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Cycles of Racial Violence: Police Brutality in the 1990s

By

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Thesis submitted for the Degree of MA by Research

Abstract

This thesis combines theoretical and practical reasoning behind police brutality and draws on methodologies and frameworks from a range of academic disciplines, including psychology, sociology, and politics. It bridges the gap in the current academic literature around police brutality by showing that implicit bias, training and weaponry culminate in the reasoning behind the cycle of police abuse. It shows that there is an ongoing Black Freedom Struggle and that it is not justifiable to assume that the Civil Rights Movement ended in the 1960s as the battles are the same, not only from the 1960s to the 1990s but to the contemporary too, whereby legislation still needs to change in order to prevent unnecessary killings of unarmed African Americans. Police brutality is one of the most deadly affects on African Americans and the thesis proves that implicit bias, the lack of adequate training and the weaponry used by police, both individually and when combined, are direct causes of overzealous policing, and will present arguments to resolve the ongoing battle between police and unarmed African Americans. Chapter One analyses the effect of implicit bias on the police and shows how status and class have little bearing to reduce this. Chapter Two discusses the inadequacy of police training around the key issues of police use of force and establishes the need to adjust the current curriculum to create new methods to reduce the deaths of African Americans in the community. The final chapter analyses the weaponry used by the police as problematic to African Americans, as they are all too readily used. These three key elements are fundamental to the cycle of police brutality, which prevents the Civil Rights Movement from ending and this analysis will resolve at least some of the issues which arise from their affect on policing.

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Introduction

Police brutality has long been an issue that has clouded African Americans in the U.S. but the reporting of it has become more prevalent in the media in recent years. Cases such as Michael Brown, Freddie Gray and Eric Garner, where African American lives were taken by the very people who are meant to protect communities, have brought police brutality back to white America's attention. This is not a new phenomenon, and scenes of African American bloodshed at the hands of police has not only a history, but a cyclical nature whereby it continues on its path and, although steps have been taken, continues to isolate and divide communities and cause unnecessary deaths, across decades, if not centuries. The cycle shows that police brutality has not changed through the years, but has remained static and always there.

Scholars such as Kim Michelle Lersch and Tom Mieczkowski, James P. McElvain and Augustine J. Kposowa and Jimmy J. Williams and Gary Hester have all begun to map out police misconduct and identify causes and links between cases. Officers have always had an authorised power to use force against citizens and, to some extent, they need this in order to do their job efficiently and effectively. Without some amount of authority and force they would be unable to control citizens and help keep the streets safe. However, a disproportionate amount of African Americans feel the wrath of the police across the nation and end up being hurt, or worse, killed at the hands of the police. Many discuss this use of force from Officers as 'a bad apple,' or that one Officer might go overboard with their levels of force but that, on the whole, Officers only use force where needed. Unfortunately, there are

many practices that affect police Officers and prevent them making the correct decisions and all Officers are susceptible to implicit bias, inadequate training and wrongful use of weapons.

This thesis looks at the reasons why so many unarmed African Americans are brutalised by police; specifically the effects of implicit bias, the training that Officers undergo, and the use of weapons in everyday police life. It also shows the cycle of police brutality; that due to the underlying issues police face and the fact that these issues are not resolved when they need to be, history repeats itself time and time again. The only way to prevent further unarmed African Americans from dying at the hands of the police is to find ways to deter implicit bias, to adjust training so that Officers better understand use of force, and to re-evaluate what weapons Officers use and how they use them through legislation – only then will the cycle be broken.

The problem with scholarship and knowledge surrounding the topic of police misconduct is that there is no set definition as to what use of force or police brutality means; the words are used regularly but vary between individuals. As Lersch and Mieczkowski argue without a clear explanation as to what denotes use of force or police brutality, individuals in the police and civilians may interpret it differently. If this is the case, the police may use the right level of force but be accused of misconduct, or civilians could be witness to police use of force and not understand when their behaviour is wrong, thus fuelling the cycle. Holmes suggests that "the police consider excessive force to be normal and essential to control individuals who they perceive to be a threat to them," however perception is the underlying problem;

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¹ Kim Michelle Lersch & Tom Mieczkowski, (2005), "Violent police behaviour: Past, present and future research directions," *Aggression and Violent Behaviour*, Vol. 10, p.554.

where something can be perceived, it is open to interpretation — what could be considered normal to an Officer might be construed as use of force to members of the community.² Furthermore, although in the Supreme Court decision in *Tennessee* ν . *Garner* use of deadly force was to be determined by the Fourth Amendment and it was declared that deadly force should only be used to prevent a suspect escaping or if the suspect was deemed to pose a threat to the Officer, this is again linked to perception as it is the Officer who has to make a snap decision, in the heat of the moment, as to whether someone is a threat, through their own implicit bias as to what counts as threatening.³ Klockars defines excessive force as "the use of more force than a highly skilled police Officer would find necessary to use in a particular situation." The issue with this definition is that it is based on the idea that just because an Officer is highly skilled they are not affected by implicit bias or a sense of authority.

It is considered that the younger the Officer and the less time spent in the force, the more likely the person is to use force, however this does not make older, more experienced Officers immune to acts of violence. Force, as defined by McElvain and Kposowa, is "an allegation that an Officer engaged in an incident in which they allegedly used physical force (i.e. control hold, excessive handcuffing, strike, chemical agents, impact weapons and/or firearms)" which opens up discussion as to whether force should be considered under the premise that it may have been used or that it was used, making force vague and less sinister; without

² James P. McElvain & Augustine J. Kposowa, (2004), "Police Officer characteristics and internal affairs investigations for use of force allegations," *Journal of Criminal Justice*, Vol. 32, p.268.

³ Jimmy J. Williams & Gary Hester, (2003), "Sheriff law enforcement Officer and the use of force," *Journal of Criminal Justice*, Vol.31, p.374.

⁴ James P. McElvain & Augustine J. Kposowa, (2004), "Police Officer characteristics and internal affairs investigations for use of force allegations," *Journal of Criminal Justice*, Vol. 32, p.267.

clear definition there could be a negative impact on Officers who receive untrue allegations and it also alleviates the harshness of force.⁵

To Fyfe, there are two types of excessive force – extra-legal violence which is considered "the wilful and wrongful use of force by Officers who knowingly exceed the bounds of their office" and unnecessary force which "occurs when well-meaning Officers prove incapable of dealing with the situations they encounter without needless or too [hastily resorting] to force." Through this division of what defines use of force, it separates the good and the evil when, in fact, it is not so black and white. According to studies conducted by Adams and Worden and Catlin, when force is used it generally falls at the lower end of the spectrum through seemingly lesser violence such as pushing, grabbing causing small injury. Furthermore, "what was once a generic term used to describe police abuse against citizens has come to symbolize a confrontation between members of minority communities and the police."

Police brutality is not solely about race, but the difference in responses that police have towards African Americans in comparison to white citizens adds to the injustice of police brutality. However, this racial correlation "is the direct result of the disproportionately high number of Blacks and Latinos who have been assaulted

⁵ James P. McElvain & Augustine J. Kposowa, (2004), "Police Officer characteristics and internal affairs investigations for use of force allegations," *Journal of Criminal Justice*, Vol. 32p.270.

⁶ Jimmy J. Williams & Gary Hester, (2003), "Sheriff law enforcement Officers and the use of force," *Journal of Criminal Justice*, Vol.31, p.374.

⁷ James P. McElvain & Augustine J. Kposowa, (2004), "Police Officer characteristics and internal affairs investigations for use of force allegations," *Journal of Criminal Justice*, Vol. 32, p.268.

⁸ Katheryn K. Russell, ed. Jill Nelson (2000), "What Did I Do to Be So Black and Blue?," *Police Brutality: An Anthology,* W.W. Norton Company: USA, p.137.

by the police." Between 1950 and 1973 six thousand people were killed by the police, forty-five percent of whom were African American males. ¹⁰ For the purposes of this study, the definition of use of force is any unnecessary behaviour by a police Officer that causes non-fatal harm or injury to a person, and the definition of police brutality is any unnecessary behaviour by a police Officer that causes the death of a person.

This study aims to understand the reasoning behind the cases of police brutality and discusses the idea that, although scholars often look at case studies and look to categorise events in short time periods, the African American versus Police dynamic is just a cycle, continuing on from before the 1960s. In an attempt to understand police brutality fully, studies have been looked at through a variety of scholastic fields such as Psychology, Sociology, Criminology, Police Studies, Law and History. This thesis brings a new perspective to the issue discussing the weaponry, implicit bias, police training and cycle of events that affects African Americans so severely, incorporating the different schools of thought to provide an in-depth and rounded analysis.

This is not a smear campaign against the police, but a look into the broader context and the reality facing African Americans daily. As Klockars suggests, "No police anywhere has ever existed, nor is it possible to conceive of a genuine police ever existing, that does not claim a right to compel other people forcibly to do something," but where the rate of African Americans losing their life through police

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⁹ Katheryn K. Russell, ed. Jill Nelson (2000), "What Did I Do to Be So Black and Blue?," *Police Brutality: An Anthology*, W.W. Norton Company: USA, p.137.

¹⁰ H. Bruce Pierce, (1986), "Blacks and Law Enforcement. Towards Police Brutality Reduction," *The Black Scholar*, p.50.

behaviour is consistently high, police brutality must be understood, and there must be a way to break the cycle. 11 Cases are not isolated and the same events are happening now as they were in the Civil Rights era of the 1960s; there is still an African American plight that needs to be discussed and evaluated in order to overcome the cycle of police brutality.

Police brutality has existed ever since the police department was established in Boston in 1838, where harsh tactics were used to control European immigrants and, eventually, African Americans who were fleeing the South. ¹² Following this, Southern States created Slave Patrols which were designed to "chase down, apprehend, and return to their owners, runaway slaves; to provide a form of organized terror to deter slave revolts; and, to maintain a form of discipline for slave-workers...if they violated any plantation rules." ¹³ As the police became more established within society, so too did police brutality towards African Americans. It is estimated that at least five thousand African Americans were lynched to death from 1859 to the early 1960s, which included the involvement of police officers. ¹⁴ "Historically, then, Black people have been criminalized in the United States as a function of a racialized society and culture that blame them – the victims of racial domination – for the cultural and social pathologies of the dominant White

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¹¹ Kim Michelle Lersch & Tom Mieczkowski, (2005), "Violent police behaviour: Past, present and future research directions," *Aggression and Violent Behaviour*, Vol. 10, p.565.

¹² Dr. Gary Porter, (2013), "A History of Policing in the United States, Part 1," *Eastern Kentucky University Police Studies Online*, Available at: http://plsonline.eku.edu/insidelook/history-policing-united-states-part-1 (Accessed on 16th March 2018)

Katie Nodjimbaden, (2017), "The Long, Painful History of Police Brutality in the U.S.," *Smithsonian*, Available at: https://www.smithsonianmag.com/smithsonian-institution/long-painful-history-police-brutality-in-the-us-180964098/ (Accessed on 23rd March 2018)

¹³ Ibid.:

¹⁴ Derrick Bell, ed. Jill Nelson (2000), "Police Brutality: Portent of Disaster and Discomforting Divergence," *Police Brutality: An Anthology*, W.W. Norton Company: USA, p.93.

society."¹⁵ This historical blame culture manifested through the 1990s and to today and allows for African Americans to lose their life to those police officers who have that blame culture embedded in them.

The most well-known and well-documented police brutality was in the dawn of the Civil Rights Movement. This period brought police brutality to light as it was broadcast to society in never before seen events. Many people associate the start of the Civil Rights Movement with the Emmett Till case. In 1955, 14 year old Emmett Till, who was visiting family in Mississippi, was beaten, shot, lynched and thrown in the Tallahatchie River with a seventy-five pound fan tied, with barbed wire, around his neck in an attempt to send his body to the bottom. ¹⁶ He had apparently accosted a white female, Carolyn Bryant, in a shop and this resulted in him losing his life at the hands of Bryant's husband and brother-in-law. 17 In 2017, Carolyn Bryant admitted that her claims that Till had grabbed her and made sexual comments to her were false. 18 But the power of the Emmett Till case – the fact that the body was almost unrecognisable and that his mother Mamie Till chose to use an open casket at his funeral so that the public could see the damage that had been done - reverberated through the nation and was fundamental to the Civil Rights movement. But Till was not the first African American to lose his life on the basis of sexual assault towards white females. It was common after emancipation that African American men who had been arrested for sexual assault towards white women were attacked by white

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¹⁵ David A. Rembert, Jerry Watson & Rickey Hill, (2016), "A trilogy of trepidation: Diverse perspectives on police violence targeting African American males," *Journal of Human Behavior in the Social Environment*, Vol.26, p.230.

¹⁶ Time 100 Photos, (unknown), *Emmett Till,* Available at:

http://100photos.time.com/photos/emmett-till-david-jackson (Accessed on 16th March 2018) ¹⁷ Ihid ·

¹⁸ Richard Perez-Pena, (2017), "Woman Linked to 1955 Emmett Till Murder Tells Historian Her Claims Were False," *New York Times,* Available at: https://www.nytimes.com/2017/01/27/us/emmett-till-lynching-carolyn-bryant-donham.html (Accessed on 16th March 2018)

citizens, including white police Officers.¹⁹ Incredibly, "sometimes a band of white men would forcibly remove [the accused] from police custody and exact their own brand of justice."²⁰ This relationship between white America and the police continues.

There was an astounding level of brutality towards African Americans; in an eight year period, from 1960-1968, one thousand one hundred and eighty eight African American males were killed by police. The police were described as "archtormenters and prosecutors of Negroes" and the 1960s saw an increase in the militarisation of both the police and the political protests brought forward by Malcolm X and Martin Luther King Jr. who played fundamental and often opposing parts, in their attempts to create unity between white dominant citizens and African American citizens. Some police departments were equipped with heavier weapons and armoured vehicles in an attempt to control the protestors.

One of the most harrowing shows of police brutality occurred in Birmingham, Alabama in 1963. Following the bombing of the Sixteenth Street Baptist Church where four children were killed, Robert Chambliss, a member of the Ku Klux Klan and the person behind the bombing, was acquitted on the 8th October

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¹⁹ Katheryn K. Russell, ed. Jill Nelson (2000), "What Did I Do to Be So Black and Blue?," *Police Brutality: An Anthology*, W.W. Norton Company: USA, p.144.

²⁰ Ibid.: p.144.

²¹ H. Bruce Pierce, (1986), "Blacks and Law Enforcement. Towards Police Brutality Reduction," *The Black Scholar*, p.49.

²² Derrick Bell, ed. Jill Nelson (2000), "Police Brutality: Portent of Disaster and Discomforting Divergence," *Police Brutality: An Anthology*, W.W. Norton Company: USA, p.93.

²³ Angus Campbell, (1971), *White Attitudes Toward Black People,* The University of Michigan: USA, p.28.

1963 and protests ensued.²⁴ In response to the protests, mainly being carried out by students, Safety Commissioner Bull Connor, with the aid of the police, released dogs on the protestors, jet-hosed them and beat them.²⁵ Images of the devastating effects of Connor's decision were broadcast and there was uproar over how African Americans were being treated. This would foreshadow the many more events of police brutality towards African Americans.

The 1960s brought conflicting views to society – "do [white people] want their city to meet the problem of riots by repressive measures, through an increase in police power, or...by working to improve the condition of black people in the cities." These same issues can be seen throughout the history of policing, especially when community policing was brought into play in the 1990s. "The period 1969-1971 saw a rash of shootings of Black plain-clothes cops, both on- and off-duty police Officers, by white policemen." Then, in 1994, an African American Officer in plain-clothes, had just finished his shift when he was chased and shot by the Officers he had just been working with. 28

The similarities between the 1960s and the 1990s are startling. From 1990-2000 there was increased anxiety between the police and the African American community throughout the U.S. and "citizen complaints of excessive force were

²⁴ Frank Sikora, (1991), *Until Justice Rolls Down: The Birmingham Church Bombing Case,* The University of Alabama Press: USA, pp.ix-xi.

²⁵ Carol B. Schwarble, (2006), "Images of Brutality: The Portrayal of U.S. Racial Violence in News Photographs Published Overseas (1957–1963)," *American Journalism*, Vol.23, p.103.

²⁶ Angus Campbell, (1971), *White Attitudes Toward Black People*, The University of Michigan: USA, p.28.

²⁷ Lieutenant Arthur Doyle, ed. Jill Nelson (2000), "From the Inside Looking Out," *Police Brutality: An Anthology*, W.W. Norton Company: USA, p.180.

²⁸ Ibid.: p.180.

rising sharply, from 2,175 in 1993 to 3516 in 1996."29 The basis of policing leading up to the 1990s was reactive policing, for example, under Chief Daryl Gates in Los Angeles, with "excessive overstepping of constitutional rights and copious instances of police brutality."³⁰ Under Gates' guidance, in 1986, training was adapted to create a shoot-for-the-head policy which initiated the aggressive policing that African Americans faced throughout the 1990s.³¹ Whilst in New York, under Mayor Giuliani, a reduction in crime between 1990 and 1997 was attributed to the new policing style.³² "The tougher tactics were a 'zero tolerance' crackdown on even the most minor quality-of-life infractions and stepped-up stop-and-frisk campaigns to ferret out those carrying concealed weapons," and due to this change in direction for policing, African Americans were being brutalised daily.³³ The Justice Department conducted a survey in 1997 which found that African Americans and Hispanics were more likely to come into contact with the police than white citizens by seventy percent.³⁴ In addition, it was found that African Americans and Hispanics were "hit, pushed, choked, threatened with a gun, or restrained by a dog during this time," an obvious increase in the aggressive policing that became synonymous with the 1990s.³⁵ Critical to this increase in aggressive police tactics was the increase in punishment for African Americans on basic misdemeanours – something that has

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²⁹ Marilynn S. Johnson, (2003), *Street Justice: A History of Police Violence in New York City,* Beacon Press: Massachusetts, p.290.

³⁰ Matthew B. Gordon, (2011), *The Thin Blue Line. An in-depth look at the policing practices of the Los Angeles Police Department,* University of Michigan: USA, p.2.

³¹ Ibid.: p.16.

³² Ibid.: p.291.

Andrew Karmen, ed. Roger Hopkins Burke, (2004), "Zero tolerance in New York City: hard questions for a get-tough policy," *Hard Cop, Soft Cop. Dilemmas and debates in contemporary policing*, Willan Publishing: Devon, p.24.

³⁴ Katheryn K. Russell, ed. Jill Nelson (2000), "What Did I Do to Be So Black and Blue?," *Police Brutality: An Anthology*, W.W. Norton Company: USA, p.137.

³⁵ Ibid.: p.137.

become more and more prevalent and has contributed to the numbers of African Americans sat in prisons around the U.S.

Many point to the Rodney King beating as the beginning of the Black Freedom Struggle in the 1990s. In 1991, King was brutally beaten, kicked and bludgeoned by four police Officers, and watched by ten Officers. ³⁶ The behaviour of the Officers was likened to the Birmingham attack of 1963, and was caught on camera.³⁷ Under the authorisation of Sergeant Stacey C. Koon, a total of fifty-six blows were dealt to King, as well as being tasered numerous times.³⁸ King was left with a "fractured eye socket, a broken cheekbone, a broken leg, bruises, facial nerve damage, a severe concussion and burns from a stun gun."39 At no point had King resisted arrest after being stopped for suspected driving under the influence.⁴⁰ All four Officers were acquitted in April 1992, sparking a five-day riot against the police brutality spreading through the community and the lack of accountability. 41 As Dereck Bell suggests, "race riots, whether sparked by Black or white violence, always resulted in Blacks' suffering a disproportionate number of deaths, injuries, and loss of property" and the beating of King was no different. The protests that ensued did nothing to prevent the brutality against other African Americans, like Don Myrick, Jonny Gammage and Amadou Diallo, who lost their lived to police

³⁶ Marilynn S. Johnson, (2003), *Street Justice: A History of Police Violence in New York City,* Beacon Press: Massachusetts, p.285.

³⁷ Ibid.: p.285.

³⁸ Ibid.: p.285.

³⁹ Matthew B. Gordon, (2011), *The Thin Blue Line. An in-depth look at the policing practices of the Los Angeles Police Department,* University of Michigan: USA, pp.21-22.

⁴⁰ Ibid.: p.21.

⁴¹ Marilynn S. Johnson, (2003), *Street Justice: A History of Police Violence in New York City*, Beacon Press: Massachusetts, p.287.

brutality.⁴² The King beating was just the beginning of a prolonged episode of police brutality and the middle of the already present civil rights movement. The same year as the King beating, the A.C.L.U. in Los Angeles received almost fifty violation-of-rights calls per week, showing the increase in aggressive police tactics and the consistency of which it was happening.⁴³

This thesis proved difficult at times due to the lack of primary and secondary resources on two of the three case studies that have been analysed. There is very little academic research on the deaths of Don Myrick or Jonny Gammage which meant that finding evidence was difficult, however this only strengthens my argument that there is a cycle of police brutality; it is not merely the big cases that you hear in the news that play a part in the tale of police brutality towards African Americans but every single episode of police brutality towards African Americans that creates the ongoing cycle that equates from the Civil Rights movement. The decision to analyse Don Myrick's death resulted from the fact that so little was told about his death; as a key figure during the Motown era, his name is not well-known for falling victim to police brutality. Myrick's death proves that status and class has no relevance to the killing of unarmed African Americans. It can be clearly linked to implicit bias, which helps shape the understanding of the cycle of police brutality. Analysing the killing of Jonny Gammage was equally difficult with, once again, a lack of academic coverage. Gammage is an important case with respect to police brutality as his story shows the danger of taught methods of restraining and how these need to change. Amadou Diallo is one of the more infamous cases of police

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⁴² Derrick Bell, ed. Jill Nelson (2000), "Police Brutality: Portent of Disaster and Discomforting Divergence," *Police Brutality: An Anthology,* W.W. Norton Company: USA, p.96.

⁴³ Matthew B. Gordon, (2011), *The Thin Blue Line. An in-depth look at the policing practices of the Los Angeles Police Department*, University of Michigan: USA, p.15.

brutality in the 1990s and shows how weapons impact on the deaths of unarmed African Americans.

There is a vast amount of literature based on implicit bias, with many scholars, such as Joshua Correll, focusing their life's work on it. An important factor in the sea of implicit bias cases is the lack of police-centric focus. In his study "The Police Officer's Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals," Correll *et.al.* examines Diallo and the implicit bias surrounding it; Correll *et.al.* found a positive correlation between shooter bias and African American suspects. One of the shortcomings of Correll's study is that it is unrealistic, and does not reconcile real-life situations with shooter bias, but only computer simulations. This thesis propels off of the theories of Correll *et.al.* to establish how implicit bias affects people in real-life situations and what steps need to be taken to offer Officers implicit bias training to help alleviate police brutality.

My research on police training was interesting, as it brought attention, and supported my argument, that too much emphasis has been placed on firearms training. M. Haberfield has done extensive work on police training in the U.S. and created a very useful book with various comparisons of training that is offered. Whilst Haberfield does a good job of summarising the training that she has researched and her research formed a great support to my argument, there is only a small amount of thought as to why the training is done that way or improvements that could be made to the training. Also, the text loses its shock element as it becomes repetitive and mundane when comparing police departments. There has been other excellent research done on firearms training by scholars such as Brian R.

Johnson, who delivers a step-by-step understanding of the training including drawing a weapon, having an effective stance and reloading techniques. Whilst Johnson discusses some issues with the firearms training such as problems with trigger control, the book acts as a text book for good firearms usage and fails to discuss other options. The difficulty was finding any in-depth analysis of the chokehold process and the training that is offered that does not include firearms. The current academic research heavily reflects the state of police training, with an over-emphasis on firearms training and a lack of interest in use of force training. Other scholars such as Peter C. Kratcoscki and Dilip K. Das have done research from a global perspective, offering chapters on U.S. police training. This thesis offers solutions to the overarching problems found in U.S. training and recommends alternatives where other scholars have not, whilst bringing attention to the over-emphasis on firearms training. The training research needs much more attention, but this thesis begins to extend the knowledge of the subject through a political and historical lens, so that audiences are aware of the main issues within the training process.

Diallo has had much more attention than my other case studies since he was killed by police in 1999. The research done on Diallo, however, although mentioning the number of shots fired at him, fails to discuss the reason for the sheer volume of bullets. Beth Roy brilliantly combines Diallo's family ties, the trial and the wider social context, but fails to give a specific argument on how to prevent history from repeating itself but treats the book as a political protest where change is only possible if each individual reader changes. Roy does not recognise the importance of further litigation and legislation, and accountability seems lost on her even though she details the trial of Diallo in full. There is much to be said in adapting the system to

legislate for different weapons, alternative training and the initiation of implicit bias tests.

