The Police Execution of Oscar Grant

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ABOUT THIS SERIES

In the last few months of 2011 into early 2012, the issue of police violence once again burst into the mainstream with the treatment of Occupy protesters.

While we were appalled at the violence directed at peaceful protesters by law enforcement, we were also dismayed that this phenomenon was treated as a novel one. The incidents were discussed in a way that was divorced from historical context. After all, the black and white images of police dogs being unleashed on peaceful protesters during the black freedom movement of the 1950s and 60s would not have been alien to the young people who were abused by law enforcement in New York and Oakland at the Occupy protests. Police violence is unfortunately not new.

In an attempt to inject some historical memory into the current considerations of police violence, Project NIA and the Chicago Prison Industrial Complex (PIC) Teaching Collective decided to develop a series of pamphlets to inform and educate the broader public about the longstanding tradition of oppressive policing toward marginalized populations (including some activists and organizers).

This series titled “Historical Moments of Policing, Violence & Resistance” features pamphlets on various topics including: Oscar Grant, the Mississippi Black Papers, Slave Patrols, the Young Lords, the 1968 Democratic Convention, the Danzinger Bridge Shootings, Black Student Protests on College Campuses, Timothy Thomas, Resistance to Police Violence in Harlem, and the 1937 Memorial Day Massacre, among others.

The pamphlets are available for free download at http://policeviolence.wordpress.com
Please spread the word about the availability of these publications.
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On January 1st, 2009, Oscar Grant was returning home to Hayward, California with his friends on a Bay Area Rapid Transit (BART) train after celebrating New Year’s Eve in San Francisco. Around 2am, officers responded to a call that a fight broke out on a BART train which was stopped and held at the Fruitvale station in Oakland. Several young men suspected of fighting, including Oscar Grant, were thrown off the train and detained on the platform by the two BART police officers on the scene, Anthony Pirone and Marysol Domenici. One of the witnesses, Margarita Carazo, stated in response to Pirone’s aggressive handling of Grant that she “thought it was wrong what the officer was doing. Oscar wasn’t doing anything wrong; he wasn’t fighting back or anything…he was just standing there” (Rosynsky, 2009). Court documents show a blatant disregard for legal protocols by officers where excessive force was used against Grant and his friends:

Although Pirone’s attorney stated that Grant provoked him, according to cellphone video footage and eye witness testimonies, the officers’ behavior was antagonistic, the officers were the aggressors, and they even used racial slurs. Golden Gate University Law School professor and police expert Peter Keane stated that the video footage of the scene shows a “vicious, unprovoked and inexcusable assault” of Grant by Pirone who he argued should be prosecuted (Lagos, 2009).
When five additional officers, including Johannes Mehserle, arrived at the Fruitvale station, witnesses argued that it was the officers who continued to escalate the situation. Witnesses also stated that Grant pleaded with BART police not to tase him (Bulwa & Lee, 2009). Police use-of force experts argue that it is highly unlikely that these officers truly felt threatened enough to justify the use of a weapon, be it a taser or a gun. Mehserle and Pirone proceeded to position Grant face-down on his stomach, Pirone kneeling on Grant’s neck and placing him under arrest for allegedly resisting an officer.

Eyewitness Karina Vargas stated, “I don’t understand it to this day...It looked to me like [Grant] was cooperating...It didn’t appear to me that he was resisting arrest at all” (Rosynsky, 2009).
Mehserle then stood up, unholstered his semi-automatic handgun, and fired, the bullet going through Grant’s back, out his front side, ricocheting off the ground, and puncturing Grant’s lung.

According to an Oakland police affidavit, Grant was lying prostrate with both hands behind his back when he was shot.

