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THESIS

**CONFLICT MANAGEMENT TRAINING
AND NONLETHAL WEAPON USE**

by

Casey T. Ryan

December 2018

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This thesis examines multiple theories for why law enforcement officers misuse force. It explores decision-making theory that has been used to describe how officers make rapid decisions under stress. Biases can affect an officer's ability or propensity to use force. Recognition Primed Decision addresses how over-emphasis on using force during training can prime officers to rely on force in the streets. Such other factors as the warrior mentality (versus the guardian mentality) that are instilled in recruits also may affect an officer's readiness to use force; officers also are taught that their lives are a priority over others. And finally, the law enforcement community has a sense of immunity from being held legally responsible, reinforced by courts' inability to prosecute officers or hold them liable. Practices and policies are examined in agencies that exacerbate or mitigate these issues. Over-emphasis on using force during training and specific material meant to foster the warrior mentality are identified as problems plaguing some departments. De-escalation training and training that mitigates officer bias are identified as important practices to implement. This thesis includes several recommendations that leaders should examine to minimize officer misuse of force.

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CONFLICT MANAGEMENT TRAINING AND NONLETHAL WEAPON USE

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ABSTRACT

This thesis examines multiple theories for why law enforcement officers misuse force. It explores decision-making theory that has been used to describe how officers make rapid decisions under stress. Biases can affect an officer's ability or propensity to use force. Recognition Primed Decision addresses how over-emphasis on using force during training can prime officers to rely on force in the streets. Such other factors as the warrior mentality (versus the guardian mentality) that are instilled in recruits also may affect an officer's readiness to use force; officers also are taught that their lives are a priority over others. And finally, the law enforcement community has a sense of immunity from being held legally responsible, reinforced by courts' inability to prosecute officers or hold them liable. Practices and policies are examined in agencies that exacerbate or mitigate these issues. Over-emphasis on using force during training and specific material meant to foster the warrior mentality are identified as problems plaguing some departments. De-escalation training and training that mitigates officer bias are identified as important practices to implement. This thesis includes several recommendations that leaders should examine to minimize officer misuse of force.

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I. INTRODUCTION

Since President Barack Obama's administration, the United States has seen a growing divide between support for law enforcement and opposition due to perceived systemic police brutality. At the heart of this debate is whether law enforcement officers (LEOs) overuse the spectrum of physical force and how police use of force, particularly deadly force, affects society. A 2015 report by the Bureau of Justice Statistics reported that 75 percent of civilians who encountered physical force in interactions with law enforcement believed that it was excessive.[1] There are many variables that go into the debate—for example societal expectations of its police force, society's understanding of how policing works, and department policy and training requirements. This thesis focuses on one of those variables on which law enforcement leaders and policy makers may be able to have an immediate impact: officer training.

All law enforcement officers understand the legal requirements for when use of force is allowed, but how much training and of what quality are they receiving to maximize that goal of keeping everyone safe? The community of policing in the United States is full of antiquated policies and complex bureaucracies causing inefficiencies in training requirements. Organizations like the Police Executive Research Forum recognize that many departments' efforts are misguided and have put forth policy recommendations that go above and beyond the current legal requirements.[2] No amount of new equipment, grandiose police strategies, or legal restrictions on officers will eliminate misuse of force if training efforts are not comprehensive and do not address root causes of excessive force.

A. MAJOR RESEARCH QUESTION

Which training policies enable or mitigate police use of excessive force?

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[1] Shelley S. Hyland, Lynn Langton, and Elizabeth Davis, "Police Use of Nonfatal Force, 2002–11" (Bureau of Justice Statistics, November 14, 2015), 1, https://www.bjs.gov/index.cfm?ty=pbdetail&iid=5456.

[2] "Guiding Principles on Use of Force" (Washington, D.C.: Police Executive Research Forum, March 2016); Graham vs. Connor 490 U.S. 386, No. 87–6571 (United States Supreme Court May 15, 1989).

B.   SIGNIFICANCE OF THE RESEARCH

The current social and political climate in the United States is a prime example of why law enforcement policy and interactions with the population are important. How the police use their authority has a very impactful effect on society. From the unnecessary death or injury of such citizens as Laquan McDonald[3] to such international activist movements as Black Lives Matter, the issue of use of force is pervasive in today's society. From a general societal standpoint, it is in the best interest of all parties to have a police force that performs well and does not abuse its privileges. Police use of force has risen to a level of importance that political candidates will use their opinion on the issues as part of their running platform.[4]

Municipalities and other entities assume some risk when they have a law enforcement department. It is important for officers, both due to legal requirements and the responsibility endowed on them by their employer to use the force required to accomplish the task but not to overuse such force. Misuse of force can be a nightmare for these organizations. Riots, lawsuits, and public relations issues are all potential results from an incident. Departments must be prepared to handle these situations, but by far the best option is to avoid them entirely through proper policy and training.

In the last few years, many in prominent political, religious, and cultural positions have called for reform of law enforcement training. Powerful organizations such as the ACLU have demanded training reform in response to use-of-force incidents.[5]   With roughly 18,000 law enforcement agencies (LEAs) in the United States and many hundreds

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[3] Mark Guarino and Mark Berman, "Chicago Police Officer Jason Van Dyke Convicted of Second-Degree Murder for Killing Laquan McDonald," *The Washington Post*, October 5, 2018, https://www.washingtonpost.com/news/post-nation/wp/2018/10/05/chicago-police-officer-jason-van-dyke-convicted-of-second-degree-murder-for-killing-laquan-mcdonald/?utm_term=.8c480dc804fd.

[4] Candace Smith, "How the Presidential Candidates Differ on Police Brutality," *ABC News*, July 8, 2016, https://abcnews.go.com/Politics/presidential-candidates-differ-police-brutality/story?id=40440463.

[5] J. Bennett Guess "Off-Duty Cop Tasing an 11-Year-Old Should Provoke a Clear Wakeup Call for Police Reform." *Speak* Freely (blog), *American Civil Liberties Union*. 4 September 2018. https://www.aclu.org/blog/criminal-law-reform/reforming-police-practices/duty-cop-tasing-11-year-old-should-provoke-clear

of law enforcement training academies,[6] there is a variety of training regimens. From curricula that were based on a high-stress approach to a low stress-approach and everything in between, what recruits go there differs greatly.[7] These academies can range from 700 to more than 1100 hours to complete.[8] Annual training requirements vary from department to department and state to state. Cultural issues within departments and training variances within departments may therefore lend a hint to what may cause patterns of correct or incorrect use of force among LEOs.

The responsibility of making policing better is a call that police departments do not take lightly. In 2016, the Police Executive Research Forum held a conference with more than 300 police chiefs, training experts and politicians to discuss use-of-force incidents. The result was 30 policy recommendations for departments to adopt in order to ensure appropriate levels of force are used.[9] Analysis of these recommendations shows that application may be more political than practical.[10]

C.   LITERATURE REVIEW

There is a decent amount of literature surrounding law enforcement training, but few works address all of the factors that may an influence officer's use of non-lethals. The studies with-regards-to conflict management training are a good start, but after close analyses, they appear to provide somewhat contradicting conclusions about which type of training is necessary to have an effect on policing performance. Other works unrelated to training bring up cultural factors and potential ethical questions about non-lethal weapons that could also influence officers' decision. This review will examine some of the more

[6] Bureau of Justice Statistics. *National Sources of Law Enforcement.* April 2016. Revised 4 Oct 2016.

[7] Brian A. Reaves and April L. Trotter, "The State of Law Enforcement Training Academies," *Sheriff & Deputy*, February 2017, 45–47. *Sheriff & Deputy.* January/February 2017, 48.

[8] Reaves "State of Law Enforcement."

[9] Wesley Lowery, "Police Chiefs Consider Dramatic Reforms to Officer Tactics, Training to Prevent so Many Shootings.," *Washington Post*, January 29, 2016, https://www.washingtonpost.com/news/post-nation/wp/2016/01/29/police-chiefs-consider-dramatic-reforms-to-officer-tactics-training-to-prevent-so-many-shootings.

[10] Avelar, "A Race to Force the Issue: A Use-of-Force Doctrine in Policing" (master's thesis, Naval Postgraduate School, 2017), 68.

prevalent arguments and findings out there with regards to law enforcement training and nonlethal weapons use.

Studies can be broken into several generalized fields of thought. Several academic works fall into the category that holds that training is sufficient enough for law enforcement officers and their non-lethal weapons-use. Several more—potentially the largest field of work—argue that training is either insufficient or misplaced in terms of type or delivery methodology.

1.   Training and/or Weapon-Use is at the Appropriate Level

Several researchers have studied the performance of officers in the line of duty to find whether policing is occurring at an acceptable quality. They have examined comparisons of officers that received training versus no training as well as perceived overuse of non-lethal weapons. The following two studies conclude in opposition to the projected results of the analysis, showing that officers' training did not a affect performance between two groups and that officers do not overuse non-lethal weapons.[11]

Justin Ready and Michael Fisher examined the media's analysis and portrayal of TASER-use by law enforcement officers and compared it to police and training records.[12] Some of the conclusions that they drew from their research could allude to the fact that TASER training is sufficient, and there is no evidence supporting the fact that officers abuse that non-lethal capability.[13] Some of the evidence that was used to get to this conclusion is that officers were only likely to use TASER more than once in an incident after it has been deployed the first time, due to factors such as missing the target or continued resistance. The factors prior to the deployment of the initial TASER had no effect

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[11] Justin Ready, Michael D. White, and Christopher Fisher, "Shock Value: A Comparative Analysis of News Reports and Official Police Records on TASER Deployments," *Policing* 31, no. 1 (2008): 148–70; E.P. Mulvey and N.D. Repucci, "Police Crisis Intervention Training; An Empirical Investigation," *American Journal of Community Psychology* 9, no. 5 (1981): 527–46.

[12] Justin Ready; White, Michael D; Fisher, Christopher. "Shock value: A comparative analysis of news reports and official police records on TASER deployments." *Policing*, vol. 31, no. 1 (2008): 148–170

[13] Ready, White, and Fisher, 161.

on whether it was used repeatedly, which may suggest that officers were not abusing its use for discriminatory or power reasons.[14]

In 1981, Mulvey and Reppucci studied the effects of conflict-management and crisis-intervention training on police officers in Virginia.[15] While this study is a bit older, and the training provided may be different than what is provided today, the findings between the two groups showed no significant difference in performance between those who were provided the training and those who were not.[16] More information on this study would need to be gathered to understand its relevance in today's police training regime and today's current society. Such variables as the content and method of law enforcement academies, annual training requirements, and policy procedures could change the outcome dramatically if assuming similar characteristics to today's policing world. Additionally, methods for calculating successful police work and incidents likely have changed, and legal framework for using force, as in *Graham v. Connor,* has changed since this study.

2.   Training is Insufficient or Misplaced

One study conducted by the Army Institute of Research found that 97 percent of officers failed to meet standards during a stressful training exercise.[17] While much of the study focused around lethal force, an interesting finding to note is that only 57 percent of subjects "could accurately identify the exact moment when the situation doctrine first justified the use of lethal force."[18] The requirements for use of force are discussed in depth in chapter two of this thesis. The researchers concluded that the only way to increase performance was to increase the portion of training that was conducted under stressful conditions.[19]

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[14] Ready, White, and Fisher, "Shock Value: A Comparative Analysis of News Reports and Official Police Records on TASER Deployments."

[15] Mulvey and Repucci, "Police Crisis Intervention Training; An Empirical Investigation."

[16] Mulvey and Repucci, "Police Crisis Intervention Training; An Empirical Investigation."