Taking three cases of police killings of unarmed African Americans from the beginning, the middle and the end of the 1990s proves the cycle of police brutality; these are not simply individual deaths and should not be considered merely on an individual basis, but are part of a wider movement. Furthermore, these cases show that implicit bias, police training and weaponry are not independent of each other – they all impact each other in a way that seals the fate of African Americans and continues the threat of police brutality. With the killings of African Americans by police echoing cases from the 1960s, a cycle develops and it must be considered that the Civil Rights movement did not end, but continues even today, with factions such as Black Lives Matter. It is not a repetition of events, but something constructed into society where African Americans are almost collateral damage for the police. From the emancipation of slaves, to the Civil Rights movement of the 1960s, to the LA Riots and Black Lives Matter, it is important to consider that these are not singular events but a reminder that racial disparities continue, tensions are still rife and police brutality continues. These events are not periods in time that have ended but they all merge into a continua Civil Rights movement because things have not changed and much of what Martin Luther King Jr. and Malcolm X wanted for in the 1960s is still needed now. Until it is recognised that implicit bias tests need to be rolled out to all Officers, that training needs to be adapted to understand use of force and avoid aggressive firearms tactics, and that the weapons the police use are detrimental to African American lives, cycle will continue. the

1993 - Don Myrick

Just over two years after the Rodney King beating another man lost the battle between the police and African Americans. On 30th July 1993 Don Myrick was fatally shot by Santa Monica police Officer Gary Barbaro, who was serving a warrant on Myrick's property. Implicit, explicit bias, identity and environment all had a bearing on how Myrick and others have been treated. Not only is this a case of police brutality but proof of underlying systemic racism, regardless of status, as Myrick was a saxophonist for a Grammy Award nominated, Motown band who had stormed the charts previously. The police can be seen on two parallel spectrums, the hero of the story and the people who feed the African American stereotype. ¹ These incidents are not merely one offs or case studies – in fact the case of Myrick eerily echoes the case of Henry Dumas who was fatally shot in 1968 - but a continuous episode of police brutality that is difficult to challenge because of the many layers of discrimination and violence embedded in the American psyche. Ultimately, police brutality has plagued people of minorities from its initiation to today. This chapter considers the part that implicit bias, explicit bias, identity and environment play in the continuous killings of African Americans by police Officers, how repetitive the issues are, and what can be done to prevent them affecting other African Americans.

Don Myrick rose to fame in 1970 with the band *Earth, Wind and Fire*, as part of the horn section known as *The Phenix Horns*. He began his professional career with a band called the *Pharaohs*, and became an influential Saxophonist during the

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¹ Beth Roy, (2009), 41 Shots...and counting: What Amadou Diallo's story teaches us about policing, race and justice, Syracuse University Press: New York, p.10.

Motown era. Myrick's time with the *Pharaohs* saw him backing artists such as Louis Armstrong and Smokey Robinson at the old Regal Theater in Chicago.² After joining Earth, Wind and Fire who were known for their ability to combine "doo-wop vocals, big band horns, Afro-Latin rhythms and outlandish showmanship," the band sold millions of records and had big hits such as September and After the Love has Gone where Myrick featured in solo performances. 3 Earth, Wind and Fire have been credited for their use of African garnishes in their music, cultivating the merging of "Africanesque flourishes with psychedelic rock and solid r&b grooves" first established by songwriter-producer Norman Whitfield in the early 1960s.⁴ As Brian Ward suggests, this new sound was a "musical [gesture] with a clearly understood racial provenance and a deep symbolic resonance" in a way that still caught the imagination of a larger audience.⁵ This sound recreated the racialized feel of the 1970s and combined it with rhythms and sounds found in early African music, with soulful lyrics not dissimilar to those originally found in slave songs. It thrust a more African sound into white audiences, with songs gaining success on the Billboard 100, such as September which reached number eight in 1979 and Let's Groove which got to number three in 1981.6 The success of the band only grew with their shows which were spectacular: "the group conjured up links with Egyptology, African mysticism and interplanetary travel to show how their horn-led brand of joyous jazz-

² Mathis Chazanov, (1993), "Questions Cloud Life, Death of Saxophonist: Music: Those who loved Donald Myrick are still in shock over his fatal shooting by police in an apartment where drugs allegedly were found," *LA Times*, Available at: http://articles.latimes.com/1993-08-15/news/we-24271_1_donald-myrick (Accessed on: 3rd January 2018)

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⁴ Brian Ward, (1998), *Just my soul responding: Rhythm and Blues, black consciousness and race relations,* Routledge: London, p.346.

⁵ Ibid.: p.347.

⁶ Keith Caulfield, (2016), *Earth, Wind & Fire's Top 10 Biggest Billboard Hits,* Available at: https://www.billboard.com/articles/columns/chart-beat/6866947/earth-wind-fire-top-10-biggest-billboard-hits-maurice-white (Accessed on: 6th January 2018)

funk-soul recognised no barriers of time or place." Myrick went on to tour with Phil Collins and had a solo in Collins's song *One More Night*. All of this success meant nothing when Myrick died at the hands of the police. Best summarised by Derrick Bell, "no matter [African American's] status, income, or accomplishments, we are at risk of harassment, arrest, injury, or death by those hired to protect the public peace;" Despite Myrick's status and success, he was killed because he was African American and deemed a threat through implicit bias; the perception that the police had of African Americans ruled their actions.⁸

Identity feeds into the case of Myrick due to his 'celebrity' status. It is easy to assume that someone who has built their career somewhat in the limelight would be seen as a celebrity and would be recognized as such. With Myrick, his celebrity image and identity were pushed to one side because he was African American, and considering the status of Myrick, the coverage of his shooting is limited. On 30th July 1993 Don Myrick was fatally shot in his home. Although successful, Myrick was plagued by a difficult time in his life – he separated from his wife after twenty-six years of marriage, was diagnosed with leukaemia and his career had slowed - but he was coming out of the other side, as his musical partner Louis Satterfield stated: "He was getting ready to do an album. He was going through some changes but he was coming out of all that. His music was more powerful than all of that. The only weapon he ever had was a weapon of peace – the saxophone." Santa Monica police

⁷ Brian Ward, (1998), *Just my soul responding: Rhythm and Blues, black consciousness and race relations*, Routledge: London, p.357.

⁸ Derrick Bell, ed. Jill Nelson (2000), "Police Brutality: Portent of Disaster and Discomforting Divergence," *Police Brutality: An Anthology,* W.W. Norton Company: USA, p.88.

⁹ Mathis Chazanov, (1993), "Questions Cloud Life, Death of Saxophonist: Music: Those who loved Donald Myrick are still in shock over his fatal shooting by police in an apartment where drugs allegedly were found," *LA Times*, Available at: http://articles.latimes.com/1993-08-15/news/we-24271_1_donald-myrick (Accessed on: 3rd January 2018)

had been trailing a drugs ring operating out of two addresses, putting both addresses under surveillance after an informant came forward. According to Sergeant Gary Gallinot, Myrick's address had been identified as part of a 'dial-for-drugs' scheme, and couriers would visit to pick up orders for rock cocaine for customers who had phoned in their requirements. Whilst serving the warrant on the property, Myrick approached the door and was shot by Officer Gary Barbaro as he mistook a butane lighter for a weapon. Myrick died in hospital shortly after. Court documents later revealed that drugs paraphernalia had been found on the scene and police arrested a woman who was in the apartment, a man who allegedly headed up the drugs operation and two alleged couriers. However, no evidence could be linked to Myrick himself and politics had a huge impact in what happened in this situation. Implicit bias also played a part in the decision to shoot because of a pre-conceived notion that Myrick was involved in the drugs cartel and because he was African American.

The term "War on Drugs" was first used by President Richard Nixon in 1969 but has since been a part of many other Presidents' administration policies. In the 1980s President Ronald Reagan re-established the War on Drugs and in 1986 Reagan spoke on his latest "Campaign Against Drug Abuse" where he discussed how "Drugs are menacing our society. They're threatening our values and undercutting our institutions. They're killing our children" and, alongside his wife, launched the "Just

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¹⁰ Mathis Chazanov, (1993), "Questions Cloud Life, Death of Saxophonist: Music: Those who loved Donald Myrick are still in shock over his fatal shooting by police in an apartment where drugs allegedly were found," *LA Times*, Available at: http://articles.latimes.com/1993-08-15/news/we-24271_1_donald-myrick (Accessed on: 3rd January 2018)

¹¹ Ibid.:

¹² Ibid.:

¹³ Ibid.:

say No" campaign. ¹⁴ However, as Michelle Alexander points out this War on Drugs was declared when drug crime was declining, in fact, "the war had little to do with drug crime and nearly everything to do with racial politics." She goes on to say that "This war has been waged almost exclusively in poor communities of color, even though studies consistently show that people of all colors use and sell illegal drugs at remarkably similar rates" and that "Drug offenses alone account for about two-thirds of the increase in the federal inmate population and more than half of the increase in the state prison population." This can be seen by Reagan's administration introducing mandatory minimum sentences, targeted disproportionately at minorities, under the Anti-Drug Abuse Act. ¹⁶

When President George H. W. Bush was sworn in he followed in the footsteps of his Republican predecessors and spoke to the Nation regarding his National Drug Control Strategy. Bush declared that "All of us agree that the gravest domestic threat facing our nation today is drugs...Our most serious problem today is cocaine, and in particular, crack" and that there would be an "almost \$1.5 billion increase in drug-related Federal spending on law enforcement." Bush used interesting language in this speech when he said, "Our weapons in this strategy are the law and criminal justice system, our foreign policy, our treatment systems, and our schools and drug prevention programs;" using terms like weapons in relation to

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¹⁴ Ronald Reagan, (1986), "Address to the Nation on the Campaign Against Drug Abuse," Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, Available at: http://www.presidency.ucsb.edu/ws/?pid=36414 (Accessed on 7th January 2018)

¹⁵ George Bush, (1989), "Address to the Nation on the National Drug Control Strategy," Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, Available at: http://www.presidency.ucsb.edu/ws/?pid=17472 (Accessed on 7th January 2018)

¹⁶ Matthew B. Gordon, (2011), *The Thin Blue Line: An In-Depth Look at the Policing Practices of the Los Angeles Police Department*, University of Michigan: USA, p.13.

¹⁷ George Bush, (1989), "Address to the Nation on the National Drug Control Strategy," Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, Available at: http://www.presidency.ucsb.edu/ws/?pid=17472 (Accessed on 7th January 2018)

the justice system is crucial to understanding why African Americans are targeted and how.¹⁸ It is important to note that most misdemeanor arrests were for marijuana, growing from five hundred arrests in 1993 to almost sixty thousand arrests by 2000.¹⁹

A critique of the policy-making throughout the history of police brutality comes through Bell who argues that "policies...give priority to whites most of the time, and only work[s] for Black people in the short run as a way of working for whites in the long run." As of 2000 the U.S. population was roughly twelve percent African American and around thirteen percent of regular drugs users were African American, however thirty-five percent arrested, fifty-five percent convicted and seventy-four percent sentenced to time in prison are African American. This translates to nearly three quarters of prison admissions being African American or Hispanic. In this respect Myrick was targeted because politically he fitted into the War on Drugs movement and psychologically because of an implicit bias that made him a target.

There is a stark resemblance between the case of Myrick and Henry Dumas.

Dumas was an up-and-coming novelist, whose poetry and fiction contained "bitingly sharp depictions of racial tension in America that, in an almost unbelievably eerie

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¹⁸ George Bush, (1989), "Address to the Nation on the National Drug Control Strategy," Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, Available at: http://www.presidency.ucsb.edu/ws/?pid=17472 (Accessed on 7th January 2018)

¹⁹ Andrew Karmen, ed. Roger Hopkins Burke, (2004), "Zero tolerance in New York City: hard questions for a get-tough policy," *Hard Cop, Soft Cop. Dilemmas and debates in contemporary policing*, Willan Publishing: Devon, p.29.
²⁰ Derrick Bell, ed. Jill Nelson (2000), "Police Brutality: Portent of Disaster and Discomforting

²⁰ Derrick Bell, ed. Jill Nelson (2000), "Police Brutality: Portent of Disaster and Discomforting Divergence," *Police Brutality: An Anthology,* W.W. Norton Company: USA, p.89.
²¹ Ibid.:p.97.

²² Ibid.: p.97.

way, speak to his own fate."²³ Once again, not much is known about the initial problem around why an Officer pulled his trigger on African American Dumas, however, on 23rd May 1968 a white Officer shot Dumas in the chest and killed him.²⁴ According to *The Amsterdam News*' obituary "police said Dumas and an unidentified man were scuffling in the subway when the Officer walked up to them and attempted to stop the fracas. Police said Dumas, resentful at the interference, slashed the Officer who shot and killed him."²⁵ There were no witnesses or photographic evidence; some have pertained to Dumas' innocence and the potential fabrication of the reasoning behind the shooting. Dumas was a successful African American who was making something of himself, similar to Myrick, and both were killed because police Officers did not see status but only saw race and a need to control that race.

It should be suggested that Myrick was shot that day because the Officer based his decision on implicit bias, on an embedded stereotype hinged on two perceived threats. The first perceived threat was that Myrick was an African American (which comes from an implicit bias); the second was the neighbourhood that he was in; In Los Angeles in 1993 there were just under two thousand reported homicides, with over four thousand homicides in California. It is important to note that a person need not know that they are biased and they do not need to have explicit prejudicial values, they merely need to associate African Americans with

²³ Beenish Ahmed, (2015), *Henry Dumas Wrote About Black People Killed By Cops. Then He Was Killed By A Cop,* Available at:

https://www.npr.org/sections/codeswitch/2015/10/01/433229181/henry-dumas-wrote-about-black-people-killed-by-cops-then-he-was-killed-by-a-cop (Accessed on 6th January 2018)

²⁴ Ibid.:

²⁵ Ibid.:

²⁶ State of California Department of Justice, (2002), "Homicide Crimes," *Homicide in California*, Available at: http://ag.ca.gov/cjsc/publications/homicide/hm02/preface.pdf (Accessed on 2nd December 2017)

violence. However, the more this implicit bias is acted upon, i.e. African Americans killed by police due to being perceived as violent, the more people gain that implicit bias – it is a self-fulfilling prophecy. Jerry Kang and Kristin Lane suggest that implicit bias is a psychological process that influences "social judgments...without conscious awareness or conscious control" whilst the Kirwan Institute recognises implicit bias as "the attitudes or stereotypes that affects our understanding, actions, and decisions." As Eduardo Bonilla-Silva notes, "in a racialized society, all actors develop a racial identity (are racialized) as part of their sense of self...whether they are aware of it or not and whether they want it or not," which is why implicit bias exists. ²⁸

With regards to African Americans, Sylvia Wynter discusses that America is "a systematically anti-Black world…and therefore, whites are not simply racists. The truth that structures their minds, their consciousness, structures ours." Wynter understands that implicit bias feeds the minds of white people so that they see themselves as superior and associate African Americans and other races as inferior, which opens up the dynamic of police brutality towards African Americans as a control mechanism. Implicit bias formulates the way we cognitively perceive ourselves, others and our environments and has an effect on the way we react and act in situations. It is difficult to ascertain in which situations implicit bias is triggered and how much, if any, our explicit values are overruled by implicit bias. It is also

²⁷ Jerry Kang & Kristin Lane, "Seeing Through Colorblindness: Implicit Bias and the Law," *UCLA Law Review*, (2010), p.467.

Kirwan Institute for the Study of Race and Ethnicity, (2015), *Understanding Implicit Bias*, available at: http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/ (Accessed on: 12th December 2016)

²⁸ Eduardo Bonilla-Silva, (2001), "Racial Attitudes or Racial Ideology?," White Supremacy & Racism in the Post-Civil Rights Era, Lynne Rienner Publishers Inc: USA, p.74.

²⁹ Christina Sharpe, (2014), "Black Studies: In the Wake," *Journal of Black Studies and Research*, Vol.44, p.61.

difficult to ascertain how many U.S. police Officers act because of implicit bias, and whether decisions to shoot, and the sheer amount of times shootings occur, are manipulated by it. This is for two reasons – the first is that Officers are not required to document the shootings in any depth or detail. The second reason is that it is difficult to document a subconscious thought, reaction or idea. However, looking at statistics from the Bureau of Justice there is a direct correlation between race and homicides. In 1993, the total number of justifiable homicides (most often by the police as a result of attacks on Officers) was four hundred and fifty-five. 30 In 1993, when Myrick was killed, there were an estimated 24526 homicides.³¹ It is interesting that the Bureau of Justice Statistics found that African Americans were six times more likely to be a victim of homicide, based on data collected between 1976 and 2005.³² Furthermore, in 1993 there were 12435 African Americans killed, the second highest number in that decade.³³ The statistics do not show the number of African Americans killed by Police but it can be assumed that police brutality is racialized to a certain extent; police chose to control most African Americans through violence, but to control most white citizens in alternative ways. Interestingly since the 1970s there has been a decline in the amount of law enforcement Officers killed in the line of duty - in fact in 1993 a total of seventy Officers were killed in the line of duty which does not justify the anxiety or embedded stereotype that police have against African Americans.³⁴ Although the Bureau has little evidence on Police caused homicides of African Americans, which is made even more difficult due to the lack of those deaths classed as homicides, the police are made up of people who are not

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³⁰ Bureau of Justice Statistics, (2016), Homicide Trends in the U.S., Available at:

http://bjs.ojp.usdoj.gov/content/homicide/tables/vracetab.cfm (Accessed on 7th January 2018)

³¹ Ibid.:

³² Ibid.:

³³ Ibid.:

³⁴ Ibid.:

immune to implicit bias and therefore become part of the trends in African American deaths.

Many studies have been done that have found that there is a direct association between implicit bias and the behaviour found in police shootings of African Americans. Joshua Correll et al. ran a series of tests on university participants, to understand the relationship between ethnicity and the police, by creating a videogame using twenty backgrounds and eighty target images.³⁵ These studies begin to form the foundation of psychologist's views on the topic of implicit bias. However it is important to note that the participants used, having come from a University setting, have potentially had similar experiences, have a certain level of education or upbringing, and have something in common; furthermore the thirty-nine of the forty participants were white, with one Latino participant—it would have been better had the study incorporated a larger and more diverse participant base including different levels of education and including African Americans to give a broader understanding of implicit bias and to get more of an understanding of how implicit bias affects different people. 36 In the first study, ten African Americans and ten white people were shown four times each – fifty per cent of the time they were shown with a gun and fifty per cent with either an aluminium can, a silver camera, a black mobile phone or a black wallet.³⁷ Once they had finished the game participants were then asked to do a recognition task, matching faces to their memory of the armed targets. The aim of the exercise was to shoot those pictured with a gun as quickly as

³⁵ Joshua Correll, Bernadette Park & Charles M. Judd, (2002), "The Police Officer's Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals," *Journal of Personality and Social Psychology*, Vol.83, No.6, pp.1314-1329.

³⁶ Ibid.: p.1315.

³⁷ Ibid.: p.1317.

possible, with response times and accuracy noted and awarded points (10 points for correctly shooting an armed target, 5 points for not shooting an unarmed target, 20 points taken off for shooting an unarmed target and 40 points deducted for not shooting an armed target). This points system seems to parallel real life decisions, where Officers have to choose between shooting someone who may not be armed and receiving backlash or identifying and shooting an armed target that could potentially harm others. These decisions are by no means easy to make in real-life situations. Correll et al. found that participants made correct decisions to shoot faster when the target was armed, but slower at correctly identifying and not shooting those without a gun.³⁸ They also found that African Americans were shot more quickly than white armed targets whilst deciding not to shoot unarmed white targets more quickly. Furthermore, participants shot unarmed African Americans far more than white people, and the likelihood of missing an armed target increased when the target was white. The experiment needs to increase the points awarded not to shoot unarmed targets to ensure Officers understand the situation and to try and increase their motivation to keep those unarmed people alive, which could then be translated into everyday policing situations.

The reason that Officers misjudge everyday objects with guns could be due to the statistics that show that most law enforcement Officers are killed with guns, mainly handguns. From 1990-1999 Officers killed by handguns accounted for four hundred and sixty-six of the six hundred and fifty-eight recorded deaths, which is

³⁸ Joshua Correll, Bernadette Park & Charles M. Judd, (2002), "The Police Officer's Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals," *Journal of Personality and Social Psychology*, Vol.83, No.6, p.1317.

³⁹ Bureau of Justice Statistics, (2016), *Homicide Trends in the U.S.*, Available at: http://bjs.ojp.usdoj.gov/content/homicide/tables/vracetab.cfm (Accessed on: 5th September 2017)

more than seventy per cent.⁴⁰ Therefore an Officer's implicit bias leans towards African Americans being more criminal and dangerous and that the Officers are more likely to be killed by a hand gun in the line of duty. They will always be led by these two associations which is why African Americans are recklessly killed by Officers. Myrick was fatally shot because the Officer perceived a non-existent threat due to him being African American and the Officer had the wrong association of African Americans with weapons. The likelihood is that if he had been white he would not have been shot at or killed.

The white versus African American difference has been noted by Duncan, who suggests that African Americans are perceived to be more threatening when replicating the same scenario as white people. Steve Martinot identifies a theme whereby white people create situations to justify their actions towards African Americans; implicit bias correlates with this and fits in with a person's justification for their actions. To apply this to Myrick means that the Officer created a situation, that Myrick may or may not have been a criminal, that he had a gun and that he was being non-compliant, in order to fit a justification for firing that fatal shot. It should be considered that Martinot's theory extends to an original approach – the original reasoning behind the tension - and then a more in-depth aggressive implicit bias takes over. It is not solely the Officer creating a justification but implicit bias that leads the Officer to make decisions. As Correll *et al.* explains, "the ambiguity of [Myrick's] behavior (what was he reaching for?), which ironically provides a

⁴⁰ Bureau of Justice Statistics, (2016), *Homicide Trends in the U.S.*, Available at:

http://bjs.ojp.usdoj.gov/content/homicide/tables/vracetab.cfm (Accessed on: 5th September 2017)
⁴¹ Joshua Correll, Bernadette Park & Charles M. Judd, (2002), "The Police Officer's Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals," *Journal of Personality and Social Psychology*, Vol.83, No.6, p.1314.

⁴² Steve Martinot, (2013), "Probing the Epidemic of Police Murders," *Socialism and Democracy*, p.66.

justification for the Officer's decision, may have set the stage for bias, prompting the Officer to draw on other sources of information, including stereotypes."⁴³ I agree that the uncertainty of what Myrick was reaching for caused the Officer to presume the worst based on a racially motivated implicit bias but that his could have been prevented in the event that more training had been given on understanding situations and firing to disarm rather than kill to get a better result. The results of the first test determine that implicit bias exists with regards to race and weaponry, which fits with the increasingly growing number of African Americans shot by police.

The second study had forty-four participants, thirty-three females and eleven males and differed from the original as it shortened the amount of time that participants had to make a decision. Once again there was a lack of diversity in this test with one Latino, one Asian and the rest of the participants were white; implicit bias is not a white problem but something that happens in everyone so the test should have been more diverse in order to show this. In this case there were a higher number of errors by participants where, for example, one unarmed African American target was shot ninety percent of the time and one particular armed African American and four specific White unarmed targets had errors by more than one-third of participants.⁴⁴ Overall, it was found that targets were more likely to be shot mistakenly if they were African American rather than white, whilst armed targets were more likely to be missed if they were white than if they were African American.⁴⁵ Ultimately it was found that participants would shoot African American

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⁴³ Joshua Correll, Bernadette Park & Charles M. Judd, (2002), "The Police Officer's Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals," *Journal of Personality and Social Psychology*, Vol.83, No.6, p.1314.

⁴⁴ Ibid.: p.1319.

⁴⁵ Ibid.: p.1319.

targets no matter how threatening that person was which is in line with the findings from the first study. 46 This could also explain the reasoning behind the shooting of Myrick and the multitude of police shootings of African Americans since the 1990s. As Officers become under pressure to react to a perceived threat, they are more likely to act in error. Equally the racial implicit bias of African Americans being more dangerous, violent or criminal which faces Officers could force them to act more hastily as they are conditioned to act. As an African American it was almost inevitable that Myrick would fall victim to the implicit bias of Officers, which leads to police brutality.

