

Black Shootings, Conflict Theory, and Policy Implications

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Abstract

Recently, the news media has reported the deaths of many young, unarmed African-American males who have been killed by police officers who have not been held criminally-responsible for their actions. These events have ignited social tensions, served as a topic of debate for presidential candidates, as well as sparked the *Black Lives Matters Movement*. Furthermore, when there has been public outcry staged at peaceful demonstrations, many protesters have been arrested or violently put down by police officers. These occurrences are eerily similar to the social unrest and political movements of the 1960s and 1970s, when minorities and other dissident groups were routinely harassed and subjected to extreme violence by local police and other governmental agencies. Conflict theories provide a general framework that allows more insight into these events.

Keywords: Excessive force, probable cause, fourth amendment rights, case study, conflict theory, section 1983 litigation, wrongful death suits.

I. Introduction

It seems each month, the news media reports that an unarmed African-American male has been shot and killed by police officers. Recently, it has occurred with such regularity that one is shocked to discover that this behavior is not part of crime news. The reality of these shootings is that they have become routine and often have a polarizing effect on the community. For example, when these killings are publicized, many minority communities express outrage and public outcry at what appears to be unending violence that is disproportionately perpetrated against its young males and the lack of trust that is deeply rooted in a history of poor community relations with police officers who are sworn to serve and protect. What they see and experience is repeat and unprovoked violence that ends in the premature deaths of community members, and officers who typically are not held criminally responsible for their behavior. This is revealed by the regularity of which grand juries across the country return with findings of a *no bill* or a lack of probable cause needed to take the matter to trial to hold officers accountable for these shootings. In fact, some commentators believe that this has led to a national debate about and has galvanized a *Black Lives Matter Movement*. On the other spectrum, the majority community feels that police officers routinely perform dangerous work under less than ideal circumstances that often require them to make split second life-changing decisions. As such, they should be given the benefit of the doubt when their actions result in the untimely deaths of community residents. They also believe that unless it can be established with a showing of irrefutable evidence, police officers are often justified when they use deadly force to subdue criminal suspects, especially those they encounter in dangerous communities. Therefore, the purpose of this paper is fourfold. First, it discusses police use of force. This section distinguishes between reasonable and unreasonable force. Second, it presents the conflict theory to explain police shootings of young minority males. It argues that in the wake of recent shootings, scholars should revisit these theories. Third, it provides the methodology used in this research investigation. More specifically, this section presents the case study method to analyze four recent police killings of young black males. Fourth, it presents viable policy implications.

2. Police Use of Force

The *Fourth Amendment* to the U.S. Constitution states in part that no warrant to conduct a search or seizure shall be issued without a finding of probable cause. In essence, the *Fourth Amendment* governs all aspects of searches (looking) and seizures (taken possession) of items and people. More specifically, it prohibits those that are deemed unreasonable within the meaning of the Constitution. Thus, legal experts argue that having a valid warrant to execute either a search or seizure is reasonable (del Carmen, 1991). However, under exigent circumstances, courts allow police officers to act without a warrant if probable cause exists since under emergency circumstances, officers do not have the time to procure a warrant. Nevertheless, when police officers shoot and kill suspects while attempting to arrest and take them into custody, is this action reasonable, and therefore, protected under the *Fourth Amendment*?

While each state law that governs the use of force is often unclear to the layperson, police officers, via their training, must understand that there are two types of force: justifiable and unjustifiable. Some legal scholars, as well as experts, argue that the use of force or coercion is a daily practice among police officers ranging from giving a verbal command to using a weapon on a suspect. Furthermore, in their capacity as police officers, they are authorized to use force to enforce the law. However, problems arise when they use abuse, unnecessary or excessive force while discharging their duties (Gaines & Kappeler, 2008). Where the law is concerned, courts generally ask, whether the degree of force used by an officer was reasonable to accomplish a particular law enforcement objective, such as affecting an arrest or preventing themselves and others from being killed by a suspect. More specifically, it asks, would a reasonable person faced with a similar set of circumstances respond in similar fashion as did the police officer? Despite this, disagreement abounds regarding when the use of force is excessive.

Klockars (1995) defines excessive force as “the use of any more force than a highly-skilled police officer should find necessary to use in that particular situation.” However, McEwen (1996) presents a different approach by contrasting excessive force and excessive use of force. Accordingly, he provides that excessive force is present when an officer applies too much force in a specific situation. He believes that the excessive use of force occurs when officers legally apply force in too many incidents. Despite this, Fyfe (1995) argued that there are two kinds of excessive force: extralegal violence or brutality. This type of violence occurs when an officer willfully uses force that exceeds the limits of his authority. Further, Fyfe viewed unnecessary force as that amount of force used by officers with good intentions who were unable to control the situation and resorted to force too quickly. He reasoned that officers who used unnecessary force may be likely to use extralegal violence (also see Gaines & Kappeler, 2006).

