



Confronting Extrajudicial Killings by Police: Transformative Change for Justice In Law Enforcement

**Submitted to United Nations High Commissioner for Human Rights
pursuant to Human Rights Council resolution 47/21
By Mothers Against Police Brutality
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I. Introduction: A Continuing Commitment.

From its earliest years, the United Nations has been concerned with human rights in law enforcement. The Universal Declaration of Human Rights (1948) addresses these concerns directly in Articles 6-11:

- Everyone has the right to life, liberty, and security of person.
- Everyone has the right to recognition everywhere as a person before the law.
- All are equal before the law . . .
- Everyone has the right to an effective remedy . . . for acts violating the fundamental rights granted him by the constitution or by law.
- No one shall be subjected to arbitrary arrest, detention or exile.
- Everyone is entitled in full equality to a fair and public hearing . . . of any criminal charge against him.
- Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

The UN has further delineated these rights in subsequent years through the adoption of conventions and treaties, including the International Covenant on Civil and Political Rights (ICCPR, 1966; entered into force, 1976) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 1965; entered into force, 1969). Thus, for example, one finds:

- No one shall be arbitrarily deprived of his life (ICCPR, Article 6).
- The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution (ICERD, Article 5b).

The UN has provided guidance to states in the form of resource books, fact sheets, and training manuals, including Guidance on Less-Lethal Weapons in Law Enforcement (OHCHR, 2020), Resource Book on the Use of Force and Firearms in Law Enforcement (UNODC, 2017); Civil and Political Rights: The Human Rights Committee, Human Rights Fact Sheet No. 15 (Rev. 1, 2005); and Human Rights and Law Enforcement: A Trainer's Guide on Human Rights for the Police (OHCHR, 2002). These documents provide detailed description and analysis of the principles contained in the binding treaties, for example, elaborating on ICCPR, Article 6, above:

Unlawful use of force means force that violates the principle of legality, i.e. force that has an insufficient legal basis or that is used in pursuance of an objective that cannot be qualified as a legitimate law enforcement objective. Such legitimacy is determined by domestic law, which should be compliant with international human rights obligations. Excessive use of force applies to situations where the use of force was legal and legitimate, but the type and level of force was unnecessary and/or disproportionate. Use of force is arbitrary when resorting to force (or the specific type and level of force), is not legitimate in light of

the specific circumstances, and presents an element of injustice, discrimination, unreasonableness, abuse of power, or exercise of unwarranted discretion. Arbitrary use of force may be both unlawful and/or excessive. (Resource Book on the Use of Force, UNODC, 2.)

In the aftermath of the 2020 murder of George Floyd by a police officer in the United States, then High Commissioner Michele Bachelet stated:

Impunity for crimes and human rights violations by law enforcement officers must end, and we need to see robust measures to prevent further arbitrary killings. As we have painfully witnessed in recent days and weeks, reforms to policing departments across the US continue to be insufficient to stop people of African descent from being killed. It is time to move on from talk of reform to truly rethinking policing as currently practiced in the US and elsewhere (Geneva, 21 April, 2021).

In the spirit of this ongoing commitment, Mothers Against Police Brutality submits our input and proposals.

II. Mothers Against Police Brutality.

Collette Flanagan founded Mothers Against Police Brutality (MAPB) a decade ago. Her son, **Clinton Allen**, a 25-year old Black father of twin sons, was unarmed when a police officer killed him in March 2013, shooting him seven times, once in the back. The officer was never held accountable in criminal or civil court, and he remains to this day on the police force of Dallas, Texas. Out of this injustice, MAPB was born. Our mission is to prevent police use of deadly force, particularly the killing of Black and other people of color; to change police deadly force policies and practices; to advocate for and with families who have lost loved ones to police violence; and to expand the concept of public safety with new policies limiting encounters between police and the public and making deep social investments in housing, health care, mental health services, employment, education, arts, recreation, and other presently unmet human needs throughout the United States. MAPB protests unjust policing, organizes communities most impacted, conducts research, and advocates for policy change in local, national, and international forums.

MAPB at the United Nations.

Over the past eight years, MAPB has participated in numerous forums at the United Nations and related international initiatives.

2015: MAPB's senior adviser and noted human rights lawyer, Nicole Lee, testifies at a hearing organized by the Office of the High Commissioner for Human Rights (OHCHR) on "Confronting the Silence: Perspectives and Dialogue on Structural Racism against People of African Descent Worldwide."¹

2015: MAPB's founder, Collette Flanagan testifies that same year at the InterAmerican Commission on Human Rights hearing on "U.S. Use of Force by Police Against People of African Descent."²

2020: MAPB works in coalition with the ACLU and other NGOs, in support of the passage, in June, of a major resolution of the UN Human Rights Council (UNHRC), promoting and protecting the human rights "of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers" (Resolution 43/1, Human Rights Council, 19 June 2020)³

2021: (March-April) MAPB participates in the International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the U.S. – a distinguished panel human rights lawyers – to identify cases and to bring directly-impacted families into the process.⁴

2021: (May) MAPB organizes 144 families directly impacted by fatal police violence to sign a letter, along with ACLU, and 270 NGOs from around the world, to Michelle Bachelet, then United Nations High Commissioner for Human Rights, calling for an independent commission, under the auspices of the U.N. Human Rights Council, to investigate *inter alia* police killings of Black people in the U.S.⁵ The present International Independent Expert Mechanism (EMLER) resulted, in part, from this initiative.

