

# The Evolution of Modern Use-of-Force Policies and the Need for Professionalism in Policing

By Arthur Rizer & Emily Mooney

Criminal Law & Procedure Practice Group

## About the Author:

Arthur Rizer is the director of the R Street Institute's Criminal Justice and Civil Liberties policy team. Emily Mooney is a Resident Fellow and Manager of the R Street Institute's Criminal Justice and Civil Liberties policy team.

## Note from the Editor:

The Federalist Society takes no positions on particular legal and public policy matters. Any expressions of opinion are those of the authors. Whenever we publish an article that advocates for a particular position, as here, we offer links to other perspectives on the issue, including ones opposed to the position taken in the article. In this case, we are also publishing a full rebuttal to the article by Rafael Mangual, which you can find at page 128. We also invite responses from our readers. To join the debate, please email us at [info@fedsoc.org](mailto:info@fedsoc.org).

## Other Views:

- Matthew C. Harris, Jinseong Park, Donald J. Bruce, & Matthew N. Murray, *Peacekeeping Force: Effects of Providing Tactical Equipment to Law Enforcement*, 9 AM. ECON. J. 291 (2017), available at <https://www.aeaweb.org/articles?id=10.1257/pol.20150525>.
- Bernard B. Kerik, *Ex-NYPD Commissioner: Why President Trump Is Right to Let Local Police Buy Military Equipment*, TIME, Sept. 8, 2017, <https://time.com/4933453/trump-police-military-equipment/>.
- Olugbenga Ajilore, *Is there a 1033 Effect? Police Militarization and Aggressive Policing*, MPRA PAPER, Oct. 30, 2017, available at [https://mpa.ub.uni-muenchen.de/82543/1/MPRA\\_paper\\_82543.pdf](https://mpa.ub.uni-muenchen.de/82543/1/MPRA_paper_82543.pdf).
- German Lopez, *American policing is broken. Here's how to fix it.*, Vox, Sept. 1, 2017, <https://www.vox.com/policy-and-politics/2016/11/29/12989428/police-shooting-race-crime>.

The American people delegate to the police the authority to enforce criminal laws and promote public safety. As part of that delegation, we give officers the power to use force and even violence—that is, force applied to the body—to accomplish those goals. This practice is familiar to us, but it is in deep tension with our system of limited government that prizes personal autonomy and liberty. That tension can only be maintained by careful application of rules and procedures that restrain the use of force, and by instilling humility and care in the police themselves.

Unfortunately, existing guardrails against excessive police use of force are far too weak. Almost all large police departments (and most smaller ones) have use-of-force policies that define a continuum of force that can be applied to suspects in varying circumstances. But these policies can be ineffective in practice. And while other efforts to reduce police use of force—such as promoting racial diversity in hiring and instituting new academy training—seemed promising initially, they have fallen short of solving the police violence problem.

Recent cases of excessive police use of force—including incidents in Missouri, Minnesota, and Texas<sup>1</sup>—were caused by poor cultures within departments, especially an attitude of militarism that has infected many departments in the United States. Poor police culture includes a lack of professionalism and respect for human dignity during interactions with community members on the part of some police officers. It is compounded when accountability, transparency, and a desire for continued professional development are not priorities for police forces.

Police agencies have also developed “special weapons and tactics teams,” or SWAT units, which employ weapons and tactics drawn from the military. The proliferation of these teams was driven by the largely unsupported belief that American

<sup>1</sup> In Ferguson, Missouri, in 2014, by the second day of (until-then) largely peaceful protests, “police officers showed up in armored vehicles wearing camouflage, bullet-proof vests, and gas masks brandishing shotguns and M4 rifles,” which helped to spark the violent riots that followed. Casey Delehanty et al., *Militarization and police violence: The case of the 1033 program*, 4 RESEARCH & POLITICS 1 (April-June 2017), [https://www.researchgate.net/publication/317581659\\_Militarization\\_and\\_police\\_violence\\_The\\_case\\_of\\_the\\_1033\\_program](https://www.researchgate.net/publication/317581659_Militarization_and_police_violence_The_case_of_the_1033_program). Philando Castile was killed by a Minnesota police officer while reaching for his wallet, after repeatedly and calmly telling the officer that was what he was doing. Mark Berman and Wesley Lowery, *Video footage shows Minn. traffic stop that ended with Philando Castile's death*, WASHINGTON POST, June 20, 2017, <https://www.washingtonpost.com/news/post-nation/wp/2017/06/20/video-footage-shows-minn-traffic-stop-that-ended-with-philando-castiles-death/>. Officer Aaron Dean employed a “no-knock” approach to a home and nearly instantaneously followed a verbal command with deadly force, killing homeowner Atatiana Johnson in Fort Worth, Texas. *Atatiana Jefferson shooting: Did Aaron Dean receive proper training?*, WFAA-TV (viewed January 6, 2020), [https://www.youtube.com/watch?time\\_continue=1&v=pDliwgonrds&feature=emb\\_title](https://www.youtube.com/watch?time_continue=1&v=pDliwgonrds&feature=emb_title). In each of these instances, we contend, officers went into encounters with civilian populations primed for confrontation and convinced that they were operating in uniquely hostile territory.

streets constitute a war zone and supplied by a steady stream of cast-off military equipment from the Pentagon. These units are increasingly assuming standard on-duty policing roles, as opposed to responsibility only for unusual or especially dangerous policing situations. Now, the warrior mentality affects even those officers who are not members of SWAT units and is reflected in police uniforms, tactics, culture, and language. Reversing this police-against-the-world mentality is essential to restoring police-community relations and preserving the legitimacy of the police.

Below, we briefly recount the ways in which poor police culture and militarism have taken hold in police departments, starting with the creation of SWAT units in the 1960s and continuing with their increasing integration into everyday policing. We then move to a case study of police controls around use of force in a large urban department, Miami-Dade, which demonstrates the evolution of use-of-force policies from an idealistic and minimalist approach to something far more practical and nuanced. This history shows how departments have tried to influence police use of force through professionalization, recruitment, and training. We then show how, in recent years, use-of-force policies have become far more humane, with new strategies such as de-escalation increasingly being used to improve police-civilian encounters. However, due to the continued militarization of the police, these reforms have yet to be fully reflected in departmental priorities and encounter practical resistance. We conclude with a series of proposed policy and legal reforms that could help further professionalize policing in America, reduce inappropriate use of force, and root out the militaristic mentality that is the cause of much excessive police violence.

## I. MILITARISM AND THE USE OF FORCE—A SHORT HISTORY

What is striking about the recent public protests against excessive police violence is how unusual they are. Law enforcement has been increasingly militarized and its tactics more confrontational since at least the early 1970s, yet a majority of Americans have seemed largely untroubled by aggressive police tactics.<sup>2</sup> How did the regular use of violent force by the police become normalized? Two interconnected developments are driving this shift: the expansion of SWAT units and tactics, and a concomitant attitudinal change among police, even among those who are not members of these units. Both can directly conflict with and undermine good use-of-force policies, and they partially explain recent instances of police violence.

