

is you don't understand being black in America and you instinctively under-estimate the level of discrimination and the level of additional risk." But one should also acknowledge, as Gingrich did, that, from the perspective of the police, "[e]very time you walk up to a car you could be killed. Every time you go into a building where there's a robbery you can be killed."⁷ The hateful rhetoric quoted above only serves to incite violence, and, to put it mildly, generates more heat than light.

Yet some elected officials act more like rabble-rousing community organizers fanning the flames of racial tension, perhaps inadvertently, rather than acting like responsible public officials seeking to restore calm and respect for law and order.⁸ Racial tensions in this country are clearly on the rise. A new Rasmussen poll indicates that 60% of likely voters think race relations have gotten worse since Barack Obama became president, up from 42% in late 2014,⁹ and African Americans are far more likely to believe that they are treated unfairly by the police than whites.¹⁰

While, no doubt, there may be some police officers who harbor racist thoughts and tendencies—which is likely the case with every profession—that number is, I strongly suspect, very small and diminishing rapidly over time. And, of course, some police officers do engage in misconduct, occasionally with deadly consequences. Earlier this year, five New Orleans police officers pleaded guilty in connection with the killings that took place on Danziger Bridge in the aftermath of Hurricane Katrina (including one officer who pleaded guilty to covering up the misdeeds),¹¹ and video footage showed a South Carolina police officer shooting and killing a clearly unarmed man who was running away from him.¹²

And many people (black and white) can recount stories in which they were treated rudely, perhaps unjustifiably so, by police officers. Do BLM protestors have a point? Yes, although their tactics and rhetoric are often inconducive to fostering improved relations between the police and the communities they serve. Clearly some police officers have reacted to tense situations with excessive force, most likely the result of inadequate training¹³ rather than racism, which sometimes results in a tragic outcome. Of course, when police officers do use excessive force or commit an unjustified homicide, the matter should be investigated, with officers encouraged to come forward to say what happened, which may require something of a cultural change within the law enforcement community. And there should be consequences, up to and including criminal prosecution against those involved and those who attempt to cover up what happened, as happened recently in New Orleans and in New York City in the Abner Louima case.¹⁴

To hear some protestors, though, one would think that most police officers are card-carrying members of the Ku Klux Klan who run around indiscriminately shooting young black men. Indeed, every incident in which a black citizen is shot by a white police officer becomes part of the ongoing narrative of racist-cops-running-rampant, even when it is definitively established beyond peradventure that the shooting was justified, as was the case when Officer Darren Wilson shot Michael Brown in Ferguson, Missouri. Long after it was clear that Brown had attacked Wilson and was grabbing for his gun and that the whole "Hands up, don't shoot!" story was built on a pack of lies,¹⁵ Officer Wilson was drummed out of the police force,¹⁶ Jesse Jackson decried the fact

7 Eugene Scott, *Newt Gingrich: 'Normal white Americans ... don't understand being black in America,'* CNN (July 8, 2016), available at <http://www.cnn.com/2016/07/08/politics/newt-gingrich-white-americans/>.

8 Liz Peek, *How Obama's Support of Black Lives Matter Deepens the Racial Divide*, THE FISCAL TIMES (July 13, 2016), available at <http://www.thefiscaltimes.com/Columns/2016/07/13/How-Obama-s-Support-Black-Lives-Matter-Deepens-Racial-Divide>; Dave Boyer, *Obama defends Black Lives Matter protests at police memorial in Dallas*, WASHINGTON TIMES (July 12, 2016), available at <http://www.washingtontimes.com/news/2016/jul/12/obama-defends-black-lives-matter-protests-police-ml>; Justin Fenton, *Stat's Attorney Marilyn Mosby assails police, pledges to pursue reforms*, BALTIMORE SUN (July 27, 2016) (video starts automatically when page opens), available at <http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-ci-mosby-dropped-charges-20160727-story.html>; Mara Gay and Zolan Kanno-Youngs, *Mayor Bill de Blasio's Comments on Shootings Draw Criticism From Police Union*, WALL STREET JOURNAL (July 7, 2016), available at <http://www.wsj.com/articles/mayor-bill-de-blasios-comments-on-shootings-draw-criticism-from-police-union-1467940940>.