[17] James Meyerhoff et al., "Evaluating Performance of Law Enforcement Personnel during a Stressful Training Scenario," *New York Academy of Sciences* 1032, no. 1 (December 2004): 251.

[18] Meyerhoff et al., 251.

[19] Meyerhoff et al., 253.

Martin Euwama, Nicolein Kop, and Arnold Bakker conducted a study of the effect that burnout had on job performance among LEOs.[20] Their research found that dominance by the professional (police officer) in addition to conflict with a client (civilians), a power struggle was more likely to occur.[21] Considering that most non-lethal weapon training emphasizes dominance by the officer to control the situation, could this finding mean that certain aspects of law enforcement training are counter-productive?[22] The authors suggest that training (for officers) should include controlling the situation, but not through dominant behavior.[23] Yet another study from the Netherlands conducted as an unpublished doctoral dissertation showed that "dominant behaviour exacerbates dominant and aggressive responses, instead of submissive behaviour, often resulting in a power struggle"[24]

The kind of training seems to matter. Joseph Zacker and Morton Bard provided 42 hours of affective-experiential training and 42 hours of cognitive training to two groups from the same police recruit class.[25] Affective-experiential training emphasizes "active involvement, learning while doing, and monitored practice in the field," while "cognitive training stresses a lecture format in which information is imparted to a group of students in a more passive-receptive mode of response."[26] The study found that the affective-experiential group was statistically more successful in their clearance rate than the cognitive group and those who had not received additional training.[27] Their conclusion,

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[20] Martin Euwema, Nicolien Kop, and Arnold Bakker, "The Behavior of Police Officers in Conflict Situations: How Burnout and Reduced Dominance Contributed to Better Outcomes," *Work and Stress* 18, no. 1 (March 2004): 23–38.

[21] Euwema, Kop, and Bakker, 23.

[22] Euwema, Kop, and Bakker, 26.

[23] Euwema, Kop, and Bakker, 25.

[24] A Nauta, "Oog Om Oog En Baas Boyen Bass [Battle and Bossiness in Business: Interaction Patterns in Interpersonal Conflict within Bureaucratic and Organic Organization Departments]" (doctoral dissertation, Groningen University, 1996).

[25] Joseph Zacker and Morton Bard, "Effects of Conflict Management Training on Police Performances," *Journal of Applied Psychology* 58, no. 2 (October 1973): 202–8.

[26] Zacker and Bard, 202.

[27] Zacker and Bard, 204–5.

therefore, was that it was not purely additional training that improved performance, despite the cognitive training being well-received, but the type of training that affected performance. Zacker and Bard would also agree with the previous researchers in that officers' training should not emphasize passivity, which is a negative side effect of the lecture-format in which most LE training is provided.[28]

A group of psychologists in Hong Kong conducted a study on the effect of conflict management training on traffic officers' performance on duty.[29] Their study found statistically significant improvements in a police officer's performance in controlled test environments as well as better ratings by their superiors in long-term job performance after receiving conflict management training.[30] It should be noted of a weakness of this study was the potential of not addressing the hypothesis thoroughly by failing to use a control group therefore leaving questions as to other variables that may have impacted the study group.

D.   RESEARCH DESIGN

This thesis examines existing literature to establish whether and how law enforcement training must be altered in order to receive the desired outcome of appropriate use of force. There are a lot of published studies on law enforcement training as well as the psychology of using force. The strongest and most applicable results are synthesized to establish policy recommendations for law enforcement application.

E.   THESIS OVERVIEW

This thesis is organized into five chapters. Following this introductory chapter, the second chapter provides background of current organizational practices within law enforcement training and issues surrounding misuse of force in the United States.

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[28] Zacker and Bard, 207.

[29] Esther Lau et al., "Effectiveness of Conflict Management Training for Traffic Police Officer in Hong Kong," *International Journal of Police Science & Management* 6 (2004): 97–109.

[30] Lau et al.

Understanding the current requirements and practices provides the basis for describing current issues as well as the baseline for which policy recommendations can be made.

The third chapter examines underlying reasons for police using excessive force. It explores studies which explain theoretical variables as well as quantitative studies showing what factors that contribute to police performance. These studies are analyzed to show where training may or may not have an influence on performance.

The fourth chapter examines training methods and policies that affect the reasons identified in chapter three. Training practices and policies are broken into two groups: the first encompasses those practices that exacerbate misuse of force, while the second groups those best practices that mitigate the use of excessive force.

The fifth and final chapter summarizes the findings and offers policy recommendations to law enforcement officials, policy-makers, and NGO's that are involved in ensuring public-trust in police organizations.

II.   BACKGROUND ON USE OF FORCE AND LAW ENFORCEMENT TRAINING

This chapter explores the issue of police use of force and how officers are trained. Establishing the current legal environment and the background of what goes into making an officer sheds light on the difficulties of preventing police from using excessive force. An officer may be trained on many de-escalation techniques, but an officer is not legally obligated to use any of those techniques if the information available to the officer at the time dictates that he or she can use force.[31] Officers have many "tools in the toolkit" when it comes to gaining compliance, but how they are trained on each and what is emphasized by their department is also important. The first section of the chapter discusses in depth the requirements for use of force and then analyzes statistics regarding use of excessive force in the United States. The second section discusses law enforcement training protocol and the differences among different departments.

A.   EXPLANATION OF USE OF FORCE AND WHETHER IT IS MISUSED

Police have certain immunities from prosecution if they are acting within a law which affords them a lower legal standard by which they are judged.[32] The legal standard for use of force is actually not interpreted in the same manner that most law is, but rather by a standard based on the officer's perspective.[33] This legal difference is how an officer can be legally justified in shooting a suspect who turns out to be unarmed or was not breaking any laws. By showing that he or she interpreted the victim's actions in a way that would meet use of force thresholds, the officer can be found innocent of a crime.

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[31] Graham vs. Connor 490 U.S. 386.

[32] see *Justifiable Use of Force Explained, pg 16*

[33] Graham vs. Connor 490 U.S. 386.

1. What is Use of Force?

Use of force is defined as "the amount of effort required by law enforcement to gain compliance from an unwilling subject."[34] In practice, use of force is a spectrum of activities that ranges from a friendly conversation to deadly force, such as firing a weapon. There is a plethora of tools, both tangible and intangible, that officers can use in between those two extremes, depending on the situation. Most use-of-force incidents, in the context of police brutality and using excessive force, refer to some amount of physical force being applied, whether it be combatives (i.e., martial arts), use of a non-lethal weapons, police dogs (K9s), firearms, or other means. Use of excessive force (also known as misuse of force or illegal use of force) refers to taking an action beyond what is required to gain compliance.[35]

Non-lethal weapons, or less-lethal weapons, are tools that are used to gain compliance from suspects but have a significantly reduced chance of causing death or serious bodily injury to suspects when used properly. The effects of these tools are designed to be temporary, but painful enough to coerce compliance from the suspect. Conducted electrical weapons (CEWs), commonly referred to as Tasers, along with oleoresin capsicum spray (OC or pepper spray), batons, bean bag rounds, tear gas, and other weapons fall into this category.[36] Each individual tool has significant advantages and disadvantages and should only be used in certain circumstances. Understanding these dynamics is integral to an officer's ability to effectively carry out his or her job, and therefore, is part of department policy.

2. Justifiable Use of Force Explained

The legal framework that law enforcement officers are held to is separate from department policy. This is important because, while an officer may legally use force in an

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[34] "Use of Force," BJS.gov, https://www.bjs.gov/index.cfm?ty=tp&tid=84#terms_def. (accessed October 17, 2018).

[35] "Use of Force."

[36] Kelley Marks, "What Nonlethal Weapons Can Be Used by the Police?," *Soapboxie*, April 19, 2018, https://soapboxie.com/government/What-Nonlethal-Weapons-Are-Used-by-the-Police.

incident, and therefore avoid criminal punishment, he or she can still exceed policy and face disciplinary action. Disciplinary action is far more common than officers going to trial. Even more rare is officers being found civilly liable during the execution of their duties.[37]

Legally, officers are held to a standard known as *objective reasonableness* when using force. *Graham v. Connor,* a 1989 case, explained that an officer's actions are judged on the officer's actions, given the facts and circumstances confronting him or her, without regard to underlying intent or motivation.[38]

> The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.[39]

There are several ways that the justice system translates excessive-force incidents into justifiable use of force.[40] The first is that prosecutors can decline to press charges due to lack of evidence of unreasonable force.[41] The second is that a grand jury can choose not to indict even if prosecutors submit charges.[42] The third way is that the judge or jury can decide whether the reasonableness of the actions violated the law.[43] In this case, simply an officer's testimony of his or her perspective can provide enough evidence to show reasonableness.[44] It is because there are all these steps in the process of actually criminally convicting an officer of unreasonable force that there are so few convictions. All parties

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[37] Joanna C. Schwartz, "Police Indemnification," *NYU Law Review* 89, no. 3 (June 2014): 937–38.

[38] Graham vs. Connor 490 U.S. 386.

[39] Graham vs. Connor 490 U.S. 386.

[40] Devon Carbado, "Blue-on-Black Violence, A Provisional Model of Some of the Causes," *Georgetown Law Journal* 104, no. 1479 (August 2016): 16.

[41] Carbado, 16.

[42] Carbado, 16.

[43] Carbado, 16.

[44] Toussaint Cummings, "I Thought He Had a Gun: Amending New York's Justification Statute to Prevent Officers from Mistakenly Shooting Unarmed Black Men," *Cardozo Public Law, Policy, and Ethics Journal* 781, no. 785 (2014): 12.

involved in the conviction process may be subject to explicit or implicit biases as well, which further makes this process less straightforward than many would hope.[45]

3. Data on Misuse of Force

With the recent media coverage shining light on high-profile cases of police excessive force, it can be difficult to understand a more realistic picture of police and civilian relations. Due to the highly politicized nature of excessive force from police, the medium in which data is gathered and reported likely has an effect on those results.

Polling the public on its interactions with the police is one method to receive data on police performance. The Bureau of Justice Statistics published a report in 2015 on police and public contact with regards to use of force.[46] Results showed that out of everyone who reported having contact with the police in the previous 12 months, 1.6 percent of those respondents experienced some form of force (threat or actual use of force).[47] Seventy-one percent of those same respondents (1.2 percent of the total) thought that the force was excessive.[48] Additionally, 49 percent who were shouted or cursed at believed that action was excessive, while 81 percent of those who were sprayed with OC (pepper spray) believed that it was excessive.[49] This rate is astronomically higher than the rate of excessive force reported through other means. For example, a 2006 report by the Bureau of Justice Statistics found that only 8 percent of excessive use of force complaints against large law enforcement agencies were sustained in 2002.[50] In 2011, the Department of Justice's Civil Rights Division found that the Seattle PD used force "in an unconstitutional manner nearly 20 percent of the time."[51] It certainly makes sense that the reported rate of

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[45] Carbado, "Blue-on-Black Violence, A Provisional Model of Some of the Causes," 17.

[46] Hyland, Langton, and Davis, "Police Use of Nonfatal Force, 2002–11," 6.

[47] Hyland, Langton, and Davis, 6.

[48] Hyland, Langton, and Davis, 6.

[49] Hyland, Langton, and Davis, 6.

[50] Matthew J. Hickman, "Citizen Complaints about Police Use of Force" (Bureau of Justice Statistics, June 2006), 1, https://www.bjs.gov/content/pub/pdf/ccpuf.pdf.

