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# 5 Ways to Curtail Police Violence and Prevent More Deaths Like George Floyd's

Jacob Sullum

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According to the initial police account of George Floyd's deadly May 25 encounter with Minneapolis cops, he "physically resisted officers," who called an ambulance because he "appeared to be suffering medical distress." The contradictory information that later emerged, which culminated in criminal charges against all four officers, came largely from cellphone, security, and body camera footage.

Without that evidence, the case might have become a swearing match between the cops, who were arresting Floyd for using a counterfeit $20 bill, and the bystanders who watched in horror as Officer Derek Chauvin kneeled on Floyd's neck for nearly nine minutes, ignoring his complaints that he could not breathe, past the point where he stopped moving and had no detectable pulse. The prompt dismissal of Chauvin and his colleagues, and the charges that prosecutors began to file four days after the incident, once again show how ubiquitous cameras can help hold police accountable when they abuse their powers.

Yet that knowledge was little comfort to Floyd's family and friends, who were wondering how such a thing could have happened in the first place rather than marveling at the police-correcting value of cameras worn by officers, carried by pedestrians, and mounted on storefronts. For all their potential to reveal and publicize police misconduct, the evidence that cameras make it less likely is so far equivocal, and they manifestly did not save Floyd's life. But there are some reforms that could prevent other people from meeting a similar fate.

**1. Ban Chokeholds**

The most obvious problem highlighted by Floyd's death is police restraint techniques that can fatally obstruct breathing. Floyd was not only pinned by Chauvin's knee; he was lying on his stomach with his hands cuffed behind him as two other officers applied pressure to his back and legs.

The autopsy report issued by the Hennepin County Medical Examiner's Office describes the cause of death as "cardiopulmonary arrest complicating law enforcement subdual, restraint and neck compression." An independent autopsy commissioned by Floyd's family, by

contrast, said he died from "mechanical asphyxiation." But both reports agreed that the manner of death was homicide.

Law enforcement experts who watched cellphone video of the incident immediately condemned the officers' conduct, especially Chauvin's application of his knee to Floyd's neck. "The maneuver, billed as a means to gain control of a thrashing suspect, requires pressure on the side of an individual's neck," the Minneapolis *Star Tribune* reported. "At Hennepin Technical College, which trains about half of Minnesota's police officers, students were taught to use a form of the technique until at least 2016."

Mylan Masson, a veteran Minneapolis police officer who used to direct the college's law enforcement and criminal justice education center, said it was clear that Chauvin used the technique inappropriately. "Once the [officer] is in control, then you release," Masson told the *Star Tribune*. "That's what use of force is: You use it till the threat has stopped." George Kirkham, professor emeritus at Florida State University's College of Criminology and Criminal Justice, called the prolonged compression of Floyd's neck "outrageous, excessive, unreasonable force under the circumstances," since the officers were dealing with a suspected property criminal who was "prone on the ground" and "no threat to anyone."

The possibility that such techniques will be misused with deadly effect has led some police departments to eschew them. A 2016 review of 91 major police departments' policies by the Police Use of Force Project found that 21 of them explicitly prohibited "chokeholds and strangleholds."

The issue received renewed attention in 2014, when Eric Garner died following a struggle with New York City officers who were trying to arrest him for selling untaxed cigarettes. Like Floyd, Garner complained that he could not breathe. As with Floyd, that did not deter the cops from using what turned out to be deadly violence against an unarmed man accused of a petty crime.

Video showed Officer Daniel Pantaleo using what looked like a chokehold, a maneuver the New York Police Department had banned. Pantaleo and his supporters denied that, saying his arms slipped while he was trying to use a department-approved takedown technique. The medical examiner concluded that Garner died from "compression of neck (choke hold), compression of chest and prone positioning during physical restraint by police." Despite the official department policy against chokeholds, a police review board had received more than 1,000 complaints about the technique during the previous five years.

