

# Recommendations from an Ally for Rebuilding Trust in the Police

*Benham J. Sims III*

For years, I worked with police in Kentucky. I trained officers on how to testify in court. I trained a number of police departments on DUI detection and enforcement, traffic laws and a variety of other issues during my time as a prosecutor, judge and defense attorney. I rode with officers, observed their arrests, discovered what they looked for and learned their street tactics. I even helped introduce candidates to the Fraternal Order of Police (FOP) to secure their political endorsements. I write this so you understand my relationship with the police was not casual, it was part of my everyday work experience. In many ways, it was the best time of my career. I remain an unapologetic friend and ally of good police. But my heart is breaking at what I see and feel has occurred.

I am horrified by what I see in our community and cities all across the country. It is not a time to remain silent. Silence is violence. I am disgusted by officers who casually knock down a 75-year-old protestor in Buffalo resulting in his hospitalization in intensive care.

I watched, as have millions of Americans, as Officer Chauvin tortured and executed George Floyd. He placed his knee on Mr. Floyd's neck and did not care that people were filming. He did not care that Mr. Floyd was begging for his life, calling for his long-deceased mother. Members of the public confronted the officer begging him to stop. This execution took place in front of other officers who did nothing but watch this man die of police misconduct, torture and murder.

I watched the national news and witnessed a news crew being struck by officers with their shields and, while complying with the officer's orders to leave, continued to be struck by officers with their batons. They were reporters. They were complying with the order. Why strike them with a baton when they were leaving?

I witnessed a president in time of crises order the removal of peaceful protestors from Lafayette Park for a photo-op with a Bible. I see peaceful protesting erupt in violence and looting in cities across America, including

here in Louisville, by people who have embedded in peaceful protests to sow seeds of distrust, fear, violence and destruction. I read on Facebook pages of police officers who are frustrated and disgusted at being told to stand down when looters are damaging a city they are sworn to protect.

I watched live the coverage on WAVE 3 and witnessed a reporter and her cameraman being shot with pepper bullets at close range by a SRT officer. The officer shot pepper bullets aimed, not at the ground, but at the reporters'

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faces and bodies. I listened to the studio anchors voice their shock and disbelief at what was happening.

I spent over a decade training police officers. I know that the training manuals for pepper guns specifically forbid the aiming of pepper bullets at protestors. The explosion of the bullets striking the pavement is designed to release a burst of pepper spray and cause protestors to move back. The manuals also require officers to allow protestors to retreat. This officer kept firing. This was not a mistake or inadvertent shot. He fired dozens of bullets at the bodies of the reporter and her cameraman. Where were the other officers and command staff running to immediately intervene and take his weapon away?

We should have expected that, when confronted with this conduct, the department(s), the mayor and the police would address this

issue. How could they not? I would assume that every officer deployed was repeatedly reminded that these types of weapons are not to be shot at people.

Sadly, unexplainably, those reminders did not go out. How could this have been missed? How could every police department in America when confronted with the video not address this issue with their officers? In Louisville, how could the department not remind officers at roll call, at their deployment, at their staging areas and on their police radios the whole world is watching? Do not shoot these weapons at people.

Just a few nights later, the shooting of people with these same weapons was repeated at Dino's on 26th Street. Two police officers then wandered onto David McAtee's property firing at people, not at the ground. When officers starting shooting, Mr. McAtee's family, friends and customers ran into his restaurant. The cameras showed that Mr. McAtee had been busy all night grilling. I am sure those who ran into his business were screaming that they were being shot at. I know I would have. Apparently, from the limited camera releases, Mr. McAtee made a horrific decision to unholster his gun and return fire. He was killed by a Guardsman's bullet.

Whether you believe the police were justified in killing him or you believe that Mr. McAtee had a right to defend his property, his family, his customers—can we not all agree that better decision-making could have prevented this tragedy? As someone who trained officers, questions gush out of me like the old Louisville Falls Fountain.

Who deployed the National Guard to the West End? Did the Governor not specifically order the Guard to stay out of the West End to avoid such a confrontation? If the call was made to go to Dino's, why did the police direct fire toward Mr. McAtee's business? Could they have not simply waited before trying to forcefully remove people? What were the command's instructions on that night of deployment? Were the officers and National Guard instructed to limit their confrontation

to Dino's or to keep going? Where were the command officers deployed on scene to supervise and make sure that officers were following their instructions? How could another night of officers shooting civilians with pepper bullets take place?