[51] "Investigation of the Seattle Police Department" (United States Department of Justice, December 16, 2011), 4, https://www.justice.gov/sites/default/files/crt/legacy/2011/12/16/spd_findletter_12-16-11.pdf.

police who use excessive force would vary greatly depending on the surveyed population. An independent investigation—for example, the DOJ's study of Seattle PD—is the likeliest method to provide a realistic understanding of a department's behavior due to removal of bias and a proper understanding of laws.[52]

Other factors are clearly linked to an increase in potential use-of-force incidents. The BJS report data also shows that race is a variable that likely has dramatic impact on whether force is used. Traffic stops between an officer and a driver of different races were more than twice as likely to involve force than those stops between parties of the same race.[53] The report goes on to estimate the average number of persons who experienced police use of force each year (from 2002 to 2011) was 812,852.[54] Based on the percentage who reported excessive force from that same report, one can conclude that there were roughly 577,000 people who believed they experienced excessive use of force each year.

Investigation of the Seattle PD shows that a minority of the officers were responsible for a large portion of the use-of-force incidents: Indeed, "just 20 officers accounted for 18 percent of all force incidents."[55] Clearly, there was no mechanism in place to identify the cause of the issue or to come up with solutions—for example, additional training.[56]

Most large law enforcement agencies have some sort of mechanism to investigate allegations of excessive force, whether it be an internal affairs unit staffed with full-time personnel or a review board. The same BJS report showed that the sustained rate (i.e., percentage of complaints having merit) of excessive force complaints did not differ according to type of review function.[57]

> In 2003, 19 of large municipal police departments had a civilian complaint review board (CCRB) or agency within their jurisdiction that was

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[52] "Investigation of the Seattle Police Department."

[53] Hyland, Langton, and Davis, "Police Use of Nonfatal Force, 2002–11," 8.

[54] Hyland, Langton, and Davis, 9.

[55] "Investigation of the Seattle Police Department," 4.

[56] "Investigation of the Seattle Police Department," 4.

[57] Hickman, "Citizen Complaints about Police Use of Force," 5.

empowered to review use of force complaints against officers. About 1 in 4 of these CCRBs had independent investigative authority with subpoena powers.[58]

It is difficult to examine police records across multiple jurisdictions and compare the results due to policies and procedures. The following section discusses the issue of national comparison and reporting in more detail.

B.   LAW ENFORCEMENT TRAINING PRACTICES

The many facets of policing require professionals who have a professional demeanor, are physically fit, trained in law, weapons, driving, defensive combatives, tactical medicine, processing crime scenes, personal interactions, administration, and much more. The proliferation of body cameras and social media advances that allow for immediate broadcasting of police activities has raised the standards for policing. Consequently, law enforcement departments require officers to undergo extensive training before they are allowed to interact with the public. The Department of Justice's Community Oriented Policing Services (COPS) Office Director Ronald Davis summed up the nature of the changes in policing:

> When I came on in the 1980s as a cop, the mission was clear, the direction was clear, there was no ambiguity. We were to take bad guys to jail, and how many you took determined how fast you could skyrocket in the organization. Obviously there's a lot of collateral damage that came from that. And now we have officers who have to understand a lot more complexity.[59]

When organizations want a particular outcome that can be positively influenced by training, it should build that training into a requirement. By requiring training, the organization is in effect saying, this is the proper way of conducting yourself. Establishing training protocol is one way, in addition to social pressure, to create change in accepted norms. The norm must be that police officers are well-trained, versed, and experienced in the appropriate use of force.

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[58] Hickman, 4.

[59] "Re-Engineering Training On Police Use of Force" (Washington, D.C.: Police Executive Research Forum, August 2015), 30, https://www.policeforum.org/assets/reengineeringtraining1.pdf.

Law enforcement training in recent years has become more expansive.[60] New technologies, more complex threats, social complexes, awareness of mental disorders, and more have all contributed to an increase in the need for training.[61] The time to complete law enforcement academies has gone up almost 17 percent in the last decade, averaging 841 hours in 2013.[62] In other words, departments are willing to invest more into recruits in order to get better performing officers: those who only use force appropriately and act justly and with integrity.

Where the time is spent at the academies poses some interesting questions on what it prioritizes. For example, academies average 71 hours on firearms training and 90 percent of recruits receive stressful training on firearms at night, but only three-quarters of recruits receive live fire training on non-lethal weapons. Additionally, 80 percent of recruits receive reality-based training (i.e., simulators, role-playing) on firearms, use of force, and non-lethal weapons. The likelihood that an officer must use his or her gun is quite low comparatively. In fact, the Pew Research Center found that only 27 percent of officers currently serving have ever fired their weapon on duty outside of training.[63] An analysis of the Philadelphia Police Department's public records showed that there were more than five times more Taser deployments than officer-involved shooting incidents in 2015.[64] Though this finding is from only one department, it is a good example of the disparity in rates of weapon deployments.

With more than one million law enforcement officers in the United States, there are therefore roughly 250,000 officers who did not receive live fire training with non-lethal

[60] Reaves and Trotter, "The State of Law Enforcement Training Academies," 60.

[61] Lowery, "Police Chiefs Consider Dramatic Reforms to Officer Tactics, Training to Prevent so Many Shootings.."“

[62] Brian A. Reaves and April L. Trotter. "State of Law Enforcement Training Academies." *Sheriff & Deputy.* Jan/Feb (2017): 46

[63] Rich Morin, Kim Parker, and Andrew Mercer, "Behind the Badge" (Pew Research Center, January 11, 2017), 26.

[64] Anna Orso, "Philly Cops and Tasers: How Often Are Police Using Them?," *BillyPenn.Com*, May 25, 2016, https://billypenn.com/2016/05/25/philly-cops-and-tasers-how-often-are-police-using-them/.

weapons in the academies.[65] They are starting their career off with an incomplete picture of a frequently used tool. It is possible that many of these officers received additional training after leaving the academy, though that data was not available. Additionally, officers in many departments are not required to receive the effects of a conductive electricity weapon in order to carry one.[66] While the expectation that an officer receive the effects of each weapon he or she carries is not realistic (i.e., gunfire, or baton strike), undertaking the receiving end of an electric shock will help increase situational awareness for the officer considering using it.

On-the-job (OJT) training is a critical factor of performance.[67] OJT is often conducted to refine basic skills taught in formal training, or even to alter established procedures. Law enforcement officers undergo hundreds of hours of on-the-job training, called field training, where each new officer is assigned to an experienced officer for several months. A field training officer is responsible for getting the new officer up to speed and integrating them into the department.[68] As such, it is important that field training officers are in line with department policy on best practices. It is easiest to establish proper behavior with newer officers than with addressing the issue years down the line when damage has been done.[69]

C.   INCONSISTENT TRAINING REQUIREMENTS

With more than 600 law enforcement training academies in the United States,[70] the profession is far from uniform when it comes to basic training requirements. Between the different training methodologies, the time required to complete training and hiring

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[65] "National Sources of Law Enforcement Employment Data," Program Report (Bureau of Justice Statistics, April 2016), https://www.bjs.gov/content/pub/pdf/nsleed.pdf.

[66] Michael R. Smith et al., "A Multi-Method Evaluation of Police Use of Force Outcomes: Final Report to the National Institute of Justice" (National Institute of Justice, July 2010), 8–9.

[67] Michael S. McCampbell, "Field Training for Police Officers: The State of the Art" (National Institute of Justice, April 1987), 16, https://www.ncjrs.gov/pdffiles1/nij/105574.pdf.

[68] McCampbell, 1.

[69] McCampbell, 1.

[70] Brian A. Reaves, "State and Local Law Enforcement Training Academies, 2013." (Bureau of Justice Statistics, July 2016), 1, https://www.bjs.gov/content/pub/pdf/slleta13.pdf.

practices, graduating officers may be taught at differing levels of quality. The challenge of tracking the differences becomes more difficult because of a lack of standardized reporting procedures across the country.[71]

The lack of national reporting became evident after the *Washington Post* created its own database of police shootings starting in 2015, because a complete national database did not exist.[72] There are very few guidelines or requirements that cross all state lines. The first and most prominent is the U.S. Constitution, which most famously establishes law against unreasonable search and seizure, and cruel and unusual punishment. The most well-known and important court decisions that have been decided are *Graham vs. Connor* (objective reasonableness), *Tennessee vs. Garner* (deadly use of force during escape), and *Terry vs. Ohio* (stop and frisk).[73]

Because the role of policing was not specifically identified in the Constitution as a federal responsibility, the Tenth Amendment of the Constitution reserves this role as the state's responsibility. States establish minimum training requirements through a Peace Officer Standards and Training (POST) agency or equivalent, but these are all run at state level or lower.[74] The result is a wide of range of laws governing police work, department policies, and an equally wide range of training based on those policies. The same legal requirement establishing law enforcement forces as primarily a state responsibility also means that the federal government has limited ability to standardize practices or even demand reporting.

Training must differ by state and type of agency because there are a wide range of policies from departments on whether use of force is authorized in certain instances.[75]

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[71] "Fatal Force" (The Washington Post), accessed October 7, 2018, Fatal Force (accessed October 7, 2018). https://www.washingtonpost.com/graphics/2018/national/police-shootings-2018/?utm_term=.7c98b810e211.

[72] Fatal Force (accessed October 7, 2018). https://www.washingtonpost.com/graphics/2018/national/police-shootings-2018/?utm_term=.7c98b810e211

[73] Graham vs. Connor 490 U.S. 386; Tennessee vs. Garner 471 U.S. 1, No. 83–1035 (U.S. Supreme Court March 27, 1985); Terry v. Ohio 392 U.S. 1, No. 67 (U.S. Supreme Court June 10, 1968).

[74] Department of Justice. *Policing 101* (Undated) https://www.justice.gov/crs/file/836401/download

[75] Reaves and Trotter, "The State of Law Enforcement Training Academies."

Even the tools to gain compliance vary depending on the department and what equipment they allow officers to carry.[76] The Bureau of Justice Statistics report covering law enforcement training academies provides an accurate representation of the state of these academies in the United States, receiving responses on recruit training data from 89 percent of eligible academies.[77] State POST agency academies averaged 650 hours to complete; sheriffs' offices averaged 706 hours; and county police academies averaged 1029 hours to complete in 2013.[78] Likewise, the field training portion varied greatly as well, averaging 250 hours for state POST agencies, and up to 630 for municipal police academies.[79]

The most glaring general difference, apart from the length is the methodology behind each department's curriculum. The Bureau of Justice Statistics reported that the type of training environment in law enforcement academies varied greatly in 2013, from all or mostly stress-oriented training environments to all or mostly nonstress-oriented training environments. (See Figure 1.)

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[76] "Police Duty Gear and Equipment," *Police How*, accessed December 11, 2018, http://www.policehow.com/police-gear-equipment.php.

[77] Reaves, "State and Local Law Enforcement Training Academies, 2013.," 13.

[78] Reaves, 4.

[79] Reaves, 4.

