality is that we make decisions in the moment based on what we know and perceive. It's complicated enough trying to understand what we do, much less to anticipate the universe of possible behaviors in somebody else. This was essentially the affirmation of the Supreme Court. Officers cannot predict what their presence will do.

Predictions or not, making an assumption of danger or an assumption of no danger happens at the speed of neurons in the brain. We are all about cheering for our favorite athletes as they make split-second decisions. Not so much understanding of those milliseconds when life and death are in the balance. For example, when a batter stands with a thin wedge of matter held above his shoulder, he faces a small sphere that will be hurled in his direction and arrive from the pitcher's hand to the batter's torso in about a third of a second. Since the batter's brain takes a quarter of a second to command the arms to begin his swing, there is less than one-tenth of a second to make a decision to swing or not swing. This doesn't count the milliseconds for the retina to translate a few million inputs, or the micro-adjustments the muscles must intuitively make in order to make the kind of swing most likely to rocket the ball in a certain direction. A quarterback has a luxurious 2.8 seconds to throw the ball.

So, thank you, Supreme Court, for dealing with reality and leaving these decisions to those who are forced to make them.

With the quantum physic theory behind us, we turn our attention to the law and politics. Many politicians and commentators want to do away with qualified immunity (QI). They think that it is a get-out-of-jail-free card that gets cashed in all the time. The Bond decision accomplished two things regarding qualified immunity. First, it validated the legal concept and need for the doctrine. Secondly, it reminded us that qualified immunity is not, in fact, an easy claim to make. One might also note that being granted this immunity does not save officers from other consequences, like losing their career.

If QI were the easy out for law enforcement to keep them from being held accountable for anything, this case would not have come to the attention of the highest court in the land. QI is subject to judicial review. It sees the light of day. It is not automatic, and it is not awarded by police officials or lawyers. QI is raised and allowed only if an officer is faced with a decision that they are mandated by law to make, under circumstances where no clear rule, law, or previous court case has clearly defined the action they should take.

Despite the impassioned rhetoric of anti-law enforcement politicians, such as in my home state of Colorado which has removed QI from judges in state cases, the doctrine does not apply when officers clearly violate existing rules that they should know. To say that officers should behave in a certain way that lawyers and

critics and courts will examine for years with varying opinions is, on its face, high irony if not simply ridiculous. The officers in the Bond case made their split-second decision in August of 2016. The case was debated and contested for five years before the Supreme Court rendered its decision. Save the Monday morning quarterbacking for football.

Is Being Slandered Just Part of the Police Officer's Job?

At a recent judge's conference, a high-level justice cautioned his audience of judges to be careful about making open court opinion statements about a police officer's credibility or competence. For this appellate judge to make this aside in the midst of a presentation is an indicator of the apparent frequency of such pronouncements from the bench.

Many police officers, including this writer, have been publicly shamed by criminal justice officials with apparent disregard for the consequences to the officers' reputations. Is taking slanderous statements just part of being a cop?

Slander is a loaded term and has a legal definition. Slander is a statement made known to others that is false and damages the person's reputation. In order to sue someone for slander (or libel if the false statement is in print), a person who believes they have been the victim of a false statement must also show that they have been damaged by that statement. Police officers have a hard time proving that the lost promotion or other financial impact was a direct result of a particular statement.

Another impediment to holding judicial officials accountable for accusatory language toward police officers is that there are immunity protections for judges and prosecutors. While police officers are being denied qualified immunity in more and more jurisdic-

tions, even greater immunity privileges by other criminal justice personnel remain untouched and unquestioned. In addition, public figures or persons in newsworthy matters of public interest have less protection from defamatory remarks.

In 2016 a prosecutor in Baltimore prosecuted officers for an in-custody death. The case was inadequate, went nowhere, and devastated the officers involved. They sued the prosecutor and, although they ultimately failed to get past her immunity defense, made significant headway in making the case that there are lines that should not be crossed by prosecutors condemning law enforcement officers without sufficient objective evidence.

Retired Louisville Metro Police Detective Jonathan Mattingly was shot by Breonna Taylor's boyfriend, Kenneth Walker, while leading a raid into Taylor's home on March 13, 2020. During this high-profile case, Louisville attorney Steve Romines reportedly told a media outlet last October that Mattingly "executed" Taylor during the raid. Romines accused Mattingly of "breaking" into Taylor's apartment, trying to "frame" Walker for a crime and covering up "murder" according to a defamation lawsuit Mattingly has filed against the attorney.