Police departments began developing SWAT units in the 1960s.<sup>3</sup> Half a century later, these units are ubiquitous. Even as

the violent crime rate continues to fall,<sup>4</sup> the number of SWAT deployments has increased.<sup>5</sup> Criminologists Peter B. Kraska and Victor E. Kappeler observe that, from the early 1970s to the mid-1990s, there were sharp increases in the number of what they call police paramilitary units, the number of activities they took part in, the integration of paramilitary units and tactics into standard on-duty policing, and the interconnectedness of paramilitary units and the armed forces.<sup>6</sup> In the early 1980s, SWAT-team deployments averaged around 3,000 per year; by 2007, that number was projected to be 45,000.<sup>7</sup> And these teams are everywhere, in all different kinds of communities. Towards the end of the 1990s, 89 percent of police departments in cities with more than 50,000 people had police paramilitary units (close to twice the rate in the mid-1980s); by 2007, 80 percent of departments in towns with 25,000 to 50,000 people had them (compared to an estimated 20 percent in the mid-1980s).<sup>8</sup>

The police are also armed like the military, taking advantage of the Pentagon's 1033 Program that permits the federal government to transfer military-grade weaponry to local police departments.<sup>9</sup> Since its inception, the program has transferred more than \$6.9 billion worth of equipment to local law enforcement.<sup>10</sup> President Barack Obama limited and prohibited transfer of certain types of military equipment by executive order,<sup>11</sup> but President Donald Trump has since revived the 1033 Program in its entirety.<sup>12</sup>

Contrary to public perception, these SWAT teams do not exist primarily to respond to unusual and dangerous situations

2 Victor E. Kappeler and Peter B. Kraska, *Normalising Police Militarisation, Living in Denial*, 25 *POLICING & SOC'Y* 268, 268-75 (2015). It is important to note that recent public survey data suggests attitudes around police tactics vary incredibly along demographic, economic, and political lines. For example, a 2016 survey found that 56 percent of African-Americans, 33 percent of Hispanics, and 26 percent of whites believed police actions are generally too harsh. Emily Ekins, *Policing in America: Understanding Public Attitudes Toward the Police. Results from a National Survey*, The Cato Institute (2016), <https://www.cato.org/sites/cato.org/files/survey-reports/pdf/policing-in-america-august-1-2017.pdf>.

3 RADLEY BALKO, *RISE OF THE WARRIOR COP: THE MILITARIZATION OF AMERICA'S POLICE FORCES* 10 (2013).

4 The violent crime rate peaked in 1991 at 716 violent crimes per 100,000, and it now stands at 366, about half that rate. Matthew Friedman, Ames C. Grawert, & James Cullen, *Crime Trends: 1990-2016*, Brennan Center for Justice (2017), [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Crime%20Trends%201990-2016.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Crime%20Trends%201990-2016.pdf).

5 *Cops or Soldiers?*, THE ECONOMIST, March 22, 2014, <https://www.economist.com/news/united-states/21599349-americas-police-have-become-too-militarised-cops-or-soldiers>.

6 Peter B. Kraska and Victor E. Kappeler, *Militarizing American Police: The Rise and Normalization of Paramilitary Units*, 44 *SOCIAL PROBLEMS* 1 (1997), <https://lsa.umich.edu/content/dam/sid-assets/SID%20Docs/Militarizing%20America%20Police...pdf>.

7 Peter B. Kraska, *Militarization and Policing—Its Relevance to 21st Century Police*, 4 *POLICING* 6 (2007), <https://cjmasters.eku.edu/sites/cjmasters.eku.edu/files/21stmilitarization.pdf>.

8 *Id.* at 6.

9 Matt Apuzzo, *War Gear Flows to Police Departments*, N.Y. TIMES, June 8, 2014, <https://nyti.ms/2k3GpNk>.

10 Defense Logistics Agency: Law Enforcement Support Office (last accessed December 5, 2019), <https://www.dla.mil/DispositionServices/Offers/Reutilization/LawEnforcement.aspx>.

11 Gregory Korte, *Obama bans some military equipment sales to police*, USA TODAY, May 18, 2015, <http://usat.ly/1bZY5oI>. See also Tom McCarthy and Lauren Gambino, *Obama ban on police military gear falls short as critics say it's a "publicity stunt"*, THE GUARDIAN, May 22, 2015, <https://www.theguardian.com/us-news/2015/may/22/obama-ban-police-military-gear-falls-short>.

12 Kevin Johnson, *Trump lifts ban on military gear to local police forces*, USA TODAY, August 28, 2017, <https://usat.ly/2xEwNzI>. See also C.J. Ciaramella, *Trump Wants Police to Keep Getting Military Equipment*

like active-shooter scenarios or hostage taking. A 2014 analysis of SWAT deployments found that 79 percent of those studied were for executing a search warrant, most commonly in drug investigations. Only a small handful of deployments (7 percent) were for hostage, barricade, or active-shooter scenarios.<sup>13</sup> As Kraska and others have noted, members of these units operate under a mentality that American streets constitute a “war zone” and have implemented a program of “proactive policing” that resembles a military unit on patrol, actively seeking out crime often on the flimsiest of suspicions.<sup>14</sup> No-knock warrants were employed in about 60 percent of all SWAT deployments where teams were looking for drugs.<sup>15</sup> “Zero tolerance” and “order maintenance” policing have given police departments a mandate to seek out and even manufacture community ills under the guise of “improving citizen satisfaction, reduc[ing] the fear of crime, and remov[ing] the ‘we/they’ attitude.”<sup>16</sup>

Militarization exacerbates police use of force problems in two significant ways. The first is a matter of opportunity. The larger or more powerful the weapons police have available to them, the greater the opportunity for them to respond with disproportionate force. Military equipment like armored vehicles and other advanced weaponry, used in a civilian setting, give police the opportunity to respond with overwhelming, sometimes deadly force.

The second is a matter of psychology. Even when departments recruit quality officers representative of the communities they police and attempt to train officers to use force minimally, a problematic police culture and poor mindset among individual officers can corrupt that agenda. When people adopt particular roles, they also adopt the behaviors and psychologies associated with those roles.<sup>17</sup> As the police come to operate like the military, they can come to think like the military, too, adopting a mindset that comes to see the citizens with whom they interact as collateral damage and even likely assailants. The attitudes and tactics that are appropriate to the battlefield (where the goal is to overwhelm an enemy) fit uneasily in a domestic, civilian setting in which the goal is the *avoidance* of deadly force

and the de-escalation of civilian-police encounters; in this setting, even when force is necessary, police are to use only proportional force. The hypothesized causal link between police militarization and excessive force is simple: when the only tool you have is a hammer, every problem comes to resemble a nail. While this causal link is far from conclusively established (indeed, research has found mixed results), this phenomenon is supported by some recent research finding that more militarized law enforcement departments are more likely to have violent and lethal interactions with civilians.<sup>18</sup> Excessive force is influenced by police filling their toolbox with increasingly powerful hammers instead of other, potentially less violent tools.

There is a lot of evidence for police militarization. Kraska observed that, since the early 1970s, police departments have changed their uniforms, weaponry, training, operative and tactical strategies, and even language, always tending toward military models.<sup>19</sup> In its 2014 report on police militarization, the ACLU observed a more martial tone in police training materials that had seeped “into officers’ everyday interactions with their communities.”<sup>20</sup> Journalist Radley Balko has collected a variety of police unit shirts designed by members that use violent language and imagery, including “Hunter of men,” “We get up Early, to BEAT the crowds,” “Baby Daddy Removal Team,” and “Narcotics: You huff and you puff and we’ll blow your door down.”<sup>21</sup> The rise of police militarization has infected policing in the United States—even outside of SWAT units—with a warrior mentality that trains officers to see every encounter with the public as a battle to be won. The result is increased, poorly managed use of force. Research suggests that law enforcement agencies that have the most military-style weaponry have rates of officer-involved deaths that are 129 percent higher than agencies that do not use military-style equipment.<sup>22</sup>

This warrior mentality affects every level of police training. Half of police recruits are trained in academies that employ a “stress” model derived from military boot camps that emphasizes military-style drills, daily inspections, intense physical demands, public discipline, withholding privileges, and immediate reaction

---

from the Pentagon, REASON.COM, August 23, 2016, <https://reason.com/2016/08/23/trump-wants-police-to-keep-getting-milit/>.