9 *60% Say Race Relations Have Gotten Worse Since Obama's Election*, RASMUSSEN REPORTS (July 19, 2016), available at http://www.rasmussenreports.com/public_content/politics/current_events/social_issues/60_say_race_relations_have_gotten_worse_since_obama_s_election.

10 *Views on Police Discrimination Little Changed Since Ferguson*, RASMUSSEN REPORTS (July 14, 2016), available at http://www.rasmussenreports.com/public_content/lifestyle/general_lifestyle/july_2016/views_on_police_discrimination_little_changed_since_ferguson.

11 Bill Chappell, *5 Former New Orleans Police Officers Plead Guilty Over Danziger Bridge Killings*, NPR (April 20, 2016), available at <http://www.npr.org/sections/thetwo-way/2016/04/20/474973779/5-former-new-orleans-police-officers-enter-guilty-pleas-over-danziger-bridge-kill>.

12 The graphic video is available at <https://www.youtube.com/watch?v=fg3Gr>

[FR2wiQ&oref=https%3A%2F%2Fwww.youtube.com%2Fwatch%3Fv%3Dfg3GrFR2wiQ&has_verified=1](https://www.youtube.com/watch?v=fg3Gr).

13 Wesley Lowery, Kimberly Kindy, Keith L. Alexander, Julie Tate, Jennifer Jenkins, Steven Rich, *Distraught People, Deadly Results*, THE WASHINGTON POST (June 30, 2015), available at <http://www.washingtonpost.com/sf/investigative/2015/06/30/distraught-people-deadly-results/>; Phillip Swarts, *Police need better training and community relations, presidential task force is told*, THE WASHINGTON TIMES (Jan. 13, 2015), available at <http://www.washingtontimes.com/news/2015/jan/13/police-brutality-solutions-are-training-community-/>; Timothy Williams, *Long Taught to Use Force, Police Warily Learn to De-escalate*, NEW YORK TIMES (June 27, 2015), available at http://www.nytimes.com/2015/06/28/us/long-taught-to-use-force-police-warily-learn-to-de-escalate.html?_r=0; Leila Atassi, *Lawsuits against city of Cleveland blame poor training for police use of excessive force: Forcing Change*, CLEVELAND.COM (Jan. 27, 2015), available at <http://www.cleveland.com/forcing-change/index.ssf/2015/01/lawsuits-against-city-of-cleve.html>.

14 Sewell Chan, *The Abner Louima Case, 10 Years Later*, NEW YORK TIMES (Aug. 9, 2007), available at <http://cityroom.blogs.nytimes.com/2007/08/09/the-abner-louima-case-10-years-later/>.

15 *Department of Justice Report Regarding The Criminal Investigation Into The Shooting Death Of Michael Brown By Ferguson, Missouri Police Officer Darren Wilson*, DEPARTMENT OF JUSTICE (March 4, 2015), available at https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj_report_on_shooting_of_michael_brown_1.pdf.

16 Jake Halpern, *The Cop*, THE NEW YORKER (Aug. 10, 2015), available at <http://www.newyorker.com/magazine/2015/08/10/the-cop>; John Bacon, *Darren Wilson: Ferguson made me unemployable*, USA TODAY (Aug. 4, 2015), available at <http://www.usatoday.com/story/news/nation/2015/08/04/darren-wilson-ferguson-shooting-made-him-unemployable/3109761/>.

that Brown’s “killer walked away,”¹⁷ and Michael Brown’s mother (whose personal grief is, of course, understandable) was invited to the stage at the Democratic National Convention.¹⁸

Mac Donald chronicles the events in Ferguson, including the ensuing riots, which have been repeated to devastating effect in other cities following police-citizen confrontations. She argues that the increasing hostility toward—and murder of—police officers has led to a “Ferguson Effect” in which police officers in some communities are standing down by cutting back on proactive policing particularly in high crime areas out of fear for their safety or of being falsely accused of racism, which is, in turn, leading to more crime.¹⁹