The third of Correll's studies used forty-five participants, none of whom were African American, who completed a two-stage test – the video game and a questionnaire. The participants undertook the Modern Racism Scale, the Discrimination and Diversity Scale and the Motivation to Control Prejudiced Responding Scale – all of which aim to define a person's prejudice. The Modern Racism Scale, one of the most commonly used scales, takes the form of a written survey or a telephone interview where participants have to say whether they strongly agree or strongly disagree with the statements. Due to its nature it can only measure a participant's explicit bias as they make a conscious decision of which answer to give. The Discrimination and Diversity Scale asks participants to note how they were affected by situations from almost every day, at least once a week, a few

⁴⁶ Joshua Correll, Bernadette Park & Charles M. Judd, (2002), "The Police Officer's Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals," *Journal of Personality and Social Psychology*, Vol.83, No.6, p.1319.

⁴⁷ Ibid.: p.1321.

⁴⁸ P.J. Henry, "The Modern Racism Scale," *Modern Racism,* Available at: https://nyuad.nyu.edu/content/dam/nyuad/departments/faculty/pj-henry/documents/publications/2010Henry-encyclopedia-modern-racism.pdf (Accessed on: 5th September 2017)

times a month, a few times a year, almost once a year or never. The situations are as follows: You are treated with less courtesy than other people are; You are treated with less respect than other people are; You receive poorer service than other people at restaurants or stores; People act as if they think you are not smart; People act as if they are afraid of you; People act as if they think you are dishonest; People act as if they're better than you are; You are called names or insulted; You are threatened or harassed.⁴⁹ By doing this test the participant can express the effect of implicit or explicit bias on them, which then increases the validity of the test when done alongside the Modern Racism Scale. The Motivation to Control Prejudiced Responding Scale intertwines the ideas of the first and second scale by asking participants to rate statements from both an external racial dynamic of how they appear to others, for example, 'it is important for me that other people not think I'm prejudiced' and an internal dynamic of believing you yourself are prejudiced, for example, 'I get angry with myself when I have a thought or feeling that might be considered prejudiced. '50 The issue with this test is that people may not be entirely truthful when analysing the statements, in case it sets them in a bad light and so results can be skewed by how a person identifies personally and how they want to identify to others.

Participants of Correll's study were then asked to apply the percentage of white people and African Americans that they associate with danger, violence and

⁴⁹ David R. Williams, (2016), "The Everyday Discrimination Scale," *Measuring Discrimination Resource*, p.2, Available at:

https://scholar.harvard.edu/files/davidrwilliams/files/measuring_discrimination_resource_june_201 6.pdf (Accessed on: 5th September 2017).

⁵⁰ E. Ashby Plant & Patricia G. Devine, (1998), "Internal and External Motivation to Respond without Prejudice," *The Journal of Personality and Social Psychology*, Vol.75, p.812.

aggression, and how they perceive most people would associate each race with the three characteristics.⁵¹ The questionnaire also established how many African Americans participants knew socially and personally, how well they knew them, the amount of contact they had and the number of African American friends they had in their childhood. 52 Once again, unarmed African Americans were shot at more quickly, and the decision to not shoot unarmed white targets was made more quickly. This identifies that a relationship with African Americans does not control a person's implicit bias. It shows that participants used association to make their decisions and that fundamentally, even just an awareness of stereotypes is enough to sway a person's bias. Correll et al. point to the idea that a cultural awareness of stereotypes fuels implicit bias. These cultural viewpoints can come from television, films, music and newspapers or magazines, for example, a different study by Correll, Park, Judd and Wittenbrink found that "participants who read articles about armed robberies committed by Black men subsequently set a lower criterion for the decision to shoot Black, but not White, targets."53 The more a person is surrounded by these cultural stereotypes, the more it affects their implicit bias, which in turn, piques their interest in the cultural representations of what they are feeling and so the circle continues. Then place the cultural stereotypes embedded in Officers policing African American neighbourhoods, especially those linked, no matter how tenuously, to drugs and it is clear that implicit bias was a cause of Myrick's death.

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⁵¹ Joshua Correll, Bernadette Park & Charles M. Judd, (2002), "The Police Officer's Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals," *Journal of Personality and Social Psychology*, Vol.83, No.6, p.1321.

⁵² Íbid.: p.1321.

Kimberly Barsamian Kahn & Jean M. McMahon, (2015), "Shooting Deaths of Unarmed Racial Minorities: Understanding the Role of Racial Stereotypes on Decisions to Shoot," *Translational Issues in Psychological Science*, Vol.1, No.4., p.314.

A further study undertaken by Correll came back with the same results as the above three studies showing bias towards shooting African Americans and protecting white targets. When we place this implicit bias into the case of Myrick the association that the Officer had between African Americans and violence/gun crime meant that the Officer immediately jumped to the conclusion that Myrick would be armed and therefore reacted to a non-existent threat; the Officer may have assumed that an African American would be carrying a weapon because they associated the stereotype of violence and crime with African Americans, hence why they were so quick to shoot. The most damning evidence of implicit bias in the case of police brutality towards African Americans comes from the 2014 shooting of Michael Brown in Ferguson. In his court testimony Officer Darren Wilson, who fired at Brown twelve times, described Brown as having "the most intense aggressive face," that Brown looked like a demon, "he made like a grunting" and that Brown looked like "he was almost bulking up to run through the shots." These descriptions fit the characteristics of common stereotypes, which have become embedded in American society, of the aggressive, violent African American which is often portrayed as the brute caricature. The brute stereotype focuses on African American men as "superpredators and as bigger, stronger, and more aggressive and threatening than people of other races."55 Stereotypes quite commonly make up our implicit bias and form the basis of our responses to people. As mentioned previously, African Americans are more often than not associated with violence and danger.

⁵⁴ Rachel Clarke and Mariano Castillo, (2014), "Michael Brown shooting: What Darren Wilson told the Ferguson grand jury," *CNN*, Available at: http://edition.cnn.com/2014/11/25/justice/ferguson-grand-jury-documents/index.html (Accessed on 9th September 2017)

CBS News, (2014), Documents describe Ferguson Officer's version of fatal shooting, Available at: https://www.cbsnews.com/news/documents-describe-ferguson-Officers-version-of-fatal-shooting/ (Accessed on 9th September 2017)

Jasmine B. Gonzales Rose, (2018), "Racial Character Evidence in Police Killing Cases," *Wisconsin Law Review*, p.373.

The capacity to which Officers see these stereotypes above facts can be seen clearly in the two cases of Charles Stuart and Susan Smith. In 1989 Charles Stuart murdered his pregnant wife and pinned the blame on an African American male, sparking police invasions into African American neighbourhoods and interrogations of anyone who remotely fit the 'suspect'. 56 Seven years later, in 1994, Susan Smith told of an African American male who stole her car and kidnapped her children – a manhunt ensued nationwide but it later came out that Smith murdered her own children and tried to cover it up.⁵⁷ The issue in both of these cases is that implicit bias meant Officers automatically believed the stories of white people because their stories involved violent, criminal African Americans. The implicit bias in the Michael Brown case, which became explicit as Wilson testified, was the reasoning behind the death of Brown and the death of Myrick was also caused by implicit bias.

All four studies help to ascertain people's implicit bias and the affects that it has on their decision-making, however as these tests were done in a controlled environment; it is difficult to say how much impact implicit bias has in a real-life situation which would have, for example, an element of fear, anxiety or pressure to react added to it. In a real-life situation, implicit bias would be magnified along with heightened emotions, which would speed up the reactions to the individual being accosted. Other studies for implicit bias have been done by the likes of Greenwald et al., R. Richard Banks and Green who all used Implicit Association Tests (IAT) to establish someone's affinity for implicit bias and how this is transferred into real life.

⁵⁶ Richard Austin, ed. Jill Nelson (2000), "Under the Veil of Suspicion," *Police Brutality: An Anthology*, W.W. Norton Company: USA, p.212.

⁵⁷ Ibid.: p.212.

The IAT tests are designed to show images of people and then both pleasant and unpleasant words. Participants are then asked to associate which image cultivates their experience of which word; the time it takes for the word association is also noted. The results show that participants associate African Americans with negative words whereas images of white people were associated with positive words. Participants are quicker to associate African Americans with negative words showing that implicit bias leads them to make that decision. Although much research has been done within the field of implicit bias, there is little research with regards to police Officer's and their own implicit bias. Even though there is little data for Officers, implicit bias does affect everybody – Bell suggests, a great many of [U.S.] white citizens continue to view Blacks as the source of their fears, the cause of their sense of danger, the ultimate scapegoat in times of economic anxiety. In this can happen explicitly but it also becomes part of a subconscious way of thinking. This way of thinking becomes automatic, and Officers then use this to approach African Americans and deal with them.

Very few studies have been done with respect to police Officers completing IAT tests. A study by Peruche and Plant found that Officers mistakenly shot African American targets without a gun and more often than not failed to shoot white armed targets. ⁶² Correll *et al.* completed further studies including the use of police Officers

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⁵⁸ Anthony G. Greenwald & Linda Hamilton Krieger, (2006), "Implicit Bias: Scientific Foundations," *California Law Review,* Vol.94, No.4, p.1182.

⁵⁹ Ibid.: p.1182.

⁶⁰ R. Richard Banks, Jennifer L. Eberhardt & Lee Ross, (2006), "Discrimination and Implicit Bias in a Racially Unequal Society," *California Law Review*, Vol.94., No.4, p.1183.

⁶¹ Derrick Bell, ed. Jill Nelson (2000), "Police Brutality: Portent of Disaster and Discomforting Divergence," *Police Brutality: An Anthology*, W.W. Norton Company: USA, p.89.

⁶² Joshua Correll, Bernadette Par, Charles M. Judd, Bernd Wittenbrink, Melody S. Sadler & Tracie Keesee, (2007), "Across the Thin Blue Line: Police Officers and Racial Bias in the Decision to Shoot," *Journal of Personality and Social Psychology*, Vol.92, p.1007.

which helps understand an Officer's implicit bias. They compared Officers from the Denver police department to a community sample which helps plot patterns of behaviour and shows how implicit bias works. They found that Officers were quick to make correct decisions and better at determining weapons than the community sample, which is down to their experience as an Officer. However, some reaction times were affected by more difficult tasks, proving that Officers are still open to bias. Moreover, it was found that Officers from "urban, high-crime, predominantly minority districts showed greater racial bias." This is linked to the idea that even a brief association of stereotypes can increase bias. It was found that Officers could overcome racial bias through IAT training and therefore IATs should become a valued and established part of training as and being an Officer.

Implicit bias causes biased snap decisions. Officers have seconds to make decisions and implicit bias skews their decisions – this is what happened with Myrick. According to Malcolm Gladwell the Officer made three snap judgments, which were mistaking innocence for suspiciousness, mistaking simple curiosity with brazenness and finally mistaking terrified for terrifying. Payne's executive failure hypothesis states that "an individual's inability to control his or her automatic responses, rather than an incorrect perception…leads to [errors] in decision making." This is because controlled decision making takes longer than automatic decisions, but if a person is in a reactionary state of mind rather than a processed

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⁶³ Joshua Correll, Bernadette Par, Charles M. Judd, Bernd Wittenbrink, Melody S. Sadler & Tracie Keesee, (2007), "Across the Thin Blue Line: Police Officers and Racial Bias in the Decision to Shoot," *Journal of Personality and Social Psychology*, p.1020.

⁶⁴ Sam Sterrett, "Malcom Gladwell – Blink." YouTube video, Posted October 2014, (Accessed on 5th September 2017)

⁶⁵ Kimberly Barsamian Kahn & Jean M. McMahon, (2015), "Shooting Deaths of Unarmed Racial Minorities: Understanding the Role of Racial Stereotypes on Decisions to Shoot," *Translational Issues in Psychological Science*, Vol.1, No.4., p.312.

state of mind it is more likely to create problems. Snap judgments are similar to the theory of fight or flight, where an individual subconsciously decides how to react to situations, and is caused by cells in the body communicating high levels of adrenaline and energy to cope with perceived threats. ⁶⁶ The Officer in the Myrick case made a snap decision based on their implicit bias where they chose to fire their weapon rather than ask more questions or attempt to reduce the tension levels; once again, more training is needed for Officers to understand how to react to a situation and how to reduce tension in situations. Rolling out mandatory IAT tests is a way to begin reshaping Officers' use of implicit bias. Having an awareness of implicit bias and one's own personal prejudice can help alleviate negative actions towards others and can, in time, alleviate any bias (if the person is willing to do so).

Interestingly, Sagar and Schofield found that implicit bias was perpetrated by both races towards African Americans; when people argue that police shootings against African Americans are not racist, they often counter-argue with cases of police shootings of white people or point to cases where African American police Officers have shot African Americans. On 30th August 1999, a white man, Gidone Busch was shot and killed by four NYPD Officers; Busch had a history of mental illness and on this particular night police had been called by his neighbours for praying loudly.⁶⁷ The Officers claimed that Busch attacked them with a hammer and so they fired at him twelve times in self defense.⁶⁸ The media coverage of the event did not discuss race and focused more on his mental health and religion – a harsh

⁶⁶ Harvard Health Publications, (2016), *Understanding the Stress Response*, Available at: https://www.health.harvard.edu/staying-healthy/understanding-the-stress-response (Accessed on 9th September 2017)

Katheryn K. Russell, ed. Jill Nelson (2000), "What Did I Do to Be So Black and Blue?," *Police Brutality: An Anthology*, W.W. Norton Company: USA, p.141.

⁶⁸ Ibid.: p.141.

American Officer, in New Orleans shot and killed Kim Groves after discovering that she had filed a complaint against him for abuse and In 2015 Jerame Reid was fatally shot after being pulled over for a routine traffic stop for jumping a red light. African American Braheme Days was one of the two Officers who opened fire on Reid who had been disarmed and had his hands up, complying with the Officers.

This type of police brutality is down to the desire to be powerful, more than to control a race – Officers believe they are the epitome of the law and so their actions are justified; they must use force to show their power. It is also because the implicit bias of good and bad neighbourhoods and stereotypes affects all races; just because an Officer is African American does not mean that they believe all areas are safe or that they do not feel threatened in some situations or locations. Maddox undertook a study which showed that African American participants had shooter bias towards African American targets who appeared more in line with stereotypes, for example, those that had darker skin, fuller lips or a broader nose. Stereotypes are instilled in people and have a direct correlation to their actions and Reiss found that African American Officers used more force. In fact, a Department of Justice report in 2015 found that in Philadelphia African American Officers were more likely to

⁶⁹ Katheryn K. Russell, ed. Jill Nelson (2000), "What Did I Do to Be So Black and Blue?," *Police Brutality: An Anthology*, W.W. Norton Company: USA, p.141.

⁷⁰ David Usborne, (2015), "Jerame Reid shooting: Dashboard camera footage shows police shoot dead black man with his hands raised," *The Independent,* Available at: http://www.independent.co.uk/news/world/americas/jerame-reid-shooting-police-dashboard-

nttp://www.independent.co.uk/news/world/americas/jerame-reid-shooting-police-dashboard-camera-footage-released-of-fatal-shooting-of-black-man-9994288.html (Accessed on 9th September 2017)

⁷¹ Ibid.:

Ron Daniels, ed. Jill Nelson (2000), "The Crisis of Police Brutality and Misconduct in America," *Police Brutality: An Anthology*, W.W. Norton Company: USA, p.243.

⁷² Kimberly Barsamian Kahn & Jean M. McMahon, (2015), "Shooting Deaths of Unarmed Racial Minorities: Understanding the Role of Racial Stereotypes on Decisions to Shoot," *Translational Issues in Psychological Science*, Vol.1, No.4., p.314.

shoot unarmed African Americans than whites and that the Officers involved were African American. American. However studies by Adams and Fyfe showed that African American Officers were placed in assignments for high-risk areas at a higher proportion than others. It should be argued that consistently and excessively placing African American Officers in high-risk areas is, to some extent, racist in itself – it places a race targeted heavily by implicit bias in situations which could turn dangerous and reinvigorates the implicit bias again adding to the cycle of police abuse. By placing African American Officers in those high-risk areas, if a situation arises where citizens become aggressive then this ties with the notion of race rather than police brutality – people will believe the stereotype that African Americans are inherently bad and violent rather than that police Officers need more training on their bias. The civilians in the situations will be seen as violent and bad because of their skin colour, otherwise why else would Officers have stopped them; and so, it becomes a vicious cycle.

Both identity and perception play a big part in police brutality. How people define themselves and categorize others enables implicit bias to exist. By categorizing people, we feed into stereotypes, which has happened multiple times throughout history. David Ponton has suggested a theory of blue as a racial identity and outlines that "blackness functions as a sociopolitical status wherein its wearers are divorced of citizenship and humanity," and also how the blue flesh that Officers don grants them access to sociopolitical powers that set them racially apart from

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⁷³ Annie Wu, (2015), "Report Finds Black Philly Police Officers Most Likely to Shoot at Black Unarmed Suspects," *The Epoch Times,* Available at: http://www.theepochtimes.com/n3/1296916-report-finds-black-philly-police-Officers-most-likely-to-shoot-at-black-unarmed-suspects/ (Accessed on 9th September 2017)

⁷⁴ Jimmy J. Williams & Gary Hester, (2003), "Sheriff law enforcement Officers and the use of force," *Journal of Criminal Justice*, Vol.31, p.375.

other Americans.⁷⁵ He argues that "to a cop, human beings come in six main colors: white, black, brown, red, yellow and blue."⁷⁶ Blue should not be seen as a race itself as this is a self-made category defined by control, but should be defined as authoritarian and powerful which explains why intra-racial Officer on target events happen. It is not ideal to define Officers as part of a blue race because this segregates them further from society and African Americans, in particular. It also blurs the lines further between policing a community to help and policing a community for power and to conform to a 'higher' social group.

With the consideration of Blue as a race comes blurred categories with regards to African American Officers being aggressive towards African Americans and as Ponton examines, "Black police Officers' subject identities undergo inversions, destabilizing the nature of their relationship to civilians and to populations with whom they are assumed to have greater affinity." Whilst arguing this Ponton posits that Officers are made more abusive as "it is part and parcel of becoming/being made blue" but this simply is not the case. You cannot say that one group of people are collectively more aggressive than others (this is why stereotypes of African Americans are so wrong); it is an implicit bias that causes someone to react in a particular way. Worryingly, Louisiana, and potentially other States, is readily preparing to accept a new Bill, House Bill 953, the Blue Lives Matter Bill. This Bill recognizes Blue as a protected class and anything considered

⁷⁵ David Ponton, (2016), "Clothes in Blue Flesh: Police Brutality and the Disciplining of Race, gender, and the Human," *Theory and Event*, Vol.19, No.3, p.2.

⁷⁶ Ibid.: p.11.

⁷⁷ Ibid.: p.3.

⁷⁸ Ibid.: p.11.

⁷⁹ Patrick Blanchfield, (2016), "Special Pleading: On the Identity Politics of Blue Lives Matter," *The Revealer*, Available at: https://wp.nyu.edu/therevealer/2016/05/24/special-pleading-on-the-identity-politics-of-blue-lives-matter/ (Accessed on 7th January 2018)

a Hate Crime towards Blue can now be acted against. 80 This could be tragic for African Americans, already treated as criminals before committing a crime, but now anything even seen as resisting arrest could find them in prison for Hate Crimes. It also places the police as victims, when they are taking innocent lives year after year and where nothing has changed since the 1960s. It should also be noted that Blue Lives Matter has effectively gained political recognition on the back end of Black Lives Matter, which is not given the same prominence and is seen as an issue itself. This is aptly summarized by Jennifer Nelson who talks of 'fictimhood,' the "histrionic appropriation of victimization by the powerful that doubles down on their own security [as] oppressors even as it robs those they victimize of the vocabulary they previously used to voice their own appeals of justice."81 Retired U.S. Park Police Officer of Washington, Dan Gilliam, suggests that "All lives matter, especially cops who go above and beyond the call of duty."82 This takes away from the struggles that African Americans face daily. When African Americans are treated equal to others then all lives matter. But by arguing that, with regular cases of police brutality against African Americans, and the sheer amount of African Americans killed by police brutality, it shows that African Americans are still viewed as lesser and inferior, not worthy of a decent standard of living.

How someone identifies themselves has an effect on how they behave; if someone identifies as African American they are more likely to become distrustful of the police; if someone identifies themselves as someone with power or authority, for

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Patrick Blanchfield, (2016), "Special Pleading: On the Identity Politics of Blue Lives Matter," *The Revealer*, Available at: https://wp.nyu.edu/therevealer/2016/05/24/special-pleading-on-the-identity-politics-of-blue-lives-matter/ (Accessed on 7th January 2018)

⁸¹ Ibid.:

⁸² Nick Spano, (2017), "Why Blue Lives Matter," *The Best of Magazine Writing,* Available at: http://uscmag.jour.sc.edu/2017/04/26/why-blue-lives-matter/ (Accessed on 4th January 2018)

example, an Officer, they may become more aggressive in certain situations which then fuels tension. To show their authority, Officers will create situations with small spaces. Myrick was backed into his home by the Officers in order for them to show him they were in charge and to establish their identity and power. The theory of identity as powerful is shown "through psychological and physical attack[s] of these alleged criminals, [African Americans], - that is, through both discursive violence and bodily assault – Officers stabilize their own identities, rights, and privileges and destabilize those of their suspects." In other words, the police, through their own sense of ego and superiority, act in a certain way to show their suspects that they are superior and have authority and so situations become tense but the Officers see this in a positive way. Identity can also be placed onto someone as they are put into categories; African Americans are forced into a sense of 'blackness' which establishes them as stereotypically violent, aggressive and dangerous and reinstates implicit bias.

Implicit bias will always influence society as it is deeply embedded in cognitive thought and is in the subconscious of everyone. However, as Officers play a huge part in law and order, implicit bias needs to be understood by each Officer to at least attempt at curbing the amount of police brutality incidents. It is important to consider that implicit bias will have affected Officers in the 1960s and at the height of the Civil Rights movement all the way through to contemporary cases. The cycle of police brutality will continue until efforts are made to understand cognitive behaviour and the consequences of it. We can see that the cycle of police brutality has continued from the 1960s, through to the 1990s and to the modern day through

⁸³ David Ponton, (2016), "Clothes in Blue Flesh: Police Brutality and the Disciplining of Race, gender, and the Human," *Theory and Event*, Vol.19, No.3, p.12.

officer at every stage of their career. This could help Officers understand their subconscious and prevent the amount of African American deaths caused at the hands of the police.

1995 – Jonny Gammage

Another victim fell to the death toll of the police in 1995. Jonny Gammage was killed by Officers from the Brentwood Police Department in Pennsylvania after being pulled over for a vehicle violation. Gammage was a victim of the distorted training offered to police Officers in the United States. This chapter highlights the varying training programs that Officers are given, both in Pennsylvania and nationally, and the severe gaps in training, which is yet another cause of police brutality towards African Americans in the U.S. Officers use force against citizens on a scale that far outweighs the need for it and leaves an alarming amount of police brutality cases in its midst. There is a strong preference for attention on police brutality where firearms have been used - this chapter will discuss another fundamental way that Officers show their force but also why so much emphasis is placed on police use of force with a weapon. There is an opportunity for police agencies to adapt their training programs and facilities to incorporate other sets of skills training and create much more life-like scenarios which would help to lower the number of police brutality cases and give Officers tools to deal with tense situations without always resulting in using their firearms. It is true, of course, that each police agency has its own budget for training which will always have an effect on the amount of training on offer and the ability to go as in depth as perhaps is needed, however simple changes could be made within the bounds of the budget which could slow down an Officer's immediate reaction to use force against citizens, and could enable a stronger relationship between the Officers and the community they are there to protect.