13 *War Comes Home: The Excessive Militarization of American Policing* 5, American Civil Liberties Union (2014), <https://www.aclu.org/report/war-comes-home-excessive-militarization-american-police>.

14 Peter B. Kraska, *Enjoying militarism: Political/personal dilemmas in studying U.S. police paramilitary units*, 13 JUSTICE QUARTERLY 404, 417-20 (1996). Kraska describes the cultural moment at the end of the Cold War, where political leaders such as then-Attorney General Janet Reno invoked the military as a model for policing and explicitly invited it to “help[] us with the war we’re now fighting daily in the streets of our towns and cities.” *Id.* at 419.

15 *War Comes Home*, *supra* note 13, at 33.

16 Matthew T. DeMichele & Peter B. Kraska, *Community Policing in Battle Garb: A Paradox or Coherent Strategy?* at 85, in PETER B. KRASKA, ED., MILITARIZING THE AMERICAN CRIMINAL JUSTICE SYSTEM: THE CHANGING ROLES OF THE ARMED FORCES AND THE POLICE 82-101 (2001).

17 *Id.*

---

18 See generally Delehanty, *supra* note 1. This research field is still developing, and other studies have not reached similar conclusions. Matthew C. Harris, Jinseong Park, Donald J. Bruce, & Matthew N. Murray, *Peacekeeping Force: Effects of Providing Tactical Equipment to Law Enforcement*, 9 AM. ECON. J. 291 (2017) (finding that “the causal effects of receiving tactical equipment are largely positive, though rather small, and consistent with the stated objectives of the 1033 Program”).

19 Kraska, *supra* note 14, at 417-18. Elsewhere, Kraska and Kappeler documented the explosion in the number of police paramilitary units in jurisdictions across the country—reaching 89 percent of the localities they surveyed in 1995, with 20 percent of those localities that didn’t have such units actively planning to establish them—and a dramatic increase in these units’ “callouts,” quadrupling from 1980 to 1995. Kraska and Kappeler, *supra* note 6, at 6.

20 *War Comes Home*, *supra* note 13 at 23.

21 Radley Balko, *What Cop T-Shirts Tell Us About Police Culture*, THE HUFFINGTON POST, June 22, 2013, [http://www.huffingtonpost.com/2013/06/21/what-cop-t-shirts-tell-us\\_n\\_3479017.html](http://www.huffingtonpost.com/2013/06/21/what-cop-t-shirts-tell-us_n_3479017.html).

22 Delehanty, *supra* note 1, at 3. *But see* Harris et al., *supra* note 18.

to infractions.<sup>23</sup> That training tends to focus on operations— investigations, vehicle and weapons training, policing tactics— with little time spent on the profession of policing, use-of-force policies, or emotional intelligence skills.<sup>24</sup> Indeed, as of 2017, thirty-four states had no requirement that officers be trained in de-escalation techniques that can defuse encounters with the public before the use of force is required.<sup>25</sup>

There are proposed reforms and national models that seek to roll back the warrior cop mentality. For example, in 2016 the Police Executive Research Forum, a national organization of police officials, issued guidelines advocating a “guardian” model for policing.<sup>26</sup> These guidelines stress respect for human life, restrictive standards for the use of force, proportionality and de-escalation techniques, and transparent and independent post-action investigations.<sup>27</sup> These kinds of changes in mentality and policy can translate into reductions in police use of force. Indeed, a study published in 2016 analyzing over 3,000 use of force incidents from three police agencies found that officers who operated under the least restrictive use-of-force policies were significantly more likely to use higher levels of force than those policing under more restrictive policies.<sup>28</sup> Unfortunately, calls for reform find difficulty gaining traction in the face of pressures that push police to adopt military weapons, tactics, and culture, which in turn foster excessive use of force.

## II. MIAMI: A CASE STUDY IN THE EVOLUTION OF DEPARTMENT CONTROLS OVER POLICE VIOLENCE

Policies defining acceptable use of force are meant to constrain police action by protecting the public from excessive use of force, while permitting proportionate use of force when necessary for the public good. Use-of-force policies should both define norms and reflect on-the-ground realities. However, they may not do so when they fail to correct and account for police attitudes and mindsets.

Those who don't remember history are doomed to repeat it.<sup>29</sup> For this reason, a critical evaluation of the current state of

police use-of-force policy—and all policy mechanisms that aim to control police violence—must be grounded in an understanding of the past.

In this section, we present a short history of the evolution of use-of-force policy in a large urban police department: Miami-Dade. This history includes key related changes to recruitment and training practices meant to curtail police violence and uphold norms around police use of force. The history of policing in Miami-Dade shows in microcosm the national turn toward a more professional approach to policing starting in the 1960s and 1970s, as well as a more recent shift to a more force-avoidant model that emphasizes the sanctity of life and de-escalation. However, the legacy of militarism remains, and the history suggests some divergence between modern use-of-force policies and police practice.

### A. *The Beginnings of Policing in Miami: Evolution of the Miami Police Forces*

For almost a century, policing power in the larger Miami-Dade area largely rested in the hands of the Dade County Sheriff's Office, first founded in 1863 when Dade County was officially established.<sup>30</sup> The City of Miami Police Department (MPD) was organized in 1896 under City Marshal Young Gray, who was the sole police officer in the city of Miami for several years following its incorporation.<sup>31</sup> In 1957, the Dade County Sheriff's Office was dubbed the Public Safety Department (PSD), taking on new tasks beyond traditional police work, including fighting fires, supervising the jail and stockade, and even inspecting vehicles.<sup>32</sup> This work continued with only a few changes until 1966.

After complaints concerning department corruption and the process for electing the county sheriff arose, voters decided the sheriff and the department director would be appointed by the county manager.<sup>33</sup> Following this change, E. Wilson Purdy was appointed director of the PSD, and the department began a period of professionalization that would continue throughout the next several decades amidst much turmoil and controversy. The department was renamed the Metro-Dade Police Department in 1981, a title it held until its name was changed again in 1997 to its current title, the Miami-Dade Police Department (MDPD).<sup>34</sup> Today, the MDPD employs approximately 2,800 sworn officers and an additional 1,500 support personnel in order to protect

23 Brian A. Reaves, *State and Local Law Enforcement Training Academies*, 2013, Bureau of Justice Statistics, U.S. Dep't of Justice, at 1 (2016), <https://www.bjs.gov/content/pub/pdf/slleta13.pdf>.

24 *Critical Issues in Policing Series: Re-Engineering Training on Police Use of Force*, Police Executive Research Forum, at 11-12 (Aug. 2015), <https://www.policeforum.org/assets/reengineeringtraining1.pdf>.

25 Curtis Gilbert, *Not Trained to Not Kill*, AMERICAN PUBLIC MEDIA (2017), <https://www.apmreports.org/not-trained-to-not-kill> (“Which states require de-escalation training”).

26 *Guiding Principles On Use of Force*, Police Executive Research Forum (March 2016), [https://www.policeforum.org/assets/30%20guiding%20principles.pdf?source=post\\_page](https://www.policeforum.org/assets/30%20guiding%20principles.pdf?source=post_page).

27 *Id.* at 34-78.