While some question whether the Ferguson Effect is real,²⁰ there is considerable support for the phenomenon. As a veteran Boston police officer recently stated, “Sometimes we feel like our hands are tied behind our backs and people are out to get us.”²¹ Although reluctant to use the term “Ferguson Effect,” FBI Director James Comey admitted to being deeply concerned about the uptick in violence in many of our inner cities and stated that he has “a strong sense that some part of the explanation is a chill wind blowing through American law enforcement over the last year. And that wind is surely changing [police] behavior.”²² After analyzing data from ten cities that saw a 33% increase in homicides in 2015 and which have large African American populations, Richard Rosenfeld, a well-respected criminologist who was initially skeptical of the existence of the Ferguson Effect, now says that “[t]he only explanation that gets the timing right is a version

of the Ferguson effect,” which is now his “leading hypothesis” to explain the dramatic increase in crime.²³

Are law enforcement officers nervous? No doubt, and for good reason. Tensions are high. According to Donald Mihalek of the Federal Law Enforcement Officers Association, forensic studies have established that a suspect with a gun in his waistband can draw and fire his weapon in 0.8 seconds, faster than the time it takes for an officer to respond.²⁴ Moreover, Mac Donald contends, “an officer’s chance of getting killed by a black assailant is 18.5 times higher than the chance of an unarmed black person getting killed by a cop.”²⁵ When police officers in tense and unknown circumstances hesitate to act, they die.²⁶

Fearing for their safety, officers in major cities are increasingly patrolling in pairs,²⁷ and in Baltimore, where crime rates

17 Video available at <http://video.foxnews.com/v/5029892075001/rev-jesse-jackson-theres-a-backlog-of-pain-in-america/?sp=show-clips>.

18 Chuck Raasch and Christine Byers, *Michael Brown’s mother appears at Democratic National Convention, prompting police ire*, ST. LOUIS POST-DISPATCH (July 27, 2016), available at http://www.stltoday.com/news/local/metro/michael-brown-s-mother-appears-at-democratic-national-convention-prompting/article_4b4e6e1a-55c7-5267-828a-e74472b0a7ee.html.

19 It is worth noting that some see this as a positive development. See *Moving Past ‘Broken Windows’ Policing*, NEW YORK TIMES (Aug. 10, 2016), available at <http://www.nytimes.com/2016/08/10/opinion/moving-past-broken-windows-policing.html>.

20 See, e.g., Kali Holloway, *There is no Ferguson effect: New Data confirm the war on police is a right-wing myth*, SALON (May 27, 2016), available at http://www.salon.com/2016/05/27/the_war_on_police_is_a_myth_new_data_thoroughly_debunk_a_noxious_right_wing_talking_point_partner/; Allen Steinberg, *The persistent myth of the ‘Ferguson effect’*, REUTERS (Jan. 18, 2016), available at <http://blogs.reuters.com/great-debate/2016/01/18/the-persistent-myth-of-the-ferguson-effect/>; Leon Neyfakh, *There Is No Ferguson Effect*, SLATE (Nov. 20, 2015), available at http://www.slate.com/articles/news_and_politics/crime/2015/11/ferguson_effect_it_s_not_real_but_urban_murder_spikes_are.html.

21 Nestor Ramos, *In Dallas’ wake, fear among local officers*, BOSTON GLOBE (July 9, 2016), available at https://www.bostonglobe.com/metro/2016/07/09/dallas-wake-fear-force/Zboyin6kmCaLDn2w9NwRaN/story.html?comments=all&sort=NEWEST_CREATE_DT.

22 Law Enforcement and the Communities We Serve: Bending the Lines Towards Safety and Justice, Remarks of FBI Director James B. Comey at University of Chicago Law School (October 23, 2015), available at <https://www.fbi.gov/news/speeches/law-enforcement-and-the-communities-we-serve-bending-the-lines-toward-safety-and-justice>.

23 Lois Beckett, *Is the ‘Ferguson effect’ real? Researcher has second thoughts*, THE GUARDIAN (May 13, 2016), available at <https://www.theguardian.com/us-news/2016/may/13/ferguson-effect-real-researcher-richard-rosenfeld-second-thoughts>.

24 Donald J. Mihalek, *Use of Force vs. Use of Farce*, THE DAILY CALLER (July 25, 2016), available at <http://dailycaller.com/2016/07/25/use-of-force-vs-use-of-farce/>. In some police academies, officers are still taught the “21 Foot Rule” (sometimes referred to as the “Tueller Drill” after the man who devised it, Lt. John Tueller), which provides that an average person with a knife can cover a distance of 21 feet in the time it would take a police officer to recognize the threat, unholster his weapon, and fire at the assailant, although some have questioned the wisdom and validity of this training technique. See Ron Martinelli, *Revisiting the ‘21-Foot Rule’*, POLICE (Sept. 18, 2014), available at <http://www.policemag.com/channel/weapons/articles/2014/09/revisiting-the-21-foot-rule.aspx>.

