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Diversity Dialogues . . .

Michael Brown, Eric Garner, and Law Librarianship*

Ronald Wheeler**

Professor Wheeler discusses the police killings of Michael Brown and Eric Garner. He posits that racialized fear is part of what fuels such violence and discusses examples of how racialized fear have impacted his personal life. Wheeler then discusses how and why law librarians can and should be prepared to discuss such events with their law library patrons.

1 There are times in our history when societal events cause us to step back and reflect on the severity, significance, and impact of the developments of the day. For me, the summer of 2014 was one such time. During that summer we saw the fatal police chokehold of forty-three-year-old Eric Garner in July,1 the fatal police shooting of eighteen-year-old Michael Brown in August,2 and the resulting national outcry in cities and towns across the United States.3 I found myself struggling to make sense of these events and to sort through the almost constant barrage of related media stories, commentary, and protest coverage. For those of us working with the public, with students, or with legal professionals, current events frequently come up in conversation or in the course of our duties. Thus impromptu discussions of these events with coworkers, law library patrons, students, and others grappling to comprehend these seemingly senseless occurrences were almost unavoidable. So, as a way to make sense of these events for myself and to describe their potential impact on our lives as law librarians, I penned this installment of Diversity Dialogues.

The Facts

2 On Thursday, July 17, 2014, forty-three-year-old Eric Garner was approached on Staten Island, N.Y., by police officers who suspected him of selling cigarettes ille-

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Garner, who was unarmed, pulled away when officers tried to handcuff him, and he was put into a chokehold, pulled to the ground, and held around the neck until he lost consciousness. Garner went into cardiac arrest as he was being placed into custody and died a short time later. The entire scene was caught on video where Garner “can be heard saying ‘I can’t breathe’ over and over again as officers swarm about.” The medical examiner’s office determined that the chokehold, as well as compression to the chest, caused Mr. Garner’s death, and ruled it a homicide. In September 2014, a grand jury “heard testimony from the officers involved and twenty-two citizen witnesses. All of the officers, with the exception of Officer [Daniel] Pantaleo, were granted immunity.” Officer Pantaleo, who administered the fatal chokehold on Garner, testified before a separate grand jury, which cleared him of any criminal charges. Although many of the early newspaper accounts contain no mention of race, widely circulated video footage of the incident shows that Eric Garner was black and the officers involved in his detention and killing were white.

¶3 Unrelatedly, on the afternoon of August 9, 2014, an unarmed, black eighteen-year-old Michael Brown and another man were approached by an officer in a patrol car as they were walking home from a convenience store in Ferguson, Missouri. As the officer began to leave his vehicle, an altercation ensued, there was a struggle, and at least one shot was fired. Brown allegedly ran, the officer gave chase, and at some point Brown turned to face the police officer who then opened fire. The officer, Darren Wilson, fired a total of twelve times, and Brown was killed. A grand jury met twenty-three times between August 20 and November 21, 2014, hearing testimony to decide whether to indict Wilson for his part in Brown’s death. Ultimately, the grand jury brought no criminal charges against Wilson, who is white.

5. Id.
17. Id.
My Social Reality

These two incidents and the protests that they generated caused me to ask myself, “What is really going on here?” Let’s think about this. Armed police officers are empowered to use force in the course of their regular duties, and sometimes suspects and others are injured or killed as these officers attempt to keep the peace. I doubt that anyone would dispute this characterization. However, the simultaneous reality is that “young black males . . . are . . . at a far greater risk of being shot dead by police than their white counterparts—21 times greater, according to a ProPublica analysis of federally collected data on fatal police shootings.”

“The 1,217 deadly police shootings from 2010 to 2012 captured in the federal data show that blacks, age 15 to 19, were killed at a rate of 31.17 per million, while just 1.47 per million white males in that age range died at the hands of police.” For those of us who are black, or who care about boys or young men who are black (or likely to be perceived as black), this statistical reality is a very difficult one to wake up to every day. Yet, it is something we endure as part of our social reality. The news of the Garner and Brown killings merely confirmed our ever-present fears. This is why the protests in response to the Garner and Brown killings and the related grand jury verdicts came as no surprise to me. They made complete sense. They made me feel sane and understood and vindicated and finally, finally heard.