Legal scholars argue that the use of force typically results in *non-deadly force* and *deadly force*. They distinguish the two by arguing that *non-deadly force* is the degree of force used that is not likely to result in serious bodily injury or a suspect’s death. *Deadly force*, when used, would lead an objective officer to conclude that a suspect will likely face serious injury or death (Gaines & Miller, 2010; Kappeler, 2006; del Carmen, 1991). Many legal experts argue that police officers should apply or follow the recommendation given by the *Christopher Commission’s* probe into the infamous *Rodney King* beating of the 1990s. It suggested that police officers should use the minimum amount of force that is necessary to control the subject (*Christopher Commission*, 1991). However, some scholars believe that because of the different definitions of excessive force, it is often difficult to determine excessive and unreasonable force.

While the U.S. Supreme Court has examined several cases regarding the use of deadly force, perhaps the two most salient cases include *Tennessee v. Garner* and *Graham v. Conner*. In *Tennessee v. Garner* (1985), the Court decided the circumstances under which officers could engage in the use of deadly force to make an arrest. In *Garner*, Memphis police officers responded to a call from a neighbor of an adjacent home who reported hearing glass breaking and a “prowler inside.” One of the officers radioed dispatch for backup and the other went behind the adjacent house. The officer reported hearing a door slam and he saw someone run across the backyard. He also reported seeing Edward Garner stop at a six foot fence. He stated that he saw Garner’s face and hands, and that he had no weapon. At this time, the officer commanded Garner to “halt” as he approached him, but Garner started to climb over the fence. Thinking that if he climbed the fence, he would elude apprehension, the police officer, following a Tennessee statute, used deadly force to stop the fleeing felon. As such, Garner, a 15 year old juvenile was shot and killed after breaking into an unoccupied home where he stole a ring and ten dollars.

In reviewing this case, the Court ruled that police officers could not use deadly force to stop a fleeing suspect unless the suspect posed a significant threat of death or serious injury to the life of the officer or others. The Court ruled that Garner’s death was an unreasonable seizure within the meaning of the *Fourth Amendment* and consequently, it struck down the fleeing felon law of Tennessee. After this landmark case, legal experts examining its impact pre- and post-Garner, reported that the number of shootings, especially those involving the use of lethal force, significantly declined in Tennessee (del Carmen & Walker, 2004; Gaines & Kappeler, 2008). Other scholars reported the decision also had national impact since the number of police shootings decreased by 16 percent (Tennenbaum, 1994). Some believe that

as many as 22 states were directly impacted by the *Garner* ruling since it struck down their policy on shooting fleeing felons. Therefore, police departments nationwide had to examine, revise, and tighten their policies on the use of deadly force to meet the national standard created by the *Garner* ruling (Walker & Fridell, 1992).

Despite its clarification on police legitimate use of deadly force, the *Garner* decision left unanswered questions regarding the application of the use of force in general. However, this would be addressed in *Graham v. Conner* (1989). In this case, *Graham* was a diabetic who asked a friend, *Berry*, to drive him to a convenience store so that he could purchase orange juice needed to counteract his insulin reactions. After arriving at the store, *Graham* believed the line was too long so he asked to be taken to a friend's house for orange juice. Upon them exiting the store, Officer *Conner* noticed that *Berry* and *Graham* entrance and departure to the convenient store was too brief and this caused him to be suspicious of their activities. Accordingly, he called for backup and followed them. He eventually made an investigative stop by ordering both *Berry* and *Graham* from the vehicle so that he could determine what happened at the store. When the other officers arrived at the scene, they handcuffed *Graham* and took him into custody before he could explain his medical condition. He was placed on the hood of *Berry*'s car. He attempted to explain his condition to the officer and even tried to verify his condition by asking the police officer to remove his medical decal from his wallet. Despite his efforts, he was told to "shut up" and was subsequently thrown headfirst into a police car where he sustained multiple injuries that included a broken foot, cuts on his wrists, a bruised forehead, injuries to his shoulders, and a ringing in his ear. After the officers determined what happened at the store, he was released. *Graham* later filed a lawsuit asserting that his *Fourth Amendment* right was violated when he was subjected to excessive force by police officers.

In reviewing the case, the Court ruled that *Graham*'s *Fourth Amendment* right was violated when officers used excessive force to arrest him. Moreover, police officers can be held legally liable under the Constitution for using excessive force. The Court also ruled that police use of force must be objectively reasonable whether the officer's actions were reasonable given the circumstances confronting him regardless of his intent. The Court stated that while reasonableness may lack a precise definition, it has many factors that require careful consideration. In terms of determining what is reasonable under the circumstance, one should consider whether the suspect poses an immediate threat to the officer or others, the seriousness of the crime, whether the suspect is resisting and not complying with the officer's commands, and whether the suspect is trying to escape from custody (Kappeler, 2006).