Jonny Gammage, a 31-year old African American, and cousin of sports star Ray Seals, former player for the Pittsburgh Steelers, was driving Seals' luxury Jaguar vehicle on 12th October 1995, when he was pulled over in Pennsylvania by Lieutenant Milton Mulholland. Mulholland was later joined by Sergeant Keith Henderson, patrolman Shawn Patterson, patrolman Michael G. Albert and patrolman John Vojtas, meaning that five Officers, all of whom were white, were present at a routine traffic stop.² Officer Mulholland claimed that they pulled Gammage over due to a flashing brake light and erratic driving, testifying that Gammage went through three red lights, and that Gammage did not stop immediately.³ Apparently a fight ensued after Officer Vojtas knocked a phone and address book out of Gammage's hand; according to Vojtas he thought the phone was a weapon – this could be true bearing in mind what research suggests about implicit bias, however, the more that is known about implicit bias and the more use of force that is used for trivial things, the more likely it is that Officers will expand the truth to fit their actions, and in this case it should be considered that Vojtas did not mistake the phone for a weapon, but deliberately acted violently towards Gammage as a form of pay back for him not stopping immediately. It has been found that "citizens who show disrespectful and uncooperative demeanor and use physical resistance are more likely to be punished"

¹ Dave Sell, (1996), "Steelers' Seals Still Plays With Pain," *The Washington Post,* Available at: (Accessed on 7th March 2018)

² Ibid.:

³ Ibid.:

⁴ The Washington Post, (1997), *Two PA. Officers won't be tried in Black man's death,* Available at: https://www.washingtonpost.com/archive/politics/1997/04/23/two-pa-officers-wont-be-tried-in-black-mans-death/bb091d3c-c498-44a2-b157-141f2b59666d/?utm_term=.24cfa8391e00 (Accessed on 27th March 2018)

and that Officers were three times more likely to use a weapon when they felt that someone was resisting which is another factor that affected Gammage.⁵

Regardless of the reason for the apparent fight, Gammage was brutalized and, as Civil Rights leader Jesse L. Jackson stipulated, Gammage was lynched.⁶ Gammage, who was a small 5'5, 165 pound man, was pinned down onto the pavement which resulted in "19 external cuts and bruises, including eight on the swelled face and head" and "an internal hemorrhage in a muscle in the back of his neck, with four smaller ones on his upper back." One report suggested that the Officers "said they had to sit on Gammage and beat him with flashlights to control him." Gammage was held to the ground so forcefully that it caused asphyxiation. It was also established that the emergency medical team who came to the scene failed to administer oxygen to Gammage. Another horrifying thing about this case is that originally the police put out a statement that Gammage had died after going into Cardiac Arrest but there was "no evidence of a heart attack or any other natural disease process" meaning the police were not forthcoming with the facts and, it can be assumed that they tried to cover up the real cause of death. When the autopsy

⁵ Hoon Lee, Ilhong Yun, Hyeyoung Lim & David W. Tushaus, (2010), "An examination of police use of force utilizing police training and neighborhood contextual factors: A multilevel analysis," *Policing: An International Journal of Police Strategies & Management*, Vol.33, p.683.

⁶ Ibid.:

⁷Johnson Publishing Company, (1995), "Pro Football Player Investigates Cousin's Death," *Sports,* Available at: (Accessed on 29th February 2018)

Dave Sell, (1996), "Steelers' Seals Still Plays With Pain," *The Washington Post,* Available at: (Accessed on 7th March 2018)

⁸ Johnson Publishing Company, (1995), "Three Policemen Charged In Death of Steeler Ray Seal's Cousin Jonny Gammage," *Law & Justice*, Available at: https://www-nexis-com.chain.kent.ac.uk/search/homesubmitForm.do (Accessed on 29th February 2018)

⁹ Al Baker, J. David Goodman & Benjamin Mueller, (2015), "Beyond the Chokehold: The Path to Eric Garner's Death," *The New York Times*, Available at:

https://www.nytimes.com/2015/06/14/nyregion/eric-garner-police-chokehold-staten-island.html (Accessed on 8th March 2018)

¹⁰ Johnson Publishing Company, (1995), "Pro Football Player Investigates Cousin's Death," *Sports,* Available at: (Accessed on 29th February 2018)

was completed it was found that Gammage had no traces of illegal substances in his system and that he was below the drink-drive limit for Pennsylvania.¹¹

It must be noted that this particular part of Pennsylvania was majority white at the time of Gammage's killing, and remains so according to the most recent census data. In 1996 out of ten-thousand eight hundred and twenty-three citizens, Brentwood consisted of only fourteen African Americans, sixty-five Hispanics and thirty-three Asians meaning that there would already be a high level of bias surrounding African Americans within the community. Of the five Officers present, two of the Officers were not charged, Officer Vojtas was acquitted by an all-white jury, and Officers Mulholland and Albert had their involuntary manslaughter charge dismissed on the basis that "prosecutors unfairly singled them out for charges," which is a brash comment considering the everyday racism and struggle that African Americans faced and continue to face. 12 A settlement outside of the courts for Gammage's parents recovered \$1.5 million for wrongful death; however, a fatal flaw in the American justice system is that the Officers themselves do not contribute towards this as they are a part of districts and therefore, in this case, Brentwood, Whitehall and Baldwin Cities would pay the settlement. 13 This means that not only do the Officers not face justice within a criminal court, but they do not have to bear the brunt of settlement and so Officers have no consequences to their actions. The first thing that should be taken from this case is the lack of repercussions and accountability that Officers face after taking someone's life.

¹¹ Dave Sell, (1996), "Steelers' Seals Still Plays With Pain," *The Washington Post,* Available at: (Accessed on 7th March 2018)

Nicholas J. Johnson, (2017), "Lawful Gun Carriers: License, Escalation, and Race," Law and Contemporary Problems, p.221.

¹³ Johnson Publishing Company, (1998), "Parents of Jonny Gammage Awarded \$1.5 Million In Wrongful Death Suit," *Law & Justice*, Available at: (Accessed on 29th February 2018)

The chokehold is a technique used by law enforcement to restrain people, with the majority being arrested at the time. It is a problematic technique and, as Barry Latzer notes, a definition for the technique failed to become prevalent until 1993 which has had little effect in the eighteen court trials that have been held since. 14 According to the NYPD, "Procedure 221-01 in the NYPD's Patrol Guide states that a chokehold "shall include, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air." This definition is problematic due to the ambiguity so often seen in U.S. law – by using the terms 'any pressure, which may' there is room for justification when using the technique as Officers can say that the pressure they applied might not have prevented or hindered breathing. In California, a spate of chokehold caused deaths in the 1970s brought the style of training to the forefront of people's minds: within an 18 month period Officers used chokeholds over nine hundred times and killed fifteen people, twelve of whom were African American. 16 In May 1982, any form of chokehold that blocked airways or blood flow was banned by the Los Angeles Board of Police Commissioners and City Council.¹⁷ However, the ban on chokeholds was not national and the problem was maintained. Even with the ban in place, Officers continued to use the technique or similar techniques which resulted in the death Gammage and other African Americans in the 1990s, and in the years since. The

¹⁴ Barry Latzer, (2017), "The Chokehold Issue. Determining culpability in the death of Eric Garner is no simple matter," *City Journal*, Available at: https://www.city-journal.org/html/chokehold-issue-15469.html (Accesssed on 8th October 2018)

¹⁵ Ibid.: (Accesssed on 23rd March 2018)

¹⁶ Terence McCoy & Abby Phillip, (2014), "Eric Garner's killing and why the police chokehold is so racially charged," *The Washington Post*, Available at:

https://www.washingtonpost.com/news/morning-mix/wp/2014/12/04/why-the-police-chokehold-is-so-racially-charged/?utm_term=.d4f33b911de3 (Accessed on 11th March 2018)

¹⁷ Larry Altman, (2014), "Chokeholds have been banned in Los Angeles for decades," *The Daily Breeze*, Available at: https://www.dailybreeze.com/2014/12/04/chokeholds-have-been-banned-in-los-angeles-for-decades/ (Accessed on 8th March 2018)

chokehold was used systematically and strategically, for example, "in Los Angeles, lethal chokeholds were deployed more aggressively against blacks." That is not to say that Officers deliberately choked African Americans, however, they used this technique more on African Americans and when an Officer is faced with fight or flight then this results in holding the position for too long and causing death. The chokehold in itself is problematic, and using it systematically against African Americans is an issue that must be dealt with through maintaining a full blanket ban and consequences being suffered by Officers who use the technique.

A study by More and Wegener suggests that police academies use five steps to their training programs to give Officers the fundamental knowledge required for the role: Orientation, Indoctrination, Dissemination, Skill Acquisition and Problem Solving.¹⁹ The issue is that even through understanding these steps to create a structured program there are problems that reoccur from the basis of the training to create a revolving door. Training plays a critical part in an Officer's ability to do his job and is necessary throughout the Officer's time in law enforcement. The reasons to create a structured training program come from a need to increase Officer morale, avoid unnecessary grievances, create positive relationships with the public, especially those underprivileged groups, and to ensure that an Officer remains professional, knowledgeable and avoid complacency throughout their employment.²⁰ However, an overzealous use of force means that these outcomes are not reached and that the training is failing in some way. Every time an Officer takes the life of an unarmed African American this will potentially decrease that Officer's morale either

¹⁸ Nicholas J. Johnson, (2017), "Lawful Gun Carriers: License, Escalation, and Race," *Law and Contemporary Problems*, p.227.

¹⁹ M. R. Haberfield, (2002), *Critical Issues in Police Training,* Prentice Hall: New Jersey, pp.36-39.

²⁰ Ibid.: p.40.

because of a sense of guilt or wrong-doing or because, although the Officer believes they acted fairly, it is not perceived like that by their peers, the media or the public; it increases the number of complaints made against that Officer; it causes an enormous amount of unrest and dissatisfaction by the public which in turn festers a negative and poorly dealt with relationship; and it shows a large degree of unprofessionalism; and so training is needed again. If lessons are not learned by Officers with respect to when and when not to use force then this cycle will continue.

There are three forms of training that are on offer by different agencies around the U.S. – Regional, State and In-house. Each style of training offers different modules and differing amounts of time spent on each module. Agencies use a variety of methods in their training including on the job training, classroom teaching, independent study, role plays, computer-based learning, shadowing various Officers and departments and visual based learning, such as videos, but it is not clear how often these different types of learning are implemented and, again, it is dependent on which agency the trainee Officer is from. According to research published in 2002 and drawing on specific examples/ trends from the preceding decade, such training is based heavily on military training. The more robust form is In-house training and the least vigorous training is from the State, but there are flaws in all three systems. While Gammage's case was influenced by the specific training the LA officers received, something about this as a national problem, suggested by consistent problems in training at local level.

²¹ M. R. Haberfield, (2002), *Critical Issues in Police Training,* Prentice Hall: New Jersey, pp.45-50.

²² Law Enforcement Education, (unknown), "Police Officer Training," *Police Training,* Available at: https://www.lawenforcementedu.net/police-Officer/police-training/ (Accessed on 15th March 2018)

The only nationwide training, Peace Officer Standards and Training (POST), was introduced by the President's Commission on Law Enforcement and Administration in 1967 and established a mandatory minimum for training and certification process of a mixture of education, training and experience that was needed to become an Officer. Criminologist M.R. Haberfield did extensive research into the training that Officers have to go through across the U.S., and, although each agency has its own training programs, trends can be seen in the way of the number of hours set aside for each task or topic.

The majority of police Officers will complete in the region of four hundred hours of basic training.²⁴ In 1993, a survey by the Bureau of Justice Statistics found that the average number of total training hours was six hundred and forty, which was divided between classroom and field training.²⁵ Interestingly, the divide between the two styles of training was more heavily weighted towards classroom teaching than field training.²⁶ More recently, averages have risen slightly, with agencies spending one thousand and forty hours on pre-service training with forty-three extra hours every year spent on In-house training.²⁷ This is in stark comparison to doctors who have an average of eleven thousand hours of training and lawyers who have an average of nine thousand hours of training.²⁸ Even more astounding is when we compare the amount of hours needed for police with job roles in California that require less danger such as barbering where one thousand five hundred hours of

²³ M. R. Haberfield, (2002), *Critical Issues in Police Training*, Prentice Hall: New Jersey, p.59.

²⁴ Ibid.: p.57.

²⁵ Ibid.:, p.59.

²⁶ Ibid.: p..59.

²⁷ Hoon Lee, Ilhong Yun, Hyeyoung Lim & David W. Tushaus, (2010), "An examination of police use of force utilizing police training and neighborhood contextual factors: A multilevel analysis," *Policing: An International Journal of Police Strategies & Management*, Vol.33, p.690.

²⁸ M. R. Haberfield, (2002), *Critical Issues in Police Training*, Prentice Hall: New Jersey, p.57.

training are given, and manicurists who receive the exact same amount of four hundred hours as police Officers do for basic training.²⁹ Most academies break this training up into administrative procedures, administration of justice, basic law, police procedures, police proficiency and community relations.³⁰ The result of this training is that Officers gain certification or college credit.³¹

Washington DC Police Department is the only police agency in the U.S. that does not use the POST standard. They use an In-house form of training which runs for twenty-six weeks. The course reflects a varied training process, however focuses on performance-based training. In a breakdown of the training offered in Washington DC throughout the 1990s it is easy to see the bias towards aggressive policing, with one hundred and fifty-three hours spent on firearms and defensive tactics but only thirty-seven hours spent on restraining techniques. With traffic enforcement having thirty-six hours spent on it, it cannot be justified that one of the most fundamental parts of the police Officer's role, restraining individuals, had just one extra hour allocated to it. Furthermore, diversity awareness and sensitivity training were allocated eight hours, whilst bias related crimes gained just three hours of training. No wonder African Americans were, and still are, unfairly targeted and killed using aggressive tactics when Officers are not adequately learning about diversity or racially motivated bias crimes.

²⁹ American Association of Cosmetology Schools, (2016), *Licensing Hour Requirements*, Available at: http://beautyschools.org/licensing-hour-requirements/ (Accessed on 10th March 2018)

³⁰ M. R. Haberfield, (2002), *Critical Issues in Police Training*, Prentice Hall: New Jersey, p.60.

³¹ Law Enforcement Education, (unknown), "Police Officer Training," *Police Training,* Available at: https://www.lawenforcementedu.net/police-Officer/police-training/ (Accessed on 15th March 2018)

³² M. R. Haberfield, (2002), *Critical Issues in Police Training,* Prentice Hall: New Jersey, p.59.

³³ Ibid.:, p.61.

³⁴ Ibid.:, p.61.

³⁵ Ibid.: p.62.

³⁶ Ibid.: p.63.

Charlotte-Mecklenburg Police Department (CMPD), North Carolina had a similar In-house training program based on the Basic Law Enforcement Training Curriculum.³⁷ Leading up to 2002 there was a degree of flexibility for the training where the School Director had autonomy over increasing the hours of training and formulating rules and policies.³⁸ The CMPD offered four hours of ethics training which included training on use of force and deadly use of force alongside a number of other topics; clearly four hours was not enough time to train Officers in competent use of force.³⁹ The most absurd hours for training were those allocated to firearms training. Firearms training received fifteen times the amount of hours spent on use of force training, with sixty hours being given for firearms training and four for use of force. 40 Added to the training curriculum was community awareness training, community policing problem solving, dealing with victims and the public and ethics for professional law enforcement.⁴¹ However, the amount of hours spent on these topics totaled twenty-eight hours – that is not adequate for the knowledge and skills needed. 42 All Officers of CMPD had to train annually for a total of forty hours, twenty-four of which are compulsory and set modules and sixteen hours are open.⁴³ For In-house training CMPD had a good level of hours set aside for the purpose of giving their Officers the skills and knowledge to succeed, but the division of hours needed drastic change in order to fulfill the need for a more balanced passive policing.

³⁷ M. R. Haberfield, (2002), *Critical Issues in Police Training,* Prentice Hall: New Jersey, p.64.

³⁸ Ibid.: p.64.

³⁹ Ibid.: p.65.

⁴⁰ Ihid · n 66

⁴¹ Ibid.: p.65.

⁴² Ibid.: p.65.

⁴³ Ibid.: p.65.

Suffolk County Police Department in New York prided itself on "its obligation to provide professional services in the communities and to protect all persons and property in accordance with legal, moral, and ethical standards" and used an In-house academy to train its newest members. 44 One of the positives about the Suffolk County Police Department was that, out of fifty-two topics, each subject had a minimum number of required hours. ⁴⁵ The absolute minimum number of hours that an officer could undertake was five hundred and ten hours which is the equivalent to thirteen weeks. 46 These hours consisted of a mixture of performance related training, such as firearms training, and other training, such as police procedures and law.⁴⁷ Once again training in firearms was much more frequent and intense than behavioural training. Suffolk County Police Department focused fiftytwo hours on firearms training and ninety hours on physical fitness, whilst twelve hours were spent on ethical awareness.⁴⁸ Officers should not need ninety hours of physical fitness as they are assessed for fitness when they apply but also because that should be an on-going self-assessed program implemented by each Officer in their own time. Officers should schedule in runs and going to the gym in their own time so that they are able to do their job and so that as a consequence of not doing so, they could be reprimanded or lose their job. An Officer who really wants to be an Officer will keep fit so that they are the best that they can be at their job. It should not be down to an agency to keep the Officer fit, but it should be part and parcel of becoming, and remaining, an Officer.

⁴⁴ M. R. Haberfield, (2002), *Critical Issues in Police Training,* Prentice Hall: New Jersey, p.69.

⁴⁵ Ibid.: p.69.

⁴⁶ Ibid.: p.69.

⁴⁷ Ibid.: p.69.

⁴⁸ Ibid.: p.69.

St. Petersburg Police Department in Florida used a regional academy system for training its Officers. They used the Basic Law Enforcement Training curriculum as a basis which was then divided into twelve modules including topics such as Ethical and Professional Behaviour and Use of Force.⁴⁹ The good thing about this particular model of training is that it included training on violation of civil rights, brutality, the moral and legal limitations to the use of force alongside a whole host of other critical topics.⁵⁰ The negative thing is that this was covered in one to two hours whilst weapons were covered in fifty-six hours and forty-three hours were spent on operating a vehicle.⁵¹ Whilst it is great and forward-thinking to cover topics that affect Officers on a daily basis, the amount of training offered in each topic needs to be increased or, at least, reshuffled to allow for the more psychological modules to be taught in more detail which will reduce the levels of police brutality on the streets.

Northern Virginia Police Departments also offered regional training with seven core modules totaling seven hundred and sixty-eight hours. Of those hours, four were allotted for ethics and discretion; seventy were for defensive skills; eight hours of use of force; forty-four hours of firearms and seventy hours of physical fitness. Furthermore, the academy offered two hours, every two years, on cultural diversity training. Seventy training being offered at just two hours every two years, was not enough for Officers to understand their demographic and reduce police brutality against African Americans.

⁴⁹ M. R. Haberfield, (2002), *Critical Issues in Police Training,* Prentice Hall: New Jersey, p.67.

⁵⁰ Ibid.: p.67.

⁵¹ Ibid.: p.67.

⁵² Northern Virginia Criminal Justice Academy, (2016), *Professional Development,* Available at: http://www.nvcja.org/services-view/professional development/ (Accessed on 15th March 2018)

State academies were aimed at giving Officers who were employed by small departments the capacity to get a solid grounding of training because "smaller departments...simply cannot provide comprehensive pre-service training of the breadth and depth made possible through centralized, collective efforts."53 Charleston Police Department, South Carolina, used a State Academy to train its Officers for nine and a half weeks.⁵⁴ The training by South Carolina fell far behind what was needed, but each state that used State training implemented its own rules and modules. This small amount of training cannot provide in-depth guidance to new Officers as either they will cover fewer topics and Officers will miss out on important information, or they will gloss over training so that the Officers have an inadequate knowledge. South Carolina placed a lot of emphasis on field training and offered only two hours of training for use of force and three hours of training for ethics.⁵⁵ What is missing is a critical backdrop of understanding before sending Officers out onto the streets; you would not trust a doctor who has trained for 3 hours on a topic, to then consult on that topic, nor would you trust a dentist to train for three hours on parts of dentistry, to remove a tooth without error. This is when mistakes occur and this is the same principle as the relationship between police training and police brutality.

Another police force that used a State academy is Pennsylvania, where Gammage was pulled over. The Pennsylvania Police Academy is run by the Bureau

⁵³ Gregory B. Morrison, (2006), "Police Department and Instructor Perspectives on Pre-Service Firearm and Deadly Force Training," *Policing: An International Journal of Police Strategies & Management*, Vol.29, p.228.

⁵⁴ M. R. Haberfield, (2002), *Critical Issues in Police Training,* Prentice Hall: New Jersey, p.68.

⁵⁵ Ibid.: p.68.

of Training and Education and covers much more than the South Carolina State Academy. Their most up to date Basic training syllabus contains twelve hours of ethics and moral issues training and eight hours of use of force training. However, their firearms training consists of one hundred and twenty-four hours of training. The Pennsylvania State Academy also offers an In-house training service for certified Officers, requiring them to complete twelve hours of training every year. One of the modules on this training is about de-escalating problems – something that is key to police work and to reducing police brutality – yet this module is optional. The other modules available are all aggressive policing modules including assessing and planning for active assaults and detecting and avoiding ambush situations.

Hoon *et al.* found that pre-service training had little effect on the police use of force, but that ongoing departmental training had a positive effect in reducing police use of force.⁶¹ All of these police departments have inadequate training in restraining citizens, ethics and use of force but an immense amount of training on firearms and weaponry which will filter out into which skills they use first.

⁵⁶ Pennsylvania State Police, (2018), *Pennsylvania State Police Academy Training*, Available at: http://www.psp.pa.gov/MPOETC/training/Pages/Pennsylvania-State-Police-Academy-Training.aspx (Accessed on 12th March 2018).

⁵⁷ Pennsylvania State Police, (2018), *Curriculum*, Available at:

⁵⁷ Pennsylvania State Police, (2018), *Curriculum*, Available at: http://www.psp.pa.gov/MPOETC/training/Documents/Revised%20Training%20Documents/Basic%2 0Police%20Officer%20Training/Basic%20Police%20Training%20Syllabus.pdf (Accessed on 12 th March 2018)

⁵⁸ Ibid.:

⁵⁹ Pennsylvania State Police, (2018), *In-Service Police Officer Training*, Available at: http://www.psp.pa.gov/MPOETC/training/Pages/In-Service-Police-Officer-Training.aspx (Accessed on 12th March 2018)

Pennsylvania State Police, (2018), Municipal Police Officers' Education & Training Commission (MPOETC) 2018 In-Service and Continuing Education Courses, Available at: http://www.psp.pa.gov/MPOETC/training/Documents/Revised%20Training%20Documents/In-Service%20Police%20Officer%20Training/2018%20Course%20Descriptions.pdf (Accessed on 12th March 2018)

⁶¹ Hoon Lee, Ilhong Yun, Hyeyoung Lim & David W. Tushaus, (2010), "An examination of police use of force utilizing police training and neighborhood contextual factors: A multilevel analysis," *Policing: An International Journal of Police Strategies & Management*, Vol.33, p.694.

Allocating four hours to police use of force and sixty hours to weapons is like training a doctor on using the equipment for heart surgery without training them on other ways to help the patient who may not need surgery at all.

Some of the key issues in the training that have been reported include not having quality instructors, having inadequate training facilities, teaching on a part-time basis to fit in with instructor's work, trying to teach too many different topics and teaching too quickly.⁶² There are other fundamental issues facing academies, for example, the hours dedicated to each topic and whether this is suitable, the lack of real-life situations or experiences that Officers have whilst training, and the lack of a training structure consistently taught by all police agencies.

What is most telling is the ways in which topics are being spread out in training, with a large focus on physical fitness and firearms training but very little time spent on ethics and communication. It can be seen how training is focused on the more aggressive function of an Officer and that little is done to train on other fundamental areas with four hours of training on use of force being a basic level offered. In 1993 a new course was implemented by the Federal Law Enforcement Training Centre which adapted the firearms training to involve firing sixty cartridges at a range of distances between three and twenty-five yards. They also teach how to draw a gun, firing with the weaker hand, reloading weapons within time periods and point aiming. Why do Officers need so much firearms training when statistically

⁶² M. R. Haberfield, (2002), *Critical Issues in Police Training*, Prentice Hall: New Jersey, pp.43-44.

⁶³ Gregory B. Morrison, (1998), "Police handgun qualification: practical measure or aimless activity?," *Policing: An International Journal of Police Strategies and Management,* Vol. 21, p.520.