28 William Terrill and Eugene A. Paoline III, *Police Use of Less Lethal Force: Does Administrative Policy Matter?*, JUSTICE QUARTERLY, at 17-18 (2016), <https://de-escalate.org/wp-content/uploads/2015/07/LE-Use-of-Less-Lethal-Force-Does-Policy-Matter.pdf>.

29 See Grady Atwater, *Realizing the importance of local history*, MIAMI COUNTY REPUBLIC, Oct. 9, 2019, [https://www.republic-online.com/opinion/columns/realizing-the-importance-of-local-history/article\\_086cb680-e92f-11e9-beeb-6fd898dcd0.html](https://www.republic-online.com/opinion/columns/realizing-the-importance-of-local-history/article_086cb680-e92f-11e9-beeb-6fd898dcd0.html).

30 *Analysis of Potential Merger of the Miami-Dade Police Department and the Department of Corrections and Rehabilitation*, Performance Improvement Div., Miami Dade Cnty. Office of Strat. Bus. Mgmt. (June 30, 2004), [https://web.archive.org/web/20070810221403/http://www.miamidade.gov/mppa/library/pdf\\_project\\_files/2004/PoliceCorrectionsMergerAnalysis.pdf](https://web.archive.org/web/20070810221403/http://www.miamidade.gov/mppa/library/pdf_project_files/2004/PoliceCorrectionsMergerAnalysis.pdf).

31 Paul George, *Miami's City Marshal and Law Enforcement in a New Community, 1896-1907*, 34 TEQUESTA 32, 34-36 (1984), [http://digitalcollections.fiu.edu/tequesta/files/1984/84\\_1\\_03.pdf](http://digitalcollections.fiu.edu/tequesta/files/1984/84_1_03.pdf).

32 Performance Improvement Division, *supra* note 30, at 3.

33 Dade County Public Safety Department, *Ten Years Towards Professionalism: Progress Report, 1976* at 3 (Dec. 1976) (scanned document on file with authors).

34 Performance Improvement Division, *supra* note 30, at 3.

and serve more than 2.5 million residents within over 2,100 square miles.<sup>35</sup>

Police departments in Miami did more than just change in name and grow in size during the sixty-year period from the early 1960s to today. Over time, use-of-force policy became more detailed and practical and new techniques were adopted to restrain police violence.

*B. An Idealistic, Minimalist Beginning: Use-of-Force Policy in the 1960s*

In 1962, the first manual of the Metropolitan Dade County Public Safety Department was published.<sup>36</sup> Recruits were taught that the force they were allowed to use to carry out an arrest “depends on the resistance offered by the subject and the crime which he has committed.”<sup>37</sup> As a general rule, police officers could use the amount of force necessary to complete the arrest: If the person was fleeing or only physically resisting arrest, then physical force would likely be sufficient; if the person was armed, deadly force could be used if the officer believed his or her life to be at risk.<sup>38</sup> Department policy on use of force was made very clear: “[E]xcessive force on the part of police officers will not be tolerated. . . . If the person being arrested offers no resistance and if bystanders offer no resistance, then no force is required and none will be used.”<sup>39</sup>

Given this policy, officers were to be purposeful when deciding whether to draw their weapons and to consider the likely reaction of individuals if they did so. Officers were not to use their firearms to fire warning shots or to prevent a suspect from escaping an arrest; their guns were only to be used if the situation

warranted a justified killing.<sup>40</sup> If it seemed that armed resistance from an individual was likely, officers could use their discretion and draw a weapon to ensure the suspect was “at as great technical disadvantage as possible” in an “utterly hopeless” situation.<sup>41</sup> Recruits were warned that drawing a gun otherwise would likely expose them to “ridicule and contempt.”<sup>42</sup> Throughout the arrest, officers were to be alert, decisive, professional, and courageous, but also humane, with the understanding that arrested individuals may react in a negative manner to unnecessarily harsh, cruel, or humiliating treatment.<sup>43</sup>

The PSD instituted an internal reporting process as well as a system in which official complaints could be filed by external actors as mechanisms for reviewing use-of-force incidents. At this time, all employees who used physical force during the process of arrest or to retain custody of an individual were to write up reports describing the circumstances and present them to their supervisors. A report was to include information on the logistics of the incident (date, time, location, degree of force used, what was used to inflict force, and information on what and where any medical treatment for the individual was provided) as well as any conversation with the individual that could be considered “profane, obscene, threatening or incoherent.”<sup>44</sup> Once submitted, the supervisor was to read it, talk with the officer, and provide his own thoughts in a separate document on an appropriate course of action.<sup>45</sup> The Internal Affairs Section and the division chief received copies of both reports, and the division chief ensured it was retained in the department’s files.<sup>46</sup> Police officers could also be reported for an inappropriate use of force or violence in official complaints. If a “major” complaint was levied against a PSD employee, Internal Affairs was to be immediately alerted.<sup>47</sup>

A police recruit’s manual<sup>48</sup> from 1967 is filled with notes, presentations, and policies articulating a principled rationale for these restraints on use of force. Some of the lessons contained in the manual promote a form of model policing that many communities would be ecstatic to have today. Police officers were instructed to respect individual liberty and limited government

35 Miami Dade County, *Apply for a County Police Job*, Miami-Dade County (accessed Nov. 22, 2019), [https://www.miamidade.gov/global/service.page?Mduid\\_service=ser1470668102245350](https://www.miamidade.gov/global/service.page?Mduid_service=ser1470668102245350).

36 Sheriff T. A. Buchanan, Administrative Order No. 25-65, Dade County Sheriff’s Office, Nov. 8, 1965 (scanned document on file with authors).

37 Dade County Public Safety Department Training Bureau, *Introduction to the Mechanics of Arrest* at 21, in JAMES T. BUCHANAN, POLICE RECRUIT CLASS – 44 MANUAL VOL. II (1967) (hereinafter “Buchanan Manual”). As part of our research into present-day policing practices among the Miami-Dade police force, we acquired Public Safety Department police recruit James T. Buchanan’s manual which was composed of two volumes filled with notes, presentations, and department documents and policies. Buchanan’s personal notes during instructional sessions are dated 1967 so we assume any policies included therein were reflective of the policies that year unless otherwise dated. The “Introduction to the Mechanics of Arrest” is just one document included in the manual. An electronically scanned version of the document is on file with the authors.

38 *Id.* According to the principles laid out by the Dade County Sheriff’s Office Training Bureau, several factors needed to be met for the use of force to be justified: “(1) [The officer] is acting officially as a policeman within the boundaries of his legal authority, (2) [The officer] has sufficient cause, as would appear real and reasonable to a prudent police officer, to fear for his personal safety or that of another; (3) The means and the force employed by [the officer], including the use of firearms, are not such as a prudent officer would consider excessive, unreasonable, or unnecessary; (4) The officer sees no acceptable alternative available to him considering his obligation not to retreat from his official mission and his inherent right to protect himself.” Dade County Sheriff’s Office Training Bureau, *Police-Community Relations Statement: How Police Officers Will Enforce Laws* at 2, in Buchanan Manual Vol. II.

39 Dade County Sheriff’s Office Training Bureau, *supra* note 38, at 1.

40 Dade County Public Safety Department Training Bureau, *supra* note 37, at 21.

41 *Id.* at 22.

42 *Id.*

43 *Id.* at 24, 30; Dade County Sheriff’s Office Training Bureau, *supra* note 37, at 2.

44 *Use of Force in Effecting an Arrest or Subsequent Use of Force to Maintain Custody* 15-16, in Manual of Rules and Procedures, Dade County Sheriff’s Office (1966).