It remains to be seen whether this attorney will be held accountable for his statements against the officer, but it would be a win for police officers everywhere.

One of my officers was lectured from the bench for failing to follow a court-ordered procedure that the

judge had never published to my agency. The officer had, in fact, followed the latest procedure. When I pointed this out to the judge, he admitted that it was his error, not the officers. But while the critique occurred in open court, the apology did not. In another incident, a prosecutor expressed frustration that my officers failed to provide evidence that had been made available to the defense. Annoyed, he summoned the case officers to his office to angrily demand an answer for why he was embarrassed in court. When we provided the receipt for the evidence that showed his office had in fact received and signed for the evidence, his anger was deflated. But, again, accusations in open court did not generate a public apology or correction.

It is one thing, and no surprise, when the criminal element spews lies and accusations against police officers for which they are seldom held accountable. What officers must also face is derision, accusations, and disrespect from persons in the criminal justice system who depend on law enforcement officers to keep the system operating for the public good.

An officer reached out to me recently reporting that a prosecutor lied about his credibility and admitted to the false statement in a later investigation. While the accusation against the officer was made in open court, there has been no public assertion of the officer's integrity. The false statement continues to haunt the officer's ability to be considered credible in subsequent cases.

With the credibility of law enforcement assailed incessantly by critics and anti-police politicians, officers

must be diligent in protecting their integrity and credibility. If even an unfounded accusation from the bench becomes a matter of record, it could affect the officer's personnel file and ability to testify in other criminal cases. Officers should not be passive in accepting untrue characterizations of their professionalism. Judges, prosecutors, and defense attorneys must be held accountable for unprivileged comments that slander our officers.

Cops Can Sue, Too!

You can't read very far in the news without hearing about police officers being sued. But justice is not blind to cops and they, too, have the right to file a lawsuit when unlawfully harmed. Columbus, Ohio police officer Traci Shaw was summarily charged by Richard Wozniak, Deputy Director of Public Safety for the city, and appointed to investigate allegations of police misconduct in one of the many 2020 George Floyd-inspired disturbances. Shaw was accused of inappropriately using a chemical irritant against protestors. Two other officers also faced charges, none of which survived in court.

Shaw, a veteran police officer and long-time use-of-force expert and academy trainer had served on an advisory commission whose report recommended a number of reforms for the department. She faced three misdemeanor counts of assault, three counts of dereliction of duty, and three counts of interference with civil rights. Shaw's suit against the city and Wozniak alleges that he failed to properly investigate the allegations and that the subsequent prosecution was "without probable cause, legal right, or justification and/or failure to conduct a reasonable investigation, motivated by politics and/or ill will."

The situation that gave rise to the charges was reported to be a group of protestors who were moving into an area cordoned off from the lawful protest area. Protestors surrounded Shaw and some business owners trying to access their own property earlier in the day. At

the time of the use of the irritant at least some in the group had been throwing objects at police. Shaw's report reflects that she used a couple of short bursts of the spray which resulted in no reported injuries and no subsequent detention or arrests of those affected.

Wozniak had been hired as a special investigator by a law firm hired by the city to investigate law enforcement behavior during the protests. He was paid over \$150,000 for his work that apparently did not involve interviewing alleged victims, or other officers at the scene, nor did he consult use-of-force experts. Shaw's attorney says she wants to be on record as being exonerated in the affair.

The allegations against Shaw were reviewed by The U.S. District Attorney for the Southern District of Ohio who refused to bring charges on Wozniak's complaint. Another officer's charges were dismissed, and the third officer was found not guilty in municipal court. As a result of the unsubstantiated allegations, Shaw lost her adjunct college instructor position, and her status as a use-of-force instructor, and was denied overtime and special duty opportunities. She is also claiming emotional distress from the ordeal.

Wozniak, a former FBI agent has also been accused in an EEO complaint by Sgt. Laura Suber of retaliation, harassment, and intimidation after she says she met with Wozniak for an interview as a witness to a criminal investigation. A special prosecutor on the case resigned in what she called a frustrating lack of support and resources, using the often repeated statement that "most of the protestors were peaceful", disregarding

the fact that there were episodes of violence, fires were set, and storefronts were smashed. Officers used more than a thousand rounds of non-lethal munitions and arrested about 150 people.

