

**PURSUING PROCEDURAL JUSTICE:  
REFLECTIONS BY AN ATTORNEY IN THE  
TAMIR RICE CASE**

*Walter Madison*<sup>1</sup>

*On June 11, 2015, attorney Walter Madison successfully petitioned an Ohio municipal court to make a finding of probable cause to charge police officers for the death of twelve-year-old Tamir Rice. He recounts the process that led to that decision, and the broader social and personal context behind it.*

I am no more happy about race relations today than I was in 1976. In the seventies, the Youngstown Steel Mill blast furnaces always had a pure blue flame. At that time, my conscious was reflective of those flames. I was a kid from across the tracks, attending an Italian-Catholic grade school. My cousin and I were some of the first African-American kids to ever attend. We were different. We were unaware. My Afro, my style, my taste in music were all foreign to each of my classmates. My classmates were strange fruit to me as well. The things they talked about. The way they wore their hair. The way they worshiped in a different language. I struggled with why I had to be there. I could not understand why I had to wear that ugly uniform to school while all my friends wore sneakers and walked a stone's throw to "our" neighborhood school. Ignorance (black and white) set out to make me feel I neither belonged in my neighborhood nor in my school house. I was not black enough anymore for my own neighborhood, but too black for school. At five years old, I learned the Black and White truth of life. Simply, there were two different worlds that I just could not escape.

My situation was tough. I remember being called a "nigger" each day at school. It became easier to answer and respond to the racial slur than my own name. I was afraid. I was physically unable to defend myself from the meaning behind the word. In my neighborhood, I was

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raised to always be ready to fight, and fight we did. In my neighborhood, if anyone fixed their lips to say “yo momma” it was mandatory you fight. Those were legitimate fighting words. However, at school, there was never any word that could justify fighting. At five years old, I needed to figure out how to conduct myself in these very different situations.

One day in particular was when a sixth-grade Italian kid called me a “nigger” and spat his mucous filled sputum on my faux fur lapel Easter coat. I was really proud of that coat and my Afro hairstyle. I tried to be responsible and report the incident to my teacher. She dismissively told me to just wipe it off and hurry back to class. But things had gone too far. I could no longer distinguish these two worlds I was forced to operate within. My neighborhood rules of engagement dictated. At lunch, I took my Welcome Back Kotter metal lunch box and summoned everything I had in one precise rap to the top of his head. The instant blood started pouring down his head and face was a powerful image. Two things happened: I was never called the N-word to my face again and I was instantly punished. I could not understand how I won by my neighborhood rules of engagement, but severely lost by my school’s code of conduct. The school wanted me expelled. Although unable to articulate it, I felt an injustice had occurred.

My parents became my advocates at this unilateral tribunal. Apparently, the years of enduring the N-word and now the coupling of the N-word with the ruining of my favorite Easter coat was not sufficient justification. And racial sensitivity was not a concept widely practiced in the early 80s. My father was a Marine and served this country in Vietnam. He argued my case successfully. He made it clear that unless we could address the causes of the problem, he would not allow this tribunal to address my conduct in isolation. It made sense and it worked. It did not work because he was eloquent. It worked because confrontation was harder.

By the time of my eighth grade graduation, I can honestly say each of those students loved me and I loved them back. The number of African-American students had grown to 15%. It was the mid-80s. I still keep up with many of them today. It’s not hard science; it’s heart science.

To this day, my emotions remain unmoved by the N-word. I am proud of my education, thus I am unapologetic to those who may feel proper English is a sellout. I now understand I was allowed to endure those experiences because it was preparation for what I encounter daily, not only as an attorney, but as a counselor at law. My parents knew better for me. They understood the only way to the stars was through

perseverance. They knew I could be that silk tie that binds the two divides.