45 *Id.*

46 *Id.*

47 If the complaint was filed outside of typical office hours, the Communications Bureau would request the on-call Internal Affairs Investigator. Major complaints included actions such as criminal activity, cowardice, immorality, drug use, accepting bribes, malfeasance, and mistreatment of prisoners. See *Complaints against Employers* at 39, in Manual, *supra* note 44.

48 See *supra* note 37.

when deciding whether and how to use their power and to treat all individuals with respect. For example, one note on arrests stated that “[t]he law of arrest represents an effort to achieve a balance between the right of a person in a free society to enjoy his liberty, and the right of society to protect itself against crime and the criminal.”<sup>49</sup> Another note said officers were instructed to be courteous, composed, and patient with drivers they stopped after a car chase: “[B]y being a gentleman and treating others with respect, it makes them feel important, too.”<sup>50</sup>

Unfortunately, the city and county police did not demonstrate such respect for life and liberty when policing all communities in Miami. Stop and frisk policies and mistreatment of black tenants by white landlords had increased racial tension in Miami and eventually set the stage for three days of rioting in Miami’s black Liberty City neighborhood in August 1968.<sup>51</sup> During the riots, police killed three community members, eighteen were injured, and hundreds were arrested.<sup>52</sup> Two of those community members were killed when police fired twenty gunshots over the course of ten minutes toward an alley.<sup>53</sup> The police believed they had heard gunshots from a sniper nearby, but their gunfire was never returned and the two young men killed were found unarmed.<sup>54</sup> Residents present during the riot believed the sniper the police supposedly heard was simply police firing shots a block over.<sup>55</sup> Police also used tear gas arbitrarily.<sup>56</sup> A reporter later described the racially insensitive response by Miami Police Chief Walter Headley, saying that the chief tried “to control Liberty City by flooding the black ghetto with white officers equipped with shotguns and dogs.”<sup>57</sup> The year before, Headley had been quoted as saying, “When the looting starts, the shooting starts”—a phrase that would come to exemplify his

“no-nonsense philosophy” as described by six-term Miami Mayor Maurice Ferre.<sup>58</sup> These events and statements demonstrate that even idealistic use-of-force policies are no match for poor police culture, attitudes, and practices.

### C. *Changes to Recruitment and Training: Policing from the late 1960s to the early 1980s*

Fortunately, the poor police response to the 1968 riot occurred during a time in which police training, recruitment, and practices were changing. A Community Police Council was created in 1967 to facilitate conversations between the PSD and residents, and a community services section was tasked with improving police-community relations.<sup>59</sup> In an effort to attract, produce, and retain qualified officers, the Florida Legislature passed the Police Standards Act in 1967, creating new agencies tasked with overseeing recruiting standards and training.<sup>60</sup> The Metropolitan Police Institute (now known as the Miami-Dade Public Safety Training Institute) was formed in 1968 and tasked with training both recruits and supervisors, including in community relations.<sup>61</sup> Positions for a staff psychologist and a human resources coordinator—who was tapped to develop an affirmative action plan for the department—were created in 1972.<sup>62</sup> The new Miami Department of Corrections and Rehabilitation was founded in 1970 and soon assumed the PSD’s jail duties, while auxiliary functions like fire services were handed off to other agencies to allow PSD to focus solely on law enforcement.<sup>63</sup>

Soon, the demographics of the departments also began to change. It was thought that creating a police force reflective of the community would have a positive impact on police attitudes and reduce excessive use of force.<sup>64</sup> In 1965, the PSD had only three female police officers; by 1970, there were twenty-two.<sup>65</sup> Under PSD Sheriff E. Wilson Purdy, these women were able to do work outside of the more traditional female roles—being a member of the juvenile squad, doing clerical work, or handing out parking tickets—and were given assignments signaling increasing parity

49 Charles Donelan, *Notes on Arrest* at 11-12, Dade County Sheriff’s Office Training Bureau, in Buchanan Manual Vol. II.

50 *Pursuit Driving* § 28 at 3-5, in Buchanan Manual Vol. II.

51 Terence McArdle, *How three violent days gripped a black Miami neighborhood as Nixon was nominated in 1968*, WASHINGTON POST, August 7, 2018, <https://www.washingtonpost.com/news/retropolis/wp/2018/08/07/how-three-violent-days-gripped-a-black-miami-neighborhood-as-nixon-was-nominated-in-1968/>. In one infamous stop and frisk case, police officers held a young teenager over a bridge after strip-searching him. *Id.*

52 At the time, a homicide committed by a police officer could be considered justified if it was “necessarily committed” when trying to suppress a riot, apprehend an individual alleged to have committed a felony, or in lawfully keeping the peace. Homicides were also justified when “necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any legal duty or when necessarily committed in retaking felons who may have been rescued or who have escaped, or when necessarily committed in arresting felons fleeing from justice.” Dade County Public Safety Department, *Homicide* § 782.02(1)(c), in Fla. Law Enforcement Handbook (1975).

53 McArdle, *supra* note 51.

54 *Id.*

55 *Id.*

56 *Id.*

57 Andy Rosenblatt, *Guard Shows Dade a New Face*, MIAMI HERALD, May 21, 1980 (accessed via Newsbank).

58 Maurice Ferre, *On racial issues, good intentions aren’t enough*, MIAMI HERALD, August 25, 2014, <https://www.miamiherald.com/opinion/oped/article1981602.html>.

59 Dade County Public Safety Department, *supra* note 33.

60 *Id.*

61 *Id.* at 4-11.

62 *Id.* at 12-13.

63 Performance Improvement Division, *supra* note 30 at 3; Dade County Public Safety Department, *supra* note 33 at 3-4.

64 Rosenblatt, *supra* note 57. Interestingly, research suggests a racially diverse police force can help improve community relations and may reduce discriminatory stops; however, it does not support the conclusion that officer race is generally associated with excessive use of force. Rather, it seems the department’s culture plays an important role in promoting or reducing use of force. See U.S. Commission on Civil Rights, *Police Use of Force: An Examination of Modern Policing Practices* at 99-100 (November 2018), available at <https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf>.

65 *Women wearing the police badge*, MIAMI HERALD, Nov. 19, 1970 (accessed via Newsbank).

with men.<sup>66</sup> This came as a result of top-down support from the PSD: “We want women to work in organized crime, vice, gambling, homicide, narcotics, robberies, accidents—anything the men do,” Sheriff Purdy stated.<sup>67</sup> By 1980, women made up about 14 percent of the PSD force and 9 percent of the MPD force.<sup>68</sup>

Black and Latino police officers also increased in numbers during this period. In 1975, blacks and Latinos each made up less than a tenth of the PSD force (less than 20 percent together), and in 1976, they made up roughly a quarter of the MPD.<sup>69</sup> But by December 1980, over a quarter of the PSD and roughly 38 percent of the MPD was either black or Latino.<sup>70</sup> The continued incorporation of people of color into the police force was a direct response to a federal consent decree in the late 1970s that ordered MPD to reverse past discrimination by bolstering minority hiring and promotions.<sup>71</sup>

In 1980, newly appointed MPD Chief Kenneth Harms and PSD Director Bobby Jones began implementing their plans to better address police brutality and increase accountability.<sup>72</sup> The MPD began compiling a list of officers with an unreasonable number of complaints filed against them, or who often discharged their weapons or used force, requiring them to participate in a stress-reduction program and receive counseling.<sup>73</sup>

When riots broke out again in Liberty City in May 1980 following the acquittal of four officers who had badly beaten and killed black Miami resident Arthur McDuffie, responding officers had received sensitivity training and instruction on mob psychology, race relations, and using self-control when provoked.<sup>74</sup> One reporter noted, “They have been told to maintain a low profile, ignore taunts and use their weapons as a last resort.”<sup>75</sup> Police leaders believed that training changes and a more diverse force would lead to a more effective response; however, members of the black community were less confident in this outcome.<sup>76</sup> Some officers vandalized Liberty City residents’ cars during the

riots, and McDuffie’s death and the subsequent acquittals (by an all-white jury) were taken as proof by many residents that black lives and property did not matter as much to the police and public as white lives and property.