FIGURE 1

Distribution of recruits in basic training programs in state and local law enforcement training academies, by type of training environment, 2011–13
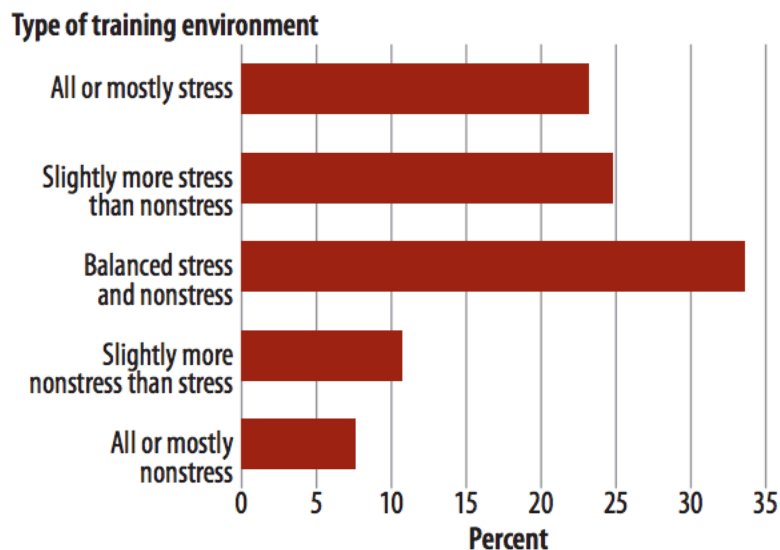
Type of training environment

Figure 1.   There are dramatically different focuses among law enforcement academies.[80]

A stress-oriented training environment is structured more like military basic training, whereas the nonstress-oriented environment more closely resembles a college classroom. The nonstress-oriented academies had the highest graduation percentage compared to all other types.[81] Given the high-stress scenarios that officers are responding to when use of force is required, there is likely an effect on officers' performances coming from the wide range of academies.

There is a large gap between training emphasis on use of force and other aspects of the job. Academies averaged more than 200 hours on operations that include report writing, patrol procedures, investigations, vehicle operations, and other topics.[82]   As well, academies spent on average 60 hours on defensive tactics, 71 hours on firearm skills, 21

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[80] Source: Reaves, 1.

[81] Reaves, 11.

[82] Reaves, 5.

hours on use of force, and 16 hours on non-lethal weapons.[83]   Additionally, while 98 percent of academies reported training on firearm skills, use of force, and defensive tactics, only 88 percent reported any training at all with NLWs.[84]

A survey of the types of training using reality-based scenarios in academies shows that use-of-force continuum (the spectrum of available tools to gain a desired outcome), threat assessment, and non-lethals are much lower on the priority list than other tactics such as arrest control, verbal tactics and self-defense.[85]   It should be noted that almost all recruits in the responding academies received training in scenarios that encompassed multiple categories, making it difficult to decipher if any one discipline was outright neglected. The high-stress academies were much more likely to use the reality-based training for multiple categories of training (eight out of the nine options in the study), compared to the low-stress academies, which averaged six out of the nine areas. The difference was greatest for threat assessment and NLW training.[86]   Again, more research must be conducted to identify effects of the difference in training focus.

Curriculum of the academies is the result of input from several sources. A full 93 percent of academies developed at least part of their curriculum in response to a state-level agency or commission.[87]   Legislative or regulatory mandates are growing in terms of input into curricula, affecting 54 percent of academies in 2013, up from 45 percent in 2006.[88] Other input includes subject matter experts and department staff, but does not include federal requirements.

D.   CONCLUSION

The excessive use of force is not a new issue, but it is one that is currently systematic in the policing world. High profile cases in recent years have shed light on the

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[83] Reaves, 5.

[84] Reaves, 5.

[85] Reaves, 6.

[86] Reaves, 6.

[87] Reaves, 7.

[88] Reaves, 7.

issue that likely affects thousands of civilians per year. The ever-changing science of policing does not have an answer on what is an acceptable rate of force incidents that are excessive. As taxpayers, and subsequently the recipients of law enforcement activities, we should expect our agencies to do nothing less than minimize force incidents where force is misused. Unfortunately, with some large departments reporting up to 20 percent of any force incidents as excessive, the problem is a complex and institutional problem that we will see for the foreseeable future.[89]

The state of law enforcement practices and training is a primer for the current climate of police misusing force. Additionally, studying future law enforcement issues will remain difficult in years to come due to the decentralized responsibilities of organizing and equipping law enforcement training and policy. Between focusing disproportional effort in academies on subject material to concentrating use of force exercise on those that require force, training curriculums are not designed to form officers who are inclined to only use the necessary force.

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[89] "Investigation of the Seattle Police Department," 4.

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III. POTENTIAL CAUSES FOR MISUSE

This chapter dives into why officers may make decisions that fall under unreasonable or excessive force. It is not intended to discuss how or why they get away with obvious misuse. When dealing with human to human interactions, the right steps in handling a situation are rarely clear to the officer. The officers must rely on their intuition, training, character, and morals to help guide them in their courses of action. These actions are susceptible to influences that may lead officers to misuse force. Additionally, many cases of excessive force are probably the result of several of these issues, and many are inter-related. For example, a department recruiting people through the use of ads promoting "rough men and women" will likely be advocating aggressive behavior in its training as well.[90] Some causes for misuse, such as Recognition-Primed Decision theory and priority-mentality, are the result of definitive actions taking by agencies. The other causes are the result of many other influences, such as policing culture, the background an officer grew up in, and natural inclinations to some degree.

A. RECOGNITION PRIME DECISION THEORY

Eric Dayley claims that Recognition-Primed Decision (RPD) theory provides insight into why police training leads officer to overuse force.[91] RPD posits that people use their experience first and foremost in making decisions through analyzing typical reactions and estimating best-case results.[92] Neville, Salmon, and Read summarize RPD theory as: the process by which the decision-maker "undertakes a quick match of the current situation to an already experienced situation in memory."[93] This process allows people to make rapid decisions that lead to good outcomes but may not be the best possible

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[90] "Re-Engineering Training On Police Use of Force," 28.

[91] Eric H. Dayley, "Reducing the Use of Force: De-Escalation Training for Police Officers" (Naval Postgraduate School, 2016), 71.

[92] Gary Klein, "Naturalistic Decision Making," *Human Factors*, June 2008, 457, https://doi.org/10.1518/001872008X288385.

[93] Timothy J. Neville, Paul M. Salmon, and Gemma J. M. Read, "Analysis of In-Game Communication as an Indicator of Recognition Primed Decision Making in Elite Australian Rules Football Umpires," *Journal of Cognitive Engineering and Decision Making* 11, no. 1 (March 2017): 82.

outcomes.[94]   This observation is relevant to use and misuse of force among law enforcement professionals. With so much police training weighted toward using force, the officers are simply relying on their experience to make these decisions.[95]

There are three variations of RPD: 1) *simple match*, in which a decision maker directly applies previous experience to select a course of action; 2) *diagnose*, in which similar features or cues are needed to help find the closest experience and then select a course of action; and 3) *simulate*, in which a scenario is mentally simulated by the decision-maker to test an outcome before selecting the course of action.[96]   Additionally, RPD follows the theory of *satisficing*, which posits that decision makers will choose the first available option that provides a good outcome, and therefore the decision-make may not consider all other courses of actions even if they provide better outcomes.[97]

Studies of law enforcement decision-making strengthen these theories as appropriate models by which officers make decisions on the job. Bonner developed a study to find the method by which officers make decisions on whether to arrest a suspect.[98]   The study found that officers categorize the current situation into several different themes based on past experiences, which allows them to utilize pre-existing "rules" or thresholds for deciding on a course of action.[99]   This framework allows for past experience to influence current actions, even if past experience differed in key respects.

Similarly, Dave Grossman posits that conditioning is what allows soldiers to perform their tasks under the immense stress of war.[100]   It is the hours of repeated practice

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[94] Klein, "Naturalistic Decision Making," 458.

[95] Dayley, "Reducing the Use of Force: De-Escalation Training for Police Officers," 71.

[96] Neville, Salmon, and Read, "Analysis of In-Game Communication as an Indicator of Recognition Primed Decision Making in Elite Australian Rules Football Umpires," 82.

[97] Gary Klein, "A Recognition Primed (RPD) Model of Rapid Decision Making," in *Decision Making in Action* (Praeger, 1993), 144.

[98] Heidi S. Bonner, "Police Officer Decision-Making in Dispute Encounters: Digging Deeper into the 'Black Box,'" *American Journal of Criminal Justice* 40, no. 3 (September 2015): 493–522.

[99] Bonner, 503.

[100] Dave Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society* (New York, NY: Little, Brown and Company, 2009), 18–20.

that engrains a specific activity in the person so that there is little to no thought when combat comes.[101] In the same way, officers are trained many hours to use firearms, often much more so than other means to solve a situation.[102] Once a situation reaches a certain stress-level, thinking through all options logically is a rarity.[103] Officers, therefore, are forced to make quick decisions without having the ability to think through all options. Hence, proper training and experience is necessary to allow officers to make appropriate decisions in stressful situations.

These decision-making concepts are in contrast to the classical decision-making model. The classical decision-making (CDM) model follows that decision makers have all the necessary information and then weigh all possibilities and alternatives before deciding on an action.[104] A law enforcement officer making decisions through the CDM model would theoretically make decisions that had better outcomes based on the ability of the officer to weigh all possibilities and find the best solution. Unfortunately, this line of thinking is unrealistic for a police officer in a stressful scenario, where time is of the essence and suspect intentions are often unknown.

B. PRIORITY MENTALITY (OFFICER SAFETY FIRST)

Within the law enforcement community, there is a culture that promotes the safety of the officer above all other activities.[105] This culture can even lead officers to treat situations as more dangerous than they are, and thus escalate force too quickly to avoid risking their own safety.[106] In more frequent occurrences, the officer-safety priority

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[101] Grossman, 19.

[102] Reaves, "State and Local Law Enforcement Training Academies, 2013.," 5.

[103] Klein, "Naturalistic Decision Making," 5.

[104] Bin Li, "The Classical Model of Decision Making Has Been Accepted as Not Providing an Accurate Account of How People Typically Make Decisions," *International Journal of Business and Management* 3, no. 6 (March 2008): 151.

[105] Charles Huth, Jack Colwell, and Randy Means, "No 'Officer Safety' Exception to the Constitution," *Law and Order*, January 2015, http://www.hendonpub.com/law_and_order/articles/2015/01/no_officer_safety_exception_to_the_constitution.

[106] Steve Blow, "Blow: Officer's First Duty Is to Go Home Safely? Job Requires More than That," *Dallas News*, March 2015, https://www.dallasnews.com/news/news/2015/03/20/blow-officers-first-duty-is-to-go-home-safely-job-requires-more-than-that.

mentality can be seen in departments across the United States where officers routinely perform frisk for "officer safety" and handcuff citizens who are not under arrest.[107]

Devon Carbado, in his study of racial bias in policing, states: "The more police internalize the idea that their life is always already at risk, the more likely they are to perceive an encounter as one in which deadly force is necessary."[108] The Police Executive Research Forum recognizes the pervasiveness of the mantra that an officer's most important job is "to go home safely to your family at the end of your shift."[109] Additionally, PERF claims that this idea may lead to an officer using deadly force in scenarios where it was controversial, and a different mindsight could have likely led to a more desirable outcome.[110]

The reason that many officers use force is that it is the *safer* option—for both officer and suspect and safer in terms of getting desired result. One potential influence on this mentality is new technology, such as the conducted-electricity weapon (i.e. Taser) being introduced to law enforcement. While the non-lethal weapon's impact on deadly force scenarios is still up for debate, its effect on reducing injuries to suspects and officers is well-studied and established.[111] Tasers and other new technology may provide confidence to officers to use these weapons at a higher rate because of the positive results they produce.

C.   WARRIOR MENTALITY VS. GUARDIAN MENTALITY

Officers have long been told they are warriors; thus they must have a warrior mentality. While a warrior is not a *bad* thing to be, it is not the appropriate mindset for the

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[107] Huth, Colwell, and Randy Means, "No 'Officer Safety' Exception to the Constitution."

[108] Carbado, "Blue-on-Black Violence, A Provisional Model of Some of the Causes," 15–16.