2021: (June) the OHCHR releases its report, pursuant to HRC Res. 43/1, describing "an alarming picture of system-wide, disproportionate and discriminatory impacts on people of African descent in their

encounters with law enforcement.” Ms. Flanagan, provided video testimony to the UNHRC during the preparation of this report.⁶

2021: (November) Ms. Flanagan testifies at the at United Nations Forum on Human Rights, Democracy, and the Rule of Law.⁷

2022: (October) Ms. Flanagan testifies in Geneva before the United Nations Human Rights Council, along with Jurema Werneck (Amnesty International Brazil) and Justice Yvonne Mokgoro, then chairperson of Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement (EMLER).⁸

2023: (April) Created in 2021, EMLER announces a fact-finding mission to the U.S., April 24 to May 3, 2023. Ms Flanagan and MAPB Co-Founder John Fullinwider serve on the planning committee for the U.N. visit. Ms. Flanagan serves as a spokesperson in numerous press reports. The first hearing is held April 26 in Atlanta GA. Asked to produce a session for this hearing, MAPB organizes in-person testimony by 15 directly impacted families, including MAPB’s Legacy Fellows. MAPB provides travel, lodging, and other support for 15 family members to participate – from 10 different cities, in 5 different states, including 8 witnesses from the Atlanta area. Their testimony is the centerpiece of the hearing. As the UN experts noted in their remarks at the end of their visit, “the Mechanism feels an urgency, and a moral responsibility, to echo the harrowing pain of victims and their resounding calls for accountability and support, which it heard throughout its journey.”⁹

International Solidarity.

Although police in the U.S. kill many more people than their counterparts in the European Union, we see similar kinds of extrajudicial killings of people of African Descent – e.g., in the 2022 death of **Oladeji Adeyemi Omishore**, at the hands of London police, or the 2016 death in police custody of **Adama Traoré**, a Frenchman of Malian Descent, in Paris. In cities as varied as Lagos, Teheran, and Hong Kong, police brutality is clearly a tool of political repression, as demonstrators there have suffered injury and death. In Brazil, police kill more than 6,000 people per year. As in the U.S., the victims are disproportionately Black.¹⁰ Clearly, there is a need for global solidarity among NGOs and people’s movements against police violence. These links can be built, in part, upon the initiatives of the HRC and the OHCHR.

III. Creating a New International Convention on Human Rights in Policing.

People of African descent living in the United States, the world’s oldest democracy and one of the world’s most prosperous nations, recognize the terrible irony of America’s pervasive, racialized police violence. MAPB understands that the families we work with every day, who have suffered this violence directly, stand to gain as much from international action for justice as any people in the world.

Before we describe the stark anatomy of unjust policing in communities throughout the U.S., and offer proposals for improvement and redress, we want to make our specific appeal to the United Nations. In the words of Malcolm X’s still urgent petition, “We see the United Nations as the institution wherein world opinion and the conscience of mankind can be appealed to.”¹¹

III.1. The U.N. Human Rights Council through the Office of the High Commissioner for Human Rights should take the lead in forming a working group to develop a new *international convention on justice and human rights in policing*.

It has been more than half a century since the adoption by the U.N. General Assembly of the International Covenant on Civil and Human Rights (ICCPR), which is the major international defense of the rights of persons caught up in the criminal justice system, including those facing arrest, trial, imprisonment, capital punishment, where it is still legal, and other aspects of law enforcement.

In the aftermath of the worldwide unrest following the murder by U.S. police of **George Floyd**, and with the relentless toll of dead and injured persons at the hands of police, notably in the U.S., it is time to draft a new convention on justice and human rights in policing.

A new convention can respond to changes in policing since ICCHR’s entry into force in 1976. The current research and hearings of the International Independent Expert Mechanism to Advance Racial Justice and Equality in the context of Law Enforcement (IIEEM) can be a prologue to the new convention working group. A new convention will bring into clear focus the ways that internationally recognized human rights are subverted by police, particularly the rights of persons of African descent in the Western democracies. A new convention can give the force of international law to the policies and practice standards that have been described in guidance documents issued by the OHCHR, augmented and sharpened through urgent developments of recent years. Finally, a new convention can create an international benchmark to recognize law enforcement agencies whose officers respect human rights and to identify those whose practices are oppressive.

There is a precedent for this kind of update and focus of elements of a prior convention. Article 24 of ICCHR describes the basic right of every child “to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.” These “measures of protection” and other rights were elaborated and amplified in the Convention of the Rights of the Child (1989).

This new initiative will provide hope of redress for people throughout the world who suffer from police brutality, corruption, and repression – particularly people of African descent.

By taking the lead to draft a new convention on justice and human rights in policing, OHCHR will be acting in its best legacy as the protector of human rights worldwide.

IV. Confronting Extrajudicial Killings in the United States.

Fatal police violence is a national crisis in the United States.

Figure 1.

Fatal Police Shootings, United States: 2015-2023						
Year	Total	Unarmed	Unarmed %	Signs of Mental Illness	Mental Health Issues %	
2015	995	98	10%	260	26%	
2016	958	60	6%	248	26%	
2017	983	69	7%	238	24%	
2018	992	58	6%	220	22%	
2019	997	54	5%	215	22%	
2020	1019	60	6%	219	21%	
2021	1048	31	3%	148	14%	
2022	1096	26	2%	147	13%	
2023	1153	49	4%	148	13%	
Total 2015-2023	9241	505	5%	1843	20%	
Average 2015-2023	1027	56	5%	205	20%	
2024 thru 01/09	26					