Where were the people who were being shot with pepper guns supposed to go? Police training in riot protocols instruct that you must also permit people to retreat. They all fled inside to his restaurant—why keep firing? In the heat of the moment, if you are a businessman and your family, friends and customers are being fired upon, what do you do instinctively? I do not suggest that Mr. McAtee was justified in firing on police. Others, including many of my defense lawyer friends, will disagree with me on this issue. They argue that Mr. McAtee had a right to defend his property, family and customers. The courts, legislative and executive bodies will make that determination.

In my mind, his response guaranteed his death. The point is it should not have happened. It happened as a result of poor command decisions, poor training and response by officers. It happened because those in charge failed to take charge and limit the rules of engagement.

I am sure my comments will not satisfy the police or those who think that Mr. McAtee had a right to defend himself, his family and customers. No matter which side of the coin you land on, can we all agree that his death was all but certain? Can we also agree that better command control, command tactics, training, discipline, communication and recruitment could have prevented this?

I do not mean to gloss over Breonna Taylor's death. As a former judge, I signed a number of warrants for officers. I do not recall how many, if any, no-knock warrants I signed. But the use of no-knock warrants must now be questioned. I cannot conceive of a circuit or district judge not pausing when handed a no-knock warrant today. Such warrants should be abandoned. The risk to the "Breonnas" of our community, the risk to neighbors in the next apartment, those walking on their street or sleeping quietly in their home next door is simply too great. The risk to the officers themselves do not warrant the use of this type of warrant.

Some officers will oppose efforts to abandon the use of no-knock warrants. Some officers,

and maybe a few prosecutors, will argue that the suspects will have time to flush drugs and evidence without no-knock warrants. One officer even claimed that Ms. Taylor's boyfriend, because he was warned, grabbed his gun and commenced to shooting at the police. But there is no video of this exchange. Common sense should inform us that if that kind of danger is real, those officers should not serve the warrant. My gut feeling is that if you don't have enough evidence without the risk of flushed drugs, your case may be too weak for a search warrant in the first place. Do we really want to freely employ such a dangerous tactic when the risk of a fireflight is so high?

My lawyer friends criticized me because they saw and participated in only peaceful protests. I, safely ensconced in my den in the East End, saw protestors spitting at police, throwing water bottles, screaming in their faces and defacing public property with "\_\_\_\_\_ the police." I know of the looting of George Stinson's property and the assault he endured. I watched the looting of Eddie Merlo's restaurant resulting in its permanent closure. I saw the defacing of my law office resulting in all windows on the first floor being boarded up. Why would I want to participate?

I have tried to engage my police friends. The response was not what I expected. I have been called disgusting by officers, including a former president of the FOP, for my comments. I want to clearly demonstrate for all the gulf between the mindset of most people in our community and how these officers see the problems. The police I have engaged with are good men. Some have demonstrated anger, many resentment, some just blind ignorance, but thank God, some get it, know it and want change.

In reaching out, I wanted to convey to the men and women who protect us to do better. Chris Rock is right when he compares police officers to pilots. We pay them to not get it wrong. They have to land the plane and not kill anyone each time, without fail.

There are a number of things the police department and the FOP can do right now to demonstrate good faith. Let me make this clear. The peaceful protestors are not the looters and rioters in our city. To paint with a broad brush is to deny reality. In the same way, the whole police department is not filled with racists, participating in a cover-up, violating the rights of citizens when and where they

want. The police want us to believe that only a small percentage of officers are the problem, but many seem to casually lump protestors with the rioters and looters we watch on TV. Both sides are myopic on this issue.

For those officers advocating change, I applaud you. For those protestors who riot and demand we dissolve law enforcement I say, "You have lost your mind." There is a middle, logical, proper way to begin to address these issues that are tearing the fabric of our communities and undermining support for police across the nation. A middle ground that does not bust heads nor dissolve the police departments. Let's work to find it. Let us reexamine and reimagine what we want from our police department and from our officers.

As an ally of the police, I have a few recommendations to make. First, admit it. There are bad cops, horrible hires, officers who cause violence instead of preventing violence. Racism exists in your department and likely every department in the country. True love for your community requires both compassion and empathy. These qualities do not demonstrate weakness, but just the opposite—they demonstrate strength, character, and understanding. Speak out, engage, help us help you and our community.