My ten-year-old multiracial godson is unusually tall for his age. I am shocked that he is so young and yet just a couple of inches shorter than me—even though his Garifuna-Honduran father and Trinidadian-American mother could both be described as tall. To the average person, my godson could appear, even at ten, to be a tall, teenaged, black youth. I think about this all of the time, and I am terrified. He has no idea how his size and his immaturity may combine to produce what police officers or others might interpret as inappropriate responses to direct orders. If spoken to harshly by police, he might run or talk back rather than stop and remain silent. I worry that he might appear threatening or menacing when responding with childish or childlike anger or frustration in a confrontation with police or others. I anguish over the likelihood of his pulling away or lashing out if grabbed or cornered by police. I agonize over the very real possibility that his actions could be misinterpreted as aggressive or combative and that he could be harmed as a result. So the frustration, anger, and dismay voiced by protesters around the country over the killings of Eric Garner and Michael Brown, who were


20. Id.

21. Those of us with biracial or multiracial families and friends understand that it is the appearance and not the reality of race that determines how one is treated by society and by the police.


23. Black men in the United States live with a universal fear and commonly held understanding of the danger implicit in and the possibility of police interactions because of the likelihood of misidentification, unjust or unlawful stops, police harassment, or even violence. See, e.g., Charles M. Blow, *Library Visit, Then Held at Gunpoint*, N.Y. Times, Jan. 26, 2015, at A21 (N.Y. Times columnist’s account of his son, a Yale student, being stopped at gunpoint by the Yale police).
both unarmed, gave voice to grievances of my own that until now had remained unspoken.\textsuperscript{24}

**The Fear Behind the Reality**

\textsuperscript{6} It is an oversimplification at best to say that black youth being disproportionately killed by police officers is merely the result of racially motivated hate. It is just too easy to say that white police officers hate black people (and other people of color), so here we are with our current social reality. I simply don’t buy it. I think the problem is far more complex than that. What it comes down to, in my mind, is fear—fear and the irrational things that fear can drive people to do or not do.\textsuperscript{25}

\textsuperscript{7} Quite recently, I was attending a conference in Washington, D.C. I had made my way out to the American University Washington College of Law for a meeting, and I wanted to get a taxi back to my hotel.\textsuperscript{26} I asked the extremely accommodating reception personnel at the law school to call me one, and I stood out on the sidewalk waiting. I soon noticed a taxi approaching. I moved closer to the curb, and stuck my hand out to indicate that I was, in fact, seeking a taxi. I then watched the taxi slow down while the driver leaned over to examine me visually. The driver then picked up speed and drove past me without stopping. Well, I thought, that must not have been my taxi. So, after waiting another twenty minutes, I asked the reception folks to call a taxi for me a second time. Unbelievably, the exact same scenario played out a second time. Shockingly, it then happened a third time all within an hour. Three taxis, three drive-bys, and not one stop. After waiting for an hour, I angrily downloaded the Uber app\textsuperscript{27} on my phone, entered my credit card information, and got myself a ride in minutes. My point here is that it did not matter at all that I am perhaps the least scary cab fare on the planet; what mattered was that taxi drivers are sometimes afraid to pick up black men. The fear evinced here is irrational and misplaced, but it is nonetheless real, and it impacts my life in real and thankfully non-life-threatening ways. Moreover, this very same racialized fear can cause much more serious harms than the mere inconveniences that I suffered that day.

\textsuperscript{8} Years ago—I must have been in college then—I found myself walking down a fairly deserted city street just after dark. I am a relatively fast walker, and I often find myself overtaking and passing pedestrians incapable of keeping pace with me. That night, I noticed that I was walking up behind a young white woman. Imme-

\textsuperscript{24} Part of the public response to these incidents included young people and parents talking about and using the phrase “Hands up, don’t shoot” as both a political critique and sign of defiance and protest, as well as providing last resort guidance for young black people when dealing with police. See, e.g., Landon Jones, *How “Hands Up, Don’t Shoot” Could Start a Real Revolution*, *Time* (Dec. 4, 2014), http://time.com/3618295/eric-garner-ferguson-hands-up-dont-shoot/.

\textsuperscript{25} I don’t suggest here that fear is the only factor. Nor do I mean to minimize the existence of systemic racism, which I believe to be a major factor. What I suggest is that our racialized social and political histories combine to infuse our everyday interactions with elements of fear that are exacerbated by race.

\textsuperscript{26} For a map of the exact location of the Washington College of Law, see https://goo.gl/maps/jkTQe.