3. Conflict Theory

Conflict theories should be revisited and applied to modern day police shootings of young minority males (e.g., African-American and Latinos) and other forms of violence perpetrated against citizens who participate in protests. During the 1960s and 70s, these theories were used to provide insight and explanation regarding protests and clashes between minorities and other disenfranchised groups at the hands of governmental agencies and officials that ranged from the CIA, FBI, and counterintelligence programs (COINTELPRO), to soldiers and local police departments (Beirne & Messerschmidt, 2015; Barkan, 2006; Garrow, 1981). These theories were effective in unmasking the true nature of law, order, and the use of authority during the turbulent periods of the *civil rights* struggle, *women's liberation* movement, protests of the *Vietnam War*, demonstrations on college campuses, the sexual revolution, and other movements that transformed the social fabric of the American society. Conflict theories exposed that police officers and other governmental agents did not always engage in even-handed justice, but rather, they routinely violated the U.S. Constitution by repressing and agitating citizens who engaged in peaceful demonstrations (Jenkins, 1984). In fact, historical records show that agents of the government routinely prevented some Americans from exercising fundamental rights such as the *First, Fourth, Fifth, and Fourteenth Amendments* which denied them equal protection, as well as equality, under the law. More specifically, it reveals that representatives of state authority used wiretaps and infiltrators to spy on and disrupt legitimate groups and even escalated matters by using force, violence, and brutality to dismantle and break the spirit of dissenters and protesters (Garrow, 1981; Finan, 2007). Historians also report that police, state troopers, and other governmental agents used dogs, horses, tear gas, and billy-clubs to inflict harm or murder southern and northern civil rights workers and sympathizers (black and white) and others who were viewed as agitators (Branch, 1998).

While reforms have been made to policing in general, many unfair and illegal practices continue to persist and are commonly displayed by governmental officials. Moreover, in minority communities around the country, no relationship exists between police and community residents. They operate with a legacy of mistrust towards each other. However, minorities are not the only groups that have been targeted by police misconduct. For example, recent efforts by the *Occupy* movement have met with fierce resistance from law enforcement agencies around the country when they have gathered to peacefully protest the destruction of the world financial markets and a lack of social justice (Chomsky, 2012). More specifically, *Occupy* has a global presence since many of its members are connected via social media networks. The organization typically demonstrates against what it believes to be class warfare. It was created in New York City in 2011 and quickly grew to have a worldwide presence and audience. Its primary agenda is to reveal the

inequities that exist between the rich and poor and demonstrate against them on a national stage. Its members engage in occupy movements by camping out, marching, or going to jail to call media attention to the perception of injustices and inequities in income disparities and the influence that Wall Street and corporate conglomerates have on the national and global economies. *Occupy* represents people without a voice, people without resources, people lacking access to power, and others who have been largely ignored. Consequently, the media has reported that in the wake of *Occupy* activities, police officers have raided their gatherings and over six thousand demonstrators have been harassed, arrested, and beaten by various law enforcement agencies (Chomsky, 2012).

Another example is the frequent encounters that have recently occurred between minorities and police (staged after police killings, along with the *Black Lives Matter Movement*) which has been a strong voice against mass incarceration, police brutality, and re-entry programs for African-Americans is eerily similar to past struggles of disenfranchised and repressed people who were targeted and brutalized by governmental agencies. Moreover, Stewart (2016) reports that in St. Louis County, Missouri local police and prosecutors have conspired to arrest and punish local members of the clergy who gathered outside of the Ferguson Police Department to pray after the killing of a young black male who failed to obey police orders. Stewart also revealed that the city has aggressively prosecuted a number of protest cases in an attempt to place the Ferguson movement on trial. Local defense attorneys have revealed to the media that city officials wish to make examples of members of the clergy and others who engaged in the Ferguson protest. Similarly, Forliti (2016) reports that in Minneapolis, a young black suspect was shot and killed by police officers who claimed he struggled with them. Despite this, witnesses state that the young man was handcuffed at the time of the shooting. The death has prompted several protests including an 18-day occupation outside of the police precinct where demonstrators have demanded the video of the shooting be released to the public and the justice department. Peak & Everett (2017, p172) argue that “for many who are downtrodden, the police symbolize brutality because the officers represent the majority group’s law which serves to keep the minority groups in their place.” Therefore, conflict theories, more than any other criminological theory provides a better contextual framework to explain violent and often deadly encounters that lower-class minority males are likely to have with police officers.

Conflict theory holds that power and authority are essential for maintaining social, political and economic inequality, as well as exerting control over those who are viewed as being part of the surplus population (Turk, 1969; Chambliss & Seidman, 1982; Quinney, 1977). These theorists do not believe that equality exists or that all people are treated fairly under the law, but rather the law, and the justice system (e.g., police, courts, and corrections) are biased in favor of powerful groups. As such, when those who are not part of the mainstream society (e.g., the chronically unemployed or those viewed as problematic) participate in social protests protected by the *First* and *Fourteenth Amendments* of the U.S. Constitution, local police and other governmental agencies may violently disrupt them from exercising a protected right. Because conflict exists in society, these theorists view the law, police, and other governmental agents as coercive weapons used to promote the interests of powerful groups to the detriment of the powerless. As such, police use of excessive force resulting in the deaths of certain segments of the population may not be criminally prosecuted.