Police accountability for inappropriate use of force and suppression of the right to assemble and freely express themselves is essential to maintain the credibility of law enforcement and restore the trust of the citizenry. Politically motivated prosecutions based on less than professional investigative efforts and unsustainable cases that harm a stellar law enforcement career also demand accountability. Whether Shaw's lawsuit prevails or not remains to be seen, but it is a reminder that law enforcement officers deserve due process and fairness like anyone else.

Do Cops Have Any Rights at All?

For all of the attempts to chip away at police effectiveness – or even police existence – the real accountability for quality policing has always been as close as the nearest voting booth or local council meeting. One of the specters hanging over the effort to destroy local law enforcement is that the vacuum will be replaced by federal law enforcement with no local accountability.

The idea of the police officer being a member of the public and the corollary that every member of the public has responsibility to maintain peace and order is an American essential. But are police officers truly equal to other citizens?

One example is how police officers are treated differently than other citizens is when they are victims of crime. Some will claim that police officers sign up for being assaulted and injured as part of their job. While it is true that officers expect that the nature of the work exposes them to such hazards, attacks are never to be taken lightly. A survey by this writer showed a sharp contrast between how assaults and other crimes against non-law enforcement citizens are viewed by prosecutors. Nearly 80% of respondents report being treated differently than non-law enforcement victims of violent crime.

When a police officer uses force, they do so under well-defined law and policy. To use force without legal grounds places the act of restraint in the same category

of any citizen offender. Arrests are assaults and false imprisonment without the legal justification given police officers to take people into custody using appropriate force. There is now lawful justification for an arrested person to flee or resist a lawful arrest. Therefore, any act of resistance not only meets the definition of assault, but further is violation of separate laws defining resisting arrest or interfering with an officer. The law not only defines the criminal act of assault on an officer, but specifically requires submission to a lawful arrest.

All states have laws that guarantee the rights of crime victims who cooperate with the investigation of certain classes of crime. Many of those states have those crime victim rights enshrined in their state's Constitution. There is no hint in any of those laws that police officers have no protection as crime victims.

My survey indicates that within any 2 year period a significant percentage of police officers will face a deadly force decision, will be injured and require treatment with days lost from duty, and many will be injured but keep working and not report it because getting care and prosecuting their offenders meets so much resistance. Even before the current recruitment and retention crisis in law enforcement, these realities eat away at morale and enthusiasm among our law officers.

When an officer is assaulted, according to my survey, almost 1 in 4 have no other officer assigned to investigate their being a victim. Can any one imagine any other circumstance where a victim of a violent

crime was the only person assigned to investigate? We also recognize that assaults on police occur during police activity that will be suspect to critics and prosecutors who are hostile to law enforcement. That means that an officer investigating their own victimization will have no objective third person to investigate that officers actions when the victim becomes the subject of an excessive force allegation. Nor will there be an objective third person to examine the circumstances of the assault as the victim officer works their way through the maze of worker's compensation and civil litigation.

When offenders are prosecuted, 61% of officers stated that charges of assault on officers and resisting arrest are among the first charges dropped in a plea bargain. If an arrestee assaults an officer during a domestic violence or drug investigation and those charges are dropped, that does not mean that the assault on an officer charge should also be dropped!

Victim rights laws require information on compensation and mental health services for victims. They also require that victims be kept aware of hearings, releases from custody, plea bargains, and sentencing. Only 11% of officers report that they were offered crime victim compensation or any other victim services allowed by law. In addition, only 31% of officers were consulted about the charges against their offenders, and 45% of officers report that their cases were disposed of without notifying them.

While we're reforming the justice system, how about we ensure justice for our police officers, too?

Can Police Find Their Voice Through Lawsuits?

Steve Pompers excellent article for NPA chronicles the efforts of Indianapolis Metropolitan Police Officer De'Joure Mercern suing for defamation. The National Football League is the object of the suit after they published a wrongful implication of Mercern's killing of a violent criminal listed among the innocent civil rights heroes in the NFLs roll call of honor. As with many such lists, there is little vetting between those killed as a result of police misconduct, those killed by civilian actors, victim-precipitated suicide by cop, and the majority who were killed in response to their own criminal violence. Mainstream media that ought to know better often refer to any fatal police shooting as a murder.

Will Mercern's suit yield results? Regardless of the outcome, signaling a new intolerance for lies, innuendo, and career-destroying claims is an important step forward.