[109] MacDonald, Kaminski, and Smith, "The Effect of Less-Lethal Weapons on Injuries in Police Use-of-Force Events," 2270; William Sousa, Justin Ready, and Michael Ault, "The Impact of TASERs on Police Use-of-Force Decisions: Findings from a Randomized Field-Training Experiment," *Journal of Experimental Criminology* 6, no. 1 (March 2010): 47–48.

[110] "Re-Engineering Training On Police Use of Force," 4.

[111] John M. MacDonald, Robert J. Kaminski, and Michael R. Smith, "The Effect of Less-Lethal Weapons on Injuries in Police Use-of-Force Events," *American Journal of Public Health* 99, no. 12 (December 2009): 2270; William Sousa, Justin Ready, and Michael Ault, "The Impact of TASERs on Police Use-of-Force Decisions: Findings from a Randomized Field-Training Experiment," *Journal of Experimental Criminology* 6, no. 1 (March 2010): 47–48.

majority of police-work, as it encourages officers to think of citizens as potential enemies.[112] This situation is exacerbated when politicians and leaders describe certain areas as "war zones." Leesburg, Virginia Police Chief Joseph Price believes that these terms convert officers from guardians to warriors: "So how did we become warriors? I think it's partly because political leaders have put us in wars—the war on drugs, the war on crime, the war on terror, the war on gangs."[113]

Some agencies include this warrior mindset in their recruiting. The PERF identified some agency recruiting videos that fit this mold. One even ended with the quote: "People sleep peaceably in their beds at night only because rough men and women stand ready to do violence on their behalf."[114] This quote implies that officers should cultivate a warrior mindset.

The militarization of police, as the trend of equipping law enforcement with more militaristic weapons and training could also play into this warrior mentality. Officers and soldiers have very different roles and responsibilities. Where soldiers are trained to kill enemy combatants in a war, law enforcement officers should be training to save people— their fellow citizens—as well as to serve the community and enforce laws.[115] The divergence of tactics plays out in a variety of ways. Many police departments in the last decade have moved toward more tactical-looking vests, where all equipment is attached outside the officer's uniform and functions the same way as a military members vest would. There are health benefits of such vests over traditional duty belts, but the optics matter. Departments still have chosen to go with more tactical-looking vests over other less-intimidating options.[116] Many departments have acquired armored vehicles and equipped

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[112] Seth Stoughton, "Law Enforcement's 'Warrior' Problem," *Harvard Law Review Forum* 125, no. 6 (April 10, 2015), https://harvardlawreview.org/2015/04/law-enforcements-warrior-problem/.

[113] "Re-Engineering Training On Police Use of Force," 29.

[114] "Re-Engineering Training On Police Use of Force," 28.

[115] Stoughton, "Law Enforcement's 'Warrior' Problem."

[116] Judy Berthiaume, "Blugold Research Aims to Improve Police Officers' Health, Quality of Life," *University of Wisconsin Eau-Claire*, October 23, 2018, https://www.uwec.edu/news/news/uw-eau-claire-research-leads-to-equipment-change-for-police-officers-3294/.

all officers with patrol rifles outfitted with the same attachments that the military uses.[117] Often, police officers are trained by former military operators in room clearing, gun-fighting, or combatives.[118] While most, if not all, of these changes do serve a specific purpose in increasing department capabilities or keeping officers safe, they may inadvertently be perpetuating the warrior mindset that departments need to keep reserved for only rare and specific scenarios.

Many police academies are organized in the same manner as military boot camp. This structure is designed to indoctrinate servicemembers into the military so that they are ready for battle and will unquestionably follow orders.[119] The military boot camp structure is hierarchical and supervisors direct all actions. In law enforcement, and in contrast to the military model, supervisors affect very few tactical decisions of subordinate officers. Additionally, trainees have no power in training, and mistakes or violations can result in verbal or physical punishment.[120] Rahr and Rice believe this training structure of building warriors through military means is misguided.[121] The system bleeds into officers' behavior on the job, where they are now the ones with power, and the citizens are powerless.[122]

The cachet of SWAT teams has also affected everyday policing activities. Balko notes the 937-percent growth in the number of SWAT teams in the United States from the early 1980s to mid-1990s.[123] The SWAT team is a highly specialized unit within a department that employs tactical breaching, room clearing, and more powerful weapons to achieve resolution to incidents that are deemed more "high-risk." "We have destroyed some doors over the years that maybe wouldn't have gotten destroyed if there wasn't a SWAT team, but it's all in the name of trying to make a high-risk situation more safe for

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[117] Radley Balko, *Rise of the Warrior Cop* (New York: PublicAffairs, 2013), xii.

[118] Balko, 208.

[119] Sue Rahr and Stephen K. Rice, "From Warriors to Guardians: Recommitting American Police Culture to Democratic Ideals," *Nationals Institute of Justice*, New Perspectives in Policing, April 2015, 4, https://permanent.access.gpo.gov/gpo57170/248654.pdf.

[120] Rahr and Rice, 4.

[121] Rahr and Rice, 4.

[122] Balko, *Rise of the Warrior Cop*, 207.

[123] Balko, 207.

everyone," a Logan, Utah department spokesman told the local newspaper.[124] Balko also notes previous studies that found that the massive increase in use of SWAT teams was tied predominantly to non-violent crimes.[125] Officers interviewed by Balko stated that in many small town SWAT teams, there is not enough time to train fully for the SWAT team as they are patrol officers, so they practice (SWAT) techniques on the citizens during more routine interactions.[126]

The same militarization idea applies to terms that officers use. The Virginia Beach, Virginia Police Chief noted that SWAT officers began using the term "operator" to refer to SWAT officers. He then noted that the origin of that term refers to military special operators, who are developed to be highly trained, direct-action professionals and whose job is to track down and kill enemies or conduct similar covert actions.[127] In effect, this term may be giving the SWAT officers the incorrect idea of what their responsibilities should be. Figures 2 and 3 show an example of how the line between military image and police image has blurred in the United States in recent years.

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[124] *Logan Herald-Journal*, April 23, 2006. quoted in Balko, *Rise of the Warrior Cop*, 207.

[125] Balko, 209.

[126] Balko, 211.

[127] "Re-Engineering Training On Police Use of Force," 35.

Figure 2.   A tactical law enforcement team in the United States[128]

Figure 3.   U.S. Army operating an armored vehicle.[129]

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[128] Source: Scott G. Winterton. *SWAT members search for a fugitive in Herriman on Saturday.* 2018. https://www.ksl.com/?nid=148&sid=46295693

[129] Source: *Cougar 6x6 MRAP.* https://www.military.com/equipment/cougar-6x6-mrap

D. DISCRIMINATORY ABUSE OF POWER/BIAS

Officers, like all humans, have biases that may overtly or subtly affect their decision making. The addition of power, or authority to enforce laws with force, adds a medium to unleash some of these biases in a potentially satisfying, albeit less than moral, way. Professor Lorie Fridell of University of South Florida states that "people may not be aware of their *implicit* biases; but implicit biases can impact our perceptions and behaviors, even in individuals who, at the conscious level, reject bias, prejudice, and stereotyping."[130] Judge Carbado claims that lack of bias awareness and disruption training can leave officers free, both "consciously and unconsciously, to act out racial stereotypes…"[131]

Biases make their way into policing in various manners. A 2009 RAND study found that Cincinnati Police Department disproportionately burdened black residents with traffic stops.[132] While the outcomes did not differ between race categories, blacks were pulled over more often relative to the percentage of the population in the community.[133] Thus, exposure to officers, and therefore, potential for receiving unnecessary use of force was increased for this minority group. A comprehensive study in the United Kingdom by Brown and Frank found that, all else being equal, male suspects were more likely to be arrested than female suspects.[134] Additionally, the research found that black officers would arrest black suspects at 81.7 times the rate at which black suspects were arrested by white officers.[135] This research shows that biases do indeed affect different people in different ways. The research did not examine how theses biases were established, though another study showed that stereotypical cues in policing work can exacerbate the effect of bias.[136]

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[130] "Re-Engineering Training On Police Use of Force," 37.

[131] Carbado, "Blue-on-Black Violence, A Provisional Model of Some of the Causes," 15.

[132] Greg Ridgeway, *Cincinnati Police Department Traffic Stops* (Santa Monica, CA: The RAND Corporation, 2009), 50.

[133] Ridgeway, 50.

[134] Robert A. Brown and James Frank, "Race and Officer Decision Making: Examining Differences in Arrest Outcomes between Black and White Officers," *Justice Quarterly* 23, no. 1 (March 2006): 118.

[135] Brown and Frank, 119.

[136] Jessica J. Sim, Joshua Correll, and Melody S. Sadler, "Understanding Police and Expert Performance: When Training Attenuates (vs. Exacerbates Stereotypic Bias in the Decision to Shoot," *Personality and Social Psychology Bulleting* 39, no. 3 (2013): 291–304.

Military psychologist Dave Grossman discusses the dynamic of cultural differences in influencing a soldier's ability to kill.[137] He notes that even physical appearance influences the aggressor: those who look more identical to the victim identify more and are therefore more reluctant to kill.[138] Grossman is referring to close physical distance between aggressor and victim, and not in a broader context such as country A. vs country B. We therefore can infer that this would supports the idea that law enforcement officers may also be reluctant to inflict pain on another human being if that human is more closely related culturally or appearance-wise to the officer. U.S. policing agencies tend to be more white, even in predominantly minority communities.[139] This imbalance of racial representation may invite this phenomenon of harm infliction to be more prevalent.

In some instances, overt biases are clearly a primary factor in using excessive force. Former officer Van Dyke attempted to describe his fear he experienced just from looking at his shooting victim's face during his criminal trial defense of the 2015 shooting that killed black teenager Laquan McDonald.[140] One Milwuakee police officer was fired over tweeting a message that had a racist connotation according to the police chief.[141] The officer had previously taken part in an arrest and use of force incident against a black NBA star earlier over an illegally parked car.[142]

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[137] Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society*, 161–63.

[138] Grossman, 161.

[139] Jeremy Ashkenas and Haeyoun Park, "The Race Gap in America's Police Departments," *The New York Times*, April 8, 2015, https://www.nytimes.com/interactive/2014/09/03/us/the-race-gap-in-americas-police-departments.html.

[140] Mitch Smith, "Chicago Police Officer Defends His Shooting of Laquan McDonald," *The New York Times*, October 2, 2018, https://www.nytimes.com/2018/10/02/us/jason-van-dyke-chicago-laquan.html?smprod=nytcore-ipad&smid=nytcore-ipad-share.

[141] Jorn Bowden, "Milwaukee Police Officer Fired for 'racist Connotation' of Tweets about Sterling Brown," *The Hill*, September 14, 2018, https://thehill.com/homenews/state-watch/406662-milwaukee-police-officer-fired-for-racist-connotation-of-tweets-about.

[142] Bowden.

E.   PERCEIVED LEGAL IMMUNITY

Officers have remarkably little material investment in the actions they conduct because they are so rarely held liable for their actions.[143] In fact, with roughly 1000 people killed by officers each year in the line of duty, only two officers have been convicted of murder, and a 31 others have been convicted of manslaughter since 2005.[144] Job loss is close to the most extreme punishment officers may receive in most cases. At the heart of this issue is the *qualified immunity* doctrine. Designed with the intent to shield officers from undue influence in carrying out their duties, qualified immunity posits that a case can be dismissed if the defendant can show his or conduct was objectively reasonable. Essentially, the conduct must violate a clearly established law, for which there is precedence or consensus of cases with similar holdings.[145]

On the civil side, incidents involving officers being held financially liable for misuse of force are even more rare.[146] In fact, in the comprehensive study of civil liability cases from 2006 to 2011, Joanna Schwartz found that police officers were found to pay only .02 percent of the dollars that were awarded to plaintiffs.[147] The vast majority of officers did not have to contribute financially at all when the court ruled against them.[148]

In those cases that do receive an award to the plaintiffs, municipalities often shield their officials (officers) from liabilities in order to retain and attract employees.[149] Even

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[143] Schwartz, "Police Indemnification," 936–37.