To literally add insult to injury, video footage of the shooting and witness statements indicate that after Grant was shot, officers placed him in handcuffs. Grant died seven hours later at Highland Hospital in Oakland at 9:13am.
While Pirone argued that Mehserle felt extremely threatened by Grant immediately preceding the shooting, saying that Mehserle sounded afraid and that he had never heard his voice with that tone, (Motion to Set Bail: The People of the State of California v. Johannes Mehserle, 2009), there has been a plethora of commentary on the video evidence countering this claim.

A police use-of-force expert Roy Bedard commented, “I hate to say this, it looks like an execution to me” and “It really looks bad for the officer” (Stan-nard & Bulwa, 2009).

According to Alessandro Tinonga, “The case of Oscar Grant illustrates how far the criminal justice system is willing to go to protect itself. At every step of the process, the police and the judicial system went to extreme lengths to maintain their legitimacy” (Socialistworker.org, 2011). A statement to the BART Board of Directors by No Justice No BART, a campaign of protests around the “murderous, inept, corrupt” BART police department, criticized BART police for their immediate response to the shooting, which was not to assist the innocent man laying there dying, but rather to run around the platform confiscating passenger cell phones in a cover-up attempt.

In addition, initially, BART took almost no action to sanction any of its officers, supervisors, General Manger Dorothy Dugger, nor BART Chief Gary Gee, for their actions during the incident nor for their attempted cover-up. It wasn’t until the public outcry and massive protests that the officers involved were suspended (with pay). Officers Pirone and Domenici were finally fired but it must be noted that all the officers that were suspended or fired were then reinstated. According to No Justice No BART, no one on the BART board has been disciplined for the incident and BART police are still allowed to carry tasers and guns.
More importantly, how did the criminal justice system handle Johannes Mehserle? While he initially refused to speak with BART investigators and fled to Nevada, if a lay person shot and killed someone, they would have been automatically arrested and the district attorney would decide whether or not to file charges. However, this is not the case in police shootings of civilians. It was only after massive demonstrations in Oakland, resulting in hundreds of arrests, that the district attorney’s office finally charged Mehserle with murder. It was the first time in California history that a police officer was put on trial for a killing committed while on duty. While Mehserle’s bail was set at $3 million, it was posted a week later by the police union.

Mehserle’s trial began in June 2010 in downtown Los Angeles because his defense attorney Michael Rains argued that he couldn’t get a fair trial in Alameda county. In a city that is 25 percent white, the jury was 75 percent white and there were no Black jurors. According to attorney John Burris, while as many as six of the jurors had a spouse or family member that was a police officer, Blacks that had any encounters with the police (either positive or negative) were excluded from serving on the jury (Ikeler, 2010).

Even Mehserle’s defense attorney stated that he would not likely be prosecuted for murder because the law discourages “second-guessing and hindsight” of police officers, who tend to be favorably viewed by juries (The Associated Press, 2009). In addition, the case was assigned to Judge Robert Perry, a former federal prosecutor known in LA as being a “friend of cops” (Chimurenga, 2012).

There were numerous other examples of how the scales of justice tilted in Mehserle’s favor. For example, the fact that Oscar Grant had previously run from and been tased by the police was officially entered into evidence to demonstrate that Grant was “prone” to resisting arrest. On the other hand, six weeks
before he killed Oscar Grant, Mehserle violently assaulted Kenneth Carruthers, a Black man for his criticism of BART police where Mehserle and other officers “kicked, punched, and eventually hogtied him.” This incident, however, was not allowed as evidence illustrating that Mehserle was “prone” to racialized police brutality (Chimurenga, 2012). In addition, Judge Perry made the jury leave the room when the video of the shooting was shown because he didn’t want the tears of the audience to influence them but then allowed the jury to witness Mehserle crying on the stand. Mehserle’s drug and alcohol test were also withheld as evidence.