First and foremost, police officers are citizens. This is not only a legal fact, but it is a fundamental principle in American law enforcement. Citizen police officers are different than police officers comprised of soldiers or some national military-like organization as is true in most countries. The United States has a history of suspicion of centralized power of arms beginning with the Redcoats at the dawn of our battle for independence. We are happier knowing our local police officers, holding them in trust because we hold their Chiefs and Sheriffs accountable at the ballot box, and

our children go to school with their children. As citizens, police officers have the same rights and privileges as anyone else, including the right to seek justice both criminally and civilly.

There are powers now that seem to be bent on ruining that trust. National voices are inflaming local passions against the police. Rantings from powerful groups, including the National Football League, are nudging their activism into communities that otherwise trust and appreciate their police. Even local politicians, claiming immunity that they are denying police officers, can incite personal animosity toward individual officers affecting their professional status, creating harmful stress, and incurring costs such as having to relocate or acquire additional home security.

In 2017 five officers of the Baltimore Police Department filed suit against Prosecutor Marilyn Mosby. As a result of her actions and statements regarding the in-custody death of Freddie Gray in 2015, the lawsuit claims that Mosby committed the civil wrongs of malicious prosecution, defamation, and invasion of privacy. Although the suit was unsuccessful, it prevailed against arguments that the prosecutor was immune from such suits through several appeals before being dismissed. The fact that it survived a summary judgment is significant. (And the irony of prosecutors' ironclad immunity being preserved at a time that officers' qualified immunity is being destroyed is a frustrating irony).

Not every insult and accusation gives rise to a lawsuit. Defamation is always a difficult case to win for a variety

of reasons, but not impossible. Police officers must exercise their rights to recover damages from assaults and injuries on the job. Even when it seems that those who harm officers are indigent and uninsured, there may be recoverable assets, future assets, or other avenues of recovery available. Officers should not “walk it off” when injured in a crash or fight, or accept as inevitable having to pay for torn and bloodied uniforms and equipment out of their own pocket. They should never accept an insurance adjustor’s promise that “we’ll take care of you”, or your department’s assurance that you don’t have to worry. Don’t think that officers are just trying to win the lottery by suing as all those lawyer ads imply. The point of a lawsuit is to restore the person claiming damages back to where they were before somebody’s harmful criminal, negligent, or intentional bad act.

Better than calling an attorney after an incident is having a relationship with an attorney ahead of time. Some legal benefits are part of police unions or fraternal organizations. Officers should know what coverage they provide. Police officers are first and foremost, citizens will all the right and privileges any American can enjoy. That includes becoming a plaintiff when wronged.

Police Often Short-changed by The Justice System

In a rural Colorado county, an injured deputy pleaded for justice after suffering a life-altering crash. Deputy Scott Eckhardt, now disabled and retired, appeared at a sentencing hearing for Travis Fouch. In May of 2021, Fouch led a multi-jurisdictional pursuit along I-25 in southern Colorado and was subsequently charged with 1st Degree Assault, Vehicular Assault, Vehicular Eluding, Operating an Uninsured Motor Vehicle, Reckless Driving, Failing to Drive in Designated Lane, and Possessed an Open Alcoholic Beverage in a vehicle after striking Deputy Scott Eckhardt's patrol car with his vehicle.

The Huerfano County District Attorney had agreed to a plea that would have resulted in a deferred sentence and probation. Fouch would have walked away with a minimal penalty, but then Eckhardt spoke. "I appreciate that the court has agreed to let me read from this statement as I struggle with my short-term memory because of injuries received to my brain and cognitive function because of the rollover crash.

I was a Deputy Sheriff with the Huerfano County Sheriff's office until the accident and on leave because of my injuries, in January of this year, I was medically retired. I say WAS because as of January, I am no longer able to fulfill my duties as a deputy with the department and have since been medically released from duty due to the injuries I sustained that night."

The deputy then cited the multiple injuries: traumatic brain injury, loss of clear speech, vision impairment, hearing loss, loss of smell and taste, loss of cognitive function and short-term memory along with multiple facial surgeries still in treatment. The deputy suffered lacerations, broken ribs, and PTSD. And the loss of his career and financial hardship. “At the end, he will have a clean record like it never happened.” He asked the court “Where is my deferred sentence for the damage he criminally caused, when do I get to walk away from this like nothing ever happened? The only answer is that I will not” stating that his injuries are a life sentence.