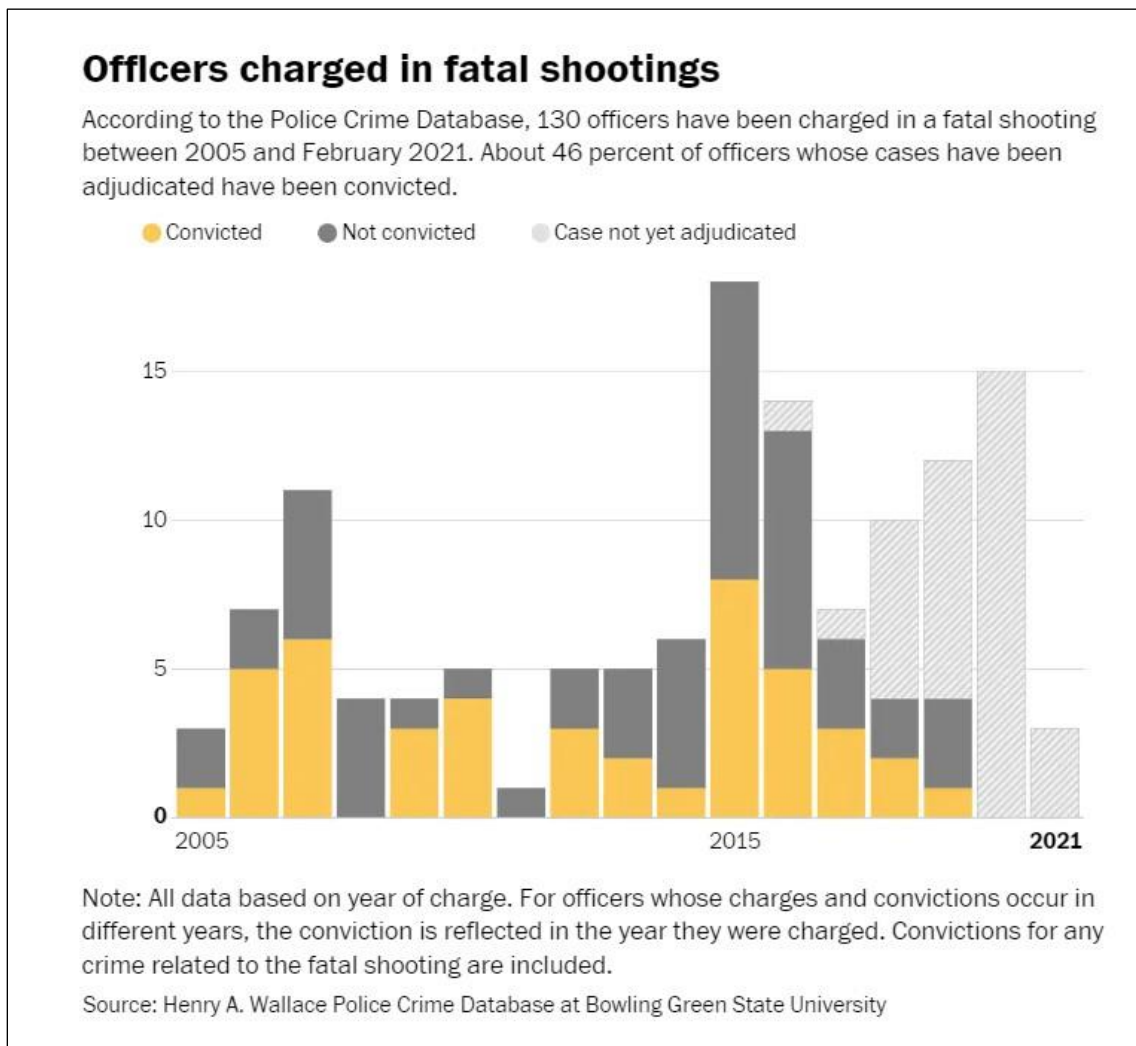
Source: Washington Post, Fatal Shooting Database, 01-09-2024.

It happens in every part of the country, from California to New England, from Minnesota to Texas – in cities, in the suburbs surrounding cities, in the small towns outside the suburbs, and in rural counties. Extrajudicial killings have become increasingly routine in American policing – they happen literally every day, three a day on average since 2015. This scale of death by police happens in virtually no other nation on earth, certainly not in the Western democracies.

Despite nationwide protests and “reforms” touted by many law enforcement agencies, Figure 1 indicates that the annual count of fatal police shootings actually increased since the killing of **Michael Brown** (2014), and increased again after the murder of **George Floyd** (2020).¹²

Beyond the immense scale of the crisis, the lack of accountability for police officers who kill is stunning. Of 1027 fatal shootings on average per year, only about 1% are prosecuted. In practically every case, there are no charges, no indictment, no trial, and no conviction of a police officer who kills a person. The number of prosecutions and convictions of officers involved in fatal shootings is statistically insignificant.¹³

Figure 2.