[.] 64 Ibid.: , p.520.

there are now more guns than people in the U.S.?⁶⁵ In 1996 there were 242 million citizen firearms in the U.S. and by 2009 that had climbed to 310 million. 66 Most U.S. citizens are familiar with guns, have held a gun or have fired a gun and Officers are no different. There are shooting ranges all over the U.S. and, with more and more people using them, they have been compared to bowling alleys.⁶⁷ Americans can use shooting ranges for weddings, parties and some ranges host children's events – accessibility to weapons and target practice is vast. ⁶⁸ On the other hand people ordinarily do not restrain or arrest others or approach hostile individuals in dangerous situations. Therefore, emphasis should be placed on training to restrain and the behavioural sciences, like understanding use of force, rather than emphasizing firearms training. It is also important to look at the statistics for Officers shot by citizens. The New York City Transport Police found that in a five year period, from 1985-1990, Officers were shot and hit twelve percent of the time.⁶⁹ In an ideal world Officers would not be hit at all, but on the scale of things twelve percent is a small number of occurrences and so fewer hours spent on firearms training would not profoundly affect this. This percentage has decreased to ten percent recently, yet firearms training is still prominent. 70 With regards to Officer accuracy, in California between 1980-1986 Officers, who subsequently were killed

⁶⁵ Christopher Ingraham, (2015), "There are now more guns than people in the United States," *The Washington Post*, Available at:

https://www.washingtonpost.com/news/wonk/wp/2015/10/05/guns-in-the-united-states-one-for-every-man-woman-and-child-and-then-some/?utm_term=.a7302f6562a5 (Accessed on 12th March 2018)

⁶⁶ Ibid.:

⁶⁷ Linton Weeks, (2013), "Are shooting ranges the new bowling alleys?", *NPR*, Available at: https://www.npr.org/2013/01/31/170391799/are-shooting-ranges-the-new-bowling-alleys (Accessed on 14th March 2018)

⁶⁸ Ibid.:

⁶⁹ Gregory B. Morrison, (1998), "Police handgun qualification: practical measure or aimless activity?," *Policing: An International Journal of Police Strategies and Management,* Vol. 21, p.522.

¹/₇₀ Ibid.: p.523.

in the line of duty, hit forty-two percent of suspects and in cases where the Officer was not killed, Officers had thirty-eight percent accuracy.⁷¹ Adapting training to reduce firearms training but increasing ethics training could result in less need for Officers to shoot and less opportunity for Officers to be shot at.

Training is approached from an aggressive and defensive standpoint which ultimately means Officers associate everyday tasks in that way. The majority of time is spent teaching Officers how to use their weapons and how to defend themselves. What needs to happen is a shift in this perspective to level the playing field which would have Officers thinking about safely restraining people rather than immediately reaching for their gun or tackling someone to the ground in a chokehold. When there is a large focus on firearms training and less so on use of force or how to restrain people passively, it is not surprising that so many African Americans are dying at the hands of law enforcement. When a disproportionate amount of time is spent on aggressively using firearms this instills in Officers that that is their main or only way of controlling situations. When you have a group of subjects to be learnt, generally the one that is spent the most time on tends to remain in people's memories for longer and this same principle happens with using weapons. Therefore, in many cases Officers will go to use their weapons much more quickly because that is what they have had the most training in. In order to prevent the deaths of unarmed African Americans, more needs to be done in the way of training to detain rather than using force to punish someone. The weapons that Officers carry should be used as a last resort, but with the amount of teaching given to Officers on the subject they are

⁷¹ Gregory B. Morrison, (1998), "Police handgun qualification: practical measure or aimless activity?," *Policing: An International Journal of Police Strategies and Management,* Vol. 21, p.524.

bound to over use their weapons when other options may be available to them. In the case of Gammage, Officers used brute force immediately to restrain him and did not think of other options to calm him down and understand his point of view. In order for police brutality to reduce, Officers need to be trained in less aggressive ways first and foremost, with a smaller proportion of time on weaponry.

Another failure of the current training systems is the lack of real-life experience. Officers receive field training as part of their core training and there is also a Field Training and Evaluation Officer program that is used in most agencies. The Field Training and Evaluation Officer program was established in order to help Officers get used to being on the streets after their initial academy training "as an extension of the traditional in-class police academy training to fill the gap between academy training and real-life situations." However, field training has its problems: "Rookies soon learn that what is taught in the police academy is somewhat irrelevant to their work on the street...they...learn that their colleagues reward them for aggressive and forceful action and punish them for caution. Cautious police Officers are seen as unreliable and as risky partners." Furthermore, field Officers are only as good as the training that they received and the instructors that they had before becoming instructors themselves which means that a variance is prominent and Officers are affected by this. The simply the case that training given at academies,

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⁷² M. R. Haberfield, (2002), *Critical Issues in Police Training*, Prentice Hall: New Jersey, p.78. Hoon Lee, Ilhong Yun, Hyeyoung Lim & David W. Tushaus, (2010), "An examination of police use of force utilizing police training and neighborhood contextual factors: A multilevel analysis," *Policing: An International Journal of Police Strategies & Management*, Vol.33, p.685.

⁷³ The Washington Post, (1997), *Two PA. Officers won't be tried in Black man's death,* Available at: https://www.washingtonpost.com/archive/politics/1997/04/23/two-pa-officers-wont-be-tried-in-black-mans-death/bb091d3c-c498-44a2-b157-141f2b59666d/?utm_term=.24cfa8391e00 (Accessed on 27th March 2018)

⁷⁴ Gregory B. Morrison, (2006), "Deadly Force Programs Among Larger U.S. Police Departments," *Police Quartlery*, Vol.9, p.333.

whether that training is In-house, regional or state, gets contradicted by experienced Officers who live by their own rules. That being said, statistics have shown that white male Officers, with one hundred and forty-five hours or less months of experience, and who were younger than thirty-six were more likely to use force.⁷⁵ It is easy to assume that experienced Officers are more likely to use force as they have been involved in more cases, have been more inclined to develop a firm implicit bias, and could be more apathetic towards citizens, but as younger, inexperienced Officers are newer to dealing with crime intervention they are more likely to deal with things in a more frantic, less structured way. This is supported by the research done on citizen complaints; Liqun Cao found that the "average age of a police department is negatively related to the citizen complaint rate of abuse of power." This proves that training is not adequate for these newer Officers and is not realistic enough to ensure they can handle situations without using force.

As police academies have grown over the years, training has stayed the same, with very similar training in place as what could be seen in the mid-nineteenth century. In fact, firearms training was one of the first modules to be introduced by academies.⁷⁷ The need for firearms training originally can be associated with the lack of structure that Officers had and goes back to the days of a militia. The underlying issue is that learning in a classroom is not adaptable to being an Officer in real life situations. Training needs to be adapted to include implicit bias tests and technological advances mean that police training can become more realistic. Within

⁷⁵ J.J. Williams & G Hester, (2003), "Sheriff law enforcement Officers and the use of force," *Journal of Criminal Justice*, p.380.

⁷⁶ Liqun Cao, (2002), "Curbing Police brutality: What Works? A Reanalysis of Citizen Complaints at the Organizational Level, Final Report," *U.S. Department of Justice*, p.24.

⁷⁷ Gregory B. Morrison & Bryan J. Villa, (1998), "Police handgun qualification: practical measure or aimless activity?", *Policing: An International Journal of Police Strategies & Management*, Vol.21, p.517.

the bounds of budgets, police Officers could have virtual reality training, with real life situations occurring and Officers having to respond to it. Another suggestion is to use fun activities to create more life-like simulations. For example, using a simple game of paint-ball could help Officers to think on their feet more so than learning how to use a firearm in a classroom. One further suggestion is to create obstacle course target shooting, whereby Officers have to negotiate different obstacles at speed and still have accuracy in hitting targets. In the 1930s part of the training process had Officers shooting at moving targets, shooting whilst running and shooting whilst being chase by vehicles.⁷⁸ Today's training needs to unpack this further. It could be a way of combining physical fitness with real life situations so fewer hours are needed for physical fitness training and so Officers can understand how adrenaline may help or hinder them in a real-life situation and how to deal with this. The targets used need to reflect a diverse culture, and therefore, they need to be a variety of races so that Officers do not create implicit bias to any one race, like African Americans. Also, the environment needs to change to, again, promote a fair reaction from Officers.

The amount of force an Officer uses can be exaggerated by the neighbourhood in which they are in and the threat that they feel.⁷⁹ If police are continuously policing African American neighbourhoods then this threat can be exacerbated and escalated; Officers will associate African Americans with this fear and with violence unless they are policing a variety of environments, with a variety

⁷⁸ Gregory B. Morrison, (1998), "Police handgun qualification: practical measure or aimless activity?," *Policing: An International Journal of Police Strategies and Management,* Vol. 21, p.518.

⁷⁹ Hoon Lee, Ilhong Yun, Hyeyoung Lim & David W. Tushaus, (2010), "An examination of police use of force utilizing police training and neighborhood contextual factors: A multilevel analysis," *Policing: An International Journal of Police Strategies & Management*, Vol.33, p.684.

of racial compositions. Research shows how Officers can associate 'bad people' with 'bad neighbourhoods' and by varying the environments used in training this could alleviate this bias. A suggestion by Cynthia Lee is to initiate martial arts training into police training. Lee suggests that ongoing martial arts training would be conducive to Officers' confidence to deal with situations without reaching for their weapons first and "police Officers with more confidence in their ability to command respect and handle volatile situations are less likely than police Officers without such confidence to shoot noncompliant but unarmed Black suspects." Self-defence training is needed for Officers who deal with difficult situations every day, but on average they are receiving only forty-four hours in self-defence. Some tactics such as wrestling and close combat techniques are used to help train new Officers, but this is not enough. Add adrenaline and fight or flight psychology, in a real life situation Officers do not know how to defend themselves so they panic and resort to using their firearms, as they have had more than enough training on using them.

The automatic reaching for firearms happens too often; from 2010 to 2014 ninety-six percent of the two thousand two hundred and eighty-five police caused deaths were shootings. ⁸³ If an Officer has alternative methods of restraining a suspect, like through the use of martial arts, then chokeholds would not be necessary. Martial arts can teach restraining techniques such as the arm-bar, where an individual is held in a position where the elbow is hyper extended and pushed backwards towards the Officer's hips – this should prevent the individual from

⁸⁰ Cynthia Lee, (2016), "Race, Policing, and Lethal Force: Remedying Shooter Bias with Martial Arts Training," *Law and Contemporary Problems*, Vol.79, p.168.

[ີ] lbid.: p.165

⁸² Law Enforcement Education, (unknown), "Police Officer Training," *Police Training*, Available at: https://www.lawenforcementedu.net/police-Officer/police-training/ (Accessed on 15th March 2018) ⁸³ James W. Buehler, (2017), "Racial/Ethnic Disparities in the Use of Lethal Force by US Police, 2010-2014," *AJPH Research*, Vol.107, p.295.

struggling and lock them in place. ⁸⁴ This method does not incapacitate the breathing of the individual being restrained and so has a lower chance of killing someone. Martial arts does not only teach self-defense but it also has an impact on how an individual copes under stress and pressure: "a person who has been training regularly in the martial arts is more likely to remain calm and stay focused on the task at hand since he or she is accustomed to being attacked during sparring practice." ⁸⁵ Martial arts training could help reduce the use of force claims against Officers and also reduce the deaths of unarmed African Americans. If martial arts had been used to restrain Gammage, then he would not have suffered asphyxiation and may still be alive today.

Currently the training offered to Officers is not meeting standards needed to prevent the unnecessary killing of African Americans. Having outlined the issues within the training that is offered to Officers in the U.S. it is clear to see that a fundamental problem is the ways that Officers approach situations. Bittner argues that "the role of the police is best understood as being a mechanism for the distribution of nonnegotiable coercive force." But this should not be the case in modern society and police play a much more consultative and community-related role. A comparison can be argued between the agency's approach to training for sustaining a suspect and training in a hostage situation. For example, an Officer is at the scene where someone has been taken hostage. In this situation the Officer would not aggressively approach the individual, and try to force the person to the floor as

⁸⁴ Michael Thomsen, (2017), "Can mixed martial arts training make Officers less dangerous?," *Slate,* Available

at:http://www.slate.com/articles/news_and_politics/crime/2017/08/can_mixed_martial_arts_training_make_police_less_dangerous.html (Accessed on 14th March 2018)

⁸⁵ Cynthia Lee, (2016), "Race, Policing, and Lethal Force: Remedying Shooter Bias with Martial Arts Training," *Law and Contemporary Problems*, Vol.79, p.167.

⁸⁶ M. R. Haberfield, (2002), *Critical Issues in Police Training,* Prentice Hall: New Jersey, p.60.

there is a good chance that the person would react and harm the hostage. Alternatively, the Officer would not withdraw his gun immediately from his holster and begin shouting aggressively to the individual because once again that would more than likely end with harm to the hostage. Even in a situation where the individual who had taken someone hostage was armed, the police would still not rush in aggressively with their weapons ready to fire - although a SWAT team may be on hand with their weapons drawn – but the situation would be dealt with in a much more calm manner, with a more strategic plan in play which has thought out the consequences of each action taken by all that are present. In hostage situations there is generally a six-step cycle that Officers take for a crisis negotiation -Immediacy, Control, Assessment, Disposition, Referral and Follow up, and Stress Management.⁸⁷ The first step, immediacy, is about having the ability and knowledge to react immediately but not necessarily doing so dependent on the situation at hand and "The negotiator must be able to establish rapport with the person contacted. Further, he must be a person who cares. Our job is to get everyone out alive."88 The key thing there is that using negotiation skills can mean the difference between life and death and would certainly have an impact on the number of African Americans killed by police. Control is about giving the person back the control that they feel they have lost and which has driven them to act in this way; "the negotiator must give some sense of structure and stability to the victim's life when they may feel that they do not have any structure and stability in their life at all."89 The third step, assessment, is put in place to understand the person better before reacting. 90 The

⁸⁷ James L. Greenstone, (2003), "Crisis and Hostage Negotiations," *Journal of Police Crisis Negotiations*, Vol. 3, p.53.

⁸⁸ Ibid.: p.53.

⁸⁹ Ibid.: p.54.

⁹⁰ Ibid.: p.54.

Officer needs to understand the circumstances surrounding the individual to know how these circumstances are affecting their decision making. Without understanding all of the key factors that could be a cause of the individual's crisis, the Officer cannot react in the best way and may miss something important. The same principle can be used in everyday situations – for Gammage, the Officer could have asked questions to comprehend why he was driving the car, who the car belonged to and any other issues that the Officers had which would have resulted in a calmer discussions and resolutions, rather than death. Disposition means offering advice and alternatives in an attempt to guide that person and alleviate some of the stress that they are facing. 91 Referral and follow up helps to establish the next steps for the individual. 92 This is about understanding the person's needs completely in order to help them if they are repeat offenders. By thoroughly questioning and understanding the person, if the police come across them in the future the Officers are more likely to have the knowledge and skills to help them again. In the case of Gammage, if the Officers had used the crisis negotiation technique then they could have gathered enough knowledge to help him if he were behaving erratically, and if they met him under similar circumstances in the future, which often happens due to the bias against African Americans, the Officers could have handled it appropriately rather than tackling him to the floor and suffocating him. The final step to the process, stress management, teaches Officers to slow down in order to deal with the situation appropriately. As James L. Greenstone suggests, "Nothing has to move at break-neck speed when [negotiatiors] are trying to make the necessary and proper assessments in

⁹¹ James L. Greenstone, (2003), "Crisis and Hostage Negotiations," *Journal of Police Crisis Negotiations*, Vol. 3, p.55.

⁹² Ibid.: p.55.

the service of saving lives."⁹³ Reproducing this stress management technique and applying it to other areas of police work, such as approaching and restraining a citizen, reduces the levels of force needed as some people will react well to a conversation rather than brute force.

Obviously, everyday situations, like being pulled over for a traffic violation in Gammage's case, are not as volatile and dangerous as a hostage situation where multiple people are at risk. However, negotiation should be a key skill taught to every Officer to deal with everyday situations because although the stakes are not that high, by talking to someone in a calm manner and to probe for further information as to what they were doing to cause them to be approached by the police, means less force would need to be used and Officers would have more control over the situations. It should be proposed that a similar model is put in place for everyday situations alongside other techniques, such as use of force when absolutely necessary. It is not expected that training Officers in negotiation skills will replace use of force but it should help Officers keep control of situations and reduce the automatic response of using their firearm or using the chokehold technique.

Another method that should be used for training purposes is implicit bias association tests. As part of an Officer's training they should have to do a number of shooter bias tests to attempt to alleviate any biases they may have. It should be mentioned that some research has suggested that implicit bias tests may have an alternate effect, by which racial attitudes are exacerbated and diversity bias becomes

⁹³ James L. Greenstone, (2003), "Crisis and Hostage Negotiations," *Journal of Police Crisis Negotiations*, Vol. 3, p.57.

more prevalent. 94 As Joshua Correll observes, "there are a number of very compelling studies that show that if you just ask somebody to try really hard to not show racial bias, you can actually inadvertently increase racial bias." Nevertheless, when a series of implicit bias tests are done and the results seem to increase after each test due to inadvertently increasing bias, this Officer should not pass and should not be allowed to get the title of an Officer. The resulting factor should be severe enough to deter those with severe racial preferences from continuing or even wanting to be an Officer. It was found that "Officers who entered the academy thinking that the use of force was effective were significantly more likely to hold that view."96 There is definitely reasoning for completing implicit bias tests, as this can make someone more aware of their own biases or their thoughts due to their environment, culture or upbringing and could curtail this bias from an early stage. These tests could also prevent Officers from maintaining their original views that use of force is an effective means of controlling citizens. The U.S. Department of Justice gave a grant in 2013 to complete implicit bias tests for police Officers which teaches Officers the effects of implicit bias and how to control it. 97 This is a step in the right direction but more needs to be done to attempt to sway racial judgment for Officers and, therefore, this needs to become an integral part of all training programs. If racial bias is not looked at, and training continues to be focused on an aggressive use of weapons, then violence against African Americans will continue and more deaths will follow.

⁹⁴ Cynthia Lee, (2016), "Race, Policing, and Lethal Force: Remedying Shooter Bias with Martial Arts Training," *Law and Contemporary Problems*, Vol.79, p.162.

⁹⁵ Ibid.:, p.164.

⁹⁶ Jay T. Jennings & Meghan E. Rubado, (2017), "Preventing the Use of Deadly Force: The Relationship between Police Agency Policies and Rates of Officer-Involved Gun Deaths," *The American Society for Public Administration*, Vol.77, p.218.

⁹⁷ Cynthia Lee, (2016), "Race, Policing, and Lethal Force: Remedying Shooter Bias with Martial Arts Training," *Law and Contemporary Problems*, Vol.79, p.163.

A further problematic area is accountability; there is a complete lack of accountability for Officers who use force. The number of shootings by police is not required to be reported which means that there are a number of incidents where police have used their firearms that the public do not even know about. Furthermore, the FBI attempts to understand the number of 'justifiable homicides' with an estimate of four hundred per year, but departments' offer this information on a voluntary basis so some cases will slip through the cracks. 98 Interestingly, a report by the Justice Department in 2015, found that "Officers do not receive regular, consistent training on the department's deadly force police; that early training among recruits is sometimes inadequate in regard to these issues; that investigates into such incidents are not consistent; and that Officers need more less-lethal options." Also, when an Officer draws his weapon, he has no obligation to report this to anyone. Jay T. Jennings and Meghan E. Rubado found that agencies had a lower rate of Officer caused gun deaths when they had to file a report for every time they pointed their firearms at civilians but did not shoot. 100 Pushing this further, it was found that reporting these instances did not increase the number of Officers killed by guns. 101 The idea of implementing a report, across all agencies and departments, for every time an Officer draws their weapon would decrease the amount of times Officers shoot at unarmed African Americans and would have little effect on themselves. In fact, there would be forty fewer fatalities over a fifteen year period, if the ten largest

⁹⁸ John Wihbey & Leighton Walter Kille, (2016), "Excessive or reasonable force by police? Research on law enforcement and racial conflict," *Journalist's Resource*, Available at: https://journalistsresource.org/studies/government/criminal-justice/police-reasonable-force-brutality-race-research-review-statistics (Accessed on 15th March 2018)

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¹⁰⁰ Jay T. Jennings & Meghan E. Rubado, (2017), "Preventing the Use of Deadly Force: The Relationship between Police Agency Policies and Rates of Officer-Involved Gun Deaths," *The American Society for Public Administration*, Vol.77, p.217.

city departments who do not use a firearm report, did so.¹⁰² This could also be assisted with the use of self-defence tactics, like martial arts, to decrease the risk to Officers even more. If an Officer is not held accountable in terms of imprisonment for taking someone's life, and is not accountable for penance in respect of payments for settlements, then the least that they should have to be accountable for is their firearms.

Drawing comparisons to Gammage's death is not difficult as there have been far too many cases where police have used incorrect training methods to restrain citizens and caused the death of that person through asphyxiation. In fact, "the Los Angeles Police Department was aware of the pattern and continued to authorize the use of chokeholds. Street-level cops deployed them widely, especially against Blacks" and it would not be the only agency that would have followed this procedure. Prior to Gammage there was the case of 21-year old Federico Pereira in 1991 who was being restrained for suspected car theft, and paid with his life as he was punched, kicked and choked whilst being arrested and later pinned down with his face to the floor, causing asphyxiation. Also, just like Gammage, was the fact that five Officers were present, and once again, the charges were dropped for four of the Officers and the final Officer was acquitted. In 1994, Ernest Sayon, who was 23, was stopped by six Officers of the NYPD, and later died of asphyxiation from

¹⁰² Jay T. Jennings & Meghan E. Rubado, (2017), "Preventing the Use of Deadly Force: The Relationship between Police Agency Policies and Rates of Officer-Involved Gun Deaths," *The American Society for Public Administration*, Vol.77, p.222.

¹⁰³ Nicholas J. Johnson, (2017), "Lawful Gun Carriers: License, Escalation, and Race," *Law and Contemporary Problems*, p.227.

Joseph P. Fried, (1991), "5 Officers charged with Murder in Slaying of a Suspect in Queens," *The New York Times*, Available at: (Accessed on 7th March 2018).

¹⁰⁵ Conor Friedersdorf, (2014), *Eric Garner and the NYPD's History of Deadly Chokeholds,"* The Atlantic, Available at: (Accessed on 7th March 2018)

"the pressure applied to his chest and back." Eight months later, Anthony Ramon Baez was arrested after accidentally hitting two parked police cars with a football. The police say that Baez died from an asthma attack but a Medical Examiner found that the cause of death was asphyxiation. The Officer involved, Francis Livoti, who had eleven previous complaints for abuse and brutality and although originally acquitted, was finally convicted in 1998 and sentenced to seven years in federal prison for violating the civil rights of Baez. 109

This form of police brutality is not restricted to the 1990s, however, and within a four year period from 2006 the NYPD received more than 200 complaints about chokeholds. In 2013 chokeholds made up just under five percent of citizen complaints, showing how widespread the technique is. It Fast forward to 2014 and yet another case of police brutality with the use of a chokehold can be seen, in the case of Eric Garner. Forty-three year old Garner was known to police as someone who sold untaxed cigarettes and had previously been arrested twice that year for evading state tax law and cautioned on other occasions. On 17th July 2014, Officers Justin Damico and Daniel Pantaleo approached Garner in the same place

¹⁰⁶ Conor Friedersdorf, (2014), *Eric Garner and the NYPD's History of Deadly Chokeholds,"* The Atlantic, Available at: (Accessed on 7th March 2018)

¹⁰⁸ Clifford Krauss, (1994), "Clash Over a Football Ends With a Death in Police Custody," *The New York Times,* Available at: (Accessed on 7th March 2018)

¹⁰⁹ Conor Friedersdorf, (2014), *Eric Garner and the NYPD's History of Deadly Chokeholds,"* The Atlantic, Available at: (Accessed on 7th March 2018)

¹¹¹ Joseph Goldstein & Matt Schweber, (2014), "Man's Death After Chokehold Raises Old Issue for the Police," *The New York Times*, Available at:

https://www.nytimes.com/2014/07/19/nyregion/staten-island-man-dies-after-he-is-put-in-chokehold-during-arrest.html (Accessed on 8th march 2018)

¹¹²Al Baker, J. David Goodman & Benjamin Mueller, (2015), "Beyond the Chokehold: The Path to Eric Garner's Death," *The New York Times*, Available at:

https://www.nytimes.com/2015/06/14/nyregion/eric-garner-police-chokehold-staten-island.html (Accessed on 8th March 2018)

that he always stood. ¹¹³ In an attempt to restrain 6 foot 2 Garner, Pantaleo used a chokehold and tackled him to the floor. ¹¹⁴ There, witnesses heard eleven pleas from Garner of "I can't breathe" but the Officer kept him in the chokehold position until he died from primarily asphyxiation. ¹¹⁵ Once again, Pantaleo was not indicted on any charges for the death of Garner and Pantaleo insists that he was trained to complete takedown maneuvers, which is what he considers he performed. ¹¹⁶ It is clear through the many cases of police using chokeholds to sustain citizens that something needs to be done to prevent the deaths of the African Americans who consistently fall victim to it. The police agencies must withdraw any form of chokehold in training, including what Pantaleo described as takedown maneuvers, which could cause death. The cases show that agencies are not learning from their mistakes and repeating these actions means the cycle will continue and there will be many more victims.

