



By Mark A.
Cunningham

Civil Discourse and the Role of the Profession in Public Policy

I am deferring my President's Message until the next issue to allow for the publication of the essay below from Roger A. Stetter. Mr. Stetter is an active volunteer for the Senior Lawyers Division, and he has had a distinguished career as a law professor and trial attorney. So when Mr. Stetter could not find a home for his essay, I asked for it to be published here.

In his essay, Mr. Stetter takes on the difficult issue of race in America and its role in recent events surrounding controversial shootings in South Carolina, Ferguson, Mo., and elsewhere. He argues that society should re-examine law enforcement policies on the use of deadly

force and police officer training. Some members may have different views on how best to protect the safety of police officers while at the same time respecting individual rights. The role of the LSBA is not to answer these questions or take sides in the debate, but rather to promote civil discourse within the legal profession.

In that spirit, I encourage members to speak out on public policy issues impacting the rule of law. Write to the *Louisiana Bar Journal* editor or the editor of your local newspaper. Run for political office. In 1978, the *Louisiana Law Review* published an article discussing the role of lawyers in the Louisiana Legislature, noting that lawyers represented the largest single

occupational group in the Legislature and generally comprised more than 30 percent of its members. Patrick F. O'Connor, *et al.*, "The Political Behavior of Lawyers in the Louisiana House of Representatives," 39 La. L. Rev. 43 (1978). Lawyers continue to play a significant role in the Louisiana Legislature, but their voices are increasingly drowned out by others who do not share the same commitment to civility and professionalism. Over time, the legal profession will surely help reinstitute civility in the political process but only if members take the time to share their points of view.

Here is what one member had to say:

It's Time to Review Deadly Force Policies and at the Same Time Fund Better Training and Compensation for Law Enforcement

By Roger A. Stetter

A spate of recent police shootings of unarmed African-American men — most notably of a man in South Carolina who was pulled over for a broken tail light and shot repeatedly in the back while running away from a police officer — has focused national attention on the use of deadly force by law enforcement officers.¹

Police work is dangerous, especially when millions of people are carrying handguns and ready to use them at the drop of a hat.² But we are left trying to understand how a minor infraction or mere suspicion of criminal activity often escalates into a deadly confrontation, and why police officers are not better trained to avoid the use of lethal force unless it is absolutely necessary.

Remarkably, there is no comprehen-

sive data base on the number of police homicides and a majority of police departments do not file fatal police shooting reports at all.³ However, we do know that young African-American males are at far greater risk of being shot dead by police than their white counterparts — 21 times greater, according to a recent study of federally collected data on fatal police shootings.⁴

Unfortunately, running from the police has become a way of life among young African-American men in heavily policed neighborhoods. Some flee because they are in possession of drugs, others because they are afraid that the police might rough them up during random stops, even if they do not try to escape.⁵ Mutual suspicion and distrust between young African-American

men and law enforcement officers lead all too often to fatalities.

In *Tennessee v. Garner*, 471 U.S. 1 (1985), the Supreme Court held that when a law enforcement officer is pursuing a fleeing suspect, he or she may not use deadly force to prevent an escape unless "the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others." The Court's ruling sounds reassuring. However, it provides no practical guidance on when police officers should chase people or draw their guns, and when they should back away, wait or try to defuse the situation.

Curbing police shootings requires a re-examination of deadly force policies and a serious investment in police recruitment,

training and retention. Police training in the use of deadly force is woefully inadequate. The lion's share of police budgets goes to salaries and equipment with almost nothing left for training. A Justice Department report on the Philadelphia Police Department states that police officers' firearms training focuses more on target practice and less on the police department's policies about when officers can fire their weapons.⁶ The average police training in the United States is 15 weeks and, in most police departments, the only criteria for new recruits are a GED and the non-use of drugs during the previous three years.⁷ The South Carolina police officer who shot an unarmed African-American man in the back was allowed to stay on the force despite a 2013 complaint that he used excessive force against another unarmed African-American man.⁸

The role of police in a free society is to enforce the law in a manner that is fair and just to all people and to only use deadly force as a last resort. But this requires an investment in proper education and training of police officers as well as generous

pay for the men and women who risk their lives to protect us from harm. Whether or not the necessary investment will be made to achieve proper community policing in the United States remains an open question.

FOOTNOTES

1. The police shooting in South Carolina came on the heels of a rash of similar incidents over the past year, including the shooting of Michael Brown, an unarmed African-American teenager, in Ferguson, Mo. The Ferguson police officer has been cleared of any wrongdoing. However, the South Carolina shooting was captured on video by a bystander and the police officer has been indicted for murder. Alan Blinder and Timothy Williams, "Ex-South Carolina Officer Is Indicted in Shooting Death of Black Man," *New York Times* (June 9, 2015), at A12. This is one of the few times an offending officer has been charged with a crime.

2. Approximately 21 million background checks were conducted for gun sales in the United States in 2013. Katie Pavlich, "Gun Sales Set New Record," *Townhall.com* (Jan 7, 2014).

3. The FBI maintains a Uniform Crime Reporting Program which relies on law enforcement agencies to voluntarily submit crime reports. This database only includes justifiable homicides.

4. Ryan Gabrielson, *et al.*, "Deadly Force, in

Black and White," *ProPublica* (Oct. 10, 2014).

5. John Eligon, "For Some, Running from Police Is the Norm, Some in Baltimore Say," *New York Times* (May 11, 2015) at A10. FBI reports filed for the years 2010 to 2012 indicate that of 15 teenagers shot fleeing arrest, 14 were African-American. A recent study by the American Society of Criminology found that over a 10-year period in which St. Louis police fired their weapons, more than 90 percent of their targets were African-American. Michael Wines, "Are Police Bigoted?," *New York Times* (Aug. 30, 2014).

6. Gene Demby, "Takeaways from The Federal Report on Deadly Force By Philadelphia Cops," *www.npr.org* (March 25, 2015).

7. Paul Waldman, "Expert: U.S. Police Training in Use of Deadly Force Woefully Inadequate," *The American Prospect* (Aug. 27, 2014), available at <http://prospect.org>.

8. Michael Slager, "Cop Who Killed Unarmed Black Man Walter Scott Had Prior Excessive Force Complaint," *Huffington Post* (April 9, 2015). On June 9, 2015, a grand jury indicted him for murder.

Roger A. Stetter, a graduate of Cornell and UVA Law School, is a trial lawyer in New Orleans, a Lifetime Member of the American Law Institute, and a former member of the LSU Law School faculty. He has several books in print, including Louisiana Civil Appellate Procedure; In Our Own Words: Reflections on Professionalism in the Law; and Louisiana Environmental Compliance. (rastetter@bellsouth.net; Ste. 1334, 228 St. Charles Ave., New Orleans, LA 70130)



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