4. Methodology

This study used data collected from August 2014 through November 2014. Therefore, the time frame for this investigation is three months. This investigation uses the case study method to examine four shootings of African-American males in several cities across the United States. The settings for this study occurred in Cleveland Ohio; Staten Island, New York; Ferguson, Missouri; and Chicago, Illinois, respectively. Experts argue the case study method uses in-depth qualitative studies as illustrative cases. This method provides tremendous variance since its units of analysis could focus on individuals, groups, organizations, and different behaviors (Hagan, 2014). Maxfield & Babbie (2011) provides that while using the case study approach, the researcher is centered on presenting an in-depth examination of one or several cases on many dimensions. Similarly, Yin (2008) states that the case study approach is used broadly to offer discussions of people, neighborhoods, courthouses, correctional settings, or any other aggregation. While using this method, researchers gather information from different sources to measure different types of items. Unlike some researchers, Yin views the case study approach as a design strategy that can apply to both qualitative and quantitative data (Bryman, 2012). They can either be used to illustrate one or a small number of units, or assist in statistical analysis to examine large numbers of variables (Yin, 2008). Champion (1993) argues that case studies are thorough examinations of specific social settings or aspects of social settings that could provide detailed psychological and behavioral descriptions of persons in these settings. Furthermore, the approach offers rich information about social settings that is typically ignored by other research designs. Champion argues that the case study method has a threefold purpose. First, it is flexible because it enables one to use multiple data gathering techniques, such as interviewing, observation, questionnaires, and the examination of records and statistical data. Second, it can be conducted in any type of social environment. Third, it allows researchers to test theories.

While relying on the case study method, we used the definition given by Yin (1981, p23) who views the approach as an empirical inquiry that examines contemporary phenomenon within its real-life context when the boundaries between phenomenon and context are not clearly evident and in which multiple sources of evidence are used. To this end, we selected four recent shooting deaths (four cases studies) of young African-American males who were killed by police officers who engaged in the use of force. More specifically, these four individuals were victims of police use of deadly force within the context of the officers either attempting to arrest and take them into custody to answer for charges against them, or they were shot by police officers who did not intend for them to survive the encounter. In each case, there are clearly defined procedures and protocols that should have been used as determined by the *Fourth Amendment* to the U.S. Constitution, leading U.S. Supreme Court cases governing the use of force, and departmental policy. Moreover, in a few of these cases, the encounters provided context since they were recorded by either amateur videos or police surveillance dash cameras.

Our case study design contains five components. According to Yin (1989, p29), case studies require a study question, its propositions (if any), its unit of analysis, the logic linking the data to the propositions, and the criteria for interpreting the findings. First, we asked, why does excessive force occur among young African-American males during encounters with police officers? Second, because our study is exploratory, we examined four cases of the use of excessive and deadly force. Third, our unit of analysis was the individuals or young minority males (n=4) killed after encounters with police officers. Fourth, we matched patterns of behavior, particularly unprovoked acts of force by police that resulted in death. In many cases, victims were either not posing a threat to officers or others, not resisting, or even retreating from police. Finally, we argue that these actions are theoretically linked to conflict theories of the past that highlight government abuse of authority and power perpetrated against powerless groups. While case studies can be used for research studies, they lack the generalizability and inferential power of studies that rely on probability samples. Nevertheless, case studies are accurate about the individual investigation for which they are used, but do not allow researchers to infer or make statements that go beyond their respective study.

4.1 Death of Tamir Elijah Rice

On November 22, 2014, Tamir Elijah Rice, a 12-year-old African-American male was shot and killed by two police officers in the Cleveland Police Department who responded to a call that reported a black male was sitting on a swing and pointing a gun at people in the Cudell Recreation Center. During the call, the dispatcher was informed that the gun was probably fake and the male was probably a juvenile. Despite this, these facts were not told to the responding officers. According to the two officers at the scene, as they approached Rice, he reached towards a gun in his waistband. However, surveillance video reveals that within two seconds of their arrival, one of the officers fired two shots before the zone car had come to a complete stop. The gun fire hit Rice once in his torso. Neither officer attempted to assist with first aid or call for emergency help. Rice died the next day at a local hospital. Police later determined that Rice's gun was an Airsoft replica, but it had the appearance of a real weapon. After community pressure and public outcry, the police department released the surveillance video four days after the shooting. On June 3, 2015, the County Sheriffs' Office released a statement about Rice's death and revealed that its report would be turned over to the county prosecutor. After receiving the report, the prosecutor convened the matter before a grand jury that returned a "no bill" of indictment against either police officer involved in the shooting. In a subsequent probe of the investigation, evidence surfaced that revealed the officer who shot and killed Rice had in the past been deemed by another police department as an emotionally unstable recruit and unfit for duty. Reports also revealed several inconsistencies in the accounts of the events given by the two responding officers and what was captured on video surveillance, namely Rice's alleged hand and gun movement they claimed precipitated the shooting (Daly, 2015).