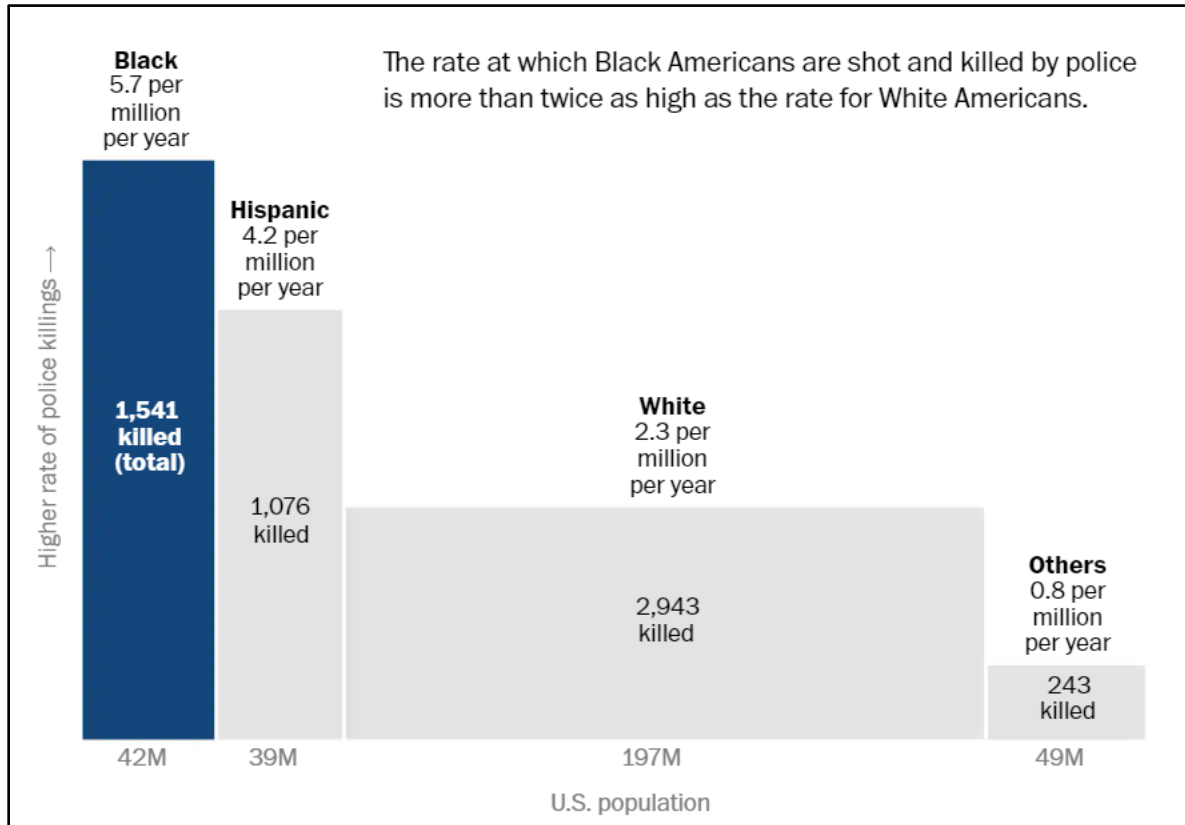
As Figure 2 indicates, of the thousand cases annually of people shot to death by police officers in America, on average less than 1% result in an indictment, i.e., fewer than eight (7.65) on average are prosecuted; even fewer cases produce a conviction at trial.¹⁴

Extrajudicial killings in the U.S. disproportionately impact people of African descent. As Figure 3 (next page) indicates, *Black Americans are killed at a much higher rate than White Americans.*

Although half of the people shot and killed by police are white, Black Americans are shot at a disproportionate rate. They account for less than 13 percent of the U.S. population, but are killed by police at more than twice the rate of White Americans. Hispanic Americans are also killed by police at a disproportionate rate.

Unarmed Black people are shot at about twice the rate of unarmed whites. And, when considering shootings confined within a single race, a black person shot and killed by police is more likely to have been unarmed than a white person. *About 13 percent of all Black people who have been fatally shot by police since January 2015 were unarmed, compared with 7 percent of all white people.*¹⁵

Figure 3.



Any attempt to reduce the number of extrajudicial killings in the U.S. must confront the national scale, lack of accountability, and racialized impact of police use of deadly force.

V. A national crisis demands a national response.

Policing in the U.S. can appear to be a local matter, the jurisdiction of more than 3,000 separate counties and 18,000 different law enforcement agencies.^{16,17} But when deadly police brutality increases despite local reforms, when fatal officer-involved shootings (OIS) occur with impunity across jurisdictions, and when people of African descent are disproportionately harmed by police violence, again across jurisdictions, then a *national* crisis is undeniable.

The situation is analogous to that facing Black citizens throughout the southern states in the 1960s, when local county registrars routinely denied them the right to vote. Here was a basic, Constitutionally protected right denied by local officials and disproportionately harming people of African descent. Local challenges to end this practice typically failed. Only when the national government was pushed into action by public protest, only after national legislation, did the franchise begin to open up to Black voters.

The fundamental threat to life and to security of person represented today by extrajudicial killings demands a comparable national response.

V.1. Establishing a national legislative standard for the use of deadly force.

Congress must legislate a national standard governing the use of deadly force, defining circumstances in which deadly force is justifiable and when it is unjustified.

“Fatal police violence is a national crisis in the United States. It happens in every part of the country, from California to New England, from Minnesota to Texas – in cities, in the suburbs surrounding cities, in the small towns outside the suburbs, and in rural counties. Extrajudicial killings have become increasingly routine in American policing – they happen literally every day, three a day on average since 2015.”

Deadly force policy in U.S. police departments is governed by two Supreme Court decisions. In *Tennessee v. Garner*, 471 U.S. 1 (1985), the court ruled deadly force can only be used when “the officer has probable cause to believe that the subject poses a significant threat of death or serious physical injury to the officer or others.” This opinion is the source of, “I feared for my life . . .” the most common officer justification for use of deadly force. A subsequent opinion of the Court, *Graham v. Connor* 490 U.S. 386 (1989), added that a specific use of force must be determined from the perspective of a “reasonable officer” on the scene.