[144] Masood Farivar, "When Police Kill: Rare U.S. Murder Conviction Stands Out," *VOA News*, August 21, 2018, https://www.voanews.com/a/when-police-kill-rare-us-murder-conviction-stands-out/4553094.html; Daniella Silva, "White Texas Police Officer Found Guilty for Murder for Fotally Shooting Black Teen in Car," *NBC News*, August 28, 2018, https://www.nbcnews.com/news/us-news/ex-texas-police-officer-roy-oliver-found-guilty-murder-shooting-n904166; John Sullivan, Julie Tate, and Jennifer Jenkins, "Fatal Police Shootings of Unarmed People Have Significantly Declined, Experts Say," *The Washington Post*, May 7, 2018, https://www.washingtonpost.com/investigations/fatal-police-shootings-of-unarmed-people-have-significantly-declined-experts-say/2018/05/03/d5eab374-4349-11e8-8569-26fda6b404c7_story.html?utm_term=.7c46f8ed9f46.

[145] Schwartz, "Police Indemnification," 893.

[146] Schwartz, 936–37.

[147] Schwartz, 936.

[148] Schwartz, 937.

[149] Schwartz, 899.

though this practice is contrary to Supreme Court rulings, which ruled that officers may be held liable for their conduct,[150] it is clearly the norm as opposed to the exception based on the Schwartz study.

The phenomenon of rarely holding officers accountable establishes a precedence within the law enforcement community. This precedence also establishes the difficulty of dealing with police actions that are legal but violate policy or even just common decency. Departments are then left with officers who may be disciplined administratively but not criminally. Camden, NJ, Police Chief Scott Thompson explained this dichotomy, "We must not mistakenly believe that if an indictment doesn't occur when force is used, that it's a validation of the officer's action. The same as 'not guilty' doesn't equate to 'innocent.'"[151] Of course, departments are also hesitant to levy charges against their own officers for obvious reasons, namely lack of trust those actions would create and as well as a difficult recruiting environment.

F.   CONCLUSION

Examination of the factors that may influence an officer's decision to use excessive force shows a wide range of problems that decision-makers have to deal with. A comprehensive approach is needed to address the potential causes for misuse at the individual officer level. Through these various causes, some officers may be facing an uphill battle to ensure they are best-prepared to perform their duties. Preexisting biases, department training, culture, and legal precedence all affect officers and their on-the-job decisions. Understanding which officers are influenced by which factors requires a thorough study of that officer and his or her department. Achieving this understanding is a monumental task to undertake with the amount of use of force incidents in the United States. Instead, decision-makers and parties involved in policing can examine the causes from a general view and ensure that they are cognizant during the entire process of policing.

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[150] Schwartz, 898.

[151] "Re-Engineering Training On Police Use of Force," 22.

IV. LAW ENFORCEMENT TRAINING AND POLICY AND ITS EFFECT ON USE OF FORCE

Most departments undoubtedly want their officers to perform at a high level. As such, departments have zeroed in on many tactics and characteristics when teaching their officers to ensure a professional police force. Still, certain policies and practices can hinder the development of competent, professional, and humane officer. For example, bureaucracy can improperly prioritize resources and human imperfection can get in the way of progress. Some departments are slow to adapt best practices or worse yet, stick with the mantra of "because that's how it has always been done." The extensive research on policing issues in the United States as well as the broad range of police department sizes and demographics allows for some review of these best and worst practices that should be applied or avoided nationwide to ensure law enforcement agencies are best equipped to use only the necessary force on citizens. This chapter explores these policies and practices— bad and good.

A. TRAINING THAT EXACERBATES MISUSE OF FORCE

Several practices have been identified that may negatively affect officer performance in terms of using only necessary force. These practices tie directly to the reasons that officers may tend to overuse force listed in Chapter III.

1. Over-Emphasis of Training on Using Force

Training is very effective at enhancing spontaneous actions.[152] When officers use the Recognition-Primed Decision theory to decide a course of action, they rely on experience, which can be an actual occurrence or from training.[153] The focus of law enforcement training creates the dynamic of experience providing the incorrect courses of

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[152] Jorn R. Patton, "Intuition in Decisions," *Management Decision* 41, no. 10 (2003): 989.

[153] Patton, 989.

action. In other words, the focus on using force in law enforcement training is a likely cause for officer's reliance on using force on the job.[154]

RPD theory is not taught as a decision-making model in the same manner that the Military Decision Making Model or the Critical Decision-Making Model is taught. Rather, it is purely a framework for understanding how individuals make decisions, not a process by which decisionmakers should be taught to follow.[155] Thus, RPD can lend insight to how and what training should cover, instead of teaching how to make a decision on-scene. By understanding how officers make decisions under stress, academies can tailor their training to fit into this decision-making model.

Eric Dayley, of the Idaho State Police, analyzed a PERF survey of training requirements, as well as conducted a survey of his own to verify the findings.[156] His findings showed that much more time was spent on firearms and other tactics than de-escalation and crisis intervention techniques, especially when accounting for the rate at which the tactics are likely used every day by an officer. He also found that this emphasis on force training likely leads to officers' predisposition to use force rather than avoid it.[157]

In his study, Dayley found that training scenarios were heavily based on firearm use. The respondents were polled on what percentage of training scenarios required the use of a firearm to successfully complete the scenario. Dayley found that on average, percent–10 percent of scenarios required a firearm. While this number is low compared to the number of training hours spent on firearms versus other tactics, it is still many hundreds of times the rate at which law enforcement officers would be using their firearms in interactions with the public.[158]

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[154] Dayley, "Reducing the Use of Force: De-Escalation Training for Police Officers," 39–40.

[155] Klein, "A Recognition Primed (RPD) Model of Rapid Decision Making," 138.

[156] Eric H. Dayley, "Reducing the Use of Force: De-Escalation Training for Police Officers" (masters thesis: Naval Postgraduate School, 2016).

[157] Dayley, 62.

[158] Dayley, "Reducing the Use of Force: De-Escalation Training for Police Officers." 62.

Training curricula are currently focused on using force rather than means to de-escalate or avoid using force. The PERF conducted a 2015 study on the content of law enforcement agencies.[159] The results were quite clear on which topics received the most training time and which were neglected, with firearms and defensive tactics being taught much more than de-escalation techniques and similar topics.[160] The emphasis on using topics that emphasize using force versus other topics that could be summarized as "avoiding force," such as de-escalation techniques and crisis intervention, is very evident.[161] The respondents showed that while 93 percent of agencies provided in-service firearms training, only 65 percent provide training on de-escalation techniques.[162] . Firearms training averaged 58 hours and defensive hours averaged 49 hours, while only eight hours was dedicated to de-escalation, and eight hours to crisis intervention.[163]

2.   Training that Inappropriately Instills Warrior Mindset

As officers go through their training academies, they are taught certain ideas and trained in several ways that perpetuate the warrior mindset. The warrior mindset indoctrinates officers to believe that every interaction with civilians is a significant threat, and they are therefore taught to be hyper-aware of their surroundings.[164] This hyper-vigilant state is another way of identifying the warrior mindset and is a by-product of law enforcement training. In this state, officers are taught to treat any and all situations as potentially harmful.[165] Additionally, this state creates the tendency for some officers to view benign behavior as potentially life threatening.[166] The day-to-day responsibilities of officers interacting with law breaking citizens, despite most not being violent, could also

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[159] "Re-Engineering Training On Police Use of Force" (Washington, D.C.: Police Executive Research Forum, August 2015), 12. https://www.policeforum.org/assets/reengineeringtraining1.pdf.

[160] "Re-Engineering Training On Police Use of Force," 11.

[161] "Re-Engineering Training On Police Use of Force," 12.

[162] "Re-Engineering Training On Police Use of Force," 12.

[163] "Re-Engineering Training On Police Use of Force," 11.

[164] Stoughton, "Law Enforcement's 'Warrior' Problem."

[165] Kevin M. Gilmartin, *Emotional Survival for Law Enforcement* (E-S Press, 2002), 34.

[166] Gilmartin, 34.

further reinforce this mindset. Those in the career field embrace this culture: "Remain humble and compassionate; be professional and courteous- and have a plan to kill everyone you meet," says one article in a popular police publication.[167]

In the academies, recruits are shown videos of fellow officers being killed.[168] The potentially beneficial exercise of reviewing footage for lessons learned is taken one step too far in some departments, where the focus is shifted toward building the warrior mindset.[169] These videos reinforce the idea to an officer that your life is in danger at all times and forces the hypervigilance. One agency training material even goes so far as to say "always assume that the violator and all occupants are armed," in its reference to traffic stops.[170] Law enforcement expert Michael Levine said, "This lesson to a fearful person [police recruit] is like shortening his fuse."[171] One leading researcher on officer trauma stated, "Officers who are hyper-vigilant, constantly on edge and exhausted by adrenaline, it's a prescription for disaster."[172] Kevin Gilmartin reveals in his report after researching police stress how officers can become over-reactive due to the effects of the hyper-vigilant profession.[173] The seemingly courageous and self-preserving mantra of going home to your family at night has spread dangerously far into something that is not in concert with a guardian mindset that police should embrace.

[167] John Bennett, "Walking the Walk," *Police One*, October 7, 2010, https://www.policeone.com/Officer-Safety/articles/2748139-How-command-presence-affects-your-survival/.

[168] Stoughton, "Law Enforcement's 'Warrior' Problem."

[169] Stoughton.

[170] Uriel J. Garcia, "Experts Say Strongly Worded Police Curriculum Is Risky with Cadets," *The New Mexican*, March 22, 2014, http://www.santafenewmexican.com/news/local_news/experts-say-strongly-worded-police-curriculum-is-risky-with-cadets/article_6fcb7d45-436c-5e48-aa06-2fc6fdcc35a1.html.

[171] Garcia.

[172] Jack IV Smith, "To Stop Police Brutality, We Must End the Epidemic of PTSD among Officers," *Mic Network Inc.*, n.d., https://mic.com/articles/154241/to-stop-police-brutality-we-must-end-the-epidemic-of-ptsd-among-officers#.uDxiswDpC.

[173] Kevin M. Gilmartin, "Hypervigilance: A Learned Perceptual Set and Its Consequences on Police Stress," in *Psychological Services for Law Enforcement* (Washington, D.C.: U.S. Government Printing Office, 1986), 443–46.

