



## Can Police Kill at Will? Sure Seems Like It.

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Last week, Bartlesville, Oklahoma, police released [video](#) from a night time SWAT raid on the home of a man suspected of selling marijuana—yes, marijuana—during which officers fatally shot his mother, 72-year-old Geraldine Townsend, after she fired a BB gun at the officers.

As he is being cuffed and dragged from the house, Mike Townsend can be heard pleading with the officers to let him see his dying mother, but they refuse.

In December, Wichita, Kansas, police received what turned out to be a prank call regarding a non-existent hostage situation at the home of Andrew Finch. When the 28-year-old father of two went outside to investigate the flashing emergency lights, SWAT officers yelled at him to “Show your hands” and “Walk this way.”

Seconds later, one of the officers shot and killed him. Andrew Finch was unarmed.

That same month, a six-year-old San Antonio boy was killed by deputies who were shooting at a suspected car thief, also unarmed, on the front porch of the boy’s mobile home.

Two weeks before that, former Mesa County, Arizona, officer Philip Brailsford was acquitted of murder for shooting an unarmed man, Daniel Shaver, as he begged for his life in the hallway of a motel.

And back in July, Justine Damond was shot and killed by a Minneapolis police officer after she called 911 to report a possible sexual assault in the alley behind her house. Damond too was unarmed.

Lack of systematic record-keeping makes it difficult to quantify the scope of the problem with precision, but according to *The Washington Post*, of the roughly 1000 people shot and killed by police last year, at least seven percent were unarmed.

A [study](#) by Vice News of *all* shootings by police, including non-fatal ones, suggests the numbers are even worse: 20 percent of people shot by police were unarmed.

No one denies that police have a difficult, dangerous, and sometimes scary job, nor should we forget the heroism of officers like those who threw themselves between citizens and mass shooter Micah Johnson during a Black Lives Matter rally in Dallas in July 2016.

But the time has come for a national conversation about the risks we expect officers to take in order to avoid shooting innocent people like Andrew Finch, Daniel Shaver, and Justine Damond—and also to ensure that they avoid creating unnecessarily dangerous situations by staging gratuitous nighttime SWAT raids to serve low-level drug warrants.

More specifically, it is time to reconsider a legal rule called “qualified immunity” that holds police to a much lower standard of care than ordinary citizens.

We expect homeowners not to leave firearms where children can get at them, and we expect permit holders to exercise great care in deciding when to carry a gun and when to use it.

One of the ways we send that message is through tort law, which enables people to sue for injuries caused by the negligence or intentional misconduct of others. Importantly, tort law creates positive incentives by holding professionals to a higher standard than others when acting in their field of expertise.

Thus, the standard of care for doctors in medical malpractice cases is not that of a layperson, but of a reasonably prudent professional with the same training and experience.

Incredibly, the opposite rule applies to police officers, who, notwithstanding their greater training and experience, are held to a much lower standard than ordinary citizens in the use of force.

That’s because the Supreme Court has effectively rewritten a federal law that makes police officers liable for violating “any right” so that they are instead only liable for violating rights that are “clearly established” in light of existing case law.

While that may seem like a relatively minor tweak, it is anything but—indeed, the Supreme Court has emphasized that the practical effect of this so-called qualified immunity doctrine is to protect “all but the plainly incompetent or those who knowingly violate the law.”

That is a breathtakingly low standard, and patients would flee from a hospital that expected no more from its doctors.

Going back to the shooting of Andrew Finch, we can see how better incentives might have prevented that tragedy.

First, “swatting” is a well-known practice whereby someone calls in a fake emergency in the hopes of unleashing heavily armed police on an unsuspecting victim. Properly trained officers would take this into account in responding to calls like the one that led to Mr. Finch’s death.

Second, officers would recognize that the many advantages they possess over laypersons, in this case more training, powerful weapons, and strength in numbers, translates into a duty of greater care, not less. An ordinary citizen who shot Mr. Finch under similar circumstances would not only be facing a ruinous civil suit but would almost certainly be charged with criminally negligent homicide.

Finally, proper financial incentives would better motivate police departments to weed out officers who are not suited to their duties. For example, Philip Brailsford, the Arizona officer who shot and killed Daniel Shaver, had the words “You’re fucked” etched onto his police-issued rifle.

That should have been a red flag that he lacked the temperament for a job requiring good judgment and self-restraint under pressure.

There is no magic solution to the problem of police shooting unarmed citizens or creating needlessly hazardous situations by invading people’s homes in the middle of the night.

But a good start would be for the Supreme Court to reverse its ill-advised foray into policymaking by abandoning qualified immunity and ensuring that police officers are held to the same standard of care as other professionals. In doing so, the court would embrace a key precept of the medical profession: First, do no harm.

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