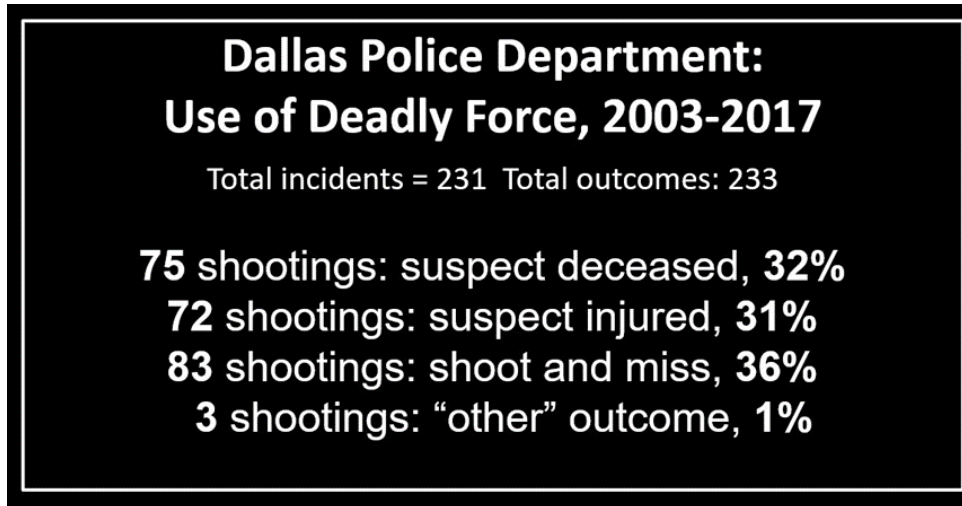
Central to the use of deadly force, then, are the officer’s perceptions of “threat of danger” from a suspect and a “reasonable” response to that threat. It is this standard that has resulted in almost universal impunity for officers who kill – even when an unarmed suspect, like Ms. Flanagan’s son **Clinton**, is shot in the back. In the City of Dallas, Texas, for example, there was not a single indictment of a police officer in a fatal shooting between 1974 and 2017, despite hundreds of killings of unarmed, mentally ill, and elderly persons.

In 2015, a special unit in the New York State Attorney General’s office was authorized to investigate and prosecute the deaths of unarmed persons at the hands of police. As the New York Times reported in 2021, of the first 43 cases investigated, none has resulted in a conviction. Prosecutors have stated that “the legal

system remains tilted in favor of law enforcement.” Brooklyn Assemblyman N. Nick Perry said that establishing a legal definition of what qualifies as excessive force is essential so that jurors can determine if the police have broken the law. Without such a definition, Perry said, “there is no limit on the police officer’s perception and judgment in the situation, which is what leads to a lot of acquittals when there are strong cases that what was done was criminal.”¹⁸

An officer’s perception of a threat to justify the use of deadly force may be asserted in bad faith. Officers who shout and shoot” at a suspect – indeed, all officers in a shooting – claim they “feared for their life.” Juries are reluctant to hold them accountable or to “second guess” an officer’s “split second decision.”

Figure 4.



Moreover, an officer’s perception that his life is at stake is often demonstrably incorrect. MAPB analyzed 231 officer-involved shootings in Dallas during the period 2003-2017. The suspect was killed in 32% and injured in 31% of the outcomes. But in 36% of the shootings, the officer shot-and-missed (see Figure 4).¹⁹ Not a single officer in these 83 instances of the use of deadly force was killed by the suspect. Clearly, these officers were not in fact facing life-threatening danger.

It should be noted here that most police calls do not involve life-threatening situations requiring use of deadly force. Many police functions, such as traffic control, could be performed by unarmed officers.

For example, a 2019 study of the City of Dallas Police Department by the global management firm KPMG described “Priority One” calls as emergencies with “high threat to human life.” In its discussion of the call volume for police services the study documented that during the period 2014-2018,

Only a small percentage of this activity, however, stemmed from urgent, emergency situations: Priority 1 calls constituted just 3 percent of total demand volume annually, and . . . Priority 1 calls accounted for 18 percent of total officer workload.²⁰

The criteria for use of deadly force described in *Tennessee v. Garner* (1985) and *Graham v. Conner* (1989) decisions of the U.S. Supreme Court, the basis for almost all deadly force policies, are not adequate to prevent unnecessary loss of life at the hands of law enforcement officers. More objective, observable standards governing the use of deadly force are required, based not on an officer’s perception, but on the actual conditions of the encounter.

Deadly force law, regulations, and policy should describe specific conditions under which an officer may or may not justifiably kill a person. Under a policy based on objective, visible conditions, the use of deadly force would not be justified if:

- a suspect is unarmed;
- a suspect is running away or attempting to withdraw;
- a suspect is driving away or sitting in a parked car;
- a suspect is not armed with a firearm – for example, when a suspect is holding a knife, screwdriver, or blunt object; or
- if the officer is alone – for example, after a solo foot chase.

In the event that deadly force is used in an encounter with a suspect, officers would not be justified in shooting multiple times at a suspect without re-evaluating the necessity of additional deadly force.²¹

Operating under a national legislative standard along these lines, jurors, officers, and the public would be able to determine with greater confidence whether or not a specific use of deadly force was justifiable. Crafting such a law may prove difficult, as in other complicated areas of law, for example, taxation and environmental law. But it can be done. Under the existing patchwork of local policies and judicial decisions, the fact remains that a police officer in the United States can do anything to a person, not excepting homicide, and more than 990 times out of 1,000 there will be no charges, no indictment, no trial, and no conviction.

V.3. Ending the judicial doctrine of qualified immunity.