These early and ongoing experiences shape my consciousness. I have learned to appreciate a wide variety of people, places, and things. I have also learned from people more experienced than myself of the importance of adjusting from a consciousness of consumption to one of production. As an attorney, much of what we should do is an art. We should not be afraid to use our imaginations to change not only the client's situation, but also the community's. Often, we should view ourselves more so as social engineers. This is particularly true in the area of civil rights. The vulnerable of our society do not have a sense of social connectivity. As a result they disengage. Outdated police philosophies from the era of "War on Drugs" have graduated a whole class of officers from the 80s to chiefs, captains, and other supervisory personnel. They implicitly reinforce the "us" versus "them" mentality to an already disenfranchised and vulnerable group that perceives the authority figures to be illegitimate and apt to mistreat them. This widens the perception of injustice. Justice Felix Frankfurter said that "justice must satisfy the appearance of justice."<sup>2</sup>

In President Obama's report on 21st Century policing, there are several factors identified as taking trust from the relationship between African Americans and law enforcement.<sup>3</sup> Lack of engagement, lack of transparency, and illegitimate authority. These are sciences of the heart. If you are mean to a dog, eventually he will turn on you. People are no different. I was triggered by that ignorant kid who was mean and ruined my favorite coat. My advocates challenged the school's authority, leading to discussion and truth in reconciliation. With the productive result of my excellent education and positive personal relationships with my fellow students of a different race.

On November 22, 2014, a twelve-year-old black boy was shot and killed by Cleveland police officers Timothy Loehmann and Frank Garmback. There is a video of the killing. The boy's name is Tamir Rice. He was playing at a playground with a toy gun. It would be hard to imagine that he was mature enough to appreciate the danger of a toy gun in the eyes of a police officer. It would be equally difficult for anyone to expect a twelve-year-old to be mature enough to vote, drive a car, or enter into a legally binding contract. Tamir probably saw the world through his own eyes and had not had enough experience to understand the two different sets of rules of engagement. It only

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2. *Offutt v. United States*, 348 U.S. 11 (1954).

3. Interim Report of the President's Task Force on 21st Century Policing (March 2015).

compounds the problem that he was black and that the officers are white. It only compounds the problem that he was yet another unarmed African American killed by police under questionable circumstances. It arrests your heart when you pause and consider that he was only twelve years old and he was doing what most twelve-year-old boys would be doing with a toy gun. Without direction, the perception of injustice occasioned by institutional racism can cause the escalation of violence to a peak as in Baltimore, Maryland and Ferguson, Missouri.

My father would say “son everything you do and experience is preparation for what you are about to do next in life.” The older I get, those words sound more prophetic than fatherly. The hardness I endured in those early years at St. Anthony’s prepared me for Tamir Rice. My lunch box tribunal taught me procedural justice. My parents’ engagement with the school taught me participation and forced my school to be transparent. We grew to see each other as legitimate. I responded with obedience to their rules. The relationship with fellow students has endured more than thirty years, and now our respective children have relationships.

I drew upon all those experiences when my people looked to me demanding justice for Tamir Rice. I felt genuinely obligated to see the middle. I will not attack the institution of policing. I will not allow injustice to fester. In the balance, I have a graphic video of what occurred. The people no longer had a perception of injustice; they had video proof positive of murder.

On June 2, 2015, the Cuyahoga County, Ohio, sheriff’s office turned over the investigation to the county prosecutor, Tim McGinty. Six months after the event, the officers are still working, no charges are filed, and the family is no closer to justice than they were the day Tamir Rice was shot. This has really infuriated many because the incident is on video and there appears to be a refusal to charge the officers with any crime. As expected, there were marches and vigils. These forms of protest are good and necessary to transform consciousness. But the Tamir Rice case was different: it required something more to avoid the dreadful responses experienced in Ferguson and Baltimore.

Enter the “Cleveland 8.”<sup>4</sup> This group of clergy and activists sought procedural justice. Throughout the foot-dragging investigation, community leaders grew increasingly weary of the pace and lack of transparency. I knew from my experience that disobedience to law enforcement was soon to follow. A creative solution was necessary. I

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4. “Cleveland 8” *Call on City to Issue Arrest Warrants for Officers Involved in Tamir Rice Shooting*, [www.cleveland.com](http://www.cleveland.com), June 15, 2015.

listened and learned from the Cleveland 8. I ultimately counseled them on what the law makes available to them in order to engage and achieve procedural justice.