With the limited research done on training and its relationship with police use of force much more needs to be done in the way of understanding the impacts of training and how this affects the killings of unarmed African Americans, like Gammage. The chokehold, although already banned in certain agencies, needs a global ban and other techniques need to be used to restrain citizens. Police need to be held more accountable, being charged and detained for their actions when they take

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¹¹³ Al Baker, J. David Goodman & Benjamin Mueller, (2015), "Beyond the Chokehold: The Path to Eric Garner's Death," *The New York Times*, Available at:

https://www.nytimes.com/2015/06/14/nyregion/eric-garner-police-chokehold-staten-island.html (Accessed on 8th March 2018)

ì14 Ibid.:

¹¹⁵ Joseph Goldstein & Marc Santora, (2014), "Staten Island Man Died From Chokehold During Arrest, Autopsy Finds," *The New York Times*

¹¹⁶ Josh Voorhees, (2014), "Of Course It Happened Again: Why no one should be surprised NYPD Officer Daniel Pantaleo wasn't indicted in the chokehold death of Eric Garner," *Slate*, Available at: (Accessed on 8th March 2018)

someone's life as a result of impulsive use of force. Legislation should be changed and count the Officers as individuals rather than part of the city district once they have passed the threshold of taking an unarmed person's life. Training for Officers needs to be much more intense and developed and should reflect the hours of training for other professions where lives are at stake. There should be a nationwide structured program, so that all Officers are held to the same rules and regulations which would help deter any bias from individual agencies from reaching their recruits. This would act as a basis which would then be built upon with regular training sessions as part of the job. The number of hours spent on firearms training must be, not removed entirely, but reduced to allow for training on other areas such as ethics and use of force which will reduce the number of African Americans being abused and killed. More time and effort needs to be put into teaching about use of force and other techniques, such as, martial arts and negotiation skills to help Officer better deal with situations that they are put in without the need for them to reach for their firearms. The training should also use a variety of methods, like IATs, obstacle courses and paint-ball exercises and simulations to ensure Officers are prepared for their time on the streets, whilst keeping them interested. Finally the departments should have accountability and Officers should have to report every time they draw their gun and, in addition to this, agencies should report their Officer-involved shootings to the FBI as a mandatory procedure, not voluntarily. The cycle of police brutality will continue unless police training is improved so that it reflects the real life situations that Officers find themselves in. It is not good enough to just teach Officers how kill. to

1999 – Amadou Diallo

Amadou Diallo became synonymous with police brutality in 1999 when he was shot at forty-one times, nineteen of which hit him, by four Officers outside his own apartment in New York. The incident sent shockwaves into the community and protests followed. This chapter argues that the Diallo case is revealing of the ways in which police brutality is exacerbated by police weapons policy. Diallo was perceived at the time as the stereotypical African American male, violent and criminal - his parents were educated and respected in Guinea. As noted in previous chapters, implicit bias had an impact on the death of Diallo, but Supreme Court rulings, legislation, in-group bias, racial profiling, weaponry, identity, and the environment all contributed to his killing.

In the wake of the LA Riots of 1992, Diallo's story is one of yet another police brutality incident – as Beth Roy suggests, "people of color see these incidents, frequent and tragic, as yet one more proof of the inevitability of racism, while white people tend to believe police killings are not about race but about rogue cops, or about criminals who... nonetheless contributed to their ill fortune by their suspicious actions." What Roy neglects is that there is a combination of underlying reasons for police brutality and that these events that are frequent and tragic are part of an even bigger story of the cyclical nature of police brutality and what that means for African Americans. This chapter will explore the theory behind why police forces use certain weapons and the consequences of doing so – this is not about the fundamental rights of U.S. citizens under the Second Amendment, nor is it about taking weapons away

¹ Beth Roy, (2009), 41 Shots...and counting: What Amadou Diallo's story teaches us about policing, race and justice, Syracuse University Press: New York, p.8.

from the police force. The analysis will discuss the interpretation of rules and legislation, both formal and informal, and it will consider the impact of U.S. police using their weapons aggressively and why, once again, more training is needed.

On 4th February 1999 Amadou Diallo, a 23 year old, 5'5, 150 pound, West African immigrant with no criminal record, stood outside his own home when he was shot at 41 times by four plain-clothes Officers, wearing jeans and coats.² Nineteen of the forty-one bullets fired by Sean Carroll, Richard Murphy, Edward McMellon and Kenneth Boss of the Street Crime Unit of the NYPD found their target.³ They were fired at close range and each shot required the finger to pull the trigger.⁴ Carroll aged 35 and McMellon aged 26 fired their weapons sixteen times each, emptying them, while Boss aged 27 fired five times and Murphy aged 26 fired four times.⁵ Tellingly, Officers Carroll, McMellon and Boss had all previously been involved in shootings showing that this was not a one-off mistake but a cycle of abuse for the Officers.⁶ On 31st October 1997 Officer Boss fired three times at an unarmed 22 year old man, Patrick Bailey, killing him alongside another Officer whose shots missed.⁷ Officer Boss was among four Officers when they learned that Bailey had menaced someone with a shotgun: "they saw Mr. Bailey with a gun outside the building and pursued him inside, where Officer Boss shot him twice after

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² Sam Sterrett, "Malcom Gladwell – Blink." YouTube video, Posted October 2014, (Accessed on 5th September 2017)

³ Timothy Lynch, (2000), "'We Own the Night' Amadou Diallo's Deadly Encounter with New York City's Street Crimes Unit," *Cato Institute Briefing Papers*, No. 56, pp.1-8.

⁴ Ray Moses, (2012), *Opening Statements: The Amadou Diallo Killing,* p.1, Available on: http://criminaldefense.homestead.com/Diallo.html

⁵ Michael Cooper, (1999), "Officers in Bronx Fire 41 Shots, And an Unarmed Man Is Killed," *The New York Times,* Available at: http://www.nytimes.com/1999/02/05/nyregion/Officers-in-bronx-fire-41-shots-and-an-unarmed-man-is-killed.html (Accessed on 5th September 2017)

⁷ Joseph P. Fried, (1999), "Diallo Defendant Is Cleared in a '97 Killing," *The New York Times*, Available at: http://www.nytimes.com/1999/04/06/nyregion/diallo-defendant-is-cleared-in-a-97-killing.html (Accessed on: 5th September 2017)

he spun around to confront the Officers."8 According to the Officers Bailey still had the shotgun in his hand when they shot at him; in contradiction to this, three eye witnesses said that he was unarmed by this point. It was later found that the gun was unloaded and inoperable. Boss was acquitted on 5th April 1997 as the Brooklyn District Attorney believed that he acted properly and that the eyewitnesses were not credible as they were assumed to be Bailey's friends. 10 In the other incidents where Carroll and McMellon used their weapons, they were equally found to have acted properly. 11 This lack of accountability is not just found in the NYPD but is country wide; one hundred and twenty-two wrongful shootings by the police in the Prince George's County Police Department had Officers claiming the suspect had a weapon when they did not and resulted in the Officers being exonerated and then promoted by their workplace. 12 Clearly there is a trend in the numbers of Officers present at times where African Americans are killed and a pre-disposed ideology of police brutality for the Officers; this can be linked to in-group bias and will be discussed later. In court Carroll remarked that Officers are not taught to distinguish between a gun and other objects, showing that Officers pull their own trigger far too quickly and could be why the three Officers had previously used their weapons. 13 As the Officers approached Diallo, after getting out of their unmarked Ford Taurus, he

⁸ Joseph P. Fried, (1999), "Witnesses Found in '97 Killing Involving Diallo Case Officer," *The New York Times*, Available at: http://www.nytimes.com/1999/04/02/nyregion/witnesses-found-in-97-killing-involving-diallo-case-Officer.html?mcubz=3 (Accessed on: 5th September 2017)

⁹ Joseph P. Fried, (1999), "Diallo Defendant Is Cleared in a '97 Killing," *The New York Times*, Available at: http://www.nytimes.com/1999/04/06/nyregion/diallo-defendant-is-cleared-in-a-97-killing.html (Accessed on: 5th September 2017)

¹⁰ Ibid.:

¹¹ Michael Cooper, (1999), "Officers in Bronx Fire 41 Shots, And an Unarmed Man Is Killed," *The New York Times,* Available at: http://www.nytimes.com/1999/02/05/nyregion/Officers-in-bronx-fire-41-shots-and-an-unarmed-man-is-killed.html (Accessed on 5th September 2017)

¹² Nicholas J. Johnson, (2017), "Lawful Gun Carriers: License, Escalation, and Race," *Law and Contemporary Problems*, p.214.

¹³ Tara George, (2000), "Cops tell their story Officer's frantic plea: 'please, don't die', " *New York Daily Post*, Available at: http://www.nydailynews.com/archives/news/cops-story-Officer-frantic-plea-don-die-article-1.871263 (Accessed on: 21st June 2017)

backed into the vestibule of his house and began reaching for his pocket. One Officer believed he was reaching for a gun, so the Officers opened fire believing he was a threat to them; it is important that only one Officer needed to believe the item was a gun, without any of the Officers actually seeing a gun, for shots to be fired – it was later found that Diallo was unarmed and had been reaching to show some identification from his rectangular black wallet. Once again, this repeats a similar case from 1996 – Aswan Keshawn Watson was shot twenty-four times, aged twenty three, by Officers Keith Tierney and James Gentile who claimed he was in a stolen car and that he reached for something. Of course, he was unarmed and witnesses claimed he had his arms up when he was approached. The ambiguity often found in these cases of whether suspects were armed or unarmed needs attention and more needs to be done to help Officers differentiate between items.

At the Diallo trial the Officers testified under oath that they had announced their arrival to Diallo – Mr. Bennett Epstein as the Defence Attorney for Carroll suggested that "the Officers identified themselves with their shields out, as they were trained to do and as they do in every situation." It will never be fully understood whether the Officers did announce themselves, if perhaps Diallo did not hear them, or if perhaps he did not understand the language. Whatever the case, and as Timothy Lynch suggests, the Officers did not think of these possibilities, they became

¹⁴ Ray Moses, (2012), *Opening Statements: The Amadou Diallo Killing,* p.1, Available on: http://criminaldefense.homestead.com/Diallo.html

¹⁵ Richard Austin, ed. Jill Nelson (2000), "Under the Veil of Suspicion," *Police Brutality: An Anthology,* W.W. Norton Company: USA, p.213.

¹⁶ Ibid.: p.213.

¹⁷ Ray Moses, (2012), *Opening Statements: The Amadou Diallo Killing,* p.8, Available on: http://criminaldefense.homestead.com/Diallo.html

aggressive. 18 However Lynch goes on to state that the "Modus Operandi of the unit was to quickly swarm on a person, with pistols drawn, all the while barking commands laced with vulgarities." Interestingly a study of New York City police stops in 2014 found that just under a third of cases reported that Officers had added racial slurs whilst approaching people showing the aggressive way in which police units act.²⁰ If this was the case, it could be suggested that four plain-clothed men shouting all at once to Diallo in a language he was not familiar with caused Diallo to back away rather than wait to be attacked. According to reports, the police targeted Diallo as they were looking for an African American serial rapist - racial profiling meant they assumed Diallo was the African American rapist - and were in a neighbourhood with a bad reputation, which added fuel to the fire. This racial profiling stemmed from an implicit bias held by the four white male Officers. Steve Martinot discusses the idea of drive, "an inner desire, totally divorced from the reality of the situation, so Officers reacted through a drive to reduce a perceived threat without understanding the realistic situation, or taking time to do so."21 This can be seen in the case of Diallo, as the final two shots fired penetrated through the bottoms of his feet – this means he was lying down at this point, he had been knocked down by the onslaught of bullets and brutally murdered.²² Furthermore, it had appeared that some of the bullets hit Diallo post-mortem.²³ If a suspect is down and disarmed, that should be enough to stop Officers from continuing shooting. All four Officers were charged with second degree murder but later acquitted by the

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¹⁸ Timothy Lynch, (2000), "'We Own the Night' Amadou Diallo's Deadly Encounter with New York City's Street Crimes Unit," Cato Institute Briefing Papers, No. 56, p.8.

¹⁹ Ibid.: p.5

²⁰ Nicholas J. Johnson, (2017), "Lawful Gun Carriers: License, Escalation, and Race," *Law and Contemporary Problems*, p.227.

²¹ Steve Martinot, (2013), "Probing the Epidemic of Police Murders," *Socialism and Democracy*, p.60.

²³ Mark Peffley & Jon Hurwitz, (2010), *Justice in America: The Separate Realities of Blacks and Whites*, Cambridge University Press: New York, p.2.

courts.²⁴ A similar case in 1997 had an even harsher outcome – African American Kevin Cedeno was shot in the back by Officer Anthony Pellegrini, who not only was not indicted but who, whilst under investigation, was voted "Cop of the Month," by his colleagues.²⁵ This reiterates the lack of consequences to Officers and suggests that Officers might feel untouchable. The jury in Diallo's case consisted of seven white men, one white woman and four black women, and an internal investigation found that "the Officers had acted within policy, based on what a reasonable Officer would have done in the same circumstances with the information they had" which outlines again what should be considered reasonable and shows that policy needs to be reviewed in light of the many cases of police brutality.²⁶ Furthermore, reasonableness is ambiguous; in no way should the killing of unarmed African Americans, due to a perceived but non-existent threat, is reasonable.

The NYPD's Street Crimes Unit was created in 1971 but under Mayor Giuliani and Police Commissioner William Bratton the Unit began to be more aggressive in 1994 in order to confiscate illegal weapons.²⁷ The aggression increased further and in 1996 some Officers were seen with t-shirts bearing the quotation "Certainly there is no hunting like the hunting of man, and those who have hunted

²⁴ Ray Moses, (2012), "Opening Statements: The Amadou Diallo Killing," *Criminal Defense*, Available on: http://criminaldefense.homestead.com/Diallo.html (Accessed on: 25th November 2016).

²⁵ Richard Austin, ed. Jill Nelson (2000), "Under the Veil of Suspicion," *Police Brutality: An Anthology,* W.W. Norton Company: USA, p.213.

²⁶ Amy Waldman, (2000), "THE DIALLO VERDICT: THE DELIBERATIONS; The Crucial Defense Element: the Judge's Instruction," *The New York Times,* Available at:

http://www.nytimes.com/2000/02/26/nyregion/diallo-verdict-deliberations-crucial-defense-element-judge-s-instruction.html Accessed on 9th September 2017)

Ray Moses, (2012), "Opening Statements: The Amadou Diallo Killing," *Criminal Defense*, Available on: http://criminaldefense.homestead.com/Diallo.html (Accessed on: 25th November 2016).

²⁷ Timothy Lynch, (2000), "'We Own the Night' Amadou Diallo's Deadly Encounter with New York City's Street Crimes Unit," *Cato Institute Briefing Papers*, No. 56, p.1.

armed men long enough and liked it, never really care for anything else."28 Interestingly, in 2013 the same passage was used on t-shirts worn by the NYPD's Queens Warrant Squad.²⁹ This identifies an embedded culture of violence within the Police and shows the cyclical nature of police violence and viewpoints. Arguably, being in law enforcement automatically means that you will be accustomed to a certain level of violence, however, what is happening and has been happening since the invention of law enforcement is this violence is being placed into everyday situations and Officers are using this violence excessively (not merely using excessive force but using it repeatedly). It also means that, because this violence is embedded in the mindsets and actions of current Officers, when new recruits come in they are with taught to act this way or learn to act his way through experience. When Officers join a Special Unit they often feel more powerful and authoritative because they identify with a certain group of people. They will also have natural affinity with that group of people which integrates the violence throughout the unit. It was minority and poorer citizens who felt the ultimate wrath of the Unit as they were targeted most – hunted the most. With crime rates falling during this time, many viewed the aggression as a necessary evil.³⁰ The Unit appeared to follow the precedent set in Terry v. Ohio where the Supreme Court decided that "a police Officer could temporarily deprive individuals of their right to go about their business on the basis of what [they] called reasonable suspicion."³¹ In the case of Diallo the reasonable suspicion was that he was the same phenotype as a serial rapist –

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³¹ Ibid.: p.4.

²⁸ Timothy Lynch, (2000), "'We Own the Night' Amadou Diallo's Deadly Encounter with New York City's Street Crimes Unit," *Cato Institute Briefing Papers*, No. 56, p.5.

²⁹ The Huffington Post, (2013), *NYPD 'Hunting of Man' T-Shirts Seen on On-Duty Officers in Queens*, Available at: http://www.huffingtonpost.com/2013/06/18/nypd-t-shirt_n_3460781.html (Accessed on 5th September 2017)

Timothy Lynch, (2000), "'We Own the Night' Amadou Diallo's Deadly Encounter with New York City's Street Crimes Unit," *Cato Institute Briefing Papers*, No. 56, p.2.

although the Officers were not tasked to find this serial rapist and should have called it in prior to the incident to check what the likelihood was of Diallo being that suspect. It is at this time that it should be questioned why the Officers decided to stop at this point, when their Unit was set up to tackle fire-arms; the Officers could have called their relevant colleagues to discuss any further information and gain a better understanding before jumping to conclusions and approaching Diallo. In fact, although the Street Crimes Unit had a history of intense and frivolous arrest rates; throughout 1997 and 1998 they conducted over forty-five thousand stop and frisks, arresting under ten thousand of those people, fifty percent of which were thrown out.³² This shows that Officers were stopping anyone who they decided were dangerous. It proves that African Americans, like Diallo, were systematically targeted in an unfair policy.

The Fourth Amendment was put in place to establish that citizens have the right "to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." However, in 1968 a precedent was set by the Supreme Court ruling on *Terry v Ohio* which formed the basis of police brutality under law. The case began when Detective Martin McFadden, who had been assigned to be alert for shoplifters and pickpockets in Cleveland, approached John Terry, Richard Chiltern and Carl Katz on the basis that he felt they "didn't look right to [him] at the time." After watching them for a period of time, McFadden came to the conclusion

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³² Ron Daniels, ed. Jill Nelson (2000), "The Crisis of Police Brutality and Misconduct in America," *Police Brutality: An Anthology*, W.W. Norton Company: USA, p.244.

³³ Jonathan Kim, (2017), "Fourth Amendment," *Cornell Law School*, Available at: https://www.law.cornell.edu/wex/fourth_amendment (Accessed on14th February 2018)

³⁴ Stephen A. Saltzburg, (1998), "Terry v. Ohio: A Practically Perfect Doctrine," *St. John's Law Review*, Vol.72, p.913.

that the two men were about to steal from a store.³⁵ It was only when Terry, Chiltern and Katz began walking away that McFadden decided to approach them. None of them took any action to resist or walk away from McFadden. The Officer aggressively patted Terry down, using him as an example to the others and found a concealed weapon - he also found a weapon on Chiltern; all three were taken to the station and Terry and Chiltern were charged with carrying concealed weapons.³⁶ Terry and Chiltern decided to complete a joint motion to the Court due to believing McFadden had incorrectly seized their weapons but the prosecution counter argued that the seizure of the weapons was legitimate as the reason for the search was to arrest.³⁷ The judge concluded that McFadden did not have probable cause for the arrest in advance of searching them, however, "McFadden had reasonable cause to believe that the defendants were conducting themselves suspiciously, and some interrogation should be made of their action." The judge inevitably decided that McFadden had acted appropriately and that Terry and Chilton were guilty. 39 At this point both men decided to appeal to the Ohio Court of Appeals (although Chiltern died before getting to this point).⁴⁰ The Ohio Court of Appeals, backed by the Supreme Court, "approved the investigatory stop as a procedure that fell short of arrest" and reasoned that "it follows that the Officer ought to be allowed to frisk, under certain circumstances at least, to ensure that the suspect does not possess a dangerous weapon which would put the safety of the Officer at peril."⁴¹ The *Terry* case "determined that a police Officer could, on less than probable cause, briefly

³⁵ Stephen A. Saltzburg, (1998), "Terry v. Ohio: A Practically Perfect Doctrine," St. John's Law Review, Vol.72, p.913.

³⁶ Ibid.: p.914.

³⁷ Ibid.: p.914.

³⁸ Ibid.: p.915.

³⁹ Ibid.: p.915. ⁴⁰ Ibid.: p.916.

⁴¹ Ibid.: p.916.

detain an individual to investigate potential wrongdoing and conduct a limited weapons search for the Officer's and others' safety." As a consequence of this, police Officers can approach, at their discretion, anyone who they deem may be doing something criminal or who might do something criminal in the near future; this gives them an immense amount of power and authority and can often be abused. This abuse of power can be seen through "widely reported assessments show that Terry stops in New York City tilted dramatically against Blacks, although they lead to no higher rates of actual arrests."43 It is important to note that an Officer must have "reasonable, objective grounds" for detaining citizens under Terry.44 This makes way for "policies that give priority to whites most of the time, and only work for Black people in the short run as a way of working for whites in the long run."⁴⁵ This is also a reason for the over-zealous shootings of African Americans; Officers who stop citizens without reasonable, objective grounds have to create a scenario where they will not be punished for doing so (although the likelihood is that they would not get punished at all). There must be frustration when Officers do not find the grounds they need, and this is when things violently escalate. By the time the Officers in the Diallo case realised he was unarmed, it was too late.

The 1985 case of *Tennessee v Garner* made waves politically for police use of deadly force law. The Supreme Court ruled that Officers could not use deadly force to prevent people escaping, after a Memphis Officer shot dead unarmed, 15

⁴² Matthew J. Wilkins, (unknown), "Armed and Not Dangerous? A Mistaken Treatment of Firearms in *Terry* Analyses," *Texas Law Review*, p.1168

⁴³ Nicholas J. Johnson, (2017), "Lawful Gun Carriers: License, Escalation, and Race," *Law and Contemporary Problems*, p.227.

⁴⁴ Matthew J. Wilkins, (unknown), "Armed and Not Dangerous? A Mistaken Treatment of Firearms in *Terry* Analyses," *Texas Law Review*, p.1168

⁴⁵ Derrick Bell, ed. Jill Nelson (2000), "Police Brutality: Portent of Disaster and Discomforting Divergence," *Police Brutality: An Anthology,* W.W. Norton Company: USA, p.89.

year old Edward Garner whilst he was fleeing the scene of the home he broke into and stole from. He item he stole was worth \$10 and Garner paid for it with his life. This case is not dissimilar to Diallo; both were unarmed, both African American, and both shot dead. The case eerily foreshadows the death of Walter Scott in 2015, who was shot in the back by Officer Michael Slager whilst running away. Tennessee v Garner was a turning point for laws against police brutality but has not had the effect needed to prevent these deaths.

Tennessee v Garner was followed by Graham v Connor in 1988. DeThorne Graham was in the middle of an insulin reaction and looking for juice to counteract the effects of Type 1 diabetes. Having quickly walked in and back out of a store and driven away by his friend, Graham was pulled over by Officer Connor, questioned and handcuffed. Whilst in Connor's police car a message came over the radio regarding Graham's ownership of two legal handguns. Graham was refused orange juice initially – which would have helped sustain his sugar levels – and when the Officers allowed it they held his head back and poured it down. During the time it took the Officers to get Graham out of the police car, obviously doing this in an

⁴⁶ Victor E. Kappeler, (2013), "How objective is objective reasonableness Standard in police brutality cases?," *EKU Police Studies*, Available at: http://plsonline.eku.edu/insidelook/how-objective-%E2%80%9Cobjective-reasonableness%E2%80%9D-standard-police-brutality-cases (Accessed on 1.4th February 2018)

⁴⁷ Ibid.:

⁴⁸ Mythili Sampathkumar, (2017), "Walter Scott shooting: Former police Officer who shot dead unarmed black man as he ran away jailed for 20 years," *The Independent,* Available at: http://www.independent.co.uk/news/world/americas/walter-scott-shooting-verdict-policemansentence-jail-20-years-killing-black-man-a8098271.html (Accessed on 14th February 2018)

⁴⁹ Counsel of Record, (1988), *Dethorn Graham, Petitioner vs. M. S. Connor, et al., Respondents,* Available at: http://users.soc.umn.edu/~samaha/cases/graham_v_connor_tria_%20record.html (Accessed on 13th February 2018)

⁵⁰ Ibid.:

⁵¹ Ibid.:

aggressive manner, Graham had two broken bones in his foot. ⁵² Further to this injury Graham had a cut eye, cut wrists due to the tightness of the handcuff and had lack of movement in his right shoulder. ⁵³ Ultimately, the Supreme Court decided that a necessary amount of force was used and that each case needs an objective reasonableness standard applied. In this case the Court decided that the Officers were reasonable and in line with the Fourth Amendment and that due process had not been affected. Americans are now faced with conflicting and ambiguous rulings hinged around how reasonable the police Officers were, when the reasonableness becomes too violent as in *Tennessee v Garner*, and that Officers have the power to preemptively approach people to stop and frisk them. There is direct contradiction in the authority of the Officers in these cases and more needs to be done to re-construct the language used and reduce the power that Officers have on a case by case basis.