Case study 1 reveals that police officers on the scene failed to follow proper procedure since they hardly had time (two seconds) to assess the situation before one officer responded with the use of deadly force. The events recorded by the dash camera of the patrol car did not show either officer ordering Rice to drop or lower his weapon, nor did it reveal a situation that would lead a reasonable person to believe his or another person's life was in significant danger. This violates the reasonableness standard created in *Graham* and the *Fourth Amendment* to the *U.S. Constitution* which governs how searches or seizures of items and persons should legally occur. It is also questionable as to whether the shooting officer acted with probable cause which is also required since he was the only officer present who fired his weapon. While the killing of Rice is tragic and unjustified since killing someone should never be the first option when responding to a call that a suspect in the park has a weapon, the conflict theory would hold that agents of the justice system do not afford the same level of respect, sensitivity, or deference to people who are outside of the mainstream or considered as troublemakers. In many cases, this could be because of the social settings and context under which they encounter them. It can also be because of physical characteristics such as a suspect's race or ethnicity since Rice was a young African-American male who dressed differently from others. For example, some may perceive wearing a hoodie as threatening or unconventional. Nevertheless, some officers view these suspects differently and respond accordingly.

Unfortunately, bias enforcement and disparate treatment can escalate and result in the untimely death of teenagers.

4.2 Death of Eric Garner

On July 17, 2014, Eric Garner an African-American male was killed in Staten Island, New York City by members of the NYPD. More specifically, Garner was approached by police because they suspected that he was selling single cigarettes from packs without tax stamps. After being accosted, Garner told police that he was not selling cigarettes and he was tired of their harassment. He was subsequently arrested. An amateur video of the arrest reveals a plainclothes police officer placing him in a chokehold, a practice that was banned by the NYPD. During the arrest, Garner swatted one of the officer's hands as the officer placed Garner's arm behind his back. The officer immediately placed his arm around Garner's neck (for 15 to 19 seconds) and pulled him backwards and down to the ground. The officer released him from the chokehold and placed him onto the ground with assistance from other officers to help restrain Garner. During this time, Garner stated, "I can't breathe" eleven times while placed faced down on the ground. When the officers realized that Garner had lost consciousness, they turned him on his side to aide his breathing. He remained lying on the sidewalk for seven minutes while waiting for an ambulance to arrive. Neither the police nor EMT personnel attempted to render CPR to Garner. One hour later, he was pronounced dead at a local hospital. A medical examiner later concluded that Garner was killed by compression of the neck and chest along with the position that he was placed in by the NYPD. He also stated that Garner's acute and chronic bronchial asthma, obesity, and hypertensive heart disease were contributing factors. Despite the medical examiner ruling the death a homicide, on December 3, 2014, the Richmond County grand jury returned with a "no bill" not to indict the officer who choked Garner to death (Baker, Goodman, & Mueller, 2015).

Case study 2 shows officers following up on their suspicion by accosting Garner and asking questions about his alleged involvement in a crime. This part of the encounter is procedurally correct and legal (see *Terry v. Ohio, 1968*). Terry allows police brief encounters to confirm or dispel suspicion and a brief pat down for protection. However, an arrest can only be made with a determination of probable cause which is usually established after officers find evidence. In this case, the video does not reveal that officers discovered evidence to confirm their suspicion. At that point, Garner should have been left alone or released. However, video surveillance reveals that after Garner stated that he was tired of being harassed by police, he was arrested (without provocation) and violently taken into custody by a police officer who quickly placed him in a chokehold that had been banned by the NYPD. This violates departmental policy, as well as the reasonableness standard of *Graham*, and the *Fourth Amendment* since officers lacked probable cause to arrest Garner. Moreover, because Garner did not present a threat to the officers as revealed by the video surveillance, the dangerous tactic used to lower him to the ground was unreasonable, excessive (given Garner's response that he kept repeating he could not breathe), and deadly since the police actions were later viewed as one of the contributing factors to his death. In this case, conflict theory argues that Garner's death can be explained by several factors ranging from police officers seeing him as part of a larger problem of what is wrong in America to his failure to completely submit to police brief questioning without protest. The theory holds that because police are agents of the justice system, they expect respect and deference from everyone even when they do not reciprocate. Furthermore, police believe that many people they interact with are undesirables and problematic, namely those who are unemployed and add nothing to the economy. Consequently, officers often view some people as criminals who, for example, may sell illegal cigarettes to earn money. They become angry and frustrated at those who do not freely submit to their commands or show obedience to their authority. So, when Garner expressed discontent about being harassed, this may have precipitated his death since police believe they are responsible for controlling undesirables.

