The Peace Officers' Association of Georgia Foundation
Use of Force in Georgia
Executive Summary

This paper is an attempt to define the problems associated with the use of force used by peace officers in Georgia. The result of the 2014 incidents in Ferguson, Missouri, has created a focus on the issues of race relations between the police and the public. Movements, such as a group calling itself Black Lives Matter, have sprung up over most of the United States with the purpose of keeping a spotlight on what is described as the excessive force use by police against minority groups, especially young, black males. Many law enforcement agencies in Georgia continue to have difficulty in recruiting, and retaining peace officers with the appropriate mind set and temperament for doing a difficult job. Random murders of peace officers in Dallas and Baton Rouge have a chilling effect on recruitment and retention.

A portion of this paper discusses the mind set of some peace officers who see themselves as "Warriors" and others who view their job as more aligned with the "Guardian." Some general traits of both descriptions can be found in almost every law enforcement agency in Georgia, however, the emphasis of adherence to well written and well thought out policy guidelines can set the tone for officers making sound use of force decisions. Many law enforcement agencies have surplus military equipment that was decommissioned and made available by the United States government. Although some of that equipment has been returned because of issues with public perception, there has recently been some positive news coverage of the appropriate mission for such equipment, including the June 2016 rescue of many hostages in Orlando, Florida through the use of an armored vehicle. This paper focuses on the real issues regarding how law enforcement and other functions of the criminal justice system have to develop positive interactions with the entire community.

There are complex issues that affect peace officers' interactions with the entire public. First, the importance of compliance and how it is central to most use of force applications. The legal, moral, and completely proper use of force is never pretty. Many people who see video of any use of force construct their own reality based upon their knowledge, experiences, and beliefs, and sometimes objectivity is lost to subjective feelings. Some viewers will be limited by a personal bias that fails to evaluate the larger picture. Videos also have their share of issues related to conducting a thorough investigation of potential peace officer wrongdoing. There is an outcry and demand for public release and immediate view of the footage; simultaneously, there is a responsibility to ensure the integrity of the investigation for later judicial proceedings. This polarizing tension is amplified by a desire for the media to constantly "feed the machine."

Empirical data is reported in this paper that point to the issues of police interaction with certain segments of the community at a rate that exceeds that segment's population percentage. But, those differences are only illuminated when you look at non-deadly force. The data concerning the use of deadly force, once factors for controls are added, does not confirm the conclusion that police more frequently use deadly force on one demographic more than others. Most of the questionable information that generates community controversy is more anecdotal than data driven.

The effect of this newly minted focus on police use of force applications has begun to have a chilling effect on peace officers who see their crime prevention role as a "Guardian" who helps prevent crime. In fact, FBI Director James Comey used the term "viral video effect," in a news conference. "There's a perception," Mr. Comey said, "that police are less likely to do the marginal additional policing that suppresses crime—the getting out of your car at 2 in the morning and saying to a group of guys, 'What are you doing here?'"[1] Many cities in the United States have started to witness the "Ferguson Effect" on serious crime. Integral to the goals of this paper is a balance in the law enforcement approach so that peace officers will continue to play a crucial role in protecting, and serving, the communities they police.

The goals of this paper are to ensure peace officers uphold the standard of law, serve and protect our citizens, and preserve their privacy, civil rights, and civil protections. Another goal is to develop strategies that will mitigate physical risk to officers and ensure public safety while insulating the professional peace officer from adverse personal judgements, absent the benefit of all the facts and due process of law. The final goal of this paper is to develop sound concepts that can be translated into policy and training, thereby promoting proactive strategies for professional operations that all peace officers are sworn to uphold. None of this can occur with a vacuum of effective leadership in the law enforcement agency.

This paper enumerates seven policy statements that will help law enforcement agencies meet current challenges concerning peace officers' use of force. The most current legal guideline interpretations for use of force must be taught and used for review for any peace officer use of force application. Public confidence will only be possible when the agency is transparent in the investigation of the use of force. Real facts, evidence and data destroy rumors but are only valuable if you have them. This paper calls for the establishment of a state wide database of peace officer use of force investigations. A portion of this transparency is to educate the community on the legal and policy requirements for use of force analysis. Enhanced training and policy development should be the mantra of every law enforcement agency in Georgia. The training is not limited to field level officers but should include every layer of leadership so they are better prepared to supervise, manage and control the delivery of proper police services. Citizen trust in law enforcement can be compromised by the quality of commensurate officer salary and successful recruitment. To attract the best and brightest, every agency is in competition for the good candidate. Miserably inadequate salaries will attract a different level of candidate and continue to perpetuate problems for the agency. And finally, we need a standardized definition of a use of force application by peace officers.

The final portion of this paper makes twelve recommendations that will aid in and improve the delivery of quality peace officer training, provide leadership training for every supervisor and encourage the development and implementation of sound policy that regulates use of force, and review of all use of force. Many of the recommendations involve the importance of consistent efforts to encourage interactions between the police and the entire community which include the

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[1] Eric Lichtblau, "F.B.I. Director Says 'Viral Video Effect' Blunts Police Work." *New York Times,* May 11, 2016. Accessed September 2016.
http://www.nytimes.com/2016/05/12/us/comey-ferguson-effect-police-videos-fbi.html

serious analysis of complaints. Finally, the twelve recommendations are focused on developing trust between the law enforcement agency and the public – all of the public.