A key component to note of the *Graham v Connor* case is the fact that four Officers were present, Connor, Rice, Chandler and Matros. Four Officers were also present at the Diallo shooting. There is a pattern forming between number of Officers present and the fatality of African Americans. Firstly, this is unusual because the NYPD generally distributes two Officers per police car.⁵⁴ In fact, a study by Green and Kolesar in 1981 found that New York City had the capacity to decline from two Officers per car to one Officer per car as this had no effect on their response time – This study equated to the NYPD looking to implement this policy.⁵⁵ In fact, in 1996 Mayor Giuliani contemplated reducing the number of Officers

⁵² Counsel of Record, (1988), *Dethorn Graham, Petitioner vs. M. S. Connor, et al., Respondents,* Available at: http://users.soc.umn.edu/~samaha/cases/graham_v_connor_tria_%20record.html (Accessed on 13th February 2018)

⁵³ Ibid.

⁵⁴ Linda Green & Peter Kolesar, (1984), "The Feasibility of One-Officer Patrol in New York City," *Management Science*, Vol.30, pp.964-981.

⁵⁵ Ibid.: p.979.

completely down from the more than thirty-eight thousand Officers employed under the Safe Streets, Safe City initiative. Therefore financially and pragmatically it would be viable to change to a one-Officer patrol car, as found by Green and Kolesar and could enable a small reduction in the force, whereas Diallo (and Garner who was mentioned earlier) was faced with four Officers in one car. This is intimidating in itself and explains why Diallo, and other African Americans, have backed away or lacked the response that the Officers were looking for. What makes the number of Officers even more critical is the idea that semi-automatics were cast out across agencies based on those Officers who work in on their own and in desolate areas where back up is often miles away, not in New York City where Officers are in groups as large as four with back up close by. 57

Secondly, it is common that groups of people fuel aggressions and become enablers for violence. As Tamara Avant notes, "when people are part of a group, they often experience deindividuation, or a loss of self-awareness. When people deindividuate, they are less likely to follow normal restraints and inhibitions and more likely to lose their sense of individuality" and that "the bigger the mob, the more its members lose self-awareness and become willing to engage in dangerous behavior." It is often seen in cases of murder that there has been more than one perpetrator and this derives from the fact that people become less fearful and more arrogant when part of a group due to peer pressure or a need to appear superior and

⁵⁶ David Firestone, (1996), "News Analysis; Giuliani Credits Strategy For the City's Safer Streets," *The New York Times*, Available at: http://www.nytimes.com/1996/01/27/nyregion/news-analysis-giuliani-credits-strategy-for-the-city-s-safer-streets.html (Accessed on 7th February 2018)
⁵⁷ Lee P. Brown, (1992), *The Choice of Handguns for NYC Police Officers: Revolvers or Semi-*

⁵⁷ Lee P. Brown, (1992), *The Choice of Handguns for NYC Police Officers: Revolvers or Semi-automatics,"* Available at: https://www.ncjrs.gov/pdffiles1/Digitization/145560NCJRS.pdf (accessed on 21st January 2018)

Megan Donley, (2017), "Examining the Mob Mentality," *New and Noteworthy,* Available at: http://source.southuniversity.edu/examining-the-mob-mentality-31395.aspx (Accessed on 9th September 2017)

in control.⁵⁹ Another dynamic is that identity teaches us to become more positive towards those from the same identifier as us. When someone categorizes themselves as part of a particular group they have more of an affinity towards that group. You can see this retrospectively when looking at lynching cases: "common features of lynching cases include group participation in the death, which is motivated by twisted notions of justice or racial hatred."60 Many of the lynching cases that occurred had police Officers actively participating or, at least, spectating.⁶¹ A definitive example of this is in the case of Jesse Washington, who was a victim of lynching in 1916. Seventeen year old Washington, who suffered with mental and physical disabilities, was tortured, castrated, lynched, and burned on the town square in Texas. 62 Spectators, including the Mayor and the Chief of Police, watched on and a photographer took photographs, selling them as mementos, whilst his body parts were also sold on. 63 In the case of Diallo, the fact that there were four Officers, from the same ethnic group, means that the anxiety was heightened due to Diallo being from an out-group, adrenaline was heightened, the fight or flight decision affected more than one person and at least one of the Officers felt enough power, authority and arrogance to react to the situation with violence.

Although lynching had avid spectators, police brutality is a new form of lynching with Officers acting as on-site spectators and the media and white public acting as an off-site audience who do not believe the police are brutal or racist but

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⁵⁹ See cases such as *Melinda Loveless (1992), Chelsea Richardson and Susanna Toledano, Valerie*Parashumti and Jessica Stasinowsky etc.

Katheryn K. Russell, ed. Jill Nelson (2000), "What Did I Do to Be So Black and Blue?," *Police Brutality: An Anthology*, W.W. Norton Company: USA, p.143.

⁶¹ Ibid.: p.143.

⁶² Patricia Bernstein, (2005), *The First Waco Horror: The Lynching of Jesse Washington and the Rise of the NAACP*, Texas A&M University Press: USA, pp.3-192.

⁶³ Ibid.: pp.3-192.

believe they are just doing their job. The number of African Americans lynched from 1882-1968 equates to, on average, 40 per year in comparison to the 104 killed by police in 2015.⁶⁴ This reiterates that police brutality has not replaced lynching but is, in fact, the new lynching which is happening at a faster pace and with many more casualties.

More recently, in 2008, a further case went to the Supreme Court, that of *District of Columbia v Heller* which amplified the situation between police and citizens. *District of Columbia v Heller* declared that a Washington DC ban on handguns and declaration that rifles should be kept "unloaded and disassembled or bound by a trigger lock" violated the Second Amendment. This ruling is problematic because the more handguns owned by citizens, the more aware and cautious Officers may be at the thought of citizens having a weapon and, in turn, the more police shootings of citizens there will be. It is the fear of the unknown weapon that is at the heart of many of the cases of police brutality against African Americans, such as Diallo. That fear drives Officers to be more aggressive in the hopes that they will find handguns more quickly, even when there is no handgun to be found. *Heller* also proves that the legislation was not clear enough in the 1990s and that had an impact on all of the wrongful deaths of African Americans.

In the opening statements in Court the Defence Attorneys discussed the neighbourhood. Bennett Epstein, who defended Carroll stated that, "[Carroll] had a

⁶⁴ NAACP, (2018), *History of Lynching,* Available at: http://www.naacp.org/history-of-lynchings/ (Accessed on 7th February 2018)

Mapping Police Violence, (2018), Unarmed Victims, Available at:

https://mappingpoliceviolence.org/unarmed/ (Accessed on 7th February 2018)

⁶⁵ Luther College, (2017), *The Supreme Court and the Second Amendment,* Available at:

familiarity with that area of the Bronx" and that "the next block over...was... a street that was so rife with drug dealing that the police department had to close it off for a vear."66 This is the basis of the stereotyped neighbourhood – the Officers knew the area and based their approach to Diallo on this. As the Prosecutor of the case opened with, "in the 1990s in Bronx County, in Albany County, or anywhere else a human being should have been able to stand in the vestibule of his own home and not be shot to death, especially when those doing the shooting are police Officers."⁶⁷ The idea of the stereotypical neighbourhood can be seen recently in the Michael Brown case where Officer Darren Wilson testified that "there's a lot of gangs that reside or associate with that area. There's a lot of violence in that area, there's a lot of gun activity, drug activity, it is just not a very well-liked community. That community doesn't like the police"; this shows again that Officers base decisions on the stereotypes that they know including the neighbourhoods that they are in.⁶⁸ Ultimately, the Officers who shot at Diallo based their decision to stop on the ideology that Diallo must be a criminal because he was African American, based on racial profiling, and because of the neighbourhood he lived in - an embedded stereotype hinged on a perceived threat. Diallo was a victim of his own neighbourhood and whilst Officers need to stop or prevent threatening behaviour in neighbourhoods with a direct link to crime, they need to prevent targeting African Americans because of this.

⁶⁶ Ray Moses, (2012), *Opening Statements: The Amadou Diallo Killing*, p.1, Available on: http://criminaldefense.homestead.com/Diallo.html

⁶⁷ Ibid.:

⁶⁸ Rachel Clarke and Mariano Castillo, (2014), "Michael Brown shooting: What Darren Wilson told the Ferguson grand jury," *CNN*, Available at: http://edition.cnn.com/2014/11/25/justice/ferguson-grand-jury-documents/index.html (Accessed on 9th September 2017)

Racial profiling, which is the "discriminatory practice by law enforcement officials of targeting individuals for suspicion of crime based on the individual's race, ethnicity, religion or national origin," is another element of bias, as it perpetuates the idea that African Americans are dangerous, violent and aggressive.⁶⁹ Diallo was racially profiled because the Officers originally stopped the car as they thought he was a suspect in a rape that was committed the year before. 70 This gave the Officers probable cause, justifying their need to stop and question Diallo. Probable cause "allows warrantless search or arrest by a police Officer" and authorizes a decision that is made that there is "cause to suspect a crime is taking place or has taken place."⁷¹ Some form of justification proves that the initial stop was due to Diallo's skin colour and not through evidence and summarized by President Bill Clinton, "most people of all races believe that if it had been a young white man in a young all-white neighborhood, it probably would not have happened;" the fact that this comes from a President shows how much it was racially fuelled (although it should be noted that this could have been more of a political statement after the Lewinksi scandal and attempting to reconcile himself with the public during his last term).⁷² Martinot believes that a third application of racial profiling was used with Diallo and "in the absence of an attitude of obeisance, he was assumed to be reaching for a gun."73 These justifications are made due to the combination of snap judgments and racial profiling and explanations, or excuses, are made to establish probable cause. Racial profiling, more often than not, targets

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⁶⁹ American Civil Liberties Union, (2017), *Racial Profiling: Definition*, Available at: https://www.aclu.org/other/racial-profiling-definition?redirect=racial-justice/racial-profiling-definition (Accessed on 9th September 2017)

⁷⁰ Sidney L. Harding, (2000), "The Diallo Verdict: Another Tragic Accident in New York's War on Street Crime?," *Social Justice*, Vol.27, No.1, p.9.

⁷¹ Steve Martinot, (2003), "The Militarisation of the Police," *Social Identities*, Vol.9, No.2, p.208.

⁷² Mark Peffley & Jon Hurwitz, (2010), *Justice in America: The Separate Realities of Blacks and Whites*, Cambridge University Press: New York, p.2.

⁷³ Ibid.: p.205.

African American men, and studies have found that shooter bias is directed more so at males over females which is reflected in real-life situations too.⁷⁴

The difficulty is proving that incidents have occurred because of racial profiling. In a precedent set by City of Los Angeles v. Lyons, which is used in most racial court cases, the plaintiff must "credibly allege that he faces a realistic threat from the future application of the City's policy."⁷⁵ In other words, African Americans must prove that there is a repeated pattern of abuse and that there is a threat of future injury; Diallo did not get the chance to do that because the Officers took his life instead. This is because the Lyons precedent refused to consider that race was one of the causes for the police's actions. The court decided that "race cannot be a motivating factor in a state decision."⁷⁶ Lyons was stopped by City police for a broken tail light; he was later choked until he was unconscious.⁷⁷ In their decision the Courts did not outline that Lyons was African American; they also did not mention that twelve others who were African American were killed through the chokehold.⁷⁸ Routine traffic stops are undeniably racially motivated as African Americans are stopped due to suspicion. In 2011, thirteen per cent of those stopped were African American, six per cent of African Americans stopped were searched, and sixty-eight per cent believed they had been pulled over for legitimate reasons.⁷⁹ Linked to the Lyons decision of basing actions on what a reasonable Officer would

⁷⁴ Kimberly Barsamian Kahn & Jean M. McMahon, (2015), "Shooting Deaths of Unarmed Racial Minorities: Understanding the Role of Racial Stereotypes on Decisions to Shoot," *Translational Issues in Psychological Science*, Vol.1, No.4., p.314.

⁷⁵ Brandon Garrett, (2000), "Standing While Black: Distinguishing "Lyons" in Racial Profiling Cases," *Columbia Law Review,* Vol.100, No.7, p.1820.

⁷⁶ Ibid.: p.1831.

⁷⁷ Ibid.: p.1817.

⁷⁸ Ibid.: p.1817.

⁷⁹ Bureau of Justice Statistics, (2017), *Traffic Stops,* Available at: https://www.bjs.gov/index.cfm?ty+tp&tid=702 (Accessed on 9th September 2017)

do, is that the people in these sorts of cases are generally from poor, racial minorities and are automatically at a disadvantage and therefore "police have a natural advantage of credibility [which] diminishes the risk of being sanctioned." This echoes the Diallo case as Diallo was an African American immigrant and was automatically at a disadvantage to the four Officers of the Street Crimes Unit, who appeared more credible than the victim who could not stand up for himself.

Another factor that needs to be considered is that racial profiling fuels implicit bias; the more an individual who is African American is routinely stopped for frivolous explanations the more they fear the police, the more they fear the police the more nervous they get, the more nervous they get the more they are stopped by the police. Furthermore, the pattern seems to consist of a routine stop escalating into physical abuse or death for African Americans. As Martinot expresses "because racial profiling has become a social issue, most black people now think in terms of being stopped, whether they are or not, while most white people think of profiling as a sensible way of dealing with a crime problem." This obviously feeds into identity — how people associate with other groups and how they self-identify — and the theory of a cycle of police brutality and racism. New legislation needs to be put in place to expand on *Lyons* where racial profiling is accepted as a threat, recognizing race as a key indicator of stop and frisk searches so that the cycle of police brutality does not continue.

⁸⁰ Nicholas J. Johnson, (2017), "Lawful Gun Carriers: License, Escalation, and Race," *Law and Contemporary Problems*, p.216.

⁸¹ Steve Martinot, (2003), "The Militarisation of the Police," *Social Identities*, Vol.9, No.2, p.209.

What made this case stand out was the sheer number of shots fired at Diallo. In order to understand why forty-one shots were fired, the type of weaponry used by police must be scrutinized. There is a consistent debate regarding revolvers versus semi-automatic handguns. Revolvers are less expensive to manufacture than semiautomatic handguns; they hold on average six rounds and, according to the University of Utah, they are more reliable than semi-automatics but it takes longer to reload them.⁸² Alternatively handguns were originally created for self defence as they are compact but are also considered dangerous for this reason (easily concealable weapons are the reason so many unarmed African Americans become targeted by police as they assume the worst). 83 The original weapon of choice for many police departments was the Smith and Wesson, an American brand and manufacturer. The first Smith and Wesson was made in 1952 and the brand has supplied U.S. troops in every war since the Civil War.⁸⁴ This is where we begin to see a direct link between the Army and the Police. Interestingly, in 2013 the Los Angeles Police Department went back to using a Smith and Wesson M&P 9 which is now their gun of choice.⁸⁵ Originally based on John Browning's iconic Colt model 1911A government 45 and the Browning Hi Power 9mm, many semi-automatics are designed to hold between fifteen and nineteen rounds, with an efficient cartridge release and reload, resulting in quicker shots fired. 86 Semi-automatic weapons were

⁸² The University of Utah, (2017), "Anatomy of Firearms," *The Internet Pathology Laboratory for medical Education*, Available at:

https://library.med.utah/WebPath/TUTORIAL/GUNS/GUNANAT.html (Accessed on 15th February 2018)

⁸³ Ibid.:

⁸⁴ Criminal Justice Degree Hub, (unknown), *What are the Most Popular Guns used by Law Enforcement Professionals,* Available at: https://www.criminaljusticedegreehub.com/popular-gunsfor-law-enforcement/ (Accessed on 22nd January 2018)

⁸⁶ The University of Utah, (2017), "Anatomy of Firearms," *The Internet Pathology Laboratory for medical Education*, Available at:https://library.med.utah/WebPath/TUTORIAL/GUNS/GUNANAT.html (Accessed on 15th February 2018)

introduced in the 1980s in order to parallel the superior weapons on the streets — "gun-makers responded [to increased superior weaponry] by producing myriad weapons chambered in multiple calibers, allowing [Law Enforcement] agencies options for what their Officers would carry" — and also in a response to the apparent War on Drugs which began the militarization of the police. ⁸⁷ In 1997 President Clinton introduced the National Defense Authorization Act which authorized the siphoning of military equipment to police departments. ⁸⁸ This paralleled the increase in handgun production from 28% in 1973, to 46% in 1985 and almost doubling in 1993 to 83%. ⁸⁹ Semi-automatic weapons load differently — when the trigger is pulled "it will shoot, eject, load but not shoot again." ⁹⁰ In other words semi-automatics will re-cock immediately in order to shoot straight away, one bullet after the other, not needing as much pressure to shoot. ⁹¹ This means that the weapon is ready to go and is easier and faster to use. Most semi-automatics need full metal jacket bullets in order to help with pushing each round through its chamber — the force of which increases their speed and power having a greater tendency to penetrate targets; once

⁸⁷ Donald J. Mihalek, (2014), "Big 10 Protection: Duty Guns of America's Largest Police Departments," *Examining the Duty Guns Cops Carry in America's 10 Largest Police Departments,* Available at: https://www.tactical-life.com/firearms/big-10-protection-duty-guns-americas-largest-police-departments/ (Accessed on 21st January 2018)

Bret McCabe, (2015), "Does the militarization of the American police help them serve and protect?," Johns Hopkins Magazine, Available at: https://hub.jhu.edu/magazine/2015/spring/aclumilitarization-of-police/ (Accessed on 21st January 2018)

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⁸⁹ D C Reedy & C S Koper, (2003), "Impact of handgun types on gun assault outcomes: a comparison of gun assaults involving semi-automatic pistols and revolvers," *Injury Prevention*, p.151.

⁹⁰ Detective Stephen Walsh, Ben Steele (Director), (2018), "Killer with a Camera," *Love and Hate Crime*, Series 1, Episode 3, BBC Iplayer, Available at:

https://www.bbc.co.uk/iplayer/episode/p05ty33h/love-and-hate-crime-series-1-3-killer-with-a-camera# (Accessed on 14th February 2018)

⁹¹ D C Reedy & C S Koper, (2003), "Impact of handgun types on gun assault outcomes: a comparison of gun assaults involving semi-automatic pistols and revolvers," *Injury Prevention*, p.151.

again putting into question why forty-one shots were fired at Diallo. 92 The NYPD, at the time of the Diallo shooting were using semi-automatic firearms, although it is not known which specific weapons were used to shoot him as each Officer bought their own guns from three options. 93 These semi-automatic weapons had rounds ready to be fired, and full metal jackets to help push the rounds through; these weapons should not be used for stop searches and forty-one shots were fired because they were so easy to use. Former NYC Police Commissioner Lee P. Brown issued a document, The Choice of Handguns for Police Officers, Revolvers or Semi-Automatics, in strict opposition of semi-automatics. In his view semi-automatics "may increase the danger to both police Officers and bystanders...the increase in number of rounds fired...would endanger innocent bystanders and police Officers" in comparison to the .38 revolver. 94 According to Brown his research suggests that in the first year that semi-automatics were issued to Officers, forty-three rounds were fired in just four incidents, averaging more than ten rounds per incident.⁹⁵ Other evidence showed that plainclothes Officers with semi-automatics fired fifty-nine rounds in seven incidents, on average more than eight rounds per incident and in comparison to rounds fired from a .38 caliber revolver, more than double. 96 It is easier and quicker to fire a semi-automatic, which is useful when an Officer is in a

⁹² Lee P. Brown, (1992), *The Choice of Handguns for NYC Police Officers: Revolvers or Semi-automatics,"* Available at: https://www.ncjrs.gov/pdffiles1/Digitization/145560NCJRS.pdf (accessed on 21st January 2018)

⁹³ Marilynn S. Johnson, (2003), *Street Justice: A History of Police Violence in New York City,* Beacon Press: Massachusetts, p.297.

Donald J. Mihalek, (2014), "Big 10 Protection: Duty Guns of America's Largest Police Departments," Examining the Duty Guns Cops Carry in America's 10 Largest Police Departments, Available at: https://www.tactical-life.com/firearms/big-10-protection-duty-guns-americas-largest-police-departments/ (Accessed on 21st January 2018)

⁹⁴ Lee P. Brown, (1992), *The Choice of Handguns for NYC Police Officers: Revolvers or Semi-automatics,"* Available at: https://www.ncjrs.gov/pdffiles1/Digitization/145560NCJRS.pdf (accessed on 21st January 2018)

⁹⁵ Ibid.:

⁹⁶ Ibid.:

threatening situation with weapons, but in everyday situations African Americans are being killed because it is easy to pull the trigger. Another factor that must be considered is that there is a tendency in firearms literature to discuss the accuracy of the weapon, which is obviously a key component of why law enforcement chooses certain weapons. 97 However, the fact that the weapons used have high accuracy pinpoints the excessive force used in the Diallo case and the incompetence of the Officers who chose to fire a multitude of shots with what would be considered accurate weapons. A firm decision was made by the Officers to repeatedly pull the trigger, using an accurate weapon, and empty them to kill Diallo. The accuracy of the weapon ensured that Diallo died through excessive fire and shows that the bullet wounds through Diallo's feet and those done post-mortem were no mistake. There was absolutely no need for forty-one shots to be fired at one person and this was a deliberate strategy on police to gain control and abuse their power, and in line with evidence that these weapons cause Officers (especially those in plainclothes) to shoot more. Diallo became victim to the semi-automatic weapons that in this case were just not needed.

When describing the NYPDs use of weapons, Donald J Mihalek calls them the "fourth-largest army in the world" and Johnson explains, "Police perceive themselves as being in a war zone or where they proceed with an 'us against them' mentality." Furthermore, Assembly Bill #9932B authorized a large scale roll out of

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⁹⁷ See literature at Criminal Justice Degree Hub, (unknown), What are the Most Popular Guns used by Law Enforcement Professionals, Available at:

https://www.criminaljusticedegreehub.com/popular-guns-for-law-enforcement/ (Accessed on 22nd January 2018)

⁹⁸ Donald J. Mihalek, (2014), "Big 10 Protection: Duty Guns of America's Largest Police Departments," *Examining the Duty Guns Cops Carry in America's 10 Largest Police Departments,* Available at: https://www.tactical-life.com/firearms/big-10-protection-duty-guns-americas-largest-police-departments/ (Accessed on 21st January 2018)

semi-automatics to police agencies with over 1200 Officers. ⁹⁹ Unfortunately what the NYPD fails to realize is that there is not supposed to be an on-going civil war, they are mirroring an army in a place where it is not needed and where innocent African American lives are being taken due to this aggressive style of policing and the use of semi-automatics in regular stops. As the police become more militarized, there becomes more consistency in police arrests going 'wrong' when the suspects are African American. This over-militarization of the police has also resulted in some states, like California, providing semi-automatic rifles to police Officers who are on patrol. ¹⁰⁰ Where do we draw the line? If the police consistently become more militarized we will begin to see scenes like that of Birmingham, Alabama in 1963, except instead of dogs and hoses we will see machine guns and grenades.

It is not just the type of weapons that the police are using that needs to be considered but also the way in which they use them. Diallo was shot at forty-one times because the police felt they could. As Bell suggests, "There is a long history of de facto authorization for police to keep Blacks generally and Black men most specifically in the subordinate place that society approves and the law condones." The police are often going to be faced with difficult decisions where their judgment comes into play; however, the license to kill paradigm takes place when they are met with African Americans. This license is different to everyday gun holders as it is exacerbated; police are allowed to "draw guns, point guns and fire guns in a wide

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Nicholas J. Johnson, (2017), "Lawful Gun Carriers: License, Escalation, and Race," Law and Contemporary Problems, p.229.

⁹⁹ Lee P. Brown, (1992), *The Choice of Handguns for NYC Police Officers: Revolvers or Semi-automatics,"* Available at: https://www.ncjrs.gov/pdffiles1/Digitization/145560NCJRS.pdf (accessed on 21st January 2018)

¹⁰⁰ Nicolas Brooklier, (2015), "The Increasing Militarization of America's Police Forces: Form of Oppression or a protection for Society?," *Law and Justice in Real Tim.*

Derrick Bell, ed. Jill Nelson (2000), "Police Brutality: Portent of Disaster and Discomforting Divergence," *Police Brutality: An Anthology,* W.W. Norton Company: USA, p.92.

range of circumstances that far exceed the boundaries of traditional self-defense."¹⁰² In turn, this license allows Officer's to have autonomy with their decisions to shoot as there are no structured rules for when to aim or shoot weapons.

