

July 5, 2017

Greetings, APDs, NC PDCORE, & REN:

We have seen developments in recent weeks in a number of notorious police shootings, so this news update will focus there. For other news items of interest, please visit the [News](#) portion of the NC PDCORE website, and remember to [sign up](#) for email updates from NC CRED.

- For a summary of the events surrounding the shootings of **Philando Castile**, **Samuel Dubose**, **Sylville Smith**, **Michael Brown**, and **Charleena Lyles**, go [here](#). Similarly, [CNN](#) catalogued the outcomes of criminal prosecutions—or decisions not to charge—for 15 recent shootings.
- The latest acquittals generated strong reactions. For a sample, go [here](#), [here](#), [here](#), and [here](#). Over 2,000 people [protested](#) in St. Paul following the verdict in the **Philando Castile** case. Finally, [here's](#) an article questioning the NRA's silence regarding **Philando Castile** and whether Black people have the same Second Amendment rights as Whites.
- A White police officer in St. Louis [shot and wounded](#) a Black off-duty police officer who was responding to assist with an investigation. A lawyer for the wounded officer argued race was a factor.
- A special prosecutor in Chicago [indicted](#) three police officers for “conspiring to cover up the fatal shooting of **Laquan McDonald**, a black teenager killed by an officer in 2014.” On June 27<sup>th</sup>, a judge [denied](#) a motion to dismiss the murder charge against Jason Van Dyke for killing Mr. McDonald.
- Prosecutors in Texas [dropped](#) the perjury charges against the trooper who arrested **Sandra Bland** pursuant to an agreement in which the trooper “agreed to end his career as a law enforcement officer.”
- [NPR](#) explored why so few police shootings end in convictions, noting that since 2005, five officers involved in shootings have been convicted of murder, twenty-four have been convicted of lesser offenses, and 53 have been charged but acquitted. The overwhelming majority of shootings are not followed by criminal charges of any type.

A striking feature of the latest acquittals is that they occurred despite compelling body camera or dashcam footage. In a review of jurors' statements, [The New York Times](#) reports that jurors faced with ambiguous or incomplete video evidence rested their decision on the officers' accounts and assertions of fear. In the trial against Officer Jeronimo Yanez for the killing of Mr. Castile, for example, the videos showed nearly the entire encounter and its aftermath but did not show Mr. Castile's hands at the moment of the shooting. Yanez testified that in that moment, Mr. Castile reached for his gun in his pocket. Mr. Castile's girlfriend, who was also in the car, contradicted that testimony, and the [prosecutor](#) argued that the forensic evidence supported her testimony and contradicted Yanez's:

Prosecutor Jeff Paulsen highlighted autopsy evidence in his closing argument, reminding the jury of a bullet wound to what would have been Castile's trigger finger — and that there was no corresponding bullet damage nor wounds in the area of Castile's right shorts pocket, where he carried his gun. He also cited testimony from first responders who saw Castile's gun in his pocket as he was loaded onto a backboard.

And yet.

The tiniest of cracks created by a single missing camera angle was enough for Yanez, in his blue cloak of credibility, to squeeze through. The credibility juries afford police officers by default—even when the physical evidence contradicts them, even when they give inconsistent statements—plagues

the trials against police who kill. This problem is familiar to us as public defenders, who have all had to warn clients brave enough to contest the officers' story about who the judge or jury is likely to believe. The problem is also familiar to federal prosecutors tasked with prosecuting officer misconduct. [Writes](#) one, "In my experience prosecuting police cases, juries are reluctant to convict cops. Although officers feel beleaguered post-Ferguson, jurors still tend to credit their testimony and have a hard time sending them to jail."

There are two, mutually reinforcing solutions to this problem: change the minds of the jurors and change the jurors. First, heavy media coverage of police misconduct, including when video evidence proves officers lie, is a relatively recent phenomenon dating to the Ferguson protests of 2014. (Franklin Zimring, [When Police Kill](#), Figure 1.3) So are pervasive cameras. Though cameras generated by the police have their [flaws](#), both police-generated cameras and civilian-generated cameras have in recent years shone light on police misconduct. In "[Blue Lies Matter](#)," Albert Samaha writes, "Just as the new DNA evidence of the last two decades proved with scientific certainty that cops sometimes coerce suspects into false confessions, video footage in recent years exposed that cops sometimes open fire on people who pose no threat." Every [new story](#) of police perjury (often in regards to grossly unacceptable use of force) that comes out chips away at the implicit connection between officers and credibility.

Second, juries must become more diverse. "An officer's usual aura of credibility doesn't hold up as well in cities with large black and Latino communities filled with residents who have long distrusted police, said [University of Chicago professor Craig] Futterman." ("[Blue Lies Matter](#)."") The jury that acquitted Yanez, in contrast, [was](#) composed of "overwhelmingly middle-aged white Minnesotans, many of whom expressly stated support for police or a belief in the infallibility of the criminal justice system."

Lack of diversity in jury pools and seated jurors is a persistent and pernicious problem with serious ramifications. [According to](#) a 2012 study of capital trials in North Carolina, 81% of the people in the jury pool were White (though only 64% of the population) and 16% were Black (though 22% of the population). [And](#) North Carolina prosecutors over a twenty-year period "struck eligible black venire members at about 2.5 times the rate they struck eligible venire members who were not black. These disparities remained consistent over time and across the state, and did not diminish when we controlled for information about venire members that potentially bore on the decision to strike them . . . ."

Our Supreme Court will soon decide whether "to allow hearings in the cases of four death row inmates who have evidence that qualified black jurors were systematically excluded from serving on their juries," writes [James Williams](#). These defendants have presented compelling evidence that the State has denied Black North Carolinians their right to "participate directly in American democracy" through jury service. These cases highlight the critically important role defenders can play in [pushing for representative pools](#) and [against discriminatory strikes](#).

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