

Chicago Daily Law Bulletin®

Volume 163, No. 213

Serving Chicago's legal community for 162 years

New book shines harsh light on necessity of police shootings

In America, there are two ways for the government to kill a person justifiably. The first is through use of the death penalty. In the last four decades, there have never been more than 100 executions in any given year; in 2015, there were 28. It goes without saying that the subject of capital punishment in America has spawned literally thousands of reports and studies over the years.

The second way produces around 1,000 deaths a year — almost 40 times the number of executions. Yet until recently it attracted almost no scholarly comment or empirical research. These deaths are caused by police use of force in the line of duty.

Franklin E. Zimring, a renowned criminal justice professor at University of California, Berkeley, was troubled by what he characterized as the “nonexistent” analytic and empirical literature in this area. He responded by writing “When Police Kill” (Harvard, 2017), an important new book.

Why the disparity of scholarly attention between these two methods of justified state killing?

Zimring suggests that we tend to view capital punishment as a “system” that can be refined, amended or abolished. Each police killing, however, is seen as a “one-off,” with its justification based entirely on the facts of the individual case. As Zimring expresses it, the police killings every year are simply viewed as “hundreds of unavoidable accidents unrelated to patterns of public choice.”

The lack of information about police killings begins with trying to determine just how many there are each year. Zimring casts grave doubt on federal government statistics that place the number around 500 per year. He compares this with statistics from media outlets such as the Washington Post which peg the total at more than 1,000 yearly. Zimring splits the difference and assumes 1,000 deaths per year.

How does this compare with police killings in other countries? The U.S. rate is 4.6 times that of Canada, 22 times that of Australia, 40 times higher than Germany and more than 140 times the rate of police shooting deaths in England and Wales.

In terms of internal disparity, although African-Americans make up 12.2 percent of the population, they constitute 26.1 percent of those killed by police. In this light, it is irrelevant whether the Michael Brown shooting in Ferguson, Mo., was or was not justified; the shooting itself was the match that ignited a fire that was inevitable.

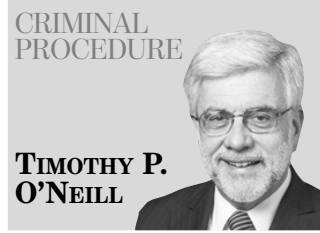
Zimring is by no means saying that all of these 1,000 killings were unjustified. He notes that in 60 percent of these killings, the victim either possessed a gun or a device that looked like a gun. And 91.8 percent of police deaths are indeed caused by firearms.

On the other hand, why were 40 percent of the people killed by police when they were not in possession of something that looked like a gun?

For example, Zimring notes that 16.5 percent of those killed by police possessed knives instead of guns. Zimring presents statistics on just how dangerous knives are to police safety. He found that

from 2008 to 2013, a knife was responsible in only 0.6 percent of police deaths. He then looked for empirical evidence on how necessary the use of deadly force was in dealing with a person armed with a knife.

Zimring discovered a tenet that has been taught in police safety classes called the “21-Foot Rule.” A Salt Lake City police officer in 1983 wrote that a man armed with



Timothy P. O'Neill is the Edward T. and Noble W. Lee Chair in Constitutional Law for 2014-15 at The John Marshall Law School in Chicago. Readers are invited to visit his Web log and archives at jmls.edu/oneill.

a knife could fatally engage with an officer if he were within 21 feet. This evolved into a heuristic that has been taught to police for decades.

And what is the empirical evidence for this rule supporting the use of deadly force? Zimring found a recent article in the periodical Police Weapons that concluded that “there are no forensically proven facts” that can verify the accuracy of the so-called rule. Thus, almost 1 in 6 of all police killings in a year is predicated on a threat that results in only 0.6 percent of police deaths.

So why has there been so little interest in determining if this heuristic has any basis in reality?

The government simply has no interest in protecting the lives of those who are perceived to be threats to police safety.

Here Zimring gets to the nub of a very inconvenient truth: The government simply has no interest in protecting the lives of those who are perceived to be threats to police safety. On a scale of one to 10, this subject rates a zero.

But Zimring's argument is that there is nothing inconsistent about a policy that strongly protects police under attack while also limiting the use of deadly force

to those cases where it is absolutely necessary.

For example, Zimring examines a Chicago study that found that a shooting by police was almost three times as likely to result in death as a shooting by a civilian. One reason may be the high caliber of all standard issue police firearms.

But a second reason is the number of police shootings in which more than one bullet is fired. The death rate when the police fire a single shot is 20.8 percent; but when multiple shots are fired, the person will probably die (a 51.4 percent death rate). Yet Zimring notes that only rarely does a police department have a protocol on when an officer must stop shooting.

So where do we go from here? Zimring concedes that the existence of 60 million handguns in America makes it unrealistic that we will ever reduce the number of police killings to European levels. Police lives are often at risk.

Yet he contends that individual police department protocols can make a difference.

He argues that departments need to stress that deadly force should not be used just to make an arrest or to prevent an escape; it should be used only where the officer (or an innocent civilian) is immediately threatened with a life-threatening injury.

There is no place for heuristics like the “21-foot rule” that are unsupported by empirical evidence. There should also be a “stop shooting protocol” that stresses that the officer must separately justify every single shot he makes.

The fact that you have the right to fire one shot in self-defense does not provide carte blanche to fire a dozen times.

Zimring contends that these, and other, reforms could potentially cut police killings in half without compromising police safety.

Zimring's book is a challenge to America to finally confront an issue that can no longer be ignored.