As that suggests, official policy goes only so far, although it presumably has some restraining effect. After Floyd's death, the San Diego Police Department announced that it would ban the carotid restraint, a "sleeper hold" that aims to induce unconsciousness by applying pressure to the carotid arteries on the sides of the neck, thereby cutting off the flow of blood to the brain. New York Mayor Bill de Blasio this week reversed his position on a bill that would criminalize chokeholds, saying he would support it as long as there was an exception for "life or death" situations.

**2. Restrict Other Kinds of Force**

In addition to chokeholds, the Police Use of Force Project considered seven other policies in its 2016 report. It found that 34 of 91 departments required officers to use de-escalation techniques, when feasible, before resorting to force; 77 had policies describing the types of force that are appropriate to use in response to different kinds of resistance; 56 required verbal warnings, when feasible, before the use of deadly force; 19 prohibited officers from shooting at moving vehicles that do not pose a deadly threat; 31 required officers to exhaust all reasonable alternatives before using deadly force; 30 required officers to intervene when their colleagues use excessive force, as three officers failed to do in Floyd's case; and 15 required officers to report all uses and threats of force—as the Minneapolis Police Department already does.

State lawmakers also can impose restrictions on police use of force. A California law enacted last year says the use of lethal force is justified only when "the officer reasonably believes, based on the totality of the circumstances, that deadly force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or to another person, or to apprehend a fleeing person for a felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless the person is immediately apprehended." That standard replaced a looser one allowing police to use lethal force whenever a "reasonable officer" in the same circumstances would have done the same.

**3. Make It Easier to Fire Bad Cops**

While the officers who arrested Floyd were fired immediately, that is by no means typical in excessive-force cases. Pantaleo was not fired until five years after Eric Garner's death, after a New York grand jury declined to indict him and the U.S. Justice Department decided not to charge him.

An administrative judge concluded, and Police Commissioner James O'Neill agreed, that Pantaleo recklessly used a prohibited chokehold, applying pressure to Garner's neck in a way that inflicted injury and helped trigger an asthma attack. But the New York City Patrolmen's Benevolent Association backed Pantaleo until the end and condemned his dismissal.

Police unions don't just reflexively defend officers who injure or kill people, even in situations where the facts are damning. They insist on contracts that make it very difficult to fire bad cops.

"Consider the binding arbitration that has become a standard feature of virtually all police contracts, which are often negotiated in secrecy," *Reason*'s Shikha Dalmia writes. "Binding arbitration allows cops to appeal any disciplinary action taken by their superiors to outside arbitrators such as retired judges. In theory, these folks are supposed to be neutral third parties. In reality, they are usually in the pockets of unions and dismiss or roll back a striking two-thirds of all actions, even against cops with a history of abuse and excessive violence. The upshot is that police chiefs are powerless to clean house, even as community complaints pile up."

As *Reason*'s Peter Suderman notes, Sgt. Brian Miller, a Broward County sheriff's deputy who conspicuously failed to intervene in the 2018 mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida, was fired for "neglect of duty." But Miller challenged his dismissal

with support from his police union, and last month he "was not only reinstated but given full back pay."

During a reckless middle-of-the-night raid last March, police in Louisville, Kentucky, killed the unarmed Breonna Taylor after her boyfriend mistook the invaders for criminals and fired a shot at them. "Taylor's death resulted in calls for the officers involved to be fired," Suderman notes, "but Louisville Mayor Greg Fischer warned that the process would be slow. A significant part of why he expected it to take so long, he said, was the city's collective bargaining agreement with the police union. Fischer lamented the process, saying he recognizes 'the system is not a best practice for our community.'"

**4. Increase Police Transparency**

Dalmia notes several other "special protections that police enjoy." They include rules "allowing police departments to destroy civilian complaint records against officers," "giving cops involved in shootings several days before filing their statements," and "barring citizens from filing complaints anonymously and revealing their names to the offending officer."

In Pantaleo's case, Commissioner O'Neill publicly released the findings of the department's internal investigation, deviating from the usual policy, favored by police unions, of keeping such information secret. "New York state law shields police discipline records from public view," *Reason*'s Scott Shackford notes, concealing both the inconsistency of penalties and the histories of officers who are accused of wrongdoing.

