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A stacked deck: How police forces get away with killing more than 1,000 Americans a year

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It was a Friday, one of the first days of the school year in 2017, and Gillis was getting ready to leave Pittsfield, Massachusetts. “He was meant to be going up to Boston for work,” Sykes told Insider in a phone interview. The pair had raised three children together – she had two girls from a previous relationship, and he had a daughter. “My children absolutely adored him,” Sykes said. “When Danny was sober, Danny was an awesome person.”

Danny, 36 and white, needed to “get out of his rut” in Pittsfield, where he worked construction after a six-year stint in prison on a drug charge, and moving to Boston would “better his life.” But he’d gone out drinking the night before he was killed, distraught about leaving Sykes and her daughters. He was still drunk when Sykes got home from work around noon the next day. Worse, he’d taken her anxiety medications: Full bottles of Valium, Prozac, and hydroxyzine.

She got him in the car and drove toward her mother’s house, “just to get him out of there.” But he grabbed the steering wheel on the way, trying to crash the car. Then “he ran back to the house, where he found more medicine,” she said. “That’s when I called the police.”

What happened minutes later is the same thing that happens to more than 1,000 Americans each year: Police shot and killed him.

If a civilian shoots and kills someone, they are typically arrested, investigated, and possibly tried for murder.

That’s not what happens to Gillis’s killer. The Pittsfield Police Department said Gillis may have committed “suicide by cop,” blaming him for his own death, and prosecutors found the explanation reasonable. None of the officers involved were charged with a crime.

The legal system stacks the deck in favour of police officers who shoot and kill

Gillis’s case illustrates the layers of legal protection given to police officers who kill civilians.

In Gillis’s case, as with similar ones across the United States, the police cited a familiar reason to justify using deadly force: He had a weapon.

Like one-in-four of those killed annually, Gillis was mentally distraught. “He was suicidal” that day, Sykes said. When the first two officers arrived at his house, he grabbed a knife from the kitchen. But Sykes was able to disarm him. “Here I am, never trained, nothing,” she said.

Gillis ran back inside and got a smaller knife. When he came out again, several other officers were on the scene. They surrounded him in the yard and told him to drop the weapon, video

footage shows. He stumbled, Sykes said, and Officer Christopher Colello shot him seven times in two seconds.

“Gillis suddenly charged at the officers while brandishing a knife,” the Berkshire County District Attorney said. “Colello acted lawfully in defence of his fellow officers.”

Neither Colello nor the Pittsfield Police Department responded to requests for comment.

Gillis’s case was unlikely to result in charges against the officers because federal law justifies deadly force when “a reasonable person would consider [the threat] likely to cause death or serious bodily harm.”

But the “reasonableness” standard is vague and broadly applied when police kill civilians, according to John Riphling, a criminal-justice researcher at Human Rights Watch.

“For practical purposes, it amounts to: They have to be able to describe to convincingly describe a good reason why they used force,” Riphling told Insider. That description can be as simple as showing that “any reasonable officer would have acted the same.”

Because of this vague standard, prosecutors don’t even bother trying the case

Even if a police department doesn’t discipline a police officer for misconduct, prosecutors can still press charges if they believe an officer unjustly killed someone.

But the “reasonableness” standard holds sway over prosecutorial decisions. If a “reasonable officer” can justify the killing, the prosecutor might not bother pressing charges.

The prosecutor’s logic in such cases is that “we are not going to file charges because we’re not sure we’re going to be able to get a conviction,” according to Riphling, who was a trial lawyer for 20 years before joining Human Rights Watch.

There were more than 1,000 “*known* police killings” every year from 2013 through 2019, according to Mapping Police Violence, most of them shootings, according to the Washington Post. Ninety-nine per cent of those cases never resulted in criminal charges.

Officers who shoot and kill civilians are “even more infrequently convicted,” Kristina Roth, a criminal-justice researcher at Amnesty International, said in a phone interview.

“Deadly force should be reserved as a last resort,” Roth said, “and that force should be necessary and proportional.”

“There’s no state that meets [that] standard,” she said.

Even if prosecutors pass on filing charges, special privileges protect police from civil lawsuits

Even if they aren’t being prosecuted, a police officer could be sued for violating civil rights. But a legal doctrine called “qualified immunity” shields officers from most of those lawsuits.

The doctrine, which applies to all government employees, protects them “from harassment, distraction, and liability” when they do their job, Karen Blum, professor emerita at Suffolk University Law School, wrote in the Touro Law Review.

Plaintiffs who successfully argue against the applicability of the doctrine must show that an officer was convicted in a prior case that had “nearly identical facts,” wrote Clark Neily, vice

president for criminal justice at the libertarian Cato Institute and a professor at George Mason University's Antonin Scalia Law School.

It's difficult to meet that requirement. In a country where police disproportionately killed Black people, that means "equal justice under the law doesn't really appear to apply if you are a melanated person," Roth said.

