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# After 'Horrible Week,' Cops-Turned-Lawyers in NJ and Beyond Talk Justice, Race

Lizzy McLellan, Julie Triedman, Roy Strom and David Gialanella, New Jersey Law Journal

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In the wake of the Dallas police shooting and years worth of mounting outrage and social unrest over the deaths of black civilians at the hands of police—including recent incidents in Minneapolis and Baton Rouge—attorneys with law enforcement backgrounds expressed dismay and sadness at recent events, lamented that it could get worse, and chalked up many of the deaths to a combination of stress, blind spots in training and for some, racial bias.

"Horrible, horrible week last week," said Anthony Pope, who heads a Newark firm and is a former Newark police officer and Essex County assistant prosecutor.

"The one thing you can't equate is—when police officers act in the course of their duty, they're subject to the highest scrutiny," added Pope, also a Newark native. "The rule of law has to apply. ... We have a system to address police shootings,"

"However, the execution of police officers is anarchy," he said.

To Victor Rotolo, who heads a Lebanon firm and spent three years as a patrolman in Elizabeth, the week's events highlight how significant a factor race remains in society.

"I am flabbergasted that we are still focused on race like we are, and it appalls me that people can't just look at each other for who we are."

Rotolo, who handles criminal defense work, added, "I don't think the justice system is biased at all except economically"—meaning access to good legal counsel for impoverished litigants.

Patrolling Elizabeth, Rotolo learned that "the vast majority of people who live in poverty want a strong police force like everybody else."

Pope, however, said it must be acknowledged—even as a matter of pure statistics—that police relations with the black community are different than with other groups.

Still, officers typically "are called most the time to a job—they're not doing things just to do them," Pope said, and assuming that any police action is racially motivated, especially if the assumption is made by politicians, is "reckless."

Pope, while reluctant to look for a bright side in the "absolute atrocity" that was the Dallas shooting, allowed that "maybe it'll force people to stop pointing fingers."

Attorneys said the reason these violent interactions between police and civilians—and particularly black civilians—occur in the first place appears to be both institutional and situational.

Many police officers-turned-lawyers, some of them having seen both sides of the tension since changing careers, talked about the stress of encounters and the split second-decisions needed—and the costs of making the wrong choice. But others also spoke of how the job can harden an individual and make them more violent-prone.

Shaka Johnson, a defense attorney and former Philadelphia police officer, said the shooting in Dallas is likely to "change the energy of the voting public."

"I'm processing this as a black man, as an attorney, as an ex-cop," Johnson said. "I can't tell you that I was convinced before this week that race relations weren't getting better."

While Thursday's shooting was not the right kind of reaction, Johnson said, something like it was likely to happen as incidents involving police violence continued to occur.

"At some point, people stop screaming into the air where they don't feel like people can hear them," Johnson said.

Thomas Grover, 44, a plaintiffs attorney in Albuquerque at Grover Law LLC, left the Albuquerque Police Department in 2011, about the time the department became the subject of a U.S. Justice Department investigation over excessive and disparate use of force (it signed a consent decree with the DOJ in 2014 over the matter). He calls the Dallas shootings a watershed event in law enforcement and race relations.

"There will be a huge ripple effect," he said. "It's a threshold event. It's going to change the way protests are handed by police."

The Dallas shootings don't surprise Grover, who says he never had to use his gun during the eight years he was on the "bike patrol" unit in some of the most dangerous neighborhoods, making felony arrests on a daily basis. "It's a long time coming. More misfortune is going to unfold. It's a bill that is coming due," he said.

John Burris, a civil rights lawyer in Oakland, California, who has a long background representing victims of police shootings, condemned the shooting of the police officers in Dallas. But Burris, who is black, also said he worries the event will overshadow the events in Minnesota and Baton Rouge and "distract" from the issue of how police officers treat African-American men.

Part of the frustration among the black community has to do with the fact that police officers are very seldom convicted of wrongdoing, Burris said. "These are some of the most challenging cases, and having been involved in over 1,000 police cases, very few have resulted in criminal charges."

The reason for that, he said, is "racial bias that exists on all levels." White jurors are more willing to accept the testimony of white police officers, he said. And police departments, in conducting internal investigations, are less willing to examine alternatives that may have prevented the use of deadly force. "You're talking about a huge problem here with many different dimensions."

LaDoris Cordell, a retired Santa Clara Superior Court judge and former independent police auditor for the City of San Jose, California, who is also African American, echoed fears expressed by Burris that the events in Dallas would distract from the larger picture.

"This isn't just about five officers tragically being murdered in Dallas. What I'm hearing from people and also what I'm feeling is that people in the black community are under siege by police officers who are not behaving well ... and the system responds by not holding them accountable," she said. "Now

you have police officers feeling that they are under siege."

Eugene "Gino" Fimbianti, a Joliet, Illinois-based criminal defense attorney, was a police officer in Indianapolis and the Chicago area for 23 years until 2011. He said his former job requires innate calm under pressure.

As an officer on Chicago's North Side, Fimbianti responded to a call of a man with a gun. He approached the man and told him to put his hands up. When the man stalled, Fimbianti drew his gun.

"I kept yelling at him not to take the gun out of his waist band, and he just did it right in front of me," Fimbianti said.

But for a reason he says he can't quite describe—it was something about the look on the man's face—Fimbianti held his fire. The man threw the gun on the ground, turned and ran, only to be chased down by Fimbianti and his partner.