As his defense, Mehserle testified that he meant to tase Grant but instead accidentally drew his gun. Tony Pirone testified that Mehserle said, “I’m going to tase him, I’m going to tase him,” just before shooting Grant (Motion to Set Bail: The People of the State of California v. Johannes Mehserle, 2009). However, Alameda County Superior Court Judge Morris Jacobson noted that Pirone told investigators after the shooting that Mehserle said, “Tony, I thought he was going for a gun” (Bulwa, 2010). As a matter of fact, Mehserle’s friend and colleague Terry Foreman, who he spent six hours with at the station following the shooting and spoke to multiple times in the days following, testified that Mehserle never once said anything about mistaking his gun for his taser. Instead, Mehserle repeatedly claimed “I thought he [Grant] had a gun” (Preliminary Hearing: People of the State of California vs. Johannes Mehserle, 2009). Furthermore, the taser is much lighter and a completely different size and shape than Mehserle’s gun, it was on a different part of his belt, he held the gun with two hands while he was trained to hold the taser with one, the gun had safety mechanisms, and Grant took a picture of Mehserle pointing his taser at him seconds before he pulled his gun. Commenting on this defense, criminologist and consultant George Kirkham stated,

_That’s as reflexive as you getting in on the driver’s side of the car [instead of] the passenger side if you want to drive it. There’s no remote similarity to a conventional firearm... The Taser is just like apples and oranges. _ Stannard & Bulwa, 2009
However, this defense tactic apparently worked wonders for Mehserle in convincing the jury of his “non-malicious” intent because on July 8th, 2010, Mehserle was found guilty of Involuntary Manslaughter with a gun enhancement, which was the least of the charges (i.e. second-degree murder or voluntary manslaughter) available to the jury next to acquittal. While the conviction gave Mehserle up to 14 years in prison, Judge Perry, the “friend to cops” overturned the jury’s decision and dropped the gun enhancement, sentencing Mehserle to only two years with time served. Thus after serving only eleven months in LA county jail, Mehserle was released on June 13th, 2011.

Attorney John Burris filed a $50 million wrongful death and civil rights lawsuit on behalf of Oscar Grant’s family against BART as well as claims on behalf of Oscar’s friends for illegal search and seizure, the use of excessive force, and false arrest. Part of the $50 million civil suit was settled when BART agreed to pay Grant’s daughter $1.5 which will be paid out until she turns 30 years old.

**Community Response**

The San Francisco Bay Area, especially the Oakland, California community has historically been at the forefront of leftist social justice movements. After all, Oakland housed the early foundations for the Black Panthers and gave rise to the Black Power movement (The Dr. Huey P. Newton Foundation, 2007). Working class and black Oakland was infuriated by the police execution of another unarmed Black man. Thus the Oscar Grant shooting fueled a broad movement by almost the entire Bay Area left, around the state of California, as well as nationwide against state violence and racialized police brutality and murder.

The Oakland General Assembly for Justice for Oscar Grant, The New Year’s Movement for Justice for Oscar Grant, The Oscar Grant Committee for Justice, The Oakland Coalition for Justice for Oscar Grant, The L.A. Coalition for Justice for Oscar Grant, CAPE (Citizens Against Police Executions), BAMN (By Any Means Necessary), No Justice No BART, The Town Halls for Justice for Oscar Grant are but a few organizations that have rallied around the issue. While the video footage released on the internet led to several nights of protest in Oakland immediately following the shooting, since then, protesters have demonstrated at every key milestone in the case—when the Alameda County district attorney
filed murder charges, when the trial was moved to Los Angeles, when the verdict was returned, and when Mehserle was released. For example, Mehserle’s early release led to over 250 protesters gathering at the Fruitvale BART station, now nicknamed “Grant Station” (Tinonga, 2011). The abundance of rallies and protests have served to facilitate discourse with public officials and place them on notice that the world is watching and holding them accountable for justice.