4.3 Death of Michael Brown

On August 9, 2014, Michael Brown, an 18-year-old African-American male was fatally shot in Ferguson, Missouri by a patrol officer. Prior to the shooting, Brown and a friend visited a local convenience store where Brown reportedly stole several packages of cigarillos and got into a physical altercation with the store clerk who confronted him about the theft. A police officer was dispatched to the store and given a description of the two fleeing suspects. As the officer approached, he observed two suspects as they walked down the middle of a neighboring street. The officer reported that as he approached the suspects, he realized that they matched the description so in an attempt to stop them, he drove ahead and backed up his patrol car to block them from continuing forward. An altercation erupted between the officer and Brown. Reports reveal that Brown struggled with the officer (who was sitting in his car) for control of the officer's gun. Though he was not able to take the weapon from the officer, the gun fired and no one was shot. Afterwards, Brown and his friend fled with the officer in hot pursuit. Suddenly, for reasons unknown, Brown stopped and turned to face the officer. The officer reported that at this point, Brown moved toward him and he fired twelve shots striking Brown's body. Witnesses later reported, and the officer confirmed, during the incident and shooting that Brown was unarmed, but when the shots were fired, Brown was moving toward the officer. However, several eye witnesses later provided conflicting accounts detailing what transpired during the shooting, especially with regards to Brown's hand movement before the shooting. On November 24, 2014, the St. Louis County grand jury returned a "no bill" to indict the officer

involved in the shooting death of Brown (Landy, 2014).

Case study 3 reveals the police officer unjustifiably acted with the use of deadly force. In this case, departmental policy allows an officer to use reasonable force or that amount which is necessary to accomplish a legitimate policing objective. However, because Brown was unarmed and initially fleeing from the officer, and for reasons unknown, returned to confront the officer, the use of deadly force is unreasonable under the *Fourth Amendment*. If the officer on the scene intended to apprehend, arrest, and take Brown into custody for stealing cigarettes, shooting him twelve times was excessive given the gravity of his criminality as per *Graham*. Since other officers had been dispatched to the crime scene and area, the officer could have waited for backup before inflicting deadly force on the suspect. Reports indicate that Brown was unarmed and did not engage in a physical altercation with the officer at the time of the shooting. For example, if the two had fought before the officer used his weapon, a case for self-defense or justifiable homicide could have been made if the officer reasonably believed at the time of the encounter that his life was in significant threat of death. According to conflict theory, police view young minority males as potentially dangerous and undesirable who refuse to subordinate themselves to police and authority. They view them as part of the surplus population that refuses to work and see them as criminals and thugs who prey upon others who contribute to society. Because police believe that these segments of the population disdain the law and those sworn to uphold it, they see these young men as the “enemy” or at least, threatening to the community and broader society. In this case, Brown, a young black male, stealing from a convenience store and threatening the owner when confronted, the initial struggle with the police officer for control of his weapon before fleeing, disrespecting the officer’s authority, and returning to challenge the officer all served to inflame the situation and consequently, instead of the officer de-escalating the matter, used lethal force to kill Brown.

4.4 Death of Laquan McDonald

On October 20, 2014, Laquan McDonald, a 16-year-old African-American male was shot sixteen times in 13 seconds (with a 9mm semi-automatic firearm) by an officer with the Chicago Police Department (CPD). In this case, the city withheld the video footage of the shooting for over a year before a judge ordered its release to the public. Prior to the shooting, police were dispatched to 4100 South Pulaski Road to investigate a call that a man brandishing a knife was breaking into vehicles at a trucking yard. When officers approached McDonald, he used a knife to slash the tire on one police vehicle and damaged its windshield. Despite police commands to drop his knife, he refused to and walked away from officers on the scene. Because of his refusal to comply, officers requested Taser backup. Video surveillance captured on a police cruiser later revealed that prior to the fatal shooting death of McDonald, he initially brandished his knife, but was turning away from officers before he was rattled with bullets. However, before the video was released to the public 13 months later, and only after several independent investigators demanded the release of the video, CPD conducted an independent investigation of the fatal shooting and released a 400 page report finding that the shooting was justifiable and within the scope of the department’s use of force. Outside sources revealed that the police department excluded important facts and details, such as the number of times McDonald had been shot. The investigation also misled the public by reporting that McDonald was acting crazed and had even lunged at officers after he refused to drop his knife. When the video was released, it showed that after receiving the first of sixteen shots, McDonald fell to the ground. The shooting officer stopped, but continued firing more rounds into McDonald’s body after he noticed he was still moving on the ground. It was later discovered that the shooting officer had only been on the scene for approximately thirty seconds before he exited his car and opened fire on McDonald. Though there were eight other officers present at the scene, none of them fired their weapon and one even stated that he did not see the need to use force. Later, the Cook County Medical Examiner’s autopsy report revealed that McDonald sustained gunshot wounds to his neck, chest, back, both arms, right leg, and a graze wound to his left scalp. The medical examiner’s office ruled the shooting a homicide due to the multiple gunshot wounds. Before the video was released, the police officer was not charged with any wrongdoing. In fact, the Cook County State Attorney had stated, “I don’t believe that any mistakes were made” (Dardick & Pearson, 2016).