Derek Chauvin "had 18 prior complaints filed against him" with the Minneapolis Police Department's Internal Affairs Division, CNN reported after Floyd's death. "It's unclear what the internal affairs complaints against [Chauvin] were for," CNN said, since "MPD did not provide additional details." Tou Thao, the officer who not only failed to intervene as Chauvin kneeled on Floyd's neck but physically prevented bystanders from doing so, "had six complaints filed with internal affairs, one of which was still open….The other five complaints had been closed without discipline."

As C.J. Ciaramella reported here this week, "New York civil liberties groups are again trying to roll back the state's expansive police secrecy laws" in the wake of Floyd's death. California already has made some progress on that front, Steven Greenhut notes, with a 2019 law requiring that "police agencies release reports or findings related to police officers' discharge of a firearm or serious use of force, as well as sustained incidents by officers of sexual assault or dishonesty."

The lack of transparency can mean that even when one law enforcement agency manages to fire a bad cop, and even when he is decertified for police work, another one hires him. "There is no nationwide mechanism allowing every police department in the country to access an applicant's work history with out-of-state departments," Anthony Fisher pointed out in *Reason* several years ago. "This information gap allows officers banned from working as police in one state to secure law enforcement employment in another state."

**5. Abolish Qualified Immunity**

Under 42 USC 1983, people can sue police officers for violating their constitutional rights under color of law. But since 1982, the Supreme Court has said such lawsuits are allowed only when police violate a "clearly established" right, which in practice often means that victims of police abuse have no recourse if they cannot cite precedents with nearly identical facts. And since 2009, when the justices said courts can dismiss lawsuits against cops without even deciding whether they violated the plaintiff's rights, it has become increasingly difficult to find the precedents necessary to overcome such "qualified immunity."

The upshot, as 5th Circuit Judge Don Willett has observed, is that "important constitutional questions go unanswered precisely because those questions are yet unanswered." Willett, an outspoken critic of qualified immunity, added that it "smacks of unqualified impunity, letting public officials duck consequences for bad behavior—no matter how palpably unreasonable—as long as they were the *first* to behave badly." Supreme Court Justices Clarence Thomas, Sonia Sotomayor, and Ruth Bader Ginsburg—who don't agree about much else—likewise have expressed concern about the qualified immunity doctrine.

This term the Supreme Court is considering a bunch of petitions that provide an opportunity to revisit that doctrine, which has become a license for outrageous police conduct. The defendants in those cases include police officers who shot a 10-year-old boy while trying to kill his dog; wrecked a woman's home by bombarding it with tear gas grenades after she agreed to let the cops inside so they could arrest her former boyfriend; knocked out a woman and broke her collarbone by lifting her up and throwing her to the ground while responding to an erroneous report that she had been the victim of a domestic assault; and sicced a police dog on a burglary suspect who said he had already surrendered and was sitting on the ground with his hands up.

"Ending qualified immunity wouldn't end police brutality," C.J. Ciaramella notes, "but it would put departments and individual officers on notice that they can no longer brazenly harm and kill people without consequences." In case the Supreme Court decides not to step in, Rep. Justin Amash (L–Mich.), joined by Rep. Ayanna Pressley (D–Mass.), plans to introduce a bill that would put an end to qualified immunity. Three senators—Ed Markey (D–Mass.), Cory Booker (D–N.J.), and Kamala Harris (D–Calif.)—are working on similar legislation.

"Qualified immunity is the cornerstone of America's near-zero accountability policy for law enforcement," says Clark Neily, vice president for criminal justice at the Cato Institute. "It is an illegitimate, judge-made legal doctrine that has systematically undermined our right to be free from the illegitimate use of force by government agents and that helped set the stage for the brutalization of George Floyd and countless others, particularly in communities of color. We applaud the legislative efforts of the numerous members of Congress—in both the House and the Senate— who have stepped forward to right this historical wrong and create a culture of genuine accountability for police, prosecutors, and other public officials."