No Justice No BART began organizing in January of 2009 in response to Oscar Grant’s shooting and has since advocated the disbandment of the BART police department, transparency in investigation, and both criminal and disciplinary accountability of police misconduct. They state, “We are fighting for justice for Charles Hill, Oscar Grant, Fred Collins, Bruce Seward, Jerrold Hall, Robert Greer, and all victims of BART police violence and murder” (http://nojusticenobart.blogspot.com/). Occupy Oakland is also in solidarity with the struggle against police brutality and murder; one of their first acts was to rename Frank Ogawa Plaza to Oscar Grant Plaza, and more Occupy kicked off New Year’s 2012 with two marches protesting police and prisons. Members of the International Longshore and Warehouse Union (ILWU) have also shown solidarity with these actions. For instance, Local 10 of ILWU shut down the port of Oakland and led a rally of 600 outside Oakland City Hall to protest the “involuntary manslaughter” verdict against Mehserle and demand justice for Oscar Grant, carrying a large banner with the slogan “An injury to one is an injury to all” (CUNY Internationalist, 2011).

Though protesters have been overwhelmingly peaceful, they have often been met with violent pushback from officers seeking to quiet their message. Media reports highlighted and exaggerated vandalism by a few protesters while downplaying and ignoring police use of aggressive, unethical, and unconstitutional disbursement and containment tactics on people peacefully assembling. No Justice No BART criticized BART police for endangering protesters and violating their rights as well as safety codes by shutting off cell phone service, locking exits and then demanding immediate evacuation through one door. The National Lawyers’ Guild filed a class-action federal lawsuit regarding Oakland police officer’s wrongful arrest of 150 protesters after Mehserle’s sentencing. The arrestees, none of whom were ever charged with any crime, were forced to endure deplorable conditions such as being corralled and trapped on a residential block by police,
detained for 18 to 24 hours in a bus where they were denied a bathroom for eight hours and forced to urinate on themselves. When in jail, they were denied food and a place to sleep and all the women were forced to urinate in a cup for a pregnancy test. Throughout the protests, law enforcement was more concerned with protecting property than people.

**Oscar Grant’s Relevance Today**

In their closing argument, Mehserle’s defense told the jury that the shooting was an “isolated incident” and not to make “some sort of commentary on the state of relations between the police and the community in this country” (cited in Ikeler, 2010). However, the murder of Oscar Grant is far from isolated, nor is it a case of “a few bad apples.” Oakland’s police force has had a federally-appointed monitor since 2003 due to their persistent corruption and violence which continues into the present. BART is also notorious for the violation of human rights by their police officers where in the 2 short years since Oscar was murdered, BART police have managed to kill both Fred Collins and Charles Hill.

Clearly, Oscar’s murder is indicative of an age-old and persistent pattern of brutal racial oppression in America in which the police are given a license to murder with impunity and they routinely exercise this “right.” This is evidenced by the all-too-frequent killing of unarmed African Americans, who, by the very color of their skin, are judged to be “suspicious,” including Trayvon Martin. This was the same scenario when police fired 41 shots at Amadou Diallo in 1999 when he reached for his wallet or 50 shots at Sean Bell for driving while black in 2005. From the New York Police Department’s “stop and frisk” policy which justifies the racist police profiling of blacks and Latinos to Arizona’s SB1070 which allows the same to be done to “suspected” illegal immigrants, the nationwide police targeting of people of color for violence and harassment has served as a mechanism to reinforce the notion that marginalized groups are beyond the realms of equal citizenship and the dignity of human rights in this country. In her book Abolition Democracy, Angela Davis puts it this way,

> One could argue that lynching was one of the ways in which the impossibility of equal citizenship was reinforced, especially when you consider the relationship between lynching and the legal apparatus. Lynching was extra-legal, but it was linked very closely to the state’s machinery of justice._

_Davis, 2005_
Although Davis is recalling the historical notions of the practice of lynching, when watching the video footage of the Oscar Grant murder, viewers can see that this is indeed a modern day lynching of yet another black man. Though the independent actions of an individual officer resulted in the murder of Oscar Grant, we must recognize that police brutality, state violence, and white capitalist superiority are the ultimate culprits. Ikeler (2010) states:

_Ultimately, racial profiling and institutionalized police brutality against African Americans stem from a system in which ordinary people do not control the police, and the police act like an occupation army in communities of color like Oakland. As the violent death of Oscar Grant shows, the stakes are too high. And as the favorable treatment of his killer makes even clearer, people of color cannot “trust” the courts and criminal justice system to right such wrongs. It is time for labor, community, immigrant and youth activists to work together to challenge the capitalist system - a system that needs exploitation, poverty, racism, environmental degradation and war in order to keep itself afloat._

socialistalternative.org

In memory of all the marginalized people who have been murdered by the police, most of whom have been denied justice, we must continue to build solidarity in our fight for racial justice.
Where, oh where, in this land
Can my son stand
And be a man

Free of street persecution
And
Blue prosecution

You see
I didn’t birth him to be
So that he could leave me
Destitute
Distraught

Full of wonder...

Did I hand him to the ghetto
Would he have been better off
In a country house built in a meadow

Did I do my best to raise him right
Should I have given him more
Kisses good night

Would that have healed his wounds
Kept him at a distance
From the tombs

What’s a black mother to do
When choices for your son
Are few...

And obstacles are much too great
For little black boys
To navigate

....and all you have to offer him is you

Do other women ever have to wonder
this wonder
Has lady justice the slightest inkling
To correct her blunders

Give my son back his dignity
Take back the crack rocks
Your son, husband, fore-fathers placed in our community

And to the colorless soldier in this movement

Show your dedication
By lobbying the GODs of this nation
To give us our just do
In the form of reparations

Nah you wouldn’t do that
‘cause then young Sally
might become the ‘hood rat’
racist ofays takin’ two to the back
and we can’t have that...now can we

However, then, maybe then you’d see
that it’s not just MTV and BET
but the whole of society
that carries the life of one

But Damn
Can’t he just be a man
Can somebody-anybody
Give him space to stand

‘Cause all I’ve got to offer him...

Won’t set him free
Might make him one in three

Oh what is a mother to do
When all you have to offer black boys
Are you?
Questions to Consider
1. Do you think that Oscar Grant and his family received justice?
2. Putting it in perspective, football quarterback Michael Vick served more time (18 months) for dog fighting than Johannes Mehserle did for killing Oscar Grant. What does this say about the value of Black males in our criminal justice system as well as in the larger society?
3. What do you think could be done to mend the relationship between the police and marginalized communities?

Resources:

Films/Documentaries:
“Never Will Be Forgotten” by Youth Movement Records
“Operation Small Axe” by JR Valrey
“Police Tape” by Josh Wolf
“Fruitvale” to be released

Books:
BART Police shooting of Oscar Grant by Ronald Cohn Jesse Russell
Punished: Policing the Lives of Black and Latino Boys (New Perspectives in Crime, Deviance, and Law) by Victor M. Rios
Black Youth Rising: Activism and Radical Healing in Urban America by Shawn A. Ginwright

Web Resources:
Youth Radio: Oscar Grant: http://www.youthradio.org/topic/oscar-grant
Oscar Grant Memorial Arts Project: http://urbanhabitat.org/rpe/oscar
Oscar Grant Foundation: www.oscargrantfoundation.com
Facebook page: www.facebook.com/RememberOscarGrant
Justice for Oscar Grant: www.justiceforoscargrant.org/
Occupy Oakland: www.occupyoakland.org
We are all Oscar Grant: wearealloscargrantcv.blogspot.com/
General Assembly for Justice for Oscar Grant: oaklandlocal.com/people/general-assembly-justice-oscar-grant

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Preliminary Hearing: People of the State of California vs. Johannes Mehserle, 547353 (The Superior Court of the State of California Alameda County May 27, 2009).
Trial Brief:The People of the State of California vs. Johannes Mehserle, 161210 (Superior Court of the State of California Court of Alameda February 19, 2010).