The second recommendation is to not continue to ignore a gift that was given to you recently. Five protestors came to the rescue of Officer Galen Hinshaw who was trapped in front of Bearno's on Main Street. These protestors formed a human chain to protect him. He was a stranger—a police officer separated from other officers—alone in the midst of a crowd of protestors. These five heroes found themselves confronted by fellow protestors screaming, "How can you protect him?" In their hearts, the response was obvious to these men, "How could they not?" The men, all strangers to each other, were protesting police brutality—but they stood up to prevent "any" brutality. They represent what is best in each of us.

Why have you not reached out to them? Why is their story not promptly displayed on your website or up on every FOP member's Facebook? LMPD and FOP, you want to make a difference? The clock is ticking down. The public wants to support you. Show them why they should. Why have you not invited these heroes to sit down and talk? Why has the department, or FOP, not held a meeting and

recognized these men as heroes? They are the embodiment of what every citizen should be. They were protestors, they were perhaps lifesavers, why not give them a platform to talk about their concerns and why they were there protesting? Would that not send a message to the community, the real audience, that you are listening? Why not approach Dawne Gee, Stephan Johnson, Terry Meiners or Doug Proffitt to host a town meeting? Pretty good optics for you, don't you think?

The third recommendation is just as obvious to our community. There are bad cops, some really bad. These officers threaten you more than any protestor, looter or rioter. While I will be the first to say there are many fine officers in the LMPD and in departments all over Jefferson County, we have endured more than our fair share of illegal and dangerous conduct by some officers. Officers that have gone to federal prison within your department, officers who forged time records, officers who forged judge's signatures on search warrants, officers whose false testimony led the imprisonment of three innocent men. I can't be the only one who sees both sides of this community issue.

You had a disaster as chief. An admittedly nice man, but not a leader of a department with significant issues and challenges. Talk publicly, but strategically, about your problems with the mayor. Talk about the sex abuse scandal involving your officers. Commit to reforming your own. Commit to expelling those officers whose conduct risks your life and the city's peace. When you have a tumor, you don't ignore, you treat it. We have had African Americans killed by officers who were cuffed and shot in the back. There is a history of African American complaints about how they have been treated. I know of no African American man who has not experienced this treatment.

Has the FOP taken a survey of minority officers and ask what they see wrong with the department? Has the police department taken that survey to see what the problems are? How do you fix the problems if you don't ask the questions? How many disasters do you have to have before you ask your own fellow officers what is the problem?

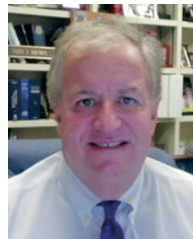
Finally, the elephant in the room for all of us—race. It seems to be the one word all of us recoil from. We know that the ugliness of prejudice stains our land and every one of our lives.

Whether it is the liquor store employee who denied an African American woman from using the toilet off privileged Brownsboro Road or the pickup truck in Valley Station waiving a large confederate flag for all to see.

No entity is more familiar with racism than police, especially here in the South. Sadly, the police have a history of turning a blind eye to lynching and investigating the murders of African Americans for centuries. One only has to review the rolodex of civil rights martyrs to be reminded of police participation in the deaths of Emmett Till, Chaney, Goodman and Schwerner. The first African American prosecutor in Louisville was murdered and her murder remains unsolved by your department. There is a history of police misconduct and racism.

At the encouragement of a lawyer friend who chastised me for not protesting, I went downtown recently (yes, with a mask) and observed for two hours the protests during the light of day at 6th and Jefferson. It was my first time downtown since the outbreak of the pandemic. These protests could not have been more peaceful. The protestors broke rank and cleaned up the park while I was there. The protestors were white and black, rich and poor, young and old. They were, most important of all, Louisvillians who cared enough about their community to give voice against the violence they watched for 8 minutes over and over with Mr. Floyd's execution and the deaths of Ms. Taylor and Mr. McAtee.

They are demanding change and they are right. I have seen racism with my own eyes. I know it exists in our courts and in our police departments. Denying it, belittling it, saying it is not true by a lawyer, a judge or a police officer is akin to a surgeon going into a hospice room and saying to a terminal cancer patient your cancer is not that bad. Racism is our country's cancer—it continues to metastasize daily. Being silent only protects it, nurtures it and allows it to spread and kill. We have to cut it out of our lives, our courts and our police department before it destroys us all. We can start the healing in our community if we are wise enough.



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