3.   Law Enforcement Policy Barriers

Ensuring that officers get the newest training requirements is complicated enough in large bureaucracies but integrating those techniques into existing training can be even harder. As Richmond, CA Police Chief Chris Magnus said:

> [S]tate POST encourages the idea that there is a list of training that everybody needs, which in practice becomes a very compartmentalized approach to teaching a lot of different skills. The idea of putting the skills *together*, and teaching decision-making about which skills to use isn't emphasized.[174]

In many cases, department training and policy can be well-intentioned but be an incubator for officers making poor decisions. By encouraging officers to put themselves in situations that are not necessary, either by policy or training, departments set up scenarios that are much more likely to cause officers to require use of force, even justifiably. Situations where officers are outnumbered, have exerted significant physical or emotional effort, or have no obvious way of tactically retreating can create situations where the officers' inhibitions are lowered.[175] In reference to foot pursuits and how poor policy and lack of training led Dallas Police Department officers to engage in foot pursuits that ended in unnecessary and poor outcomes:

> Yes it's an adrenaline dump that occurs. Physiological changes happen in your body. Your rate increases, your respiratory rate increases, you lose your fine motor skills, the fight-or flight syndrome kicks in, and it can affect your cognitive ability. In a stimulus-response situation, we want you to do the thinking *before* you get to that point. – Dallas Assistant Police Chief Carlos Cato.[176]

Many departments measure performance by how long officers take on a call, so there is incentive to execute the quickest possible solution to the problem even if that involves using more force than a more desirable option.[177] Historically, many officers have

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[174] "Re-Engineering Training On Police Use of Force," 60–61.

[175] Rachel Nuwer, "Stress Training for Cops' Brains Could Reduce Suspect Shootings," *Scientific American*, September 20, 2016, https://www.scientificamerican.com/article/stress-training-for-cops-brains-could-reduce-suspect-shootings/.

[176] "Re-Engineering Training On Police Use of Force," 23.

[177] "Re-Engineering Training On Police Use of Force," 30.

been taught either explicitly, or through on-the-job training, to chase after a suspect when he or she attempts to run away, also known as a foot pursuit.[178] For example, calling off a foot pursuit for a more systemic search process will likely take longer for the officers, but avoids putting a single officer in a situation where he or she is backed into a corner with an elevated heartrate and an emotional investment in bringing the suspect into custody, and therefore more likely to make a poor decision. The importance of avoiding unnecessary situations is especially true when considering the potential for elevation of force in a similar such scenario where the suspect is being pursued for a very minor, non-violent crime. Establishing the proper policy to avoid situations like this one, coupled with congruent training, correlates directly with enabling officers to use de-escalation techniques.[179]

Policies may be restrictive on individual officer's options for solving problems. Generally speaking, providing officers with more options to be able to de-escalate a situation is a good thing if it allows them to avoid using more force than necessary. As the introduction of CEW's has shown significant reduction of injuries to officer and suspect alike, some departments still create obstacles to equipping officers with these NLWs.[180] A study on the Philadelphia Police Department found that officers were required to complete crisis intervention training in order to carry a CEW.[181] This policy seriously limited the amount of officers able to carry the weapon and also conflated two different approaches to handling a situation.[182]

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[178] Megan Cassidy, "Phoenix Police Rethinking Traditional Foot Pursuits," *AZ Central*, October 11, 2015, https://www.azcentral.com/story/news/local/phoenix/2015/10/11/phoenix-police-rethinking-traditional-foot-pursuits/73585196/.

[179] Cassidy.

[180] MacDonald, Kaminski, and Smith, "The Effect of Less-Lethal Weapons on Injuries in Police Use-of-Force Events," 2270–72.

[181] George Fachner and Steven Carter, "Collaborative Reform Initiative: An Assessment of Deadly Force in the Philadelphia Police Department" (CNA Corporation, 2015), 4, https://ric-zai-inc.com/Publications/cops-w0753-pub.pdf.

[182] Fachner and Carter, 4.

B. POLICIES AND PRACTICES THAT EFFECTIVELY ADDRESS MISUSE OF FORCE

Law enforcement leaders have identified that proper utilization of force is something that can be addressed directly through training and policy. The following practices have been implemented at many departments and are gaining ground in the field of law enforcement research as topics that effectively help mitigate officers' propensity to misuse force application.

1. Conflict Management/De-escalation Training

One of the core elements of a law enforcement officer's job is to manage incidents where conflict is involved. It can be caused by personality clashes or differing interests between those of different levels in a hierarchy. The term *conflict management training* (CMT) is most often associated with the medical career-fields, group decision making, and the international governance realm. At its core, though, conflict management is about individual interaction and working to achieve desired outcomes. Other related and often interchangeable terms are crisis intervention or de-escalation techniques, which refers to the process of calming down a client, subject, patient, etc. The term crisis intervention was coined after law enforcement agencies began to create specially trained teams to deal with mentally ill suspects.[183] The root of most de-escalation training that many officers go through is derived from the original crisis intervention principles.[184]

For all intents and purposes, these terms cover the same general topic and will be used interchangeably for this thesis. This type of training emphasizes slowing down an officer's response to avoid unnecessary escalation. De-escalation techniques can also include *tactical repositioning*, or creating more standoff space, and appearing less imposing to the suspect.[185] De-escalation also emphasizes communication in a calm tone

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[183] Betsy Vickers, "Memphis, Tennessee, Police Department's Crisis Intervention Team" (Bureau of Justice Assistance, July 2000), 3–4, https://www.ncjrs.gov/pdffiles1/bja/182501.pdf.

[184] Janet R. Oliva, Rhiannon Morgan, and Michael T. Compton, "A Practical Overview of De-Escalation Skills in Law Enforcement: Helping Individuals in Crisis While Reducing Police Liability and Injury," *Journal of Police Crisis Negotiations* 10 (2010): 17.

[185] "Guiding Principles on Use of Force."

of voice to suspects and having a discourse, rather than overtly controlling the situation with aggressive orders.[186] As long as bystander and officer lives are not in danger, this methodology stresses avoiding force.

The benefits of de-escalation training are well-established in the United States. From a general community policing standpoint, the results are undeniable. Dallas PD found significant reductions in complaints of excessive force by citizens, from 147 in 2009, down to 13 in 2015.[187] The Dallas Police Chief credits the de-escalation training.[188] Richmond, California police department has had tremendous success in reducing officer involved shootings since revamping its training policies.[189] The Memphis Police Department saw significant reductions in injury after implementing crisis intervention (directed primarily towards de-escalating with mentally ill), as well as a significant reduction in number of incidents requiring hostage negotiators.[190]

Resolving incidents through non-physical means has significant benefits to both the officer and the suspect as well. Resolution through discourse, means less stress for officers, which has the potential to increase their quality of life.[191] More directly, an incident resolved using non-physical means of force, or reduced means of force opens departments up to less liability, officers have less risk in job performance and security, and public perception of police increases.[192]

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[186] "Guiding Principles on Use of Force."

[187] David Griffith, "De-Escalation Training: Learning to Back Off," *Police Magazine*, March 2, 2016, http://www.policemag.com/channel/careers-training/articles/2016/03/de-escalation-training-learning-to-back-off.aspx.

[188] Griffith.

[189] Robert Rogers, "Use of Deadly Force by Police Disappears on Richmond Streets," *East Bay Times*, September 6, 2014, https://www.eastbaytimes.com/2014/09/06/use-of-deadly-force-by-police-disappears-on-richmond-streets/.

[190] Vickers, "Memphis, Tennessee, Police Department's Crisis Intervention Team," 9–10.

[191] Christopher L. McFarlin, "Integrating De-Escalation Techniques into Policing," *In Public Safety* (blog), July 20, 2017, https://inpublicsafety.com/2017/07/integrating-de-escalation-techniques-into-policing/.

[192] McFarlin.

Likely the largest portion of excessive force incidents, and a substantial number of the officer shootings (dozens every year), that has the potential for reduction involves victims who are mentally ill and unarmed suspects.[193] Roughly 20% of those killed by police had a mental illness in 2017.[194] This is likely the demographic of LEO shootings that can stand to gain most from de-escalation training. Most de-escalation studies and curricula are based around hospital settings and the various conflicts that patients create in those settings, often times from mentally ill.[195]

De-escalation training/CMT is not without its critics. Officers fear that when the training becomes an expectation or policy, it can dangerously restrict an officer's options while on high stress and high-risk calls.[196] Opponents fear that officer's safety will be put at risk if officers feel they cannot use force for fear of losing their jobs or other disciplinary action.[197]

De-escalation training/CMT is an extremely valuable tool for law enforcement officers. Few LE experts would argue that having these techniques as an option is a poor idea.[198] Philadelphia Police Department recruits stated their desire for more de-escalation training after being provided insufficient training in the academy.[199] This training has

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[193] Sullivan, Tate, and Jenkins, "Fatal Police Shootings of Unarmed People Have Significantly Declined, Experts Say."

[194] Sullivan, Tate, and Jenkins.

[195] Pamela Inglis and Andrew Clifton. "De-Escalation: The Evidence, Policy and Practice." *Journal of Intellectual Disabilities and Offending Behaviour* 4, no. 3 (2013): 100–108. http://dx.doi.org.libproxy.nps.edu/10.1108/JIDOB-01-2013-0001; Anne Ines Brewer, Roger Beech, and Sinikiwe Simbani . "Using De-Escalation Strategies to Prevent Aggressive Behaviour." *Mental Health Practice (2014+)* 21, no. 2 (October 2017): 22. http://dx.doi.org.libproxy.nps.edu/10.7748/ mhp.2017.e1221.

[196] Brian Landers, "Are De-Escalation Policies Dangerous," *Police*, October 14, 2017, http://www.policemag.com/channel/careers-training/articles/2017/10/are-de-escalation-policies-dangerous.aspx.

[197] Landers.

[198] Landers; McFarlin, "Integrating De-Escalation Techniques into Policing."

[199] Fachner and Carter, "Collaborative Reform Initiative: An Assessment of Deadly Force in the Philadelphia Police Department," 5.

proven to be invaluable to departments who have implemented it.[200] Conversely, there is at least some evidence that departments who lack periodic training may have systemic use of force issues.[201] Despite this fact, only 21 states have mandated de-escalation training for their law enforcement officers as of the end of 2017.[202] This type of training is even more beneficial to officers when delivered in a reality-based training method. Oliva, Morgan, and Compton posit that, "Role-playing can be an instrumental learning method that assists police officers in mastering the various verbal de-escalation techniques."[203]

2. Bias Mitigation Training

Quality training can have an important impact on reducing officers' biases effect on police performance.[204] Sim, Correll, and Sadler concluded in their study that training is effective at reducing effects of stereotype-enforcing influences.[205] By ensuring that training scenarios do not enforce stereotypes, the authors hypothesize that the training forces officers to rely on other factors such as presence of a weapon, when deciding on whether to shoot or not.[206] When the training did enforce racial stereotypes (e.g., black males were armed at higher rate than white males), the subjects of the study allowed racial factors to negatively influence their performance substantially.[207] The authors state: "Although lab-based training hardly simulates a veteran officer's training and on-the-job experience, it provides some indication that training may attenuate the influence of stereotypes."[208] Interestingly, officers whose primary job duties included working in

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[200] David Clarey, "Some States Training Police to Use Words, Not Guns," *APM Reports*, December 20, 2017, https://www.apmreports.org/story/2017/12/20/more-states-training-police-to-use-words-not-guns.

[201] Fachner and Carter, "Collaborative Reform Initiative: An Assessment of Deadly Force in the Philadelphia Police Department," 5.

[202] Clarey, "Some States Training Police to Use Words, Not Guns."

[203] Oliva, Morgan, and Compton, "A Practical Overview of De-Escalation Skills in Law Enforcement: Helping Individuals in Crisis While Reducing Police Liability and Injury," 23.

[204] Sim, Correll, and Sadler, "Understanding Police and Expert Performance: When Training Attenuates (vs. Exacerbates Stereotypic Bias in the Decision to Shoot."

[205] Sim, Correll, and Sadler, 292.

[206] Sim, Correll, and Sadler, 297–98.

[207] Sim, Correll, and Sadler, 297–98.