In 1978 James Q. Wilson studied how policing uses varying levels of license with which to use violence in resulting in a discretionary practice of independent decisions to use violence in any given situation. ¹⁰³ Barbara Armacost equally looked at this sense of license and found that "street level police operate under more ambiguous and less precise rules than other low-level employees. Day-to-day decisions that police Officers make...are determined more by the informal norms of street-level police culture than by formal administrative rules." ¹⁰⁴ In line with this Waldoff, Litchfield and Matthews argue that, "despite Officers' strong professional identities, they must contend with the fact that they belong to other groups that can exert strong and conflicting pulls on their views." ¹⁰⁵ Officers are faced with a multi-dimensional identity where their police identity gets loosened to what they consider cultural norms in the environments that they are policing so this license to kill is used more and more.

Equally problematic is the fact that police Officers are explicitly void of consequences with regards to use of force state rules, dependant on different state law, which makes them exempt from being punished for certain criminal offenses. 106

¹⁰² Nicholas J. Johnson, (2017), "Lawful Gun Carriers: License, Escalation, and Race," *Law and Contemporary Problems*, p.216.

¹⁰³ Ibid.:

¹⁰⁴ Ibid.:

¹⁰⁵ Rachael A. Woldoff, Robert C. Litchfield & Angela Sycafoose Matthews, (2017), "Unpacking Heat: Dueling Identities and Complex Views on Gun Control among Rural Police," *Rural Sociology*, p.445. ¹⁰⁶ Nicholas J. Johnson, (2017), "Lawful Gun Carriers: License, Escalation, and Race," *Law and Contemporary Problems*, p.213.

New York State Law states, "Only that amount of force necessary to overcome resistance will be used to affect an arrest or take a mentally ill or emotionally disturbed person into custody," however Article 5 of the New York Penal law suggests that "defining justifiable use of force, conduct which would otherwise constitute an offense is justifiable and not criminal when...such conduct is...performed by a public servant in the reasonable exercise of his official powers, duties or functions." The ambiguous language of reasonable exercise allows Officers a degree of flexibility when deciding when to use force, and who to use it on. It also crucially conflicts with the Supreme Court cases, therefore, there needs to be a singular explanation for the use of force, when it is condoned and the consequences of using it.

This legitimizing of police brutality through a license to kill is present through an unwritten code of police etiquette seen in the twenty-one foot rule. This is not a set rule which has been established by police but it is a perception of license that is a way of aggressive policing without consequences. The twenty-one foot rule first came into police language in a 1983 article written by Dennis Tueller, an Officer in the Salt Lake City Police. Basing his findings on experiments with a lack of structure and competence conducted by himself, Tueller came to the conclusion that "an attacker could cover twenty-one feet in the time it took most Officers to draw and fire their weapon." Clearly this ricocheted throughout police

¹⁰⁷ Christopher Dunn, (2016), "Column: Police Use of Force, the Constitution and the New NYPD Policy (New York Law Journal)," *New York Civil Liberties Union,* Available at:

https://www.nyclu.org/en/publications/column-police-use-force-constitution-and-new-nypd-policy-new-york-law-journal (Accessed on 7th February 2018)

Nicholas J. Johnson, (2017), "Lawful Gun Carriers: License, Escalation, and Race," Law and Contemporary Problems, p.213.

¹⁰⁹ Ibid.: p.213.

departments creating a sense of fear; this fear then translated into further aggressive behaviour at a faster pace creating this cycle of police brutality that we see time and time again. Crucial to this spreading through the academies was a 1988 training video given to police on the twenty-one foot rule. Former Chief of Police for Philadelphia and Miami, John Timoney explained, "somehow the [twenty-one foot] idea got corrupted" and the 'kill-zone' was created. This is also contradicted by the weapons that are used, as the Smith and Wesson M&P Shield, which was previously mentioned, has "excellent accuracy out to 25 yards." It has become part of police culture – "handed down informally from one Officer to another, or mentioned in training over the generations" - and, as such, perpetuates police brutality. The police culture is perpetuated by Officers seeing and hearing fellow Officers using the twenty-one foot rule, or shooting unarmed African Americans, and not being punished for it, which in turn maintains and spreads police brutality. If Officers can shoot African Americans and be exonerated for doing so, then their license to kill seems even more acceptable.

The underlying reason behind Tueller's experiment was the understanding that police would be in a disadvantageous position if they were within twenty-one feet of a suspect, however there is little literature to show why this is and no stronger experiments have been done to support the findings. The issue is that this gives police the license to become more violent when they feel a person is too close to

¹¹⁰ Nicholas J. Johnson, (2017), "Lawful Gun Carriers: License, Escalation, and Race," *Law and Contemporary Problems*, p.213.

¹¹¹ Ibid.: p.213.

¹¹² Tactical Life, (2013), *Top Guns and Weapons for Law Enforcement Duty Guns,* Available at: https://www.tactical-life.com/firearms.tio-10-guns-weapons-for-law-enforcement-duty-guns (Accessed on 16th February 2018)

¹¹³ Nicholas J. Johnson, (2017), "Lawful Gun Carriers: License, Escalation, and Race," *Law and Contemporary Problems*, p.214.

them, which increases the likelihood of police shooting African Americans. This is best summarized by Johnson who states, "police response in these cases is that Officers did nothing wrong. This response can be understood as a function of license – a statement of fact that police, by assignment and training, are allowed and can be expected to escalate violence." Police culture also teaches that "de-escalating and disengaging tactically are sometimes seen as antithetical" so police overcompensate to prove that they are powerful, authoritative and unafraid to use their license to kill. 115

This police culture also establishes a competitive streak where Officers want to be seen to be the person who takes charge and resolves the situation. 116 This competitiveness which leads to aggressive policing is embedded in police culture, not specifically taught, but once again, passed down through generations; in order to overcome this the competitiveness needs to be emphasized on the amount of arrests made that lead to a conviction rather than the ability to de-escalate a situation which more often than not results in escalation, and death of the suspect. This sense of community and police culture explains why so many are not held accountable for their actions and not brought to justice; Officers stick by each other and this results in a hush culture, meaning Officers are seen to be justified in their actions in order to remain and be supported as part of that community in the future. Coupled with this, Armacost discovered that Officers work within a command structure whereby they have to aggressively identify themselves alongside aggressive investigation, resulting in high confrontation, which links back to *Lyons*; due to this identity with

¹¹⁴ Nicholas J. Johnson, (2017), "Lawful Gun Carriers: License, Escalation, and Race," *Law and Contemporary Problems*, p.222.

¹¹⁵ Ibid.: p.223.

¹¹⁶ Ibid.: p.223.

aggressive policing, Officers have a sense of justification that they have done nothing wrong, but were following rules or using their license. 117 This falls in line with the fact that as an Officer you are more aware of how situations can turn, and the likelihood of coming across danger is exacerbated; this creates what Jeremy Skolnick defines as "heightened police sensitivity" meaning that their license to kill combined with their aggressive policing style and ability to act preemptively results in further violence. 118 When discussing police license, Johnson notes "police" commonly make the first move to violence...This necessary discretion to act preemptively is just another way of describing escalation, which is an inherent part of the police assignment." However, when thinking about situations that police Officers find themselves in, there has to be a differentiation put in place between aiming a gun at a known armed suspect (i.e. the gun is in clear view), which should not be defined as escalation but should come under an Officer's job role, and aiming a gun, or in Diallo's case four guns, at someone who is not an immediate threat and does not have a weapon in their hand. It is in this situation when, arguably, the license has taken on a new format, and the Officer is no longer preemptively working towards escalation but when an Officer is choosing to escalate a situation because the Officer feels he can. Diallo was not an immediate threat to the Officers, he was not armed, and therefore the Officers did not need to escalate the situation by shooting at him forty-one times.

Tactics used in hostage situations could easily be applied to crime units dealing with potential suspects on the street, to avoid the escalation. Using particular

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¹¹⁷ Nicholas J. Johnson, (2017), "Lawful Gun Carriers: License, Escalation, and Race," *Law and Contemporary Problems*, p.223.

¹¹⁸ Ibid.: p.224.

¹¹⁹ Ibid.: p.224.

language and asking more questions could help resolve the issue without it turning violent. This obviously would not work in all circumstances but could be a step in the right direction to prevent wrongful police shootings of African Americans and may have prevented the death of Diallo. Ultimately, police Officers who patrol the streets have less strict rules and have a sense of autonomy when it comes to their actions; this begins to explain why Officers are over-zealous when it comes to African Americans and the brutality that follows them. When it is claimed that Officers shot because they mistakenly thought the suspect was armed, this is more so to do with a license to draw their guns quicker and not have to deal with the consequences, and also to maintain credibility.

Lynch suggests that the Diallo case was the "worst case scenario of a dangerous and reckless style of policing" and that "policymakers should dispense with confrontational stop-and-frisk tactics before more innocent people are injured or killed." Six years later, another victim fell to the racial profiling and the confrontational police style synonymous with American police. Sean Bell had left a nightclub in November 2006, and undercover police thought Sean and his friends had a gun. The police pursued Bell and approached the car Bell was in; the Officers opened fire and fifty bullets were discharged, killing Bell. 122 Officer Isnora testified that he believed the men were planning a drive-by shooting; Officers had no

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¹²⁰ Timothy Lynch, (2000), "'We Own the Night' Amadou Diallo's Deadly Encounter with New York City's Street Crimes Unit," *Cato Institute Briefing Papers*, No. 56, p.1.

Molly McCloy, (2008), Sean Bell Research Project, Available at:

http://www.eportfolio.lagcc.cuny.edu/scholars/doc_fa08/eP_Fa08/Pablo.Avila/documents/HUP102 /Sean%20Bell%20Research%20Project.doc (Accessed on 9th September 2017) lbid.:

evidence of this and after the incident it was clear that the men were unarmed. 123 The similarities to the Diallo case are unbelievable; the amount of shots fired, the fact that the Officers were in plain clothes, the confusion over whether the Officers announced that they were police and the assumption that an African American had a weapon. This shows that implicit and explicit bias still has a place in society, when every effort should be made to reject these biases and to create more shared identities. It also shows that the police have not learned from their previous mistakes and that their aggressive style of policing is continuing the cycle of police brutality and African American deaths at the hands of the police.

In 2014, 17-year-old Laquan McDonald was fatally shot by the police in Chicago, proving that police brutality is not confined to one location. In October 2014 a white Officer fired sixteen shots at McDonald as he attempted to get away from them with a small knife in his hand. The police dash-cam filmed the incident for a period of 15 seconds; 13 seconds of which McDonald was on the floor. This puts into question the amount of rounds being fired by police; if one Officer can fire 16 rounds and have a suspect on the floor within 2 seconds, then four Officers shooting a total of 41 rounds at one target means that Diallo should have been knocked down quicker than the Officers stated but also shows why Diallo died – if 16 rounds killed McDonald then 41 shots for Diallo was beyond extreme and unnecessary. Police training outlines that they should only shoot when they are in

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¹²⁵ Ibid.:

¹²³ Joseph Goldstein, (2011), "Detective Tells of Fatal Shots Fired at Car," *The New York Times*, Available at: http://www.nytimes.com/2011/10/27/nyregion/detective-tells-of-decision-to-fire-at-sean-bells-car.html (Accessed on 9th September 2017)

Annie Sweeney & Jamie Meisner, (2017), "A moment-by-moment account of what the Laquan McDonald video shows," *The Chicago Tribune*, Available at:

http://www.chicagotribune.com/news/ct-chicago-cop-shooting-video-release-laquan-mcdonald-20151124-story.html (Accessed on: 6th September 2017)

fear for their lives or believe the suspect to be a risk to others; they are supposed to shoot until they have stopped the target from causing harm and to aim for the centre of the body. 126 The idea of firing until a target has been stopped from causing harm is ambiguous but it seems to be interpreted as firing until that target is dead. Diallo was shot 41 times, which was more than enough to stop the target, and ended up killing him. The Officers failed to shoot solely at his body as bullets penetrated his feet. Officer Jason Van Dyke hit McDonald once at the top of his head, twice in the legs and eight times in his arms, leaving just five bullets to hit him in the body where training tells Officers to fire. 127 This displays Officers that are out of control, not behaving as their training tells them to but being driven by other factors such as loose legislation that allows for ambiguity.

Decades after the death of Diallo the police should understand where, when and how to fire their advanced weapons to deal with everyday scenarios that they are constantly going to be in. There needs to be further understandings of identity and how they are perceived by the public but they also need to stop being 'trigger happy' to prevent further innocent deaths in the future. The semi-automatic weapons that Officers have are clearly needed in line with the weapons that they are faced with in the line of duty. However, it is the way in which the Officers use these weapons that is the issue and there needs to be stronger consequences for shooting and killing unarmed African Americans. Unless Officers are reprimanded severely and appropriately for causing the deaths of unarmed African Americans then they will

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¹²⁶ Michael Cooper, (1999), "Officers in Bronx Fire 41 Shots, And an Unarmed Man Is Killed," *The New York Times*, Available at: http://www.nytimes.com/1999/02/05/nyregion/Officers-in-bronx-fire-41-shots-and-an-unarmed-man-is-killed.html (Accessed on 5th September 2017)

Office of the Medical Examiner County of Cook, *Laquan McDonald*, Available at: https://media2.fdncms.com/chicago/imager/u/original/18608008/screen_shot_2015-08-07 at 12.46.39 pm.png (Accessed on 9th September 2017)

carry on doing so because they feel that they have the power to do so and they know there will be no consequences. Legislation needs to be strengthened and less ambiguous, putting the onus on Officers to justify their actions further and deescalating the situation rather than aggressively approaching the situation which leads to devastation and ensuring that they are charged with a crime if they kill an unarmed, innocent suspect.

More needs to be done in the way of preventing in-group bias and ensuring that patrols consist of a smaller amount of Officers so as to not be prone to the competitiveness and psychological link between particular groups of people and to also not appear so threatening and intimidating in everyday meetings with the public. Finally under no circumstance should one unarmed person be shot at forty-one times. The cyclical nature of police brutality is apparent through the clear comparisons between Diallo, previous cases and contemporary cases. Although Diallo is a well known case, it is crucial to see that he is part of a bigger movement and that nothing has changed from the Civil Rights Movement of the 1960s to today. The Civil Rights Movement undoubtedly did not end in the 1960s but still needs to be discussed as a contemporary movement with tangent groups such as the Black Lives Matter movement. This cycle needs to be broken for African American men like Diallo to have a fair chance at life.

Conclusion

Police brutality has long been a part of policing across the U.S. The lack of a consistent definition for police brutality and use of force only exacerbates the issue. There needs to be an unambiguous definition, such as those used throughout this research, so that people, including law enforcement officers, know where they stand. Three interdependent factors play a fundamental role in continuing police brutality and the constant cycle of abuse; implicit bias, inadequate training for police departments, and weaponry. The case studies discussed cannot be treated in isolation, but serve to demonstrate the interdependency and are another episode in the history of police brutality that has plagued African American society. Not much has changed since Martin Luther King Jr. and Malcolm X were protesting for civil rights and legislation in the 1960s, and more needs to be done to prevent the deaths of unarmed African Americans. The 1990s was not a period in time where police brutality got worse, but it is part of the ongoing Black Freedom Struggle, and Don Myrick, Jonny Gammage and Amadou Diallo are only part of the story, which continues today.

Implicit bias has an impact on how an officer does their job, as it racially impacts situations and reinforced negative perceptions of African Americans. It forms the stereotypes that underpin our actions and results in police brutality. Alongside politics, implicit bias can be a powerful thing; the War on Drugs established a negative attitude towards African Americans. As police upped their aggressive policing style to target the War on Drugs, African Americans fell victim to it which resulted in the deaths of people like Myrick. Furthermore, the War on

Drugs reaffirmed the stereotypes associated with African Americans, which, in turn, created a cycle of implicit bias. There have been a number of studies which have shown that officers are open to implicit bias; Correll *et al.* established through many studies that people, including law enforcement officers, will shoot unarmed African American targets at a high rate, and that they would fail to shoot white armed targets more than armed African Americans. In real-life situations, with the addition of adrenaline, fear and tension, this has a negative effect and results in a continuous cycle of police brutality.

In addition, implicit bias affects snap decisions, which officers are forced to make consistently. With an implicit bias which automatically assumes the worst of African Americans, and a short amount of time to make decisions, the result is an over-zealous and over-aggressive policing style. Implicit bias creates confusion for officers, who in quick succession need to decipher whether a suspect is aggressive or scared, dangerous or confident. These snap decisions can result in Officers making difficult and incorrect decisions, where lives are lost.

Racial profiling is rife and stop-and-frisk searches do not help with this issue. Racial profiling is another type of implicit bias, and adds to the conflict between the police and African Americans. The use of training on racial profiling is crucial to an officer understanding their own actions and attitudes. In the time that an officer has, they need to get as much detail about a person as possible before making decisions that could harm that person. In Amadou Diallo's case, the reason he was stopped first and foremost was because of racial profiling — an African American, in a 'bad' neighbourhood, who may or may not have been a criminal. The IAT tests can help to

control this racial profiling, and if someone acknowledges that they may struggle with racial profiling they can take steps to try and avoid it.

Identity and perception play a big role in implicit bias – how an officer identifies, whether that be as a white American, an African American, or a blue American, can determine how they react to others. How an officer perceives someone else can rule how they treat them too. If an officer perceives someone through an implicit bias, which would align African Americans with a negative stereotype, then that officer is more likely to react aggressively towards that person. Alternatively, if an officer perceives a neighbourhood to be particularly bad, the officer is more likely to react aggressively in order to control that neighbourhood. More often than not the neighbourhoods that are perceived as threatening and bad are African American. This is why so many African Americans die at the hands of the police every year.

One way to resolve the issue of implicit bias is to roll out Implicit Association Tests to all officers. This can be done when they are on their first training courses, but also as an on-going method to monitor for any bias that may form in the future as well as the bias that is already present. Although Correll suggested that making officers complete these tests could have an alternative effect, and make them more aware of their biases which would make them act on those biases, it should be considered that the majority of people would react well to adjusting their bias through understanding it. The IAT tests should be conducive to eradicating any stereotype about a person or neighbourhood and, as such, the tests should use various targets and various neighbourhoods, in no particular order. If an

officer is shown armed African Americans in what could be perceived as dangerous neighbourhoods, then the officer is more than likely going to create an implicit bias towards them. Every time an officer completes an IAT they should be shown different sets of criteria, in as many different ways as possible to alleviate any bias that may form through doing the test.

Training is inadequate to prepare officers for real-life situations on the streets, with real people. The chokehold technique should be banned across the U.S. as no good can come of restricting someone's airway and too many African Americans have already died because of this technique, including Jonny Gammage. This is not to say that police officers deliberately choke African Americans to death, and in situations where tensions run high you can understand an officer's need to try and restrain a suspect, but there are other ways of doing so.

Another loophole in the training of American police officers is that there is no consistent training for all forces. Training is separated into In-house, regional and state and each department decides which way they want their training to be delivered. If there is no standardised training, then it can be deduced that officers will react differently to situations as they have been taught differently. You cannot expect two doctors to give the same diagnosis if they have had different training and the same can be said about law enforcement training. There should be a basic standard that all officers have to reach; ideally there would be a state academy that would teach the standardised training and then officers would have to complete In-house training to make them more knowledgeable.

The number of hours spent on each module for each police department needs to be addressed as this is not adequate for any officer. There is an over-emphasis on firearms training, with far too many hours being dedicated to that above other important training techniques. Much more emphasis is needed on ethics and use of force training so that officers have a better understanding of what to do in these circumstances. By reducing the hours of firearms training, there would be little effect to the experience that officers have of using firearms as most officers will already have a basic understanding of firearms before joining the force. Furthermore, with fewer hours spent on firearms training officers will not automatically reach for their weapons in all circumstances; this would drastically reduce the numbers of African Americans shot by police. What is most critical from the research is the lack of focus on training outside of firearms training. Moving forward there is room for scholars to complete a deeper analysis of training techniques and how these affect an officer's decision-making. The sheer amount of research on firearms training confirms that too much emphasis is placed on it and that more needs to be done to look at other techniques.

As an alternative to firearms training, courses such as martial arts defence training and negotiation skills training should be considered. By teaching officers the art of self defence, once again, they would be deterred from automatically reaching for their weapons when they feel threatened and this could result in fewer people being injured or dying from police fire power. Not only this, but the officers can gain the confidence to deal with people that they consider might be, but not definitively, dangerous in a way that is less aggressive, and they would have more control over the person and the situation. Another method to be used is negotiation skills, like

those used in hostage situations. In a hostage situation, the officer wants to gain control by using negotiation to reduce or remove the threat without causing reckless and dangerous actions to happen to the person who has been taken hostage. By using negotiation skills, an officer has much more control over the situation and is not acting defensively. It could also mean that the officer does not need to fire his weapon at all. These techniques should not completely take over from firearms usage, as an officer's role is very dangerous at times, but could help to prevent the deaths of unarmed African Americans. By using negotiation skills and martial arts techniques the officers could establish that a person was unarmed without killing them first.

This research has identified the lack of accountability of officers and this needs to be challenged. In most of the cases that were looked at the officers were not held accountable for killing an unarmed African American. This is simply not acceptable. In any other profession, bar the military, a person can be held accountable for causing the death of another person. Officers are not above the law. When an unarmed African American is killed by an officer, that officer must be independently investigated and, where necessary, taken to court and punished. In support of making officers more accountable there is a need to ensure that officers report when they have drawn their weapon, when they have fired their weapon and when they have used a defensive technique. This will make officers more accountable for their actions and will also not pass down negative behaviour to other officers through police culture or identity.

Weapons are pivotal to an officer performing his job efficiently and correctly. However, there is a distinct lack of clear legislation and Supreme Court rulings to help prevent police brutality. In a lot of ways the Supreme Court decisions conflict with each other and the ambiguous language used allows for flexibility when it comes to interpreting the law. There must be consistency in the decisions and more needs to be done to stand up for citizens who are wrongfully subdued and injured by the police departments who are meant to be supporting them.

The police has become far too militarised and the use of semi-automatic weapons has increased the fear that citizens have of Officers but has also increased the chance of an encounter ending in death. It is important for officers to have the correct equipment to help them keep the streets safe, especially when they are dealing with suspects who have military grade weapons. But the use of semi-automatics within law enforcement has surpassed where it needs to be; an officer should only use a semi-automatic in the most dangerous of circumstances. In no way should police officers be using semiautomatic weapons on a daily basis in every situation that they are sent to.

The idea that lynching was a part of society in the 1990s, and still today, may seem ludicrous to some but is visible in this research. The issue is that when multiple officers are together - the reoccurring number of officers in these cases seems to be four – they tend to become more aggressive and this is when situations spiral out of control. These groups of officers become much more like lynch mobs which causes tension and could intimidate unarmed victims. Officers in built up areas do not need to travel in groups of four as back up is always close by, and this could prevent the

build up of aggression, and the spurring on of officers, which would calm situations and deter officers from brutality.

The final thing to say on weapons is that if law enforcement departments are insistent on being militarised and carrying heavy weaponry, there needs to be a system in place to prevent too many shots being fired. Officers need to be aware of their surroundings and aware of the situations unravelling before them. Furthermore, the idea to shoot someone until they are down seems to be failing, as autopsies reveal the entry points of bullets, so more training is needed for officers to know where and when to shoot, and also how many shots to take. Twelve shots are too many – forty-one shots are indescribable and should never have happened.

The three mechanisms discussed work both independently and in combination with each other to create the opportunity for police brutality. If implicit bias is targeted and officers begin to understand their racial attitudes, this in itself is not enough to prevent police brutality. If training is adapted to involve increased use of force and ethics training on a larger scale, and included martial arts and negotiation skills to reduce the reliance on firearms, police brutality will continue to exist. If legislation is strengthened and officers did not immediately reach for their weapons; if the use of semi-automatics was dependent on individual cases and the danger of the case; if officers travelled in smaller groups and did not fire their weapons excessively, police brutality would still be an issue facing American society. These mechanisms might affect police brutality on an independent basis, but it requires changes in all three areas to significantly reduce police brutality and prevent more unarmed African Americans from being killed. Otherwise the cycle of

police brutality continues and in thirty years we will be looking at more cases of police killing unarmed African Americans for the same reasons that we look at them today.

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