The conclusion of this paper is that this document will serve as a means to promote and provide more accurate information and data to support transparency and demonstrate legitimacy. Given the real life issues involving recruitment, screening, hiring and retaining quality officers, each law enforcement leader is challenged to provide a quality agency with a culture of service. We believe that all peace officers are public servants and have a profound responsibility and sworn obligation to protect the constitutional rights of, and provide safety and security for Everyone, Everywhere, Every time.

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The prompt:

The Ferguson, Missouri officer involved shooting incident was the beginning of a chain of use of force incidents that have provoked community and law enforcement unrest that potentially permeates every agency and influences peace officer mindsets and decision-making throughout our nation. Philosophical arguments over "The Ferguson Effect" have become the subject of political rhetoric and academic study as well as a source of endless media and community comparisons for every subsequent officer-involved incident. The chain of video shootings, advent of the Black Lives Matter (BLM) movement, and media focus have drawn attention to and provoked concern over peace officer use of deadly force. The consequences of these incidents have led to many investigations, focus groups, and task force inquiries.

This phenomenon has created a situation where a few bad apples have placed judgement on the many. Our introspection has revealed a lack of veteran officers on the front lines due to retirements, hiring freezes, and locally unmatchable federal government or private sector hiring for the most qualified and skilled people. This loss has had a profound effect on our ability to keep the front lines staffed with experienced officers. This lack of experience and resources results in problems with officers' discretionary responses to dynamic events. Never before have people skills at all levels been so important in our profession. Leadership and supervision responsibilities are at an all-time high.

Some believe Law Enforcement philosophy is suffering from an identity crisis. The "Warrior versus Guardian" mentalities, the concept that some policing circles favor a "Warrior" mindset, seeking to battle and defeat criminals over the "Guardian" mindset of seeking to assist and protect citizens. The subject matter taught in our police academies, in combination with the topics found in police periodicals, is seen by some as unbalanced and indicative of a warrior mindset, when a guardian may be more appropriate in today's policing context.[2] The opinions are also diverse. Former Sheriff Sue Rahr, a participant in the *President's Task Force on 21st Century Policing*, provided the following insight, "In 2012, we began asking the question, 'why are we training police officers like soldiers?' Although police officers wear uniforms and carry weapons, the similarity ends there. The missions and rules of engagement are completely different. The soldier's mission is that of a warrior: to conquer. The rules of engagement are decided before the battle. The police officer's mission is that of a guardian: to protect. The rules of engagement evolve as the incident unfolds. Soldiers must follow orders. Police officers must make independent decisions. Soldiers come into communities as an outside, occupying force. Guardians are members of the community, protecting from within. There's an old saying, "Organizational culture eats policy for lunch." Any law enforcement organization can make great rules and policies that emphasize the guardian role, but if policies conflict with the existing culture, they will not be institutionalized and behavior will not change. In police work, the vast majority of an officer's work is done independently, outside the immediate oversight of a supervisor. But consistent enforcement of rules that conflict with a military-style culture, where obedience to the chain of

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[2] Seth Stoughton, *Law Enforcement's "Warrior" Problem*. Harvard Law Review. (2015).

command is the norm, is nearly impossible. Behavior is more likely to conform to culture than rules."[3]

A different perspective comes from Sheriff David Clarke. "Why do we need so much assertive policing in the American ghetto? Are police officers perfect? Not by any stretch of the imagination. Are police agencies perfect? Not…even…close. But we are the best our communities have to offer. Instead, the conversation should be about transforming Black underclass subculture behavior. The discussion must start with addressing the behavior of people who have no respect for authority, who fight with and try to disarm the police, who flee the police, and who engage in other flawed lifestyle choices. Bashing the police is the low-hanging fruit. It is easier to talk about the rare killing of a Black male by police because emotion can be exploited for political advantage."[4]

The appropriateness and utility of surplus military tactical equipment in police inventory has been questioned since Ferguson, as have the context in which such equipment is deployed and used. The focus on military grade equipment used by civilian police forces can polarize citizen and officer perspectives and degrade agency mission effectiveness. Media focus, citizen protest, and continued criticism impact peace officers on the street and cause apprehension about initiating contact and proactively policing. However, much citizen support came from police use of the Lenco "BearCat" military grade armored vehicle employed during Orlando's terrorist attack in

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[3] Sue Rahr, *Transforming the Culture of Policing from Warriors to Guardians in Washington State*. Reuters. (2015)

[4] *U.S Congress, House of Representatives, Committee on the Judiciary.* 114th Cong., 1st sess., May 2015, page 10 https://www.gpo.gov/fdsys/pkg/CHRG-114hhrg94653/pdf/CHRG-114hhrg94653.pdf

June 2016. Many lives were saved through police use of a vehicle the media labelled as military only in design.

More important than media concerns over the appearance of police is the concept that every agency has its own use of force policy, own set of training, and different perspectives of supervision and oversight priorities regarding the same. Equally important is that every agency reports or collects information regarding use of force in a different way, if collected at all. Moreover, in 21st century law enforcement there is no collective data repository for this important information to be evaluated and analyzed. Herein lies the problem. Without such data there are no empirical means to demonstrate the number of times we engage in force; the circumstances, dynamics and specifics of who is involved, and the multitudes of times peace officers prevent acts of force by their de-escalation or control skills; or when the suspect accedes or decides to comply. Compliance is the central factor in almost all police use of force cases.

The demand for relationship building through community policing strategies is at a premium. Law enforcement must sustain the principles of the servant and protector while building community trust through positive interaction, individual care and relationships. The combination of community trust, respect and support leads to more efficient, effective and safer policing.