In Ohio, a private citizen can file an affidavit alleging any criminal offense.<sup>5</sup> If the offense is a felony, and supporting evidence is provided, the judge must issue a warrant. The judge in this case found probable cause to charge Officer Loehmann with murder and Officer Garmback with negligent homicide, but found that state court rules prohibited him from issuing a warrant without a prosecutor's complaint.<sup>6</sup> We have appealed that decision not to issue the warrants.<sup>7</sup> The decision though, at least, put pressure on the prosecutor to act. It resulted in the sheriff's office release of a detailed report providing new facts in the case.<sup>8</sup> Immediately, this form of democracy accomplished two things: engagement and transparency. The concerned community's response was immediate and amazingly positive. And it suggests that this form of American democracy or citizen participation right is worthy of close consideration in all fifty states.

Since our use of the law to achieve a measure of procedural justice, others have observed the citizen participation right effort and contemplated using the same for their communities. In Beavercreek, Ohio, another black man, John Crawford, killed by white police officers had a special grand jury decline to indict. Tom Hagel, a University of Dayton law professor acknowledged the tact used by the Cleveland 8 for Tamir Rice as a strategy for revival of John Crawford's case.<sup>9</sup> In Philadelphia, activists for the Brandon Brown-Tate family are also considering citizen participation rights. In that case, the prosecuting attorney has refused to bring charges. However, the community still perceives an injustice. Bishop Dwayne Royster, activist, has taken the lead on pursuing citizen participation rights there, and plans on visiting Cleveland and supporting Tamir Rice's family.<sup>10</sup>

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5. OHIO REV. CODE § 2935.09; Judgment Entry, *In re Affidavits Relating to Timothy Loehmann and Frank Garmback* (Clev. Muni. Ct. June 11, 2015), available at [http://www.cbsnews.com/htdocs/pdf/00\\_2015/06-2015/doc07518120150611155635.pdf](http://www.cbsnews.com/htdocs/pdf/00_2015/06-2015/doc07518120150611155635.pdf).

6. Richard Pérez-Pena & Mitch Smith, *Cleveland Judge Finds Probable Cause to Charge Officers in Tamir Rice Death*, N.Y. TIMES, June 11, 2015.

7. Petition for Peremptory Writ of Mandamus, *Ohio Ex rel Vernon v. Adrine* (Ohio App. 8th Dist. June 18, 2015), available at <http://ftpcontent4.worldnow.com/woio/pdf/arrestwarrants.pdf>; see OHIO REV. CODE § 2731.06.

8. Mitch Smith & Richard A. Oppel, Jr., *Sheriff's Report Provides New Details on Tamir Rice Death But Leaves Questions*, N.Y. TIMES, June 13, 2015.

9. *Citizens Motion Viable in John Crawford Case*, [www.whio.com](http://www.whio.com), June 12, 2015.

10. Joel Mathis, *Could Brandon Tate-Brown Family File Criminal Charges if D.A. Won't?*, PHILA. MAG., June 17, 2015.

When you think about the benefits, citizen participation in the judicial system should be welcomed by every local government. It could be a viable tool used to restore trust between the African-American community and law enforcement. The engagement gave the citizenry a sense of connection. They felt relevant and integral to the administration of justice in their own community. This level of engagement discourages apathy and indifference. Transparency reinforces the notion of government being by the people for the people. Foreseeably, when the work can be observed, the citizenry is less likely to harbor attitudes of distrust.

Engagement and trust are the keys to any good working relationship. For generations, the African-American community, real or perceived, has had low trust in law enforcement. The low trust manifests in disobedience for some. Law enforcement often confuses their authority with their status as “public servants.” The two have a difficult time coexisting.

Too often, African-American communities are policed by people who do not have the capacity to engage and explain their positions to the community in which they are serving. Arrogance with a sense of indignation only makes matters worse. These toxic interactions lead to violence and sometimes death. America can hardly stand another unarmed African-American child killed by law enforcement. Regardless where you stand on the issue, it is about time reasonable minded Americans sit, listen, and talk about sustainable solutions. Ohio’s legislature did so more than sixty years ago when it enacted its version of citizen participation rights aimed at engagement and transparency. Perhaps, less policy and more legal creativity and humanity is all we ever needed. For America’s sake, I sure pray that’s so.