Case study 4 reveals that McDonald was a victim of police use of deadly force. The shooting was unjustifiable and unlawful for a number of reasons. First, despite the fact that CPD manufactured the story that McDonald was acting crazed and was lunging towards police, video footage that was eventually released contradicted their story and revealed that McDonald was retreating from officers when one of them who had only been there for thirty seconds opened fire hitting him repeatedly. Second, as he lay on the ground, the same officer fired more rounds into his body striking him a total of sixteen times. Police officers later lied about the number of times McDonald was actually struck by police bullets. The video shows that the actions taken by police amounts to an illegal seizure within the meaning of the *Fourth Amendment* since the action was unreasonable, excessive, and deadly since none of the other eight officers’ lives were in jeopardy as evidenced by only one officer firing on McDonald and several officers later remarking that they did not believe the matter warranted the use of force. Conflict theories view police violence and use of force as a way that

officers combat crime and disorder. They use violence, including excessive and deadly force to suppress and control those they view as threatening to society. This is especially pronounced among young African-American males who police may view as part of larger problems in America. We believe that scholars should use conflict theories instead of other theories to call more attention to these deadly shootings since they provide a critical way to scrutinize police misconduct and provide more contexts to explain their show of excessive and deadly force. It is hoped that by holding police accountable for their actions, fewer tragedies will occur.

5. Policy Implications

While some grand juries return with a “no bill” owing to a lack of evidence strong enough to indict police officers who engage in excessive use of force that often results in the untimely deaths of citizens they encounter, there are a number of strategies that can be used to prevent these atrocities from occurring in the future. To that end, we recommend that police agencies adopt proactive methods to recruit better qualified police officers; provide proper training to officers in order to garner greater police-community relations; the use of body and dash cameras, and a mandatory federal database. We also recommend that victims of police excessive force file a civil lawsuit when their civil or constitutional rights are violated. Moreover, surviving family members can file a wrongful death suit when it can be established that police committed an act of excessive force that resulted in an unjustifiable homicide.

5.1 Recruit Better Qualified Police Officers

Policing a diverse society has become more complex. As such, agencies should engage in proactive efforts to recruit and properly train qualified candidates. Today, policing in the United States is not the same as it was decades ago. In fact, experts argue that because of increased diversity in nearly every locality in the country, changing cultural dynamics, changes in the use of technology, the threat of domestic as well as international terrorism and other complicated matters, police officers are required to do more now than any other time in the history of policing. Therefore, policing requires a rigorous recruitment and hiring process designed to attract more educated, diverse, and psychologically stable officers or face future litigation (Gaines & Kappeler, 2008; Worrall, 2001).

5.2 Provide Proper Training

The legacy of discrimination, distrust, and tension persists in many minority communities. In the aftermath of the killings presented in our case studies, several demonstrations and protests followed. Two common themes were echoed -- distrust of police and a lack of respect residents experience from police. Therefore, extensive training should be provided to police in order to build trust with the communities they serve. Criminal justice experts argue police must receive ethical training in the academy, continued education through in-service training, and be familiar with departmental policies governing aspects of policing. They contend this will allow avenues for police to be successful in servicing these communities (Payne, Oliver, & Marion, 2016). Minority residents should not feel nervous or fearful when confronted by police or that they are agents of repression, but rather, police are there to serve and protect them without inflicting brutality. A failure to properly train officers could be used as evidence against police and their municipalities as a show of deliberate indifference to the plight of those they serve.

5.3 Use Body and Dash Cameras

Experts argue that in light of recent shootings, police agencies nationwide should adopt the use of body and dash cams to show transparency (Peak & Everett, 2017). These devices could prove to be an effective and beneficial tool for policing for several reasons. First, they could provide training opportunities since they would reveal the encounters between police and citizens. They will show what transpired if an officer is accused of engaging in unnecessary or excessive force. As a pedagogical tool, they can illustrate what is an appropriate action to take given the circumstances. Second, they can be used by prosecutors who go before grand juries seeking an indictment against an officer accused of using excessive force. Third, they could prove to be invaluable when an officer and his respective police department face civil litigation. Events captured by video can reveal whether an officer followed proper procedure during encounters with suspects. If an officer has been wrongfully accused of operating in a manner that exceeds his scope of authority, a body or dash camera can help to exonerate him and potentially save his police agency large sums of money in damage awards. In the aftermath of releasing the video surveillance of the shooting death of Laquan McDonald one year later and calls for his early resignation, Chicago Mayor Rahm Emanuel has proposed a new policy promising that in the future, all videos of police shooting will be released to the public no later than three months after they occur. He cited this approach best serves the interest of transparency and helps remove any speculation over cover-ups (Babwins, 2016).

5.4 Mandatory Federal Database

Given the recent police shootings of unarmed African-Americans by police around the country, a mandatory federal database of these shootings is needed now more than ever. Currently, police departments report officer involved

shootings on a voluntary basis to the *Federal Bureau of Investigations* (FBI). However, these reports are vague often lacking details and are categorized only as “justified” or “unjustified.” We suggest the creation of a federal database that resembles *42 U.S. Code §13031* which requires those in a professional capacity (including law enforcement personnel, see section B6) who engage in activities within federal jurisdictions to report “facts that give reason to suspect that a child has suffered an incident of child abuse” or face federal criminal proceedings. A similar reporting system can be created to address officer involved shootings. In fact, such a database could be used to monitor officers who are involved in shootings in one jurisdiction, but later move to another jurisdiction without their past behavior following them. Moreover, this database will facilitate justice, transparency, and restore public confidence and trust in policing. The role of the FBI will be critical in conducting police shooting investigations, thereby, removing undue influence, such as nepotism or a local police department falsifying its independent investigation of shootings by fellow officers. This strategy can break the code of silence that is entrenched within the police culture. Federal oversight can produce findings that are more likely to be accepted by all segments of the community. The perception of fairness and justice from an outside entity could mean fewer protests and demonstrations from disenfranchised communities.