25 To view a disturbing montage of police officers being shot by assailants of different races, see <https://www.youtube.com/watch?v=q-PnrtUPPUs>.

26 To those who believe that police officers have particularly itchy trigger fingers when confronting African Americans, research suggests that, in fact, if anything, officers take longer to shoot black suspects than they do to shoot white or Hispanic suspects. Lois James, David Klinger, and Bryan Vila, *Racial and ethnic bias in decisions to shoot seen through a stronger lens: experimental results from high-fidelity laboratory simulations*, JOURNAL OF EXPERIMENTAL CRIMINOLOGY (May 2014), available at https://www.researchgate.net/publication/269354127_Racial_and_ethnic_bias_in_decisions_to_shoot_seen_through_a_stronger_lens_Experimental_results_from_high-fidelity_laboratory_simulations. Moreover, research indicates that white officers have lower “threat perception failures” (perceiving that a suspect is armed when he is not) than black or Hispanic officers when it came to confronting black suspects. George Fachner and Steven Carter, *An Assessment of Deadly Force in the Philadelphia Police Department*, Report by the Department of Justice’s Office of Community Oriented Policing Services and CNA (April 2015), available at <http://ric-zai-inc.com/Publications/cops-w0753-pub.pdf>. Research also indicates that, if anything, police officers are less trigger happy than members of the affected communities when it comes to making shoot-don’t-shoot decisions, especially when the suspect is African American. Joshua Correll, Bernd Wittenbrink, Tracie Keese, Bernadette Park, Charles M. Judd, and Melody S. Sadler, *Across the Thin Blue Line: Police Officers and Racial Bias in the Decision to Shoot*, JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY, 2007, Vol. 92, No. 6, 1006-1023, abstract available at <http://www.ncbi.nlm.nih.gov/pubmed/17547485>.

27 Sadie Gurman, *Police Across US Patrolling in Pairs After Ambush Attacks*, PROVIDENCE JOURNAL (July 19, 2016), available at <http://www.providencejournal.com/news/20160719/police-across-us-patrolling-in-pairs-after-ambush-attacks>; Kelly Cohen, *Police officers in major U.S. cities to patrol in pairs*, WASHINGTON EXAMINER (July 8, 2016), available at <http://www.washingtonexaminer.com/police-officers-in-major-u.s.-cities-to-patrol-in-pairs/article/2595982>.

have shot through the roof (murders have increased by 63% in 2015), police officers have quit in large numbers.²⁸ Who can blame them? Through August 1, 2016, firearms-related killings of law enforcement officers are up a staggering 70% over this period last year (from 20 to 34)²⁹ and ambush killings are up nearly 400% (3 to 14),³⁰ according to data compiled by the National Law Enforcement Officers Memorial Fund. In 2014, law enforcement officers were assaulted 15,725 times, resulting in 13,824 injuries;³¹ those numbers are likely up too this year. While these figures have been worse in years past,³² they are, nonetheless, deeply disturbing. And while there may be other factors contributing to the recent upsurge in violent crime—such as the heroin epidemic and the violence that has ensued as Mexican drug cartels and affiliated gangs compete for new customers and territories³³—any hesitancy by police officers to engage in discretionary proactive law enforcement efforts will only serve to exacerbate an already bad situation.

Unfortunately, the facts seem to bear this out. Homicide rates in 56 large U.S. cities were up approximately 17% in 2015 over 2014 (much more in some cities), the largest increase in a quarter century.³⁴ Homicide rates have continued to rise at an alarming rate during the first half of 2016; they are up another 15% in 51 large cities that have reported data, according to the Major Cities Chiefs Association.³⁵ While some cities, such as Milwaukee, have seen declines, others such as Chicago have

seen dramatic increases (316 homicides in the first half of 2016, compared to 211 in the first half of 2015).³⁶ And it's not just homicides that are up in the first half of this year; there have been more than 600 more non-fatal shootings, over 1,000 more robberies, and nearly 2,000 more aggravated assaults compared to the first half of last year.³⁷ Again, violent crime rates are still substantially below where they were in the 1960s through the early 1990s, but this reversal is quite dramatic, and the trend is quite alarming. What is needed to combat crime in communities of color is *more* of a police presence, not less.