Following the May 1980 riot and amidst increased crime and under-resourced police departments,<sup>77</sup> the Miami police forces continued to grow and change.<sup>78</sup> After McDuffie’s murder, the Metro-Dade police force began using psychological screening tests in its recruiting process to screen out impulsive, prejudiced, insecure, aggressive, and passive candidates (the MPD had already begun using psychological tests).<sup>79</sup> The goal of this change was to ensure that only high quality, psychologically and emotionally stable officers were recruited into the force. Leaders recognized that the consequences of recruiting the wrong officers were high, and the topic often arose in conversations on policing. A paper presented during the Florida Department of Law Enforcement’s Statewide Conference on Law Enforcement Officer Selection in 1981 clearly stated the negative repercussions of poor recruitment strategies:

The presence of even a few undesirable officers in a police agency has enormous social and financial implications. The excessive or injudicious use of force by an emotionally unstable officer can result in tragic consequences, and an officer who becomes involved in illegal activities causes an erosion of the public’s confidence in the agency. A major goal in police selection is screening out such “misfits” from positions in law enforcement.<sup>80</sup>

The MPD and PSD continued to prioritize minority recruiting.<sup>81</sup> By May 1981, both police forces had added around 200 officers to their ranks within the previous year.<sup>82</sup> News accounts noted that a recruitment campaign targeting potential black and Latino officers, as well as Police Appreciation Week and Crime Prevention Week, were all intended to improve the image of policing following a year of turmoil and low morale within the two departments.<sup>83</sup> According to one MPD human resources official, the goal of these strategies was simple: “What we’re trying to do is make the department reflective of the makeup of the entire

66 *Id.*

67 *Id.*

68 *Authorities begin series of reforms*, MIAMI HERALD, Dec. 30, 1980 (accessed via Newsbank).

69 Latinos almost composed a majority of the population within the city of Miami at this time. *Id.*

70 *Id.*

71 Dan Williams, *City Looking for a Few (150) Good Cops*, MIAMI HERALD, Oct. 10, 1980 (accessed via Newsbank). See also *United States v. City of Miami*, 195 F.3d 1292, 1301 (11th Cir. 1999).

72 *Probes improve, Harms and Jones say*, MIAMI HERALD, Dec. 30, 1980. See also *Authorities begin*, *supra* note 68.

73 *Id.*

74 Rosenblatt, *supra* note 57; David Smiley, *McDuffie riots; revisiting, retelling story—35 years later*, MIAMI HERALD, May 17, 2015, <https://www.miamiherald.com/news/local/community/miami-dade/article21178995.html>.

75 Rosenblatt, *supra* note 57.

76 *Id.*

77 *Miami Herald* reporting noted that, during this period, some police officers told citizens to arm themselves because they could not count on the police to protect them due to insufficient police resources. Williams, *supra* note 71.

78 *Id.*

79 *Authorities begin*, *supra* note 68. See also Rick Hirsch, *Drive to recruit blacks, Latins led to young force*, MIAMI HERALD, Dec. 31, 1982 (accessed via Newsbank).

80 Charles D. Spielberger, Harry C. Spaulding, Margie T. Jolley, and John C. Ward (eds.), *Selection of Effective Law Enforcement Officers: The Florida Police Standards Research Project*, in POLICE SELECTION AND EVALUATION: ISSUES AND TECHNIQUES (1979).

81 *Id.*

82 Anders Gyllenhaal, *Police polish image on 3 fronts*, MIAMI HERALD, May 12, 1981 (accessed via Newsbank).

83 *Id.*

community.”<sup>84</sup> By the end of 1982, almost six of every ten MPD officers were either female, Latino, or black.<sup>85</sup>

*D. Community Fallout from the 1980s Hiring Spree: Policing in the Mid- to Late 1980s*

This period of rapid growth and change did not come without collateral consequences. For one, the MPD was increasingly made up of young, inexperienced officers. In October 1982, one in three city police officers had been on the job for less than eighteen months.<sup>86</sup> Two of these young officers were involved in the shooting of 20-year-old Nevell Johnson, Jr., a black Miamian, in December 1982, which sparked further unrest and violence.<sup>87</sup> Civil rights leaders called for MPD Chief Kenneth Harms to be fired after he called the young people rioting following the Johnson killing “hoodlums.”<sup>88</sup> In 1984, after 24-year-old Dade County officer Luis Alvarez was acquitted of manslaughter charges in the Johnson case by an all-white jury, riots broke out again in Miami.<sup>89</sup> During this time of racial tension, police leaders often struggled to lead effectively and to orchestrate peace and healing within their communities.

But this was not the only problem plaguing Miami area police forces. In the late 1980s, the Miami River Cops scandal and associated events led Miami Police Chief Clarence Dickson to purge roughly a tenth of the MPD force.<sup>90</sup> Many of these officers had become involved in corruption and drug trafficking after being recruited in the early 1980s, or they knew their fellow officers were involved in illegal matters but failed to investigate or report them.<sup>91</sup> Several county officers were also found to be involved in the drug trade.<sup>92</sup> The overwhelming number of new recruits, the relative youth of the department, subsequent failures to sufficiently train and supervise new officers, and a police code of silence were credited as possible reasons for the widespread

corruption and lethal uses of force.<sup>93</sup> Indeed, a Dade County grand jury report called for an overhaul of both Dade County’s and the city’s Field Training Officer (FTO) programs:

The Field Training Officer programs, in both the Metro-Dade and the City of Miami Police Departments, are substandard at best. Until this defect is remedied, the implementation of all of the other recommendations made in this Report will, collectively, still not bring our police department to performance levels which this community expects and deserves.”<sup>94</sup>

In 1982, the Supreme Court established the doctrine of “qualified immunity.” Qualified immunity is a legal doctrine that allows public officers—including law enforcement—to escape the civil liability they would otherwise face for violating an individual’s constitutional rights “insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”<sup>95</sup> This doctrine has since made it extremely difficult to hold law enforcement officers who use excessive force or otherwise violate people’s constitutional rights accountable.

Nevertheless, the 1980s were largely a time of increased progress toward the professionalization of policing—a trend which continued into the 1990s.

*E. Use-of-Force Policy Becomes More Nuanced while Militarization Becomes More Apparent: Policing in the 1990s and the 21st Century*

Despite the dramatic changes that took place from the 1960s to the 1980s, the police use-of-force policy in the 1980s remained largely similar to that of the 1960s—and overly simple. In the 1960s, department policy had considered police use of force, including deadly force, to be justified when used in defense of the officer or another or while capturing a fleeing suspect or prisoner if the officer had sufficient cause to anticipate harm, was without alternatives, and his or her exercise of force would appear reasonable to a prudent officer.<sup>96</sup> According to the MDPD’s 1985 version of the Florida Law Enforcement Handbook:

[A law enforcement officer] is justified in the use of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest or when necessarily committed in retaking felons who have escaped, or when necessarily committed in arresting felons fleeing from justice.<sup>97</sup>

But by 1996, the MDPD manual dedicated ten pages to an in-depth articulation of the policy, rules, and standard operating

<sup>84</sup> *Id.*

<sup>85</sup> Hirsch, *supra* note 79.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* See also Reginald Stuart, *Policeman in Miami is Acquitted by Jury in Slaying of Black*, N.Y. TIMES, March 16, 1984, <https://www.nytimes.com/1984/03/16/us/policeman-in-miami-is-acquitted-by-jury-in-slaying-of-black.html>.