\textsuperscript{27} Uber, https://www.uber.com/ (last visited Aug. 24, 2015), is an electronic application that connects drivers to riders and thus bypasses traditional taxi services.
diately the thought occurred to me that this scenario could play out badly. She will undoubtedly be frightened by the swift approach of a young black man behind her. Might she scream? Run? Pull a weapon? How will I be impacted? If she screams, might someone come to the rescue? How should I then respond? At best it will be an embarrassing scene. At worst it could be deadly. All of these thoughts converged in my mind, and I felt obliged to act to prevent what I felt was the inevitable result of fear. So I slowed my pace and crossed the street taking pains to tread loudly to signal my presence. I noticed her turn and take note of my presence and my movement away from her. Her expression was one of concern but not panic. I felt relieved and also irritated. This circumstance was neither my fault nor hers. We were both pawns in a game whose rules were not of our making. Scenarios like this one have happened to me many times throughout the years. I continue to feel helpless and trapped in an unfortunate reality dictated by fear.

¶9 It is far too easy to dismiss these anecdotes as isolated incidents or to chalk them up as misinterpretations on my part. But they no doubt ring true and are familiar to black men reading this piece. Stereotypes about race underlie the fear that fuels these occurrences. “There exists [in our society] a stereotypical, yet robust, understanding of blackness as ‘badness.’”[28] “The social distance between blacks and whites in America fosters the possibility of misunderstanding and mistranslation of communications and behavior.”[29] This social distance, this mistranslation, the stereotypes and the fear converge, and the result is that I become one to be feared by taxi drivers and women alone on the streets.

Fear, Blackness, and Mental Illness

¶10 One of the things that came to mind for me immediately after reading about Eric Garner and the circumstances surrounding his death was the likelihood that mental illness may have been a factor. This man was forty-three years old, formerly employed, and selling single cigarettes on the streets.[30] “He had been arrested more than thirty times, often accused of selling loose cigarettes bought outside the state.”[31] The idea that a forty-three-year-old man continued to commit misdemeanors over and over seemed telling to me. Others have pointed out that repeatedly committing nonviolent misdemeanors like peeing in public, littering, panhandling, and selling single cigarettes is often associated with “immaturity, low social status, mental illness, low intelligence” and other problems.[32] However, as is all too often the case, race and fear combine to turn what may have been an unthreatening

29. Id.
30. Goldstein & Schweber, supra note 4.
31. Id.
mentally ill black man into a dangerous threat to public safety. Part of what we do know is that “people of color who are mentally ill, or whose mental situation is unstable, are at greater risk of being subjected to police brutality.” Rightly or wrongly, “the convergence of criminality and mental impairment often leads to stereotyping of the mentally ill as violent.” Add to that the potential influences of racialized fear, and the probability of violent police responses to mentally ill suspects of color escalates.

Race and Law Librarianship

So where do all of these events and all of these phenomena leave us as we navigate our daily lives as law librarians? How is any of this relevant to those who may feel somewhat unaffected by the race-related occurrences described above? Simply put, “race affects our day-to-day work as law librarians . . ., [and] . . . this includes those of us who are white.” In her piece Race and the Reference Librarian, Mary Whisner correctly points out that race and racial issues permeate almost every aspect of the law, both criminal and civil. Yet racial issues are not always clear. Even though issues of race may be present and even salient, they may also remain unmentioned in legal opinions. Uncovering these racial issues may require extralegal research, statistical analysis, social science inquiry, and more. As Whisner so aptly puts it, “not all of our work is simply reacting to someone else’s questions, and we can incorporate race ourselves.” When we know that race impacts a particular patron’s query, we can suggest they investigate the racial issues. We can be ready with sources or we can suggest examples. We can choose not to ignore what we know to be part of our social reality. We can demonstrate through our professional interactions with patrons what legal scholars have proven to be true, that racial issues are interesting and important.

Showing an interest in racial justice and issues of race helps to break down barriers, expose as false perceived misunderstandings, and shed light on commonly held perceptions of a race-infused reality. As Whisner quite astutely points out, it helps law students of color (and patrons of color more generally) feel more wel-

33. See generally Nelson, supra note 28 (analyzing how the police and the criminal justice system are ill equipped to deal with the intersection of race and mental illness).
34. Id. at 7; see also Nat’l Inst. of Justice & Bureau of Justice Statistics, Use of Force by Police: Overview of National and Local Data, at viii (1999), available at https://www.ncjrs.gov/pdf files1/nij/176330-1.pdf (finding that “use of force is more likely to occur when police are dealing with persons under the influence of alcohol or drugs or with mentally ill individuals.”).
37. Id. at 626, ¶ 2.
38. Id. at 629–30, ¶ 5 (providing examples of rulings where race remained unmentioned but was nonetheless profoundly important or determinative).
39. Id. at 630, ¶ 5.
40. Id.
I would add to that, it helps people of color feel more understood, and it unmasks the truth that even those of us who are white can have a common understanding of how race impacts us all daily. It may even help to erode the fear that lies beneath our racialized reality.