If the officer’s perception, “I feared for my life,” is a shield against criminal prosecution, then qualified immunity (QI) is his armor in civil court. It is an affirmative defense officers raise, most often successfully, in wrongful death and excessive force civil cases. The Council on Criminal Justice Task Force on Policing summarized QI in a May 2021 report:

Qualified immunity is a legal doctrine that was established by the U.S. Supreme Court in the 1960s. While it has received significant attention in the context of policing, its original intent was to protect all government employees acting in good faith and discourage frivolous federal civil lawsuits against them. Over the past 50 years, the Supreme Court has modified qualified immunity; it now has less to do with officers acting in “good faith” and more to do with whether officers violated “clearly established law.” According to the Court, the law is not clearly established to put an officer on notice of unconstitutional conduct unless the plaintiff can point to a prior court decision, usually from the federal appellate court with jurisdiction, with virtually identical facts. As such, qualified immunity has come to mean that officers who are accused of using excessive force or engaging in other alleged misconduct (for example, an improper search) may be protected from civil suit because an identical prior instance that was found unconstitutional could not be found.²²

The QI doctrine often results in the loss or dismissal of a particular family’s wrongful death suit, but it has a broader, more pernicious impact. The threat of civil cases is a weak deterrent to deadly police brutality because of the protections afforded officers and their agencies through qualified and sovereign immunity. The most eloquent voices raised against QI are from judges obligated to employ it.

In the case of *Jamison v McClendon* (04 August 2020), Mississippi District Judge Carlton W. Reeves issued an Order Granting Qualified Immunity,²³ but not without protest against the doctrine:

This Court is required to apply the law as stated by the Supreme Court. Under that law, the officer who transformed a short traffic stop into an almost two-hour, life-altering ordeal is entitled to qualified immunity. The officer’s motion seeking as much is therefore granted.

But let us not be fooled by legal jargon. Immunity is not exoneration. And the harm in this case to one man sheds light on the harm done to the nation by this manufactured doctrine . . .

Over-turning qualified immunity will undoubtedly impact our society. Yet, the status quo is extraordinary and unsustainable. Just as the Supreme Court swept away the mistaken doctrine of “separate but equal,” so too should it eliminate the doctrine of qualified immunity.

Earlier this year, the Court explained something true about wearing the robe:

Every judge must learn to live with the fact he or she will make some mistakes; it comes with the territory. But it is something else entirely to perpetuate something we all know to be wrong only because we fear the consequences of being right.

“If the officer’s perception, “I feared for my life,” is a shield against criminal prosecution, then qualified immunity (QI) is his armor in civil court.”

A recent opinion from the 4th Circuit Court of Appeals, in *Estate of Wayne A. Jones v. City of Martinsburg, W. Va.*, sought to limit qualified immunity, overturning a lower court ruling that dismissed a police brutality case on the grounds of qualified immunity. It is worth quoting Circuit Judge Henry F. Floyd at length:

Wayne Jones was killed just over one year before the Ferguson, Missouri shooting of Michael Brown would once again draw national scrutiny to police shootings of black people in the United States. Seven years later, we are asked to decide whether it was clearly established that five officers could not shoot a man 22 times as he lay motionless on the ground. Although we recognize that our police officers are often asked to make split second decisions, we expect them to do so with respect for the dignity and worth of black lives. Before the ink dried on this opinion, the FBI opened an investigation into yet another death of a black man at the hands of police, this time George Floyd in Minneapolis. This has to stop. To award qualified immunity at the summary judgment stage in this case would signal absolute immunity for fear-based use of deadly force, which we cannot accept.²⁴

As in the case of a national standard for the use of deadly force, Congress failed in 2020-2021 to pass legislation ending the doctrine of qualified immunity.

V.3. Expanding the criteria for prosecution of a civil rights violation.

Congress should legislate broader civil rights criteria in order to enable prosecution of the ongoing, extra-killings of the public by police, which have not decreased despite limited reforms in some local police departments. The taking of a life by law enforcement, unless in genuine self-defense, is an act of deadly official oppression and a violation of basic human rights. The victim killed in an officer-involved shooting, it must be remembered, has not been convicted of any crime. Civil rights prosecutions may be the *only* accountability for officers, as in the severe, near fatal beating of Rodney King in 1991. The officers involved were acquitted of all criminal charges, resulting in widespread rioting in Los Angeles. But four officers were indicted in 1992 on federal civil rights charges,²⁵ and two were convicted at trial.

The criteria for USDOJ to launch a civil rights complaint in OISs are too narrow. Meeting the law’s “willfully subjects” criterion (18 U.S.C. § 242) and requiring “specific intent” (*Screws v. United States*, 325 U.S. 91, a 1945 case that eerily foreshadows the 2023 fatal beating of Tyre Nichols by police in Memphis TN; see box on next page) are so strict that a civil rights prosecution in a fatal police shooting is extremely rare. The U.S. Department of Justice declined, for example, to prosecute a civil rights violation against the New York officer who choked **Eric Garner** to death or against the police officers who shot to death **Tamir Rice**, a 12-year-old child playing in a Cleveland park, both in 2014; nor did the Department pursue charges against the U.S. Park Police officers who 2019 fired 10 shots into a stalled car, killing unarmed 25-year-old **Bijan Ghaisar**, after a minor traffic violation in Fairfax County, Virginia.

The changes MAPB advocates in the preceding sections above would significantly increase the opportunities to hold accountable officers who kill – on criminal homicide charges, in civil wrongful death cases, and for violations of federal civil rights law.