<sup>88</sup> Associated Press, *Civil Rights Leaders Ask Dismissal of Miami Police Chief in Shooting*, N.Y. TIMES, Jan. 6, 1983, <https://www.nytimes.com/1983/01/06/us/civil-rights-leaders-ask-dismissal-of-miami-police-chief-in-shooting.html>.

<sup>89</sup> Stuart, *supra* note 87.

<sup>90</sup> In the Miami River Cops case, a group of Miami police officers robbed and killed drug traffickers bringing cocaine into the city by way of the Miami River. Morris S. Thompson, *Miami Vice Police Trafficking in Drugs*, WASHINGTON POST, Feb. 7, 1988, <https://www.washingtonpost.com/archive/politics/1988/02/07/miami-vice-police-trafficking-in-drugs/b2c36dc8-1dbb-4e93-9a06-c89011c3946d/>.

<sup>91</sup> *Id.*

<sup>92</sup> United Press International, *Dade Police Director Quits*, SOUTH FLORIDA SUN SENTINEL, Nov. 21, 1986, <https://www.sun-sentinel.com/news/fl-xpm-1986-11-21-8603110689-story.html>.

<sup>93</sup> *Id.*; Thompson, *supra* note 90.

<sup>94</sup> Dade County Fall Term 1982 Grand Jury, Final Report of the Grand Jury 7-8 (1983, May 10), [www.miamisao.com/publications/grand\\_jury/1980s/gj1982f4.pdf](http://www.miamisao.com/publications/grand_jury/1980s/gj1982f4.pdf).

<sup>95</sup> *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), <https://caselaw.findlaw.com/us-supreme-court/457/800.html>.

<sup>96</sup> Dade County Sheriff’s Office Training Bureau, *supra* note 38, at 1-2.

<sup>97</sup> Metro-Dade Police Department, *State Substantive Laws*, Florida Law Enforcement Handbook § 776.05 (1985) (scanned document on file with authors).



procedures around use of force. Force was to be an officer's last resort, to be used only when all other options—verbal commands, pursuit, nondeadly force—had been used or when not using force would be unsuitable for the circumstances.<sup>98</sup> Instead of using physical force against someone, officers were told that they could advise, give them a warning, or use other forms of persuasion.<sup>99</sup> If force had to be used, an officer could use nonlethal options, such as a police baton or chemical agents.<sup>100</sup> Firearms were only to be drawn or pointed at someone if it presented a tactical advantage for the officer and if there was “a substantial and imminent risk that the situation may escalate to a point where deadly force may be justified.”<sup>101</sup> And deadly force was only to be used when an officer had a clear reason to think they or another individual could be in immediate danger of being killed or critically injured.<sup>102</sup>

Building on the internal affairs process described in the 1960s policy, the 1990s policy added that if an officer used force to control a situation, their supervisor would be alerted, and the supervisor would fill out a Supervisor's Report of Use of Force to Control form accompanied by photos of any individuals injured during the incident.<sup>103</sup> Depending on the type of force used, the officer could be placed on administrative assignment as the incident was reviewed.<sup>104</sup>

The MDPD's use-of-force policy did not change much between the 1990s and 2010s, with some key exceptions. In 2015, the MDPD allowed officers to use “Electronic Control Devices”—also known as tasers—as a nonlethal tool of force if they had completed the department's training course.<sup>105</sup> Additionally, the use-of-force policy was updated to lay out three specific instances in which deadly force could be used: (1) when it is reasonably assumed to be necessary to stop the commission of a violent felony in the near future, (2) when it is reasonably necessary for self-defense or to protect the officer or another person from imminent death or serious injury, and (3) when it

is reasonably necessary to prevent an individual convicted of a violent felony from escaping prison or jail.<sup>106</sup>

Yet while policing policy changed little in the two decades preceding the 2010s, key changes outside of local policy—like the founding of the 1033 Program and the 9/11 terrorist attacks— influenced the mindset of officers and the practice of policing. Miami police forces became able to acquire and use military weaponry, and police leaders could use a possible terror threat to galvanize public and official support for such acquisitions.<sup>107</sup> By the time of the Ferguson protests in 2014—one of the first widely recognized displays of police militarization in the United States—the MDPD had acquired an armored personnel carrier (a “Bearcat”), multiple mine-resistant vehicles, several grenade launchers, and almost 250 assault rifles.<sup>108</sup> Dr. James Sewell, the former Assistant Commissioner of the Florida Department of Law Enforcement speculated that while some military-style equipment may aid officer safety, it also could create a dangerous attitude among police in which members of the community were labeled the enemy.<sup>109</sup> In 2016, protestors outside the Miami county hall were patrolled by an officer with a semi-automatic weapon, an unusual display of force.<sup>110</sup> And in 2017, the MDPD declared it would be randomly showcasing its Rapid Deployment Force—which includes armored vehicles—at key infrastructure sites and potential targets, such as government buildings or the metro system.<sup>111</sup>

Given the increased militarization of policing and the public outcry following several lethal police shootings, the policing community soon came to realize police training needed to be amended. Police were holding ever more potent weapons in their hands, increasing the need for de-escalation—“the strategic slowing down of an incident,” where police seek to calm civilians who are agitated, obviating the need to use force, rather than immediately seeking to obtain compliance by means of force—as well as communication and crisis-intervention training that better permits officers to identify and respond effectively to

98 Metro-Dade Police Department, Administrative Order 2-34: “Use of Force and Discharge and Firearm Reporting,” in Metro-Dade Police Department Manual pt. 1 (1996).

99 *Id.*

100 Only individuals who had completed training and demonstrated proficiency in lateral vascular neck restraints (LVNR) could use it as a technique for subduing an individual; individuals upon which a LVNR was applied were to be examined by Fire Rescue and medical personnel before being incarcerated. *See id.*

101 *Id.*

102 The department policy specifically articulates that “fleeing felons” are included in this protection. *See id.*

103 *Id.*

104 *Id.*

105 Miami Dade Police Department, Use of Force and Weapons ch. 31 pt. 1 (June 30, 2015), <https://www.muckrock.com/foi/miami-dade-county-7318/use-of-force-policy-miami-dade-county-police-18608/#comms>.

106 The specific mention that deadly force was allowed to be used when necessary to prevent an individual from escaping a penal institution seems to be a direct reversal of the 1996 policy, which instructed officers “not to use deadly force against any person, including fleeing felons, except as necessary in self-defense or the defense of another when they have reason to believe they or another are in immediate danger of death or serious physical injury.” Metro-Dade Police Department, *supra* note 98 at § C.

107 Jerry Ianeli, *Miami-Dade Police Deploying Military Unit Randomly Across Town*, MIAMI NEW TIMES, August 8, 2017, <https://www.miaminewtimes.com/news/miami-dade-county-police-deploy-military-unit-armored-trucks-across-town-9559428>.

108 Carol Marbin Miller, *South Florida cities can roll out Ferguson-like arsenals*, MIAMI HERALD, August 22, 2014, <https://www.miamiherald.com/news/local/community/miami-dade/article1981225.html>.

109 *Id.*

110 Jerry Ianeli, *Miami-Dade Police Deploying Military Unit Randomly Across Town*, MIAMI NEW TIMES, August 8, 2017, <https://www.miaminewtimes.com/news/miami-dade-county-police-deploy-military-unit-armored-trucks-across-town-9559428>.