[208] Sim, Correll, and Sadler, 292.

situations that reinforced stereotypes, such as gang units, showed much higher rates of racial bias in the study.[209]

3.   The Use-of-Force Continuum Policy

Many police departments have a use-of-force continuum that provides guidelines for escalating or de-escalating force. The use-of-force continuum covers the spectrum of available tools that an officer can use to solve a problem.[210] This continuum is the basis for many department's use-of-force policy.[211] The use-of-force continuum methodology states that if a certain level of force is not effective, then the officer should escalate one level to achieve the desired effect.[212] An example of a use-of-force continuum appears in Figure 4:

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[209] Sim, Correll, and Sadler, 299.

[210] "The Use-of-Force Continuum," *National Institute of Justice*, accessed November 27, 2018, https://www.nij.gov/topics/law-enforcement/officer-safety/use-of-force/Pages/continuum.aspx.

[211] William Terrill and Eugene A. Paoline, III, "Examining Less Lethal Force Policy and the Force Continuum: Results From a National Use-of-Force Study," *Police Quarterly* 16 (2012): 41.

[212] Richard M. Hough Sr and Kimberly M. Tatum, "An Examination of Florida Policies on Force Continuums," *Policing: An International Journal of Police Strategies and Management* 35, no. 1 (2012): 42.

Figure 4.   An example of a Use of Force Continuum[213]

The use-of-force continuum is policy that varies from department to department. First, some departments do not have a written continuum in their policy.[214] Of those that do, definitions and rules for each level of force may differ.[215] Bostain, as referenced by Richard Hough and Kimberly Tatum, argues that use-of-force continuums lack the ability to address the "totality of circumstances."[216]

The reality is that use-of-force continuums are an effective policy because they go above and beyond the objective reasonableness in a manner that is effective.[217] Use of force continuums are effective in that they provide appropriate policies for officers to abide by when using force. Continuums allow them to use their array tools that are appropriate for a specific situation, but still use force legally. They are not mutually exclusive in incorporating or even emphasizing de-escalation techniques. By giving guidelines on when

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[213] Source: Robert Farago. "Police Use of Force (UOF) Policies Under Fire." The Truth About Guns. March 28, 2016. https://www.thetruthaboutguns.com/2016/03/robert-farago/police-use-force-policies-fire.

[214] Terrill and Paoline, III, "Examining Less Lethal Force Policy and the Force Continuum: Results From a National Use-of-Force Study," 41.

[215] Terrill and Paoline, III, 41.

[216] Bostain, J. "Use of force: are continuums still necessary?," *FLETC Journal (*2006): 33–7. As quoted in Hough Sr and Tatum, "An Examination of Florida Policies on Force Continuums," 41.

[217] Hough Sr and Tatum, 42–43.

certain uses of force are authorized for perceived threats, it provides officers a clearer picture of how to train and use force other than just what is "objectively reasonable."

C. CONCLUSION

There are several practices within the policing community that have a direct influence on the rate of which officers misuse force. Within departments, poor recruitment tactics followed by inappropriate policies for desired behavior are creating officers that may be more inclined to overuse force even when departments strongly desire to fix these issues. Departments explore the benefits of conflict management and de-escalation training and seek to incorporate throughout their curriculum. Training should emphasize realistic amounts of force relative to the number of incidents that occur on duty. By using reality-based training that exposes officers to more realistic rates of use of force scenarios, officers decision-making processes will not lean towards using force under stress.

Departments must acknowledge that officers will have biases in some sort or fashion. Shaping their training to mitigate the effects of those biases is vital seeing racial trends in use of force incidents. Additionally, the warrior mindset must not be the default mentality that is emphasized in the training process. This mentality creates dangerously eager and hyper-vigilant officers that are at risk of making poorer decisions in high stress scenarios. Finally, departments must have policies in place to support and promote these training and performance goals. By establishing the end-state as the desired and acceptable outcome, officers will seek to not only abide legally with minimizing force but seek to excel within their department as well.

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V. CONCLUSION AND RECOMMENDATIONS

Within the pro-law enforcement community, there is a tendency to blame the use-of-force issues on "just a few bad apples."[218] By ascribing the problems to a small percentage of officers, however, the proponents of status quo are attempting to divest themselves of the responsibility of fixing any systematic issues. For one thing, it is much easier to deal with one officer administratively after an incident than to overhaul an entire recruiting system, training system, oversight system, or the like.

It is easier, that is, until it is not; highly publicized misuse-of-force cases have prompted leaders and organizations to demand sweeping and immediate changes of the whole system by which officers police the nation. Something clearly must be done, but the solutions want careful consideration. Police leaders must avoid the trap of implementing something hastily, amid political pressure. Officer Bryan Landers wrote in *Police*, "I believe the qualitative effect could be creating a culture in which officers fear using force because they could violate policy, or at minimum face an ambiguous system of being internally investigated on force applications driven more by politics than law."[219] Landers claims he found that officers were more than twice as likely to be killed, and ten times more likely to be injured after implementing de-escalation policies.[220] A more promising approach seems to present itself at the training phase; research has found effective training and policies that can be pursued to improve law enforcement officers' ability to use appropriate force and mitigate excessive force issues.

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[218] Chenjerai Kumanyika, On Race And The Police: A Few Bad Apples Or Systemic Failure?, NPR, September 26, 2016, https://www.npr.org/2016/09/26/495523392/on-race-and-the-police-a-few-bad-apples-or-systemic-failure; Andrew Cohen, "How Bad Apples Spoil the Whole Bunch," *The Marshall Project* (blog), accessed October 29, 2018, https://www.themarshallproject.org/2017/09/27/how-bad-apples-spoil-the-whole-bunch; "Are Police Corrupt?," Debate.org, accessed October 29, 2018, https://www.debate.org/opinions/are-police-corrupt.

[219] Landers, "Are De-Escalation Policies Dangerous."

[220] Landers. (Note: To be sure, the many flaws in the research include the limited number of departments surveyed and its failure to take into account the recent uptick in violence toward law enforcement officers. Still, this article is a good representation of the strong opinions of some parts of the community towards changing current practices.)

A.   RECOMMENDATIONS

Thorough research has several common themes of best practices as well as gaps in ability to study this topic. The following are recommendations that can be taken as general guidelines for implementation by departments. Due to the nature of differing size, responsibilities, and legalities, a single strict curriculum for law enforcement training academies is unrealistic. Additionally, this research has not produced a clearly superior all-encompassing policy that should be implemented at the present time.

Existing literature published provides a solid foundation for those looking to implement changes. Leaders can follow the guide by Oliva, Morgan and Compton regarding using de-escalation training effectively.[221] It takes elements of what has been found to be important in this research such as reality-based training scenarios. Additionally, reports by the Justice Department on high-profile law-enforcement agencies contain in-depth and formidable recommendations for all agencies to abide by.[222]

(1)   Require Use-of-Force Reporting Nationwide

This thesis is not the first identify a lack of available and comparable data on use of force use, and until a unified system is available, it will not be the last.[223] There is currently no mandate to report use of force incidents or training practices. Additionally, there is no manner in which to submit reports and compare. A system must be developed suitable for collecting and analyzing use-of-force data from all law enforcement agencies across the country. Additionally, Congress should mandate standardized reporting definitions and procedures.

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[221] Oliva, Morgan, and Compton, "A Practical Overview of De-Escalation Skills in Law Enforcement: Helping Individuals in Crisis While Reducing Police Liability and Injury."

[222] "Investigation of the Seattle Police Department."

[223] Smith et al., "A Multi-Method Evaluation of Police Use of Force Outcomes: Final Report to the National Institute of Justice," 8–10.

(2)   Academies Must Avoid the Trap of Over-Emphasizing Force

Academies must give up some of their training hours that emphasize using force in order to make room for more training that emphasizes de-escalation and avoiding force when possible.

(3)   Incorporate Policies to Avoid Likely Use of Force Scenarios when Possible

Departments must have policies against certain enforcement tactics where the benefits do not outweigh the risks. Such crimes as petty theft should not lead to a car chase or foot pursuit that, in turn, can culminate in the use of force—even lethal force.

(4)   Avoid Culture of the Warrior

Police departments must be careful to minimize recruiting tactics, training material, and exercises that promote the warrior mentality. Departments should avoid overly aggressive marketing aimed at recruiting people to go to battle and avoid terms that confuse the roles and responsibilities with that of military servicemembers.

(5)   Require Annual De-escalation Training

Departments must have annual de-escalation training for all officers, starting first at the academy incorporating reality-based training, then continuing annually.

(6)   Increase Reality-Based Training

All types of training should include a heavy dose of reality-based training, as it is proven to be a more effective way of building experience within officers. Training scenarios to avoid biases uses cues other than race to identify what level of force is needed.[224]

(7)   Develop Clear Policies for Specific Levels of Force

Departments must have clearly defined policies for using different levels of force. Policy should not be overly restrictive as to encumber officers. For example, departments

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[224] Sim, Correll, and Sadler, "Understanding Police and Expert Performance: When Training Attenuates (vs. Exacerbates Stereotypic Bias in the Decision to Shoot," 300.

should limit the number of CEW shocks that may be fired once the weapon has made contact.

(8)   Incorporate Periodic Training on Identifying Poor Officer Conduct

Departments need to ensure that officers know how to identify misconduct as well as how to step in and prevent further misconduct. Police can and should be responsible for policing their own when it comes to good behavior, and it stands to reason that much of the complaints can be stopped by robust self-discipline in this regard.

B.   FUTURE RESEARCH

One of the most beneficial topics of research to the law enforcement community is the comparison of best practices from departments that have implemented these recommendations. An independent review of agencies comparing use of force incidents, crime, demographics, and officer training will hold potential for further solidifying or invalidate these recommendations.

C.   CONCLUSION

There is a lot of literature surrounding police use of force, even before the current cultural uproar surrounding recent high-profile excessive force cases. Many departments have taken a proactive and aggressive approach to combatting excessive force within their ranks. Police leaders should take note of the work being done and be open minded to dramatic changes in recruiting, training, and other policies involving policing. The problem is clearly not as simple as many on both sides would have us believe.

Society, including law enforcement officers, often fail to remember that police-civilian interactions are not-linear. While the officers are typically responding to a call of some sort, and therefore initially reacting to actions or alleged actions of a suspect, the suspect also reacts to the officers' actions. Actions like officers' hands approaching their holsters, even inadvertently, can create even more stress.[225] Officers must understand that

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[225] Charles E. Hughes and Kathleen M. Ingraham, "De-Escalation Training in an Augmented Virtuality Space." (2016 IEEE Virtual Reality (VR), Greenville, SC, 2016), 181–82.

there is no "objective reasonableness" for the suspect/victim of excessive force. If the officer is on trial, the actions of the victim/suspect in reaction to the police are not typically a solid legal defense against a suspect increasing resistance however natural the response may be. In effect, an officer may escalate a situation early on, causing the suspect/victim to act a certain way which triggers an officer to use force. The officer's actions in court are then judged on his or her reaction to the suspect's actions—and not on the officer's initial escalation.

Thus, it is vitally important to ensure officers are trained appropriately, equipped with the correct mindset, and part of a structure that holds people accountable for their actions, provides feedback, and constantly looks for ways to improve. While society must manage its expectations and know that no police agency will be perfect, citizens should still expect excellence from its officers and support them to reach that objective. When departments do not hold themselves to high standards, the citizens of its jurisdiction suffer significantly.[226]

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[226] Christian Scheckler and Ken Armstrong, "Who Will Now Police the Police?," *The New York Times*, December 1, 2018, https://www.nytimes.com/2018/12/01/sunday-review/trump-sessions-police-reform.html.

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