The pursuit of justice is muddled further by other legally unconventional privileges.

"If you shot somebody, they would take you back to the station and put you in a windowless room, and be grilling you immediately before you had a chance to catch a breath and get your story straight," Riphling said.

But for police, Riphling said, "the investigation is generally done to exonerate the officer as opposed to a typical homicide or other crime investigation, where the idea is to prove guilt or gather evidence of guilt."

There are no national standards for keeping police accountable

There is no state in the country where the use of deadly force meets international standards. And nine states do not have any use-of-force statutes at all, [a 2015 Amnesty International report found](#) – including Gillis's state of Massachusetts. In lieu of strict or even comprehensive accountability measures, it's up to police chiefs to bring "any sort of accountability," according to Roth.

"These policies don't come with a ton of accountability," she said, "and it's sort of dependent on the personnel – of who the actual chief is and what they believe conduct should look like in their department."

But [police departments often lie](#) and deceive the public.

After two police officers in Buffalo, New York, pushed an elderly man to the ground and he began bleeding, a spokesperson said he was "injured when he tripped and fell." [Video footage showed that to be false](#), and the spokesperson recanted.

And even when police chiefs want to keep their department accountable by expelling so-called "bad apples," their hands might be tied. In many cities and states, police chiefs must typically act [according to the precedent set by previous expulsions](#). Otherwise, their decision can be appealed and voided. So if their department has meted out lax discipline to an officer, it can become the standard for all future discipline.

Police have broad influence over state and local overseers

The lack of broad standards lets individual police departments decide on policy, procedures, and discipline. What little oversight exists is primarily on the local and state levels. But police have sway over both.

"For example, you don't get to be appointed a judge if you don't have the seal of approval from law enforcement," Riphling said. Local elected officials "get a great deal of support, money, and endorsements from law enforcement, police unions, police chiefs – law enforcement in general. That is particularly powerful in the local races."

Indeed, police unions in some of the biggest cities in the country have spent millions to lobby local and state officials, an analysis by The Guardian found. Over the last 20 years, unions have spent at least \$US64.8 million in Los Angeles, \$US19.2 million in New York City, and \$US3.5 million in Chicago.

That spending can pay off. After Chicago officer Jason Van Dyke shot dead Laquan McDonald, a 17-year-old Black boy, an investigation found that the labour agreements between Dyke's union and the city maintained "a deeply entrenched code of silence" within the Chicago Police Department.

Before killing McDonald in 2017, Dyke was the subject of 20 civilian complaints over 13 years, including eight for excessive use of force. He was not disciplined until a jury found him guilty of murdering McDonald, becoming the first Chicago officer convicted of murder in almost 50 years.

Police killings are not publicly tracked by any government agency

If police departments are going to be held accountable, they need to be transparent, the Amnesty International report argued. But "there are no comprehensive national statistics tracking deaths or injuries at the hands of the police in the USA," the report said, and that's still true five years later.

"The information and data that we largely have is due to what's been reported from news agencies," Roth said, "or organisations like Mapping Police Violence." In the Amnesty report, "we looked at three different websites that were trying to do the same thing," she said. "They came up with different numbers."

Police departments are "highly secretive organisations," Riphling said, and federal oversight does little to shine light on their internal operations. For instance, the Death in Custody Reporting Act, which became law in 2014, requires police departments to share police-killing data with the Attorney General – but the data is not publicized.

"The idea that we have had in law in the US since 2014, something that has literally never been implemented, speaks volumes to me about the country's commitment to solving this problem," Roth said.

Police killings have not declined since the law was passed, data from Mapping Police Violence shows.

'Why is the first resort always the police?'

After Pittsfield police killed Gillis, Sykes wondered why her partner, distraught and intoxicated, was met with lethal violence when he needed help. "He was a person," she said. "His kids are growing up without a father, his mother without a son."

"They could've saved him," she said.

Since the police killing of George Floyd, a Black man, last month, many have called for police departments, whose budgets have ballooned 445% per cent over the last 30 years, to be defunded – and for those funds to be redirected to social and community services. There is growing support for the idea that police departments do not keep communities safe, Riphling said.

“If you’re sending people whose training is command, control, arrest, and force, how does that mesh with someone who’s in a desperate mental state?” he asked. “Why is the first resort always the police, who have this particular orientation and mentality? That’s not a safe thing that improves public safety.”

And police are not fit to de-escalate tense situations where someone may need assistance. Police departments spend an average of 58 hours on gun training and 49 hours on defensive tactics,a 2016 survey found. A total of eight hours are spent on de-escalation, crisis intervention, and electronic control weapons like Tasers. “These de-escalation tactics,” Riphling said, “run so counter to their basic training.”

“Support, care, job training, economic development, schooling, youth programs – all of these things contribute to public safety,” he said. “Maybe we intervene and help people before they’re getting to this point of desperation and crisis.”