The problem:

21st century life has been transformed through rapid and ongoing cultural, political, and technological change. As a result, our societal communication has become very complex due to the amounts of information, how it is shared, and perspectives and assumptions forged regarding the interpretation and meaning. Financial motivations from media ratings and advertising revenues drive the advancement of certain types of information over others because of voyeuristic interest

and the magnetism of the controversy. Social media creates a real time "perfect storm" of information that targets people of like interest and views, and has no filters for rumors, lies, or inaccuracy. The traditional media uses social media as it once used ground level reporting, despite the lack of editorial verification in the new format.

The same phenomenon has also provided a credible view into places that were once unavailable to public scrutiny or opinion. The advent of cell phone camera technology has opened a portal into our profession that can be both very positive and extremely negative. On the positive side, these cameras have affirmed operational oversight and illumination of problem officers who have no place in law enforcement. Never before in our profession has leadership become so important to ensure professional conduct, standards, accountability, and transparency while managing and terminating those whose behavior is contrary to the ethics and preservation of privacy, civil rights and civil protections. Like any other occupation, law enforcement employs humans, and humans can make mistakes or become deviant to their responsibilities and the law. Identification of these mistakes leads to policy or training opportunities that adapt to challenges, so proper procedures ensure mistakes become learning points and are contained, not repeated.

On the negative side, the video perspective is just one perspective. People make different assumptions and draw different conclusions based upon their limited view looking through their lens of judgement. These diverse and filtered evaluations can have adverse consequences because of incomplete, biased, or distorted realities and circumstantial viewpoints. In addition to conditions posed by the advent of cell phone technology there is also a tendency to hold an officer to the same standard as an engineer, architect, or building contractor when making decisions and conducting their business. These professions do have certain responsibilities and specific duties just like policing. However, these professions, and many others, have what police often do not: the luxuries

of time and a static set of variables. It is unrealistic to compare the time-crucial and ever-changing dynamic variables of policing environments to that of other professions. Officers must make the best objectively reasonable decisions they can make, based on the information known to them at the time of action, even if that action changes every second. This precept is basic to the Supreme Court of the United States' guidance and mandate that the police are not required to be right, just objectively reasonable through the perspective of a "reasonable officer."[5]

Unfortunately, this concept is difficult for a lay person to understand without proper background and perspective. Moreover, despite journalistic training, resources, and law enforcement available for questions and clarification, the media rarely highlights or describes this lawful standard in a way that the general reader can understand. Police use of force, whether right or wrong, is never pretty. It is unpleasant for anyone to watch. As humans, we all feel first, before we think. As a result, passions, beliefs and unintentional and inadvertent ignorance can distort the structural view our law requires in observing a use of force case.

The problem of general perception of police action is exacerbated by four other issues. First and foremost, many do not understand the importance of compliance and how it is central to most every use of force case. Second, all people construct reality based upon their knowledge, experiences, and beliefs, and sometimes objectivity is lost to subjective feelings. Third, judgmental bias occurs when it is assumed that the characteristics of police occurrences of force can be estimated from a small number of observations or data points that fail to evaluate the larger picture from the thousands and thousands of police encounters every day. Finally, every time an incident occurs that is captured by video, there is by now a predictable concurrent outcome that promotes

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[5] Graham v. Connor. 490 U.S. 386 (1989).

conflict and controversy, resulting in an unescapable tension between the public, media, police and courts. There is an outcry and demand for public release and immediate view of the footage. Simultaneously there is a responsibility to ensure the integrity of the investigation for later judicial proceedings. This polarizing tension is amplified by a desire for the media to constantly "feed the machine," and the lack of patience and trust the community has in our courts; misinterpreting methodical and law compliant as reluctant or an act of deliberate delay.

On June 27th 2016 the Pew Research Center released a report regarding views on race and inequality, the data is compelling. According to Pew, "most blacks (65%) express support for the Black Lives Matter movement: 41% strongly support it. In addition, 24% say they support it somewhat. Some 12% of blacks say they oppose Black Lives Matter (including 4% who strongly oppose it). Even so, blacks have somewhat mixed views about the extent to which the Black Lives Matter movement will be effective, in the long run, in helping blacks achieve equality. Most (59%) think it will be effective, but only 20% think it will be very effective. About one-in-five (21%) say it won't be too effective or won't be effective at all in the long run."[6]

As citizens and visitors of the United States, all people need to understand that the police are the foundation of order and safety. Central to any police interaction is first, why they are there to begin with and second, compliance by the suspect. Contact and context are huge factors in understanding modern police operations. Adverse media publicity, subjective political maneuvering and rushes to judgement absent all the facts have created an environment where peace officers feel untrusted, unappreciated and disengaged. Such fuels the very "them and us" mentality we all recognize as wrong. Former Chief Charles Ramsey frames the problem best, when he says

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[6] PEW Research Center, *On Views of Race and Inequality, Blacks and Whites Are Worlds Apart*. PEW Social Trends. (2016).

that we don't have to agree, just understand each other…and, there are shared responsibilities, police officers must be fair and follow the law and citizens must comply with officers' authority. Ramsey goes on to point out the importance of dialogue between the two.

Peace officers for years have been the street level bureaucrats for all government and the gate keepers for our criminal justice system. Many of society's ills are thrown at the feet of peace officers every day. Dallas Chief of Police David Brown frames the problem even better, "We're asking cops to do too much in this country, we are. Every societal failure, we put it off on the cops to solve. Not enough mental health funding, let the cops handle it. … Here in Dallas we got a loose dog problem; let's have the cops chase loose dogs. Schools fail, let's give it to the cops. … That's too much to ask. Policing was never meant to solve all those problems."[7] The problems mean more interactions in communities that are stressed and impoverished, where hope is little and tension is high.