5.5 Section 1983 Litigation and Wrongful Death Lawsuits

Legal experts report that each year, thousands of lawsuits are filed against police and their respective departments alleging a violation of rights (Gaines & Kappeler, 2008). A popular form of legal redress is found in *Title 42 of the United States Code, Section 1983: Civil Action for Deprivation of Civil Rights*. Established in the *Civil Rights Act of 1871*, it was enacted by Congress to control the behavior of state officials and to provide an avenue of legal redress to citizens when their constitutional rights were violated. At this time, Congress ratified the *Thirteenth* and *Fourteenth Amendments* that freed the slaves and granted them due process and equality under the law. This mechanism was originally used against state (police) officials with ties to the *Ku Klux Klan* (del Carmen, 1991; Gaines & Kappeler, 2008). This remedy is referred to as a *Section 1983* lawsuit. It allows citizens who had their civil and constitutional rights violated by government officials to bring a civil suit to federal court to recover monetary damages.

In a *Section 1983* claim, the plaintiff, a victim of excessive force, can bring a lawsuit in federal court against a police officer alleging that his constitutional rights were violated while the officer was acting under color of law. These suits are preferred because they are filed in federal courts which are more liberal than state courts; and they require the plaintiff to establish two basic elements -- the defendant (a police officer) acted under the color of law, and (2) a violation of a constitutionally or federally protected right (del Carmen, 1991). In the case of excessive force, if a state or local law enforcement officer misuses his power or authority derived from his employment as a law enforcement officer, he has acted under color of law and can therefore be held liable in a civil rights lawsuit. As such, the first requirement of a *Section 1983* claim is satisfied. To satisfy the second requirement, the plaintiff has to show that a right granted by the U.S. Constitution or a federal law was violated. To that end, a violation of any amendment to the U.S. Constitution or federal law satisfies this requirement. Cases involving an officer’s use of excessive or deadly force constitute a violation of the *Fourth Amendment* if performed in a manner that violates the reasonableness standard created by the Court. In cases where suspects are shot and killed and it is later determined that they were unarmed or retreating from police and did not pose a significant threat of death to the officer, nor posed danger to others, these matters are likely to be ruled by federal courts as civil rights and constitutional rights violations.

Section 1983 claims can also include municipal liability. In *City of Canton v. Harris* (1989, p1205), the U.S. Supreme Court ruled that inadequate police training may serve as the basis of liability under *Section 1983* if that failure amounts to “deliberate indifference” to the rights of persons with whom the police come into contact and those deficiencies in their training program are closely related to the victims’ injuries. More specifically, the Court stated that “it may happen that in light of the duties assigned to specific officers or employees, the need for more or different training is so obvious, and the inadequacy so likely to result in violations of constitutional rights, and the policymakers of the city can reasonably be said to have been deliberately indifferent to the need.” Some legal scholars suggest that the tendency now is to sue the officer who is directly involved and any others if it can be established that they had anything do with the violation. Consequently, these lawsuits name the officer, his immediate supervisor; the police chief; the agency; and members of the city council as parties. In these suits, plaintiffs claim that the officer is liable for shooting or choking the deceased; the immediate supervisor or police chief is liable for failure to properly train, direct, or supervise the officer; and the agency is liable for allowing past customs, practices, and policies that contributed to behavior that resulted in death (del Carmen & Walker, 2004). Legal experts argue the strategy of including others in the lawsuit is threefold. First, lower level officers may lack the resources to settle a judgment. Second, the chances of financial recovery are enhanced if the agency and supervisory personnel are included in the lawsuit. Third, including the supervisor and agency often create inconsistencies in the legal strategies used by the defense (del Carmen, 1991).

5.6 Wrongful Death Lawsuits

In a wrongful death lawsuit, surviving family members or relatives of the deceased can file a tort action alleging the death of their family member was caused by unjustified actions of a police officer. These suits are brought for damage awards associated with pain, suffering, and the costs of the funeral and hospitalization. Plaintiffs typically initiate these suits when an officer shoots and kills a fleeing suspect; shoots and kills a suspect that he may have intended to arrest and place into custody; uses a chokehold resulting in death; an officer's random gunfire kills an innocent citizen, or any police negligence resulting in someone's death. In order to prevail in a wrongful action, the plaintiff must demonstrate that the death of a family member was unjustified (del Carmen, 1991). When grand juries fail to issue indictments to police officers who kill suspects under questionable circumstances, thus, denying families and community's justice, surviving family members should seek relief in the civil justice system. Perhaps if police officers and their respective municipalities are held civilly liable and ordered to pay large monetary awards, police agencies around the nation will become more inclined to address police use of force rather than risk facing civil litigation.

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