Screws v. United States, 325 U.S. 91 (1945)

This is the case that created the precedent of “specific intent” necessary to determine if a police officer commits a violation of civil rights when the officer kills or injures a person. The facts of the case were particularly brutal. Sheriff Screws of Baker County GA and two officers arrested Robert Hall on a warrant for “the theft of a tire” (all quotations from the Supreme Court decision). Mr. Hall, a young Black man, “was handcuffed and taken by car to the courthouse. As Hall alighted from the car at the courthouse square, the three petitioners began beating him with their fists and with a solid-bar blackjack about eight inches long and weighing two pounds . . . after Hall, still handcuffed, had been knocked to the ground, they continued to beat him from fifteen to thirty minutes until he was unconscious. Hall was then dragged feet first through the courthouse yard into the jail and thrown upon the floor, dying. An ambulance was called, and Hall was removed to a hospital, where he died within the hour and without regaining consciousness.” The sheriff and two officers were convicted by the trial jury of “willfully” violating Mr. Hall’s due process rights under the 14th Amendment; the appeals court affirmed the jury verdict. But the Supreme Court reversed, stating that such a violation “is to be construed as requiring a *specific intent* to deprive of a right which has been made *specific* by the express terms of the Constitution or laws of the United States or by decisions interpreting them” . . . The trial court erred in not instructing the jury that, in order to convict, they must find that the defendants had the *purpose* to deprive the prisoner of a constitutional right” (emphasis added).

V.4. Anti-Black discrimination is pervasive in policing.

Not only does the use of deadly force by police fall most heavily on people of African descent, but Black Americans face a wide range of degrading, discriminatory behavior from police officers. Racist and misogynistic social media posts have been documented in police departments throughout the country.²⁶ And these attitudes leap off online screens to inform daily police practice.

The Minneapolis MN police department, which employed the murderer of George Floyd, Derek Chauvin, was last year found to have “routinely engaged in racially discriminatory practice and failed to punish officers for misconduct” by the Minnesota Department of Human Rights. As reported in the New York Times,

The state investigation, started in the wake of Mr. Floyd’s death, painted a damning portrait of the Police Department. Investigators found that Black people in Minneapolis were far more likely to be arrested, searched and stopped than white people. A review of more than 700 hours of body camera footage revealed that officers often used slurs to demean women and Black people, a practice so pervasive that it often imperiled prosecutions.²⁷

The U.S. Department of Justice announced in March 2023 a similar pattern of discriminatory behavior and impunity in Louisville KY. DOJ officials specifically charged that the Louisville Metro Police Department “unlawfully stops, searches, detains, and arrests people during street enforcement activities, including traffic and pedestrian stops; [and] unlawfully discriminates against Black people in its enforcement activities.”²⁸

V.5. Restitution is past due for over-policed, racially profiled, brutalized communities.

Congress must address the paradox of current U.S. police practice: *The over-policed, racially profiled, and brutalized communities remain “high crime areas” not only year after year, but for decades.*

These communities are severely under-resourced in accessible health care, affordable housing, living wage jobs, and other aspects of a secure family and social life. The typical police department budget

across the U.S. is regularly increased, even though it dwarfs spending on human needs in local governments, and particularly in the neighborhoods that suffer the worst police brutality.

Congress should establish a dedicated fund to make deep investments in community-based public safety initiatives that do not rely on law enforcement to address community harm and that promote community health, safety, and well-being.

Increased federal investment could begin as a program administered within U.S. DOJ. How can the Justice Department, putting aside ideology, contribute to alleviating the large-scale, chronically underfunded, unmet human needs in cities throughout the country? By providing funding for community-based programs that address these needs at the grassroots level. Examples include:

- a. violence prevention / interruption by community residents/leaders;
- b. provision of mental health services for people in crisis (including homeless individuals), without police involvement;
- c. practical programs operated by community organizations, such as provision of transportation to seniors for shopping, medical appts., etc.;
- d. prevention of evictions and other tenant rights-based approaches to improving housing conditions;
- e. assistance with access to income-support and other public benefits
- f. assistance for residents to obtain a “medical home”, and to obtain health insurance and related health services;
- g. employment programs for youth, formerly incarcerated persons, and others facing barriers to employment.²⁹

There are successful models of such programs in a number of localities, but their scale is inadequate given the emergency conditions in the most hard-pressed American communities. Congress and USDOJ may think of the increased investments as demonstration projects, or ways to illustrate non-police approaches to public safety. The scale may be initially small, but such projects would show a tangible improvement in the wellbeing of residents, and they could be rolled out fairly quickly. Successful projects could be replicated and scaled up, and local governments would have incentives to contribute to such efforts.

At the family level, DOJ should develop protocols to make sure that families of victims of police brutality are eligible for and receive compensation when police kill or seriously injure their loved ones.

Families are typically left on their own to cope with funeral expenses, recovery of victim’s personal property and clothing, damage to their residences, official attacks on their loved one’s reputation – all in addition to coping with their grief and loss.

But in many states, even limited relief from “crime victims compensation” programs is allowed only if the victim “participate in the crime; commit illegal activity at the time of the crime; or share responsibility for the crime due to [his/her] behavior.”³⁰ Clauses such as these typically disqualify an individual or family victimized by the police. Officers involved in a shooting, however, readily receive compensation – e.g., for emotional distress.

VI. Civil Society Against Police Violence: Waves of Unrest, Years of Resistance.

Waves of civil unrest and protest against police brutality swept the U.S. in 2014, after Michael Brown was killed by police in Ferguson MO. Again, in 2020, when George Floyd was killed by police in Minneapolis MN, waves of protest and civil unrest erupted worldwide in the aftermath. *But these waves eventually subside, often leaving no major changes, as in the failure to pass significant police reform legislation in the U.S. Congress to this day.* The waves subside, the crisis remains.