In Colorado, as in most other states, the law imposes obligations on law enforcement and prosecutors to afford victims certain rights. These include being appraised of the status of the case. Eckhardt told the court that it was explained to him that other cases had priority and the DA’s office needed to “clear their desks of some cases including this one because there were so many”, and that he was not notified of the plea agreement as required by the Victim Rights Amendment in the Colorado Constitution.

“That there are no real consequences to face even if you tried to kill an officer. Who will protect those who protect if not the DA and this court? If there is no one to protect us and have our backs when we need it how long do you think those who protect the citizens will stay around? Especially if the criminal element in the community finds out there is no punishment for hurting one of us” Eckhardt asked.

It is a good question. This writer's survey of law enforcement officers revealed the national shame of failing to serve crime victims who happen to be police officers in the line of duty. Nearly 40% of officers responding to the survey said that their prosecutor considers being assaulted as part of the officer's job. Only 41% said that their prosecutor takes the offense of assaulting an officer seriously. Charges of assault on an officer are among the first to be dropped when an offender faces multiple charges according to 61% of officers. In 45% of cases, dispositions were made without the officers' knowledge or input, for only 31% were officers consulted on charges or sentencing for assault or resisting charges or allowed to make a victim statement. Only 11% report being offered victim assistance, counseling, or compensation after an assault.

The survey also found that a significant percentage of officers have not sought medical treatment for injuries on the job, or pursued criminal charges, believing that the cases would never be pursued by prosecutors. Over 10% have given thought to abandoning their law enforcement career as a result.

In Eckhardt's case, his moving statement resulted in the court's rejection of the plea. The final outcome is yet to be decided, but the deputy's statement rings true all too often across the nation. If the justice system for which law enforcement officers are willing to give their lives abandons them, who will protect our protectors?

Use of Force Investigations' Missing Link

When an OIS (officer involved shooting) occurs there is a major investigative effort by specialized units or by agencies outside of the officer's employer. Witnesses are interviewed, measurements are taken, video is examined frame by frame, and physical evidence is collected. Even if no shot is fired but other coercive compliance measures are used, a complete investigation is required.

The stakes are high. Criminal charges against officers on both the state and federal levels are possible. Police agencies and individual officers might be sued on both the state and federal levels. Department discipline for policy violations can affect a police officer even if they acted in a lawful manner. Public confidence is at risk if errors were made or answers are not forthcoming in the aftermath.

What happened in literally milliseconds will be examined and possibly litigated for years as lawyers and judges ponder the dozens of questions around the case. In all of that examination, there will likely be one report missing. The missing report will be the one where the officer was the initial victim of a crime that was never investigated independently.

Take a hypothetical domestic disturbance call. Officers arrive and intervene and find that an assault occurred, In attempting to arrest the suspect, the suspect shoves the officer, attempts to reach for a weapon to bring it to bear on an officer, and is shot by police. At what point do

investigators begin their report? Is the initial resistance to a lawful arrest investigated as a separate offense? Is the officer who was the victim of the felonious assault with the weapon afforded the same consideration as the victim of any other felonious assault?

Officers are routinely ignored as crime victims. Protections under state constitutions and statutes afforded crime victims under victim rights laws are routinely ignored when police are crime victims in the line of duty. An antiquated idea that police are supposed to quietly suffer the assaults and injuries from criminal actors as part of their occupation flies in the face of the reality of cumulative physical injuries and trauma which decimate the ranks of law enforcement by disability, early retirement, and even suicide.

One survey indicated that 83% of officers have suffered on-the-job injuries and didn't bother to report or get treatment for them because of the expectation of a lack of response from supervisors, peers, and prosecutors. Nearly 2/3 of officers report that assaults against them are among the first charges dropped by prosecutors during plea bargaining. Taking a domestic violence call once again as an example, if an officer is assaulted or resisted during the call and the domestic partner later recants or requests that the charges be dropped, the charge of assaulting an officer or resisting arrest is also often dismissed. The two events should be considered each on their own merits. If the officers had found meth on the scene while investigating the domestic call, certainly the drug charges would remain even if the domestic violence charges were dropped.

To make matters worse, these dismissed charges often occur without the victim officer's knowledge, contrary to most states' victims' rights laws, according to 45% of survey respondents. In only 25% of cases where a police officer is the victim of a

crime in the line of duty were there other officers investigating the offense. In other words, when a police officer is assaulted, most of the time they have to investigate it by themselves! Imagine any other assault victim being treated that way. In addition, when a police officer is involved, there will be inevitable accusations that the officer behaved improperly, and no objective third-party investigation will exist to verify the officer's testimony about the event.