The recent ambushes at Dallas and Baton Rouge create concerns of a dangerous environment unlike anything our profession has ever seen. Our peace officers are under tremendous stress in turbulent times driven by many operational expectations that are not rooted in reality. The needed funding for additional staff, better salaries, thorough backgrounds, meaningful training and resources from social services and mental health professionals is in full display.

Compounding this powder keg atmosphere, police are pushed to proactively intervene to combat crime and reduce violence. With that momentum in such an unstable environment, absent

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[7] Brady Dennis, Mark Berman and Elahe Izadi, *Dallas police chief says 'we're asking cops to do too much in this country'*. Washington Post. (2016)

the resources and training peace officers need, many times officers are set up for failure. Consider a suspect who fears or does not trust the police, may lack the esteem or hope central to all people's health and dignity, and whose outlook or mindset might be exacerbated and compounded by substance abuse and/or mental illness. The dynamic interaction of the officer, the suspect and the circumstances that brought them together create the context of the encounter.

The perceptions and conduct of the officer and the suspect become the catalyst for thought and behavior. The issue evolves into whether there is compliance or not. The majority of the time police force is a response to suspect non-compliance. "These perceptions and the concomitant interpretations were altered by the actions of each person as they interacted. Based on those assessments and assumptions of each other's behaviors, each acted accordingly. At that moment, the fluid movement of 'the deadly mix', set in motion when the offender and officer came together, began to shift. All of this occurs within only seconds, but has life-altering consequences." [8]

Community trust is critical. Community policing and relationship building is huge. However, when officers are required to choose between hurrying through one call in order to protect life at the next, the quality of the contact and relationship is ruined. The most valuable resource is time, and for officers to have it, there must be enough of them to respond to calls.

In spite of a historic lack of resources, we inherit a responsibility to be aware and better trained and prepared in light of today's and yesterday's issues. Whether we agree or not, perception trumps reality and the perception today from people of color is a huge distrust of law enforcement. Thus, we have a duty to repair that break in trust and find ways to ensure others' concerns are

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[8] Anthony Pinizzotto, Edward Davis, and Charles Miller, *The Deadly Mix: Officers, Offenders, and the Circumstances that bring them together*. FBI Law Enforcement Bulletin. (2007)

addressed as we uphold the premise of equality and due process for all. The bottom line is, all lives matter to our profession and we have a rich history of being killed in the line of duty protecting people we do not know, do not agree with, or have nothing in common with other than our humanity.

The perspective:

Body cameras have received much attention as a potential remedy to the subjectivity of police use of force cases. Yale University studies now bring forth questions as to how the same video footage may be interpreted ~~by~~ differently by different people. "Commentators on all sides of the debate over police shootings have assumed that video evidence is an improvement over non video evidence in terms of how decisively it can resolve contentious deadly force cases. Common sense suggests that ocular proof is objective. But the study findings reported here suggest that video evidence remains susceptible to biased interpretation. In deciding factual matters about what happened—such as whether a weapon was present, whether physical force was used, whether the citizen complied with the officer's requests—fact finders reviewing video footage brought their prior attitudes toward the police to bear on their judgments. In deciding more subjective matters—such as whether the citizen posed a threat, was likely armed at the time, or was resisting arrest—viewers again relied on their level of identification with police. When judging whether the police treated the citizen fairly—a key determinant of whether police are seen as wielding legitimate authority—viewers again drew upon their prior attitudes. Finally, when it came to making the

ultimate judgment about whether the individual officer should be held accountable for excessive force, viewers' judgments were influenced by their general identification with police.[9]

Many studies present findings that are very encouraging as to the utility and benefits from body camera technology; however body cameras are not the panacea in the environment peace officers and citizens occupy.

There is considerable empirical evidence that police intervene disproportionately with African-American subjects. Two major explanations for this phenomenon are that this level of intervention is (1) justified by the greater involvement of African-Americans in criminal activity and in resisting police, and (2) explained by police bias. Regarding the second explanation, the theory of "implicit bias" has received increasing attention in recent years and found support in voluminous empirical research. Pursuant to this theory, we link people we do not know to the characteristics or "stereotypes" associated with their group(s) (e.g., race, gender, body type). These linkages or associations can impact how we perceive the individuals and can impact our behavior; this can occur outside of conscious awareness. Also relevant to this current study are the consistent findings from laboratory studies that there is a Black-crime implicit bias, whereby we link Blacks to crime and violence.[10]

Recent research, however, calls into question whether the Black crime implicit bias is producing in police more or greater use of force against Black subjects. The "counter-bias" perspective produced from research by the team and posits that the human biases that police have—including the Black-crime implicit bias —may be overcome by a counter bias. This counter

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[9] Roseanna Sommers, *Will Putting Cameras on Police Reduce Polarization?*, Yale Law Journal. (2016).

[10] Lorie Fridell and Hyeyoung Lim, *Assessing the Racial Aspects of Police Force using the Implicit and counter-bias Perspectives*. Journal of Criminal Justice. (2016).

bias would produce less force against Blacks compared to Caucasians for instance, because of police fears of the consequences of using force, especially deadly force, against Black subjects. Officers might fear departmental sanctions, prosecution and jail/prison time, and national media attention, and might even fear physical threats to him/herself and family."