When the police kill a beloved son or daughter, it can unravel a family. It can shatter a mother. MAPB has seen this happen many times – but not always. Our organization has identified hundreds of mothers who have overcome their own pain to take action for justice in memory of their child. We are working with these moms to build a national network of community leaders among directly-impacted families who have the staying power to actually deliver the necessary changes.

The **MAPB Fellowship Legacy Program** is our primary leadership development initiative, now operating in ten U.S. cities. Participation in the Fellowship is limited to women who have lost loved ones to extrajudicial killings by police. Those chosen as Fellows have a track record of advocating for their martyred children and organizing for change in their hometowns. Through the Fellowship, they are networking with other mothers, learning new skills, and gaining experiences that will help them to become leaders in a broader national movement to change policing.³¹

We are committed to the long-term development of this network – and to working in coalitions with progressive U.S. organizations; with NGOs participating in U.N. proceedings; and with local, national, and international philanthropic and public institutions.

VII. Conscience Against Injustice.

In her remarks before the Human Rights Council in October 2022, Collette Flanagan closed with this image of our present dilemma in the worldwide movement for justice:

The police forces of this world are almost a world power in themselves. But those of us who speak out and work to bring justice and human rights into law enforcement are a power as well. And I have no doubt that the collective power of conscience against injustice will have, as America’s greatest theologian once said, “the final word in reality.”³²

May it be so through our labor.

Submitted this 16th day of April, 2023, by:

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Notes and sources appear on next page.

Notes and Sources:

1. See: <https://webtv.un.org/en/asset/k1k1klzhstlm>. Ms. Lee's testimony begins at 01:21:28.
2. See: https://www.youtube.com/watch?v=c_ZLnaWeXCk. Ms. Flanagan's testimony begins at 10:57. Sara's testimony begins at 18:38.
3. See: <https://undocs.org/A/HRC/RES/43/1>
4. See: <https://inquirycommission.org/>; Ms. Flanagan's testimony upon the release of this report appears here: <https://www.youtube.com/watch?v=A23jIPufK4U> – at 03:18 minutes in.
5. For text of the letter, see: <https://www.aclu.org/letter/coalition-letter-calling-joined-nations-inquiry-us-police-violence>.
6. For press report, see: <https://www.theguardian.com/law/2021/jun/28/un-calls-end-impunity-police-violence-against-black-people-george-floyd>. For summary, see: <https://www.ohchr.org/EN/Issues/Racism/Pages/Call-Implementation-HRC-Resolution-43-1.aspx>. For full text of the report, see: <https://undocs.org/A/HRC/47/53>. For Ms. Flanagan's testimony to the UNHRC, see: <https://www.youtube.com/watch?v=MPptFBAIlg5g&t=137s>
7. For video of Ms. Flanagan's testimony, see: <https://webtv.un.org/en/asset/k1z/k1zd578uhr>, beginning at about 34:22.
8. For video of Ms. Flanagan's testimony: excerpted: <https://www.mothersagainstpolicebrutality.org/>; her testimony appears in the full hearing, at 15:19: <https://webtv.un.org/en/asset/k1y/k1ytmpqiyh>.
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11. Clarke, John Henrik, Ed. (2016). Malcolm X: The Man and His Times. *Outline for Petition to the United Nations Charging Genocide Against 22 Million Black Americans*, Africa World Press, p. 344.
12. Source: Washington Post, Fatal Shooting Database, 01-09-2024. Download entire database here: <https://github.com/washingtonpost/data-police-shootings/releases/tag/v0.1>
<https://www.washingtonpost.com/graphics/investigations/police-shootings-database/?itid=inbox>
(From this page, click on "See all victims"; on the next page, click "Download data.")
The trend in Chart 1 indicates decreasing deaths where the victim is classified as "unarmed." This may be due to citizen protests forcing changes by departments in certain jurisdictions. It could also be due to the increase in victims classified as possessing a weapon that is either "unknown" or "undetermined" and in victims for which the database does not report a weapon at all (i.e., a "blank" cell). The total of these victims rose from 7% in 2015 to 11% in 2021. In 2022, the proportion of these victims shown in the database at 07 January 2023 rose to 16%.
13. Dawan, Shaila. Few Police Officers Who Cause Deaths Are Charged or Convicted. *New York Times*, 30 Nov 2021, <https://www.nytimes.com/2020/09/24/us/police-killings-prosecution-charges.html>.
14. Figure 2 is taken from <https://www.washingtonpost.com/nation/2021/04/04/when-police-kill-people-they-are-rarely-prosecuted-hard-convict/>
15. Figure 3 is from Washington Post, Police shootings continue daily, despite a pandemic, protests and pushes for reform, 04 May 2022: <https://www.washingtonpost.com/investigations/interactive/2021/police-shootings-since-2015/>. For shootings within a single race, see: <https://www.washingtonpost.com/news/post-nation/wp/2016/07/11/arent-more-white-people-than-black-people-killed-by-police-yes-but-no/>
16. U.S. Census, Table 4-4. Number of Counties and Statistically Equivalent Entities, by State, as of January 1, 1990: <https://www2.census.gov/geo/pdfs/reference/GARM/Ch4GARM.pdf>
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19. Analysis in Figure 4 is based on published Dallas Police Department data; see <https://dallaspolice.net/ois/ois>
- For full discussion of DPD shooting outcomes, see: <https://dallasweekly.com/2022/03/i-popped-one-off-rethinking-police-use-of-deadly-force/>
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