¶14 On August 3, 2015, I happened to very briefly glance at Facebook while at work (something I almost never do), and I saw the following editorial cartoon on a longtime friend’s page.

¶15 She’d commented, “I’m still thinking about this. You?” This friend happens not to be a person of color. She is, however, incredibly smart, indescribably funny, and devoted to issues of social justice. Days later, I am only now realizing the impact this illustration had on me. It caused me to smile, and then it caused me to question its humor. I wondered what must be wrong with me that I find humor in this dark cartoon. Yet I kept thinking about it. Then I found myself going back to Facebook, after work of course, to read the comments posted by other

42. Whisner, supra note 36, at 631, ¶ 7.
45. Id.
46. See Law Office of Lynn Perls, http://www.perlslaw.com/about.html (last visited Aug. 24, 2015) (describing Lynn Perl’s family law practice, which has done cutting-edge work for nontraditional families for more than twenty years but which only hints at her lifelong devotion to and ongoing work for issues of social justice).
47. In fact, I was so affected by this illustration that I felt compelled to contact the editor of this journal and add it to this essay long after the editorial deadline had passed.
friends. I even searched the *Tulsa World* website to read the more than fifty comments posted there.\(^{48}\) What I discovered is that this process was healing for me. It gave me an outlet for my anger and helplessness and discontent. It showed me that, indeed, others were still thinking about this. The comments taught me that opinions differ about these issues and that respectful, sometimes collegial, and earnest discussion is extremely useful. More than anything, however, this illustration taught me that humor, irony, and art are powerful and important tools for a society grappling with difficult social and political problems. So I will now add irony and humor to the law librarian’s toolkit for engaging on difficult societal issues like the intersection of race and police violence.

¶16 What I have found most important, for myself and for the students, faculty, and others whom I serve is to remain willing to engage with them about the difficult developments of the day.\(^{49}\) As I struggled to make sense of the events of the summer of 2014, I very often felt ill equipped to engage with patrons. I wanted to retreat from discussions of Garner, Brown, and their aftermath. I resented attempts to draw me out on these subjects. Yet I ultimately found that maintaining a willingness to grapple with these topics, especially in conversations with students, was useful and healing and restorative and educational. It signaled to students my willingness to go the extra mile, to struggle along with them to make sense of difficult and emotional issues. It exposed to them my humanity, my vulnerability, and my empathy. It made us all closer and more engaged with one another, even when we disagree.

Conclusion

¶17 Most legal information professionals are tasked, at least in part, with keeping up with legal, business, and sociopolitical current events. That work informs our work with patrons attempting to solve legal problems, students learning to solve legal problems, patrons analyzing the law, or those applying the law to contemporary legal issues. Thus when current events involving the law, the criminal justice system, law enforcement, and race relations ignite in the way that the Garner and Brown events did, they can have a profound impact on our professional lives. I found this to be true in my own professional life. In particular, my commitment to contributing a regular piece to *Law Library Journal* on issues of diversity seemed to require me to comment on these issues. So I offer these musings as part of our profession’s ongoing dialogue on diversity. In part, my goal here is to publicly grapple with my own emotions around these events. But, perhaps more important, I hope to illustrate to my professional colleagues that your patrons, your coworkers, and your professional peers may also be struggling to make sense of these events.

\(^{48}\) Plante, *supra* note 43.

\(^{49}\) It is important to acknowledge that these issues are more far-reaching than Michael Brown, Eric Garner, and the summer of 2014. One estimate found that in the year following Michael Brown’s death, 314 black Americans were killed by police. See Elizabeth Kiefer, *314 Black Americans Have Been Killed by Police Since Michael Brown’s Shooting*, REFINERY29 (Aug. 7, 2015, 6:00 PM), http://www.refinery29.com/2015/08/92023/ferguson-anniversary-black-people-killed-by-police-officers#.kt7l4c:HmkM.
Living in a diverse society demands that we all do exactly that, continue to struggle with events like these. We may not all agree on causes or solutions, but it is the willingness to struggle as a profession and as a society that ensures our collective humanity.