A July 2016 study by the National Bureau of Economic Research at Harvard provides a very noteworthy set of findings: "The issue of police violence and its racial incidence has become one of the most divisive topics in American discourse. Emotions run the gamut from outrage to indifference. However, very little data exists to understand whether racial disparities in police use of force exist, or might be explained by situational factors inherent in the complexity of police-civilian interactions. Beyond the lack of data, the analysis of police behavior is fraught with difficulty, including the reliability of the data that does exist and the fact that one cannot randomly assign race. On non-lethal uses of force, there are racial differences – sometimes quite large – in police use of force, even after controlling for a large set of controls designed to account for important contextual and behavioral factors at the time of the police-civilian interaction. Yet, on the most extreme use of force – officer-involved shootings – we are unable to detect any racial differences in either the raw data or when accounting for controls".[11]

Other earlier studies provide additional context and analysis that often escape media and public distribution:

"Although police are affected by target race in some respects, they generally do not show a biased pattern of shooting. We suggest that police performance depends on the exercise of

[11] Roland Fryer, *An Empirical Analysis of Racial Differences in Police Use of Force*. NBER Working Paper Series. (2016)

cognitive control, which allows officers to overcome the influence of stereotypes, and we conclude with potential implications of this research for law enforcement. The death of Amadou Diallo stimulated more than a decade of research examining the psychological processes involved in weapon identification and decisions to shoot. Our review has focused primarily on experimental laboratory research, and we want to highlight the overlap between a concrete real-world scenario and experimental social psychology. For both police and students of social cognition, it is crucial to consider (a) the need to respond quickly; (b) the ambiguity of relevant information; (c) the presence of peripheral cues like race, gender, and environment; and (d) the potential influence of difficult-to-control associations between those cues and threat. This overlap offers hope that lab-based research may ultimately help us understand something crucial about the processes that unfold in the streets, but applications have been hard to pin down. We must acknowledge that the experience of an officer can never be ethically simulated in a lab and that there are many factors that complicate police decision-making. It is only now – after more than 10 years of research – that we have reached a point where we feel somewhat confident commenting on police work. As we conclude this review, we consider factors that dramatically affect police decision-making (fatigue and fear), which may compromise controlled processes critical to the reduction of racial bias."[12]

Further noted, "There was no evidence that target race biased a police officer's ability to correctly shoot armed targets and to not shoot unarmed targets. Our accuracy results seemingly bode well for police officers in that implicit racial biases affected the speed of responses but not behavior. We argue that it is precisely in the early stages of an encounter that expectations police

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[12] Joshua Correll, Sean Hudson, Steffanie Guillermo, and Debbie Ma, *The Police Officer's Dilemma: A Decade of Research on Racial Bias in the Decision to Shoot*. Social and Personality Psychology Compass. (2014).

officers hold based on race, neighborhood, gender, etc., may unintentionally influence officer behavior and contribute to an escalation of the situation." [13]

An important and profound perspective can also be drawn from this 2012 study regarding police shootings:

"The results of the study indicate that approximately 10 percent of the police officers sampled had been in a situation where they could have legally used their firearm but chose not to. Furthermore, police officers exercised restraint in deadly force in 93 per cent of the situations in which they could have legally fired their weapon. Rather than an excessive use of force on the part of these officers, great restraint on their part was displayed. The interchange between the law enforcement officers and the offender in high-risk situations in which deadly force can be used legally and ethically is complex, dynamic and rapidly changing. [14]

Finally, research from 2014 provides additional context: "One lesson to learn from the present research is that shooting decisions are not made in a vacuum. To the extent that we would like to generalize to the important real-world context of officer shooting decisions, we need to take seriously the complexity of the circumstances in which shoot or don't shoot decisions are made. For example, our data indicate that the interaction of neighborhood and officer race influences shooting mistakes more than suspect race or any other factor we measured. Specifically, officers were more likely to mistakenly not shoot armed suspects, regardless of suspect race, when they were in other-race neighborhoods. In real life, officers are nested within neighborhoods and cities,

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[13] Joshua Correll, Sean Hudson, Steffanie Guillermo, and Debbie Ma, *The Police Officer's Dilemma: A Decade of Research on Racial Bias in the Decision to Shoot*. Social and Personality Psychology Compass. (2014).
[14] Anthony Pinizzotto, Edward Davis, Shannon Bohrer and Benjamin Infanti, *Law Enforcement Restraint in the Use of Deadly Force within the Context of 'the Deadly Mix'*. Police Science and Management. (2012).

and understanding these broader social contexts is central to understanding shooting decisions and shooting mistakes. Added to suspect race, officer race, and neighborhoods, we may need to study the effects of time of day, timing within shift, whether violent events have occurred recently in the area patrolled, how suspects are dressed, their Social Economic Status (SES) level, and so on. The emphasis on suspect race to the near exclusion of other variables does a disservice to the complexity, seriousness, and consequentiality of this problem."[15]

In addition to empirical study comes the anecdotal assumptions by many experienced and well respected peace officers that a "Ferguson Effect" is impacting officers across the country and leading to a "de-policing" type mindset among street officers. As a result, others suggest this may be a reason for climbing violent crime acts in some urban cities. FBI Director James Comey used the term viral video effect, "There's a perception," Mr. Comey said during a news conference, "that police are less likely to do the marginal additional policing that suppresses crime—the getting out of your car at 2 in the morning and saying to a group of guys, 'What are you doing here?'"[16]

According to author and researcher Heather Mac Donald, "The country's political and media elites have relentlessly accused cops of bias when they police inner-city neighborhoods. Pedestrian stops and broken-windows policing (which targets low-level public-order offenses) are denounced as racist oppression. That officers would reduce their discretionary engagement under this barrage of criticism is understandable and inevitable. Policing is political. If a powerful segment of society sends the message that proactive policing is bigoted, the cops will eventually