If the body count is racking up in many of our inner cities, it is not because police officers are wantonly shooting black people; it is because black people, predominantly black men, are shooting each other. As Mac Donald correctly notes, “young black men commit homicide at nearly ten times the rate of young white and Hispanic males combined,” and their victims are overwhelmingly other black residents who live in their communities. In Chicago, for instance, in 2015, 2,460 African American people were shot (nearly seven each day), compared to only 78 white people (one every 4.6 days); in 2011 (the last year for which data was released by the Chicago police), 71% of those committing murder were black and 75% of murder victims were black.³⁸ Homicide is now the number one cause of death among African Americans between the ages of 1 and 44.³⁹ And, Mac Donald adds, “until the black crime rate comes down, police presence is going to be higher in black neighborhoods, increasing the chance that when police tactics go awry, they will have a black victim.”

As Mac Donald points out, nobody on the Left seem to want to talk about how the crime problem in our inner cities has been exacerbated by, among other things, rampant drug use, high dropout rates, and the breakdown of the family structure, where over 70% of African American children are now born to single mothers.⁴⁰ Mac Donald also notes that nobody wants to talk about the fact that the people who benefit the most from aggressive policing are law-abiding African Americans who live in the inner cities and are trying to lead decent lives, but are afraid to go out at night, let their children play outside, or go to work. These same people also lose much-needed goods, services, and jobs because entrepreneurs refuse to open businesses in crime-plagued communities; as Mac Donald reminds us, “Lowered crime is a

28 Blake Neff, *Cops Quit Baltimore Force In Droves While Murder Soars*, DAILY CALLER (July 7, 2016), available at <http://dailycaller.com/2016/07/07/cops-quit-baltimore-force-in-droves-while-murder-soars/>.

29 *Preliminary 2016 Law Enforcement Officer Fatalities*, National Law Enforcement Officers Memorial Fund (as of Aug. 1, 2016), available at <http://www.nleomf.org/facts/officer-fatalities-data/>.

30 *Latest Memorial Fund Fatalities Report*, National Law Enforcement Officers Memorial Fund (as of Aug. 1, 2016), available at <http://www.nleomf.org/facts/research-bulletins/>; *2016 Mid-Year Enforcement Officer Fatalities Report*, National Law Enforcement Officers Memorial Fund (as of Aug. 1, 2016), available at <http://www.nleomf.org/assets/pdfs/reports/2016-Mid-Year-Officer-Fatalities-Report.pdf>.

31 *Law Enforcement Facts*, National Law Enforcement Officers Memorial Fund (as of Aug. 1, 2016), available at <http://www.nleomf.org/facts/enforcement/>.

32 *Officer Deaths by Year*, National Law Enforcement Officers Memorial Fund (as of Aug. 1, 2016), available at <http://www.nleomf.org/facts/officer-fatalities-data/year.html>.

33 See Richard Rosenfeld, *Documenting and Explaining the 2015 Homicide Rise: Research Directions*, NATIONAL INSTITUTE OF JUSTICE (June 2016), available at <https://www.ncjrs.gov/pdffiles1/nij/249895.pdf>; Sean Kennedy, *Is heroin behind the crime spike? New evidence suggests so*, AMERICAN ENTERPRISE INSTITUTE (June 27, 2016), available at <https://www.aei.org/publication/is-heroin-behind-the-crime-spike-new-evidence-suggests-so/>.

34 Rosenfeld, *supra* note 32.

35 Zusha Elinson, *Murders Rise in 29 of Largest U.S. Cities in First Half of 2016*, WALL STREET JOURNAL (July 25, 2016), available at <http://www.wsj.com/articles/murder-rate-rises-in-29-of-largest-u-s-cities-in-first-half-of-2016-1469485481>. See also Derek Hawkins, *Monday was Chicago's worst day in more than a decade for homicides, with 9 people fatally shot*, THE WASHINGTON POST (Aug. 10, 2016), available at <https://www.washingtonpost.com/news/morning-mix/wp/2016/08/10/nine-people-fatally-shot-in-chicago-marking-citys-deadliest-day-in-more-than-a-decade-10-more-wounded/>.