111 *Id.*

persons undergoing mental health crises.<sup>112</sup> Yet a 2015 survey by the Police Executive Research Forum found that the median recruit received an estimated 58 hours of firearms training and 49 hours of defensive tactics training, but only eight hours of de-escalation training and 24 hours of use-of-force scenario-based training (which is how recruits learn to respond proportionately to interactions with civilians who are agitated or resisting).<sup>113</sup> Making matters worse, only 65 percent of responding agencies reported even offering de-escalation instruction as part of their in-service training.<sup>114</sup> Given these results, the Police Executive Research Forum concluded that more training time needed to be spent on de-escalation and crisis intervention.<sup>115</sup>

Interviews with police chiefs led the Police Executive Research Forum to conclude that use-of-force policies also needed to refocus on the sanctity of human life.<sup>116</sup> Use-of-force policy and informal police culture often told officers to focus on their own safety—an obviously important consideration—but analysis of contemporary police shootings suggests that officers could have avoided lethal outcomes if they had thought more broadly about every individual’s safety rather than solely their own.<sup>117</sup> Indeed, several police shootings involving MPD officers led to a Department of Justice investigation and ultimately the signing of a federal consent decree in 2016, which required MPD to (among other reforms) beef up with reporting systems on use of force incidents, increase oversight of line officers, and complete use-of-force investigations more quickly than in the past.<sup>118</sup> Although the MDPD did not face such an investigation, Miami-Dade officers were also involved in several publicly criticized shootings.<sup>119</sup>

#### F. Policing in Miami-Dade Today

The MDPD followed these recommendations by focusing their latest use-of-force policy updates on de-escalation and preserving the sanctity of human life. “[T]he sanctity of human

life,” the policy now states, “is central to the department’s mission, policies, training and tactics.”<sup>120</sup> This is perhaps the biggest change in Miami-Dade’s use-of-force policy from the 1960s until now. As part of the agenda that aims to implement this mission, officers today are to use de-escalation before using force when able and, even when the circumstances could warrant deadly force, are instructed to only use the force required to protect individuals’ lives.<sup>121</sup> They are not to use deadly force if an individual is only a danger to themselves or to stop a fleeing felon unless that individual poses an immediate harm to another or to the officer.<sup>122</sup> If they use force, officers must notify the dispatcher and ask that their supervisor respond; this supervisor will then take photos and complete the “Supervisor’s Report of Response to Resistance” document that will be sent to the Professional Compliance Bureau (PCB).<sup>123</sup> While the incident is being investigated, an officer will be put on administrative assignment if the use of force resulted in death or serious injury.<sup>124</sup> And following any use of deadly force, officers must attend a Miami-Dade Public Safety Training Institute training program either immediately or as soon as possible.<sup>125</sup>

However, an officer’s decision of whether to use force and, if so, how much is often highly context-dependent. Even a factor as simple as whether the officer is working a day or night shift can influence an officer’s tendency to de-escalate a situation.<sup>126</sup> To truly prepare officers to successfully use de-escalation techniques, officers need to be able run through different scenarios and practice de-escalation frequently. Moreover, given the fact that the MDPD still has military-grade equipment and thus may be influenced both subconsciously and consciously by a more militaristic attitude, the need for effective training and policy becomes all the more apparent.

The Miami-Dade Police Department has already begun to better incorporate these principles into their training. Although de-escalation training is not highlighted as one of the major training priorities for new Florida recruits, MDPD recruits do receive the more helpful scenario-based training recommended by groups like the Police Executive Research Forum during their time at the academy and in practicums (and forty hours of crisis-intervention training is available as an advanced course).<sup>127</sup> Additionally, the Miami-Dade Public Safety Training Institute teaches officers de-escalation tactics during their annual training,

112 This is how the MDPD defines de-escalation today. See Miami-Dade Police Department, *Use of Force and Weapons* ch. 31, pt. 1, Miami-Dade Police Department Manual (March 1, 2017) (not publicly available, received from Lt. Thomas Buchanan on June 27, 2019) (electronic copy on file with author).

113 Police Executive Research Forum, *supra* note 24, at 11.

114 *Id.* at 12.

115 *Id.*

116 *Id.* at 4.

117 *Id.*

118 See Bryan Gerhart, *Who’s Policing Miami Cops After 63 Unsolved Civilian Shootings*, COLORLINES, July 14, 2011, <https://www.colorlines.com/articles/whos-policing-miami-cops-after-63-unsolved-civilian-shootings>; David Ovalle, *High-profile Miami police shootings still under investigation, five years later*, MIAMI HERALD, April 10, 2015, <https://www.miamiherald.com/news/local/community/miami-dade/article18215174.html>; Joey Flechas & Charles Rabin, *Tampa’s new mayor at odds with Justice Department over her oversight of Miami Police*, MIAMI HERALD, May 3, 2019, <https://www.miamiherald.com/news/local/community/miami-dade/article229983224.html>; Agreement between the United States Department of Justice and the City of Miami Regarding the City of Miami Police Department, Miami Police Department, March 10, 2016, <https://www.justice.gov/crt/file/833286/download>.

119 Gerhart, *supra* note 118.

120 Miami-Dade Police Department, *supra* note 112.

121 *Id.*

122 *Id.*

123 *Id.*

124 *Id.*

125 *Id.*

126 Lois James, Stephen James, and Bryan Vila, *The Impact of Work Shift and Fatigue on Police Officer Response in Simulated Interactions with Citizens*, 14 J. OF EXPERIMENTAL CRIMINOLOGY 111, 117-19 (2018), <https://link.springer.com/article/10.1007/s11292-017-9294-2>.

127 Personal communication (email), Sergeant Troy Lee, Miami-Dade Police Department, Miami-Dade Public Safety Training Institute, Dec. 2, 2019; Police Executive Research Forum, *supra* note 24, at 11.

with scenario-based training provided every other year.<sup>128</sup> More research is needed to determine whether more regular scenario-based or other forms of training, perhaps when probates are under the supervision of FTOs, would aid police in keeping the public safe while minimizing use of force.

### *G. Lessons Learned from Miami: Professionalization is Important*

The evolution of the MDPD's attempts to control police use of force and violence is largely a story of the professionalization of policing. While the policing policy of the 1960s purported to emphasize ideals, such as respect for individual liberty and courtesy toward fellow citizens, public accounts suggest these ideals were often absent in interactions with black residents—a trend that was common in policing across the country. As a result, the department's reputation suffered, and police-community relationships frayed. Both police policy and police attitudes needed to shift.

New recruitment standards were adopted in the late 1960s through the 1980s, and new priorities were set. Departmental leadership began to tackle the problem of police brutality. Officers were recruited to reflect the community they served and to demonstrate a character and personality well suited to the job. Moreover, department training was changed to better prepare officers for sometimes tense citizen encounters and teach them to respond in less lethal or forceful ways.

As the Miami community grew, so did the number of officers. At times this came with collateral consequences—the hiring spree of the 1980s is credited with creating several of the corruption problems that marked the MPD in the latter half of the decade. And the relative inexperience among the young recruits was thought to account for some of the poor judgment leading to a few officer-involved shootings.

But for the most part, these changes abetted a positive trend of increased professionalism. Department corruption was rooted out, and use-of-force policies became more detailed. While the increasing militarization of Miami police forces in the last two decades has led to new fractures and debates between the police and community, a recently articulated focus on the sanctity of life and de-escalation is intended to further reduce police use of force and, in turn, police violence. As to how these policies interact with police attitudes