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[15] William Cox, Patricia Devine, Ashby Plant, and Lauri Schwartz, *Toward a Comprehensive Understanding of Officers' Shooting Decisions: No Simple Answers to This Complex Problem*. Basic and Applied Social Psychology. (2014).
[16] Eric Lichtblau, "F.B.I. Director Says 'Viral Video Effect' Blunts Police Work." *New York Times,* May 11, 2016. Accessed September 2016. http://www.nytimes.com/2016/05/12/us/comey-ferguson-effect-police-videos-fbi.html

do less of it. This isn't unprofessional; police take their cues, as they should, from the messages society sends about expected behavior."[17]

Leadership and support become critical as identified in a study by Scott Wolfe and Justin Nix, "Given the widespread public and police attention to this issue, we begin with the practical implications of our findings. Yes, it appears that officers in our sample have been affected by negative 'Ferguson-type' press. Some officers indicated being less motivated to perform their duties. This is important from a managerial standpoint because feelings such as these need to be subverted if possible. It is also important to note that this effect was observed in an agency largely removed from high profile events such as Ferguson (indeed, Ferguson is nearly 800 miles away from the department surveyed for this study").[18]

The study went on to say, "We are often quick to ask how events such as Ferguson affect citizens, but rarely do we consider whether these events are harmful to the police. This is perhaps an equally important question. Regardless of whether the media or citizens challenge the legitimacy of the police, it is unlikely that the police will stop responding to violent crime. What is perhaps more conceivable is that they may be less willing to put in the "extra effort" in the form of working with the community to solve problems. Our study supported this idea initially. However, the data demonstrated that organizational justice and self-legitimacy were the key correlates of willingness to engage in community partnership. This is encouraging for police agencies because it reveals that when supervisors are fair and cultivate confidence among officers, they can minimize the harmful effects of negative publicity. This is important because it can help

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[17] Heather Mac Donald, *Obama's Assault on the Police*. Commentary Magazine. (2016).
[18] Scott E. Wolfe and Justin Nix, *The Alleged "Ferguson Effect" and Police Willingness to Engage in Community Partnership*. Law and Human Behavior. (2015).

sustain community engagement, which ultimately will help reduce crime in the community. Indeed, achieving such results makes communities safer in the long term."[19]

Much emphasis must be placed upon leadership, professional culture and training as well. Dr. Tom Tyler's huge contribution to policing in his procedural justice research continues to have profound implications. "The present study highlights the potential for a single set of reforms aimed at the internal workings of law enforcement to have widespread effects that ripple throughout the department into the community. Perhaps ironically, our results emphasize that to a large degree officers want from their organization the same thing that citizens want from officers: to be treated with respect in an honest and fair manner by those around them. It appears that if we want to change the climate between citizens and the police, a good place to start is by changing the climate within police departments. Such changes will go a long way toward creating more efficient police departments and happier officers more open toward the kind of policing that produces positive and mutually beneficial relationships with the public.[20]

Conflict, ambiguity and debate persist as research continues to demonstrate how complex use of force events and issues can be. We argue that complexity demands disciplined thought, insight and evaluation. We see many common denominators and red flags that compel us to undertake this project under a proactive mindset, dedicated to objectivity, understanding and proactive change. Our dual concern for peace officer and citizen safety have caused our motivation and drive toward an objective, responsible and professional evaluation of how we do business.

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[19] Scott E. Wolfe and Justin Nix, *The Alleged "Ferguson Effect" and Police Willingness to Engage in Community Partnership*. Law and Human Behavior. (2015).
[20] Rick Trinkner, Tom Tyler, and Phillip Goff, *Justice from Within: The Relations Between a Procedurally Just Organizational Climate and Police Organizational Efficiency, Endorsement of Democratic Policing, and Officer Well-Being*. Psychology Public Policy and Law. (2016).

Our purpose:

1. **To uphold** the standard of law, serve and protect our citizens, and the preservation of their <u>privacy, civil rights and civil liberties.</u>

2. **To promote** strategies that will mitigate physical risk to officers and provide for public safety while ensuring the fundamental fairness of civil and criminal judgments with the benefit of all of the facts and due process of law.

3. **To develop** sound concepts that can be translated into policy, training, supervision and review/analysis, prompting approaches for professional operations.

4. **To provide** a practical understanding and application regarding what response is appropriate and legal when confronted with non-compliance.

The proposal:

To provide seven (7) policy statements and 12 recommendations as a reference to be used in the assessment and evaluation of leadership issues, legislation, policy, training, in the areas we identified as significant; and adapting to the changes and complexity related to peace officer use of force incidents.

Seven (7) policy statements:

1.) The use of force should be evaluated under the standards developed and provided by the United States Supreme Court in the case of *Graham v. Connor*.[21] Justified or unjustified, police use of force is never pretty. The advent of video technologies into modern media creates an emotional environment where everyone exposed "feels before they think," and evaluates without the context provided from the benefit of all the facts and circumstances. It is difficult to watch, and depending upon one's predisposition, can be judged

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[21] Graham v Connor. 490 U.S. 386 (1989).

subjectively. Our laws require such police actions to be "objectively reasonable." The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.[22] Thus, legal police use of force cases can be both "lawful, and awful." Context in these cases, seen from the perspective of a reasonable officer at the time of the incident, is paramount in the objective determination of the behaviors and conduct of both the officer and the suspect. An example being: unarmed does not automatically mean not dangerous, the perception of danger depends upon the context of the situation afoot. This explains why our courts intently reject "hindsight" judgements and narrowly tailor legal evaluation though the lens of objective reasonableness based upon and rooted in the totality of all the facts and circumstances at the time. We must measure police behavior based upon what they know at the time, and how they translated their thoughts into actions. Modern technology such as body cameras are useful tools, but the perspective and testimony of the officer remains paramount in law.

2.) Law enforcement and prosecutors must be given the latitude to objectively analyze and examine video evidence through the lens of the legal process, and balance in that evaluation the tensions between the pressure for early video release, and investigative responsibility to preserve the integrity of evidence. Our system is created for open records inspection and examination after any judicial proceedings which can be used to hold the process and elected officials accountable. Public trust must be promoted at the onset, and verified after

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[22] Graham v Connor. 490 U.S. 396-397 (1989)

the investigation and judicial proceedings are complete. Ongoing active investigations must be focused upon thorough, accurate and complete processes. Often, the manner and method information is managed during the course of such investigation will directly affect the credibility and effectiveness of that investigation. Law enforcement and prosecutors should collaborate early on to release what they can, when they can, and as soon as they can, to promote public trust and transparency.

3.) Law enforcement must strive to understand the perspective of communities of color, offering accountable efforts to promote trust, transparency and legitimacy. Simultaneously, agencies must educate the public about laws, policies, and procedures that govern officer behaviors. We must comprehend and understand how we are seen, and why, before we can change the way in which we are judged. People of color judge the police by their experiences, observations, and past history with the police. They want fairness, empathy, and understanding versus judgment. Their wants and needs focus upon policing with the Community instead of to the Community. Both the police and the public stereotype each other, while wanting the same result, to be seen and respected as an individual. We understand that all people have implicit and explicit biases. Having a bias is not being racist or sexist, bias is an inescapable part of the human condition, and all people no matter the race or gender have biases. We know and accept that it is absolutely essential that people recognize and understand their bias, in order to change their perspectives to eliminate discriminatory practice or behaviors.

4.) Education and training are central to providing officers with the skills required to maneuver the complex and dynamic interactions in modern public safety. Today's peace officer is expected to be a specialist in many areas far beyond the scope of policing. Further, we recognize the importance of solid leadership and sound supervision in the management and oversight of police operations. Peace officer training must be provided the time, resources and funding to facilitate change and adapt to the pressures and tensions in many poverty-stricken communities that want and need the police. Government must provide funding and promote a consistent foundation for success, instead of the continued culture of trial and error reactions to the responsibility of maintaining order. Whether a small town, rural county or metropolitan area, government must adopt minimum salary law and be required to provide the means for all agencies to recruit, hire and retain the most capable, qualified, diverse and credible peace officers.

5.) Information and data are central to the analysis and evaluation of any issue; specificity and objectiveness are rooted in empirical research. Without credible facts, data points and measures, we cannot achieve an accurate picture of any situation. There is no central clearing house in Georgia that collects, stores and makes available complete, thorough and accurate data regarding peace officers' shooting incidents. The state should provide a central collection site with a mandatory reporting protocol for the incidents of officer involved shootings.

6.) The state of Georgia will follow the national guidelines for response to non-compliance as a source for all non-compliance/force reporting. At the time of this writing, "The final

recommendation from the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB) reads: 'The APB recommends the collection and reporting of use of force by a law enforcement officer (as defined by the Law Enforcement Officer Killed and Assaulted Program) to the FBI. The collection and reporting would include use of force that results in the death or serious bodily injury of a person, as well as when a law enforcement officer discharges a firearm at or in the direction of a person. The definition of serious bodily injury will be based, in part, upon 18 USC 2246 (4). The term, "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.' "

7.) Use such reporting as a means to capture information and produce empirical data as to police/citizen encounters where non-compliance or force was observed. Agencies in Georgia should consider the following uniform definition of use of force as a context for policy, procedure and operations.

The Definition: "Force is the application of physical techniques or tactics, chemical agents or weapons by a peace officer to another person, using the body or any object, device, or weapon, not including unresisted escorting or handcuffing a subject, nor when the subject allows him/herself to be searched or restrained."

Georgia law: Sheriffs and peace officers may use deadly force to apprehend a suspected felon only when the officer reasonably believes that the suspect possesses a deadly weapon or any object, device, or instrument which, when used offensively against a person, is likely to or actually does

result in serious bodily injury; when the officer reasonably believes that the suspect poses an immediate threat of physical violence to the officer or others; or when there is probable cause to believe that the suspect has committed a crime involving the infliction or threatened infliction of serious physical harm. Sheriffs or peace officers shall not be restricted from the use of such reasonable non-deadly force as may be necessary to apprehend and arrest a suspected felon or misdemeanant.[23]

Twelve (12) Recommendations:

1. Endorse a Peace Officer Certification Exam that all officers must pass in order to obtain certification. Such will ensure uniform standards of concepts, procedures, training and law throughout our states police academies. Uniformity in use of force policy and procedure starts with uniformity in standards and training.

2. Embrace constitutionally and procedurally just policies and strategies in police leadership and supervision; with all officers on the streets. Such will promote legitimacy and encourage compliance.

3. Create and sustain supervisory and leadership culture of accountability and documentation for performance. Comprehensive, thorough and specific documentation promotes legitimacy and transparency. Promotion and requirements for the value of specific documentation and accurate reporting in all police/citizen interactions in seizure, arrest and use of force is essential to a professional law enforcement agency. Further, agencies must ensure early warning systems are in place to identify problem officers, the need for additional training, or management actions. The ongoing review and oversight of

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[23] O.C.G.A. § 17-4-20

vehicle and/or body camera video footage by supervisors as addressed by policy is an important requirement to provide ongoing oversight.