36 *Id.*

37 Wesley Bruer, *Violent crime rising in US cities, study finds*, CNN (July 26, 2016), available at <http://www.cnn.com/2016/07/25/politics/violent-crime-report-us-cities-homicides-rapes/>.

38 Devin Foley, *Chicago: 75% of Murdered are Black, 71% of Murderers are Black*, INTELLECTUAL TAKEOUT (July 27, 2016), available at <http://www.intellectualtakeout.org/blog/chicago-75-murdered-are-black-71-murderers-are-black>.

39 Dhruv Khullar and Anupam B. Jena, *Homicide's Role in the Racial Life-Expectancy Gap*, WALL STREET JOURNAL (April 27, 2016), available at <http://www.wsj.com/articles/homicides-role-in-the-racial-life-expectancy-gap-1461797871>.

40 Births: Final Data for 2014, National Vital Statistics Reports, Vol. 64, No. 12 (Dec. 23, 2015), at page 7 & Table 115, available at http://www.cdc.gov/nchs/data/nvsr/nvsr64/nvsr64_12.pdf. That is the nationwide average; the numbers are much higher in some of our inner cities, where supportive fathers seem scarce.

precondition to economic revival, not its consequence.” Any dialogue between the police and local community leaders ought to acknowledge and address these issues too if any real progress is likely to occur.

The War on Cops is not without its flaws. There were times (several actually) where I found Mac Donald’s rhetoric too acerbic, and she makes some arguments with which I am sympathetic but not in complete agreement. For example, she is vehemently opposed to the criminal justice reform movement (“America does not have an incarceration problem; it has a crime problem.”), whereas I have written⁴¹ and spoken⁴² in favor of some forms of criminal justice reform. Mac Donald states that those who favor criminal justice reform do so because they contend, falsely, that our country has a “mass incarceration” problem or because the criminal justice system is suffused with racism—neither of which I believe. Nonetheless, Mac Donald’s views on this topic, as on all others she covers, are as thoughtful and articulate as they are provocative.

Law enforcement officers have a difficult and dangerous job to do. As former President George W. Bush said at the recent memorial service honoring the five slain Dallas law enforcement officers, “Most of us imagine if the moment called for [it], that we would risk our lives to protect a spouse or a child. Those wearing the uniform assume that risk for the safety of strangers. They and their families share the unspoken knowledge that each new day can bring new dangers.”⁴³

We should never forget it and should honor and support those whose job it is “to swallow the sorrows of humanity—from the banal to the truly tragic—and to return to work the next day and do it all over again.”⁴⁴ As Heather Mac Donald points out time and again in *The War on Cops*, things are bad. They could, however, get much worse. After all, Mac Donald notes, “The trend of increasing crime rests on firmer statistical evidence than does the claim that we are living through an epidemic of racist police killings.”

41 John G. Malcolm, *Criminal Justice Reform at the Crossroads*, TEXAS REVIEW OF LAW & POLITICS, Vol. 20, No. 2, pgs. 249-293 (Spring 2016), available at http://trolp.org/wp-content/uploads/2016/06/FINAL-FORMAT-Malcolm_Website-1.pdf.

42 John G. Malcolm, *Criminal Justice Reform*, Testimony before the Committee on Oversight and Government Reform, U.S. House of Representatives (July 15, 2015), available at <https://oversight.house.gov/wp-content/uploads/2015/07/Malcolm-Heritage-Statement-7-15-Criminal-Justice-II-COMplete.pdf>.

43 *George W. Bush’s Remarks at Dallas Memorial Service*, U.S. NEWS & WORLD REPORT (July 12, 2016), available at <http://www.usnews.com/news/articles/2016-07-12/transcript-george-w-bushs-remarks-at-dallas-memorial-service>.

44 Graham Campbell, *Why Cops Like Me Are Quiet*, BUZZFEED NEWS (May 6, 2015), available at https://www.buzzfeed.com/dreamworks/why-cops-like-me-stay-quiet-about-police-brutality?utm_term=.xv4ZMb3.