"Everything I know about the law today tells me I was absolutely justified in the law to shoot at him," Fimbianti said. "Technically, should I have fired? I don't know. It was something about his mannerisms, so I didn't do it. Then again, if I was wrong, I would be dead. My wife would be a widow and my kids would grow up without me. I can't look back and say it's clear that I made the right decision. But those are the kinds of decisions officers have to make all the time."

Fimbianti said he never saw a white officer "with an intent to grind an axe against one race or another." He said the shootings that have taken place are more likely a result of hiring processes that don't do enough to weed out officers who can't handle high-stress situations.

Commenting on the video of the aftermath of Philando Castile's shooting, Fimbianti said, "I don't know what happened, but I can tell he had that extreme stress. When you get to that point, you're not thinking with that critical part of your brain anymore."

"If you can't maintain composure and really critically look at very high-stress situations, then you're going to make a mistake and pull the trigger," Fimbianti said.

A summer associate at an Am Law 100 firm who asked not to be identified because he didn't have his firm's permission, said the death of Philando Castile in Minneapolis brought to mind traffic stops he has made as an officer in Virginia, which also has open carry laws.

"If I'm conducting a police operation, and I come across someone who's open carry, it certainly increases the tension," he said. "You have no idea what's going to happen. Most of time they will tell you they have a license to open carry. And I have a line that I use, 'I notice you have a gun on your hip, if you don't touch your gun we'll be fine.'"

The tension of the moment may be a factor in many of these police-involved shootings, but that doesn't explain all of it, some said.

Johnson, the former Philadelphia police officer, said systemically law enforcement has operated with a tolerance for roughness, and the impression that police officers have to be rough in order to do their jobs. More experienced officers often learn to "put your pistol away and talk things out," he said, but younger cops may think they are supposed to be rough.

"There has been a turn a blind eye and acceptance of violence in local policing," Johnson said. But, he added, this has not been the case in higher income places.

Johnson said he noticed a change in himself while he was a police officer, although he said he might not have fully understood it before he changed his career. He said police departments have often

looked to hiring changes to approach their problems.

"You can hire all the sisters and the fathers from the convent. I'm telling you that the institution of policing, after you do it for a while, tends to lend itself toward a shift in even the most decent man's thinking," he said. "I lived it. It happened to me."

And, Johnson said, low-income, minority communities are unlikely to report police for roughness because of their experiences. High-income communities are much more likely to report an incident in which a police officer did something wrong, he said.

"It's a circular sort of problem," Johnson said. "We're not telling, they don't know. When they don't know they do nothing about it. And since they do nothing about it, we don't tell."

When asked about possible solutions to this complex problem, most cited the need for community-based policing rather than policing based on driving statistics, like arrests, as well teaching officers how to de-escalate tense encounters and driving out institutional racism.

Bryan DePowell, a Harrisburg, Pennsylvania, criminal defense attorney who was a police officer in northeast Pennsylvania for 10 years, said there was a major push made during his law enforcement career for programs that encouraged police officers to interact with members of the community during foot patrols.

DePowell said he found those programs to be effective but is seeing law enforcement agencies curtailing them recently.

"I think they're moving away from that primarily for officer safety," he said, adding, "I hold the chiefs in the upper echelons of these departments directly responsible for" failing to implement those programs.

The goal of those programs was to help police officers and members of the communities they serve to better understand each other.

Patrick McGeehan, a former homicide detective who now runs a Miami, Florida, criminal defense and family law practice the legal community, said better communication is crucial and that attorneys, particularly those with a police background, can help control violence by starting a dialogue around police shootings and any individual or institutional racism involved.

"I see both sides now," he said. "Policemen aren't educated, policemen are trained. When you're trained, you're taught to recognize scenarios. When you recognize a scenario that you've been trained on, you act upon it based on your training."

McGeehan agreed that community-focused policing, like the patrolling he did in the 1980s in predominantly black areas of south Miami-Dade County, might help. He said he believes many police departments are only focused on more measurable success benchmarks, such as number of arrests or citations.

DePowell and others also advocated better training for police officers in verbally de-escalating tense situations, but some said that's not enough.

Burris said addressing police violence toward blacks will take more than just training about confrontation and de-escalation, and must include real efforts to address engrained biases towards blacks among police.

If a lack of accountability for law enforcement has been part of what's kept those biases alive, the ubiquity of cellphone cameras could have a profound effect, many said.

Gregory Cerritelli, of Knight & Cerritelli in New Haven, Connecticut, is a former police officer and police commissioner. Cerritelli said he believes the police's actions have not changed; simply the technology has caught up with the bad ones and changed perception.

"I think what you're seeing now is the fact that you have camera phones capturing police interaction with people," said Cerritelli. "Oftentimes police had the benefit of the doubt in these shooting cases. For that reason they were never prosecuted. But now you're seeing it with your own eyes and it's really changed the public's perception of how policing is being done."

Manhattan attorney Edgar De Leon, 61, a former detective-sergeant with the New York City Police Department, called cellphone videos of police shootings "a game-changer," but cautioned they may also be having the effect of inflaming tensions even further.

"[P]eople are seeing things they've never seen before," he said. "There's this sense there's a lack of accountability and this sense that if you're in fear that you're justified in taking any actions."

*ALM staff reporters Rebecca Baker, Ben Hancock, Celia Ampel, Christian Nolan, Zack Needles and Mark Hamblett contributed to this report.*

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