4. Concentrate on action-focused incident response and reporting versus an actor-focused concept. Prejudgments and bias are mitigated when officers are trained to focus on individual behavior, conduct and movements in the context of the information and environment.

5. Develop and implement agency systems and processes for receiving, reviewing and responding to complaints.

6. Develop resources and implement a system to properly investigate non-criminal (internal affairs) complaints received by agencies.

7. Recommend independent investigations by the GBI of use of force applications that result in serious bodily injury or death.

8. Emphasize agency leadership responsibility to ensure certified academy training for recruits is reinforced and sustained by line supervision and field training officers, and integrated into policy, procedure and operations to become agency culture.

9. Recommend to agency leadership that all departmental training is documented by policy, accepted and supervised to appropriately sustain that behavior, and becomes a part of agency culture.

10. Provide comprehensive and specific training that should be implemented for ALL peace officers in the following areas (from academy to in-service):

✓ Implicit and explicit bias training for supervisors, officers and recruits

- ✓ Crisis Intervention Training (CIT)

- ✓ Constitutional policing as rightful policing (with emphasis upon soft skill, "interpersonal" applications in combination with discretionary enforcement actions)

- ✓ Procedural justice policing

11. Train officers to inform suspects that they are under arrest or detained before the application of force, when safe and practical.

12. Utilize resources to inform and educate the public regarding compliance, tactical processes and legal standards of objective reasonableness involving use of force.

The path to progress:

Never before have Georgia Peace Officers been under so much pressure and stress. The proliferation of social media and earned media focus regarding rare shootings of people of color without understanding the larger context of thousands upon thousands of interactions where compliance is widespread. To complicate the matter, the few incidents where police have been targeted and ambushed has had a profound effect upon officers' perception of their safety when simply wearing a uniform.

Communities of color need the police, and police need the support from those communities where many calls for service originate. We must fight to overcome the difficulties in communicating with and informing the public and officers of the public's perceptions. We also understand that both implicit and explicit bias do exist among black, white, Hispanic and Asian officers, and we must fight to eliminate and protect against biases in our police forces.

Our hope is that this document will serve as a means to:

- Encourage and provide more accurate information and data that promote transparency and demonstrate legitimacy;

- Provide resources for the recruitment, screening, hiring and retention of quality officers;

- Lead to the universal adoption of timely and relevant training and its implementation into our police culture;

- Introduce an objective and meaningful dialogue into relationships between the police and communities of color that will lead to mutual trust and respect.

We believe that all peace officers are public servants and have a profound responsibility and sworn obligation to protect the constitutional rights of, and provide safety and security for Everyone, Everywhere, Every time.

ACKNOWLEDGMENTS

Project Editor

    Kimberly Monast, Research & Development, *Henry County Police Department*

Project Research

    John B. Edwards, Jr., *Savannah Law School*

Special Contributors

    J. Dale Mann, *Georgia Law Enforcement Command College and* Director (retired)
    Georgia Public Safety Training Center
    Greg Connor, Professor Emeritus, *University of Illinois Police Training Institute and*
    Federal Law Enforcement Training Center (retired)

Subject Matter Experts

    Athens-Clarke County Police Department
        Fred Stephens, Assistant Chief of Police

    Bulloch County Sheriff's Office
        Mac Edwards, Investigator

    Clayton County District Attorney's Office
        Dennis Baker, Chief, Special Investigations and Services

    Clayton County Police Department
        Michael Register, Chief of Police

    Crisp County Sheriff's Office
        Joseph Arzola, Major

    Evans County Sheriff's Office
        Randall Tippins, Sheriff

    Georgia Board of Public Safety
        Ellis G. Wood, Vice Chairman

    Georgia Bureau of Investigation
        Vernon Keenan, Director
        Dan Kirk, Assistant Director
        Dawn Diedrich, Director of legal services
        Russell E. "Rusty" Andrews, Deputy Director (retired)

Georgia Chiefs of Police
    Frank V. Rotondo, Executive Director
    William Westenberger, Chief of Police, Kennesaw Police Department

Georgia Department of Corrections
    Homer Bryson, Commissioner

Georgia Department of Natural Resources
    Eddie Henderson, Colonel, Law Enforcement Division

Georgia Department of Public Safety
    Colonel Mark W. McDonough, Commissioner
    Lieutenant Colonel Russell Powell, Deputy Commissioner
    Joshua Lamb, Sergeant First Class

Georgia Law Enforcement Command College
    Dr. Archie Rainey, Director (retired)
    Dr. Butch Beach,   Deputy Director Georgia Public
    Safety Training Center (retired)

Georgia Peace Officers' Standards and Training
    Ken Vance, Director
    Ryan Powell, Director, Operations Division

Georgia Public Safety Training Center
    Chris Wigginton, Executive Director
    Ray Saxon, Division Director, Basic Training Division
    Harlan Proveaux, Manager, Garden City Regional campus

Gwinnett County Public Schools Police
    William Wellmaker, Captain, Assistant Director of Safety & Security

International Association of Chiefs of Police
    Lou Dekmar, First Vice President, and Chief of Police, LaGrange Police
    Department

Kaplan University
    Dr. Chris Findley, Major, Lyons Police Department

LoRusso Law Firm
     Lance J. LoRusso, Principal

Savannah-Chatham Metropolitan Police Department
     Joseph Lumpkin, Chief of Police
     Gary Taylor, Training Director

University of South Carolina School of Law
     Seth Stoughton, Rule of Law Collaborative