With all the talk about criminal justice reform, our police officers, under increasing violent attack and resistance, must be assured justice, too.

Charging Police with Crimes in the Line of Duty: Justice or Petty Politics?

No one invested in quality law enforcement wants police officers to get away with violent crime. No one who needs quality law enforcement wants officers who survive a violent encounter to be prosecuted for political gain.

Kim Foxx, Chicago's top prosecutor, says "this is time to be aggressive" as she spoke about the possibility of charging [officers](#) staying inside a building a block away from rioting in June of last year. Perhaps she hadn't read the news from two weeks prior with the [headline](#) "Chicago Police Officers Ordered To No Longer Use Force To Disperse Large Gatherings". Police union leaders spoke out for officers during the June uprisings, [reporting](#) that measures by city leaders came too little and too late to mitigate damage from rioting, leaving over a hundred officers injured and lacking in basic equipment such as radios and protective gear.

While Foxx gets tough on cops, the [Chicago Sun-Times](#) reports that "as of Dec. 31 (2020), the city recorded 774 murders in 2020, an increase of more than 50% from the 506 murders in 2019, according to a database maintained by the Chicago Sun-Times. The uptick was felt across the city, as 20 of the CPD's 22 police districts recorded more murders in 2020 than the year before. The number of overall shooting incidents skyrocketed, too, rising from 2,120 in 2019 to 3,237 as of Dec. 27, 2020."

Chicago's Mayor Lori Lightfoot wants an officer fired for lifting a middle finger to protestors. Lightfoot did not see any irony that she used her public platform to respond to President Trump's suggestion for dealing with rioters: "It begins with an F and it ends with a U".

In Philadelphia prosecutor District Attorney Larry Krasner has stated his intention to file aggravated assault charges against a 31 year veteran officer for using a baton on a student during a confrontation with protestors. A video posted on [Twitter](#) shows the student actively attempting to interfere with an arrest as the now suspect officer uses a baton strike to repel the student. Krasner contends that the officer struck the student in the head with a baton, but a department use of force instructor testified that the officer's use of the baton "was completely lawful and reasonable," and that "the use of force in this case was absolutely justified." The student also testified that he had "intervened" in the arrest of another protestor.

The top prosecutor in Boston, Rachel Rollins, tweeted "We are being murdered at will by the police ... No more words. Demand action", and accused police supporters of white fragility when she was accused of fomenting violence against police.

Police critics lament that murder charges are not usually pressed against officers who kill in the line of duty. According to according to data compiled by Philip M. Stinson, a criminal justice professor at Bowling Green State University in Ohio, about a thousand persons annually are killed in confrontations with police but only 121 officers have been charged with murder or

manslaughter. Fewer than half of officers whose cases have been concluded were convicted. To the critics, this lack of successful prosecution shows a skewed criminal justice system. To experts in violent encounters who know how closely these events are investigated by outside agencies, the statistics show how few police shootings are criminal.

Officer Darrin Wilson is still considered by anti-police observers as someone who got away with murder and should have been charged in the death of Michael Brown. This example of political scapegoating and posturing continues despite the forensic and testimonial evidence of state, local, federal, and private investigations and inquiries that support the officer's justified actions.

Two Atlanta officers were recently reinstated after being fired for using their Taser on two vehicle occupants during civil disturbances were breaking out and a curfew had been imposed. Atlanta's Chief of Police at the time testified that city officials were afraid the students' arrest would only fuel mounting outrage against police. The officers' attorney noted that the dangerous conditions surrounding the officers was not considered "the city just trampled over their rights". Had the confrontation occurred before the George Floyd in custody death, the officers would not likely have been publicly scorned by their department. "The circumstances were exceptional," Shields testified. "We did, I did, what I had to do to make sure the city was stabilized", clearly implying a public relations decision and not one based on merit. Criminal prosecution by the state has not been ruled out.

No one wants police officers to have no fear of accountability for their decisions which can deprive a citizen of their right to life, liberty, and the pursuit of happiness. But no police officer should fear political repercussions for decisions made under extreme circumstances. Justice and fairness for police officers should be no lesser than for other citizens.

About The Author



This series is authored by [Chief Joel F. Shults, Ed.D.](#) Joel is a retired police chief. He is an award-winning writer, college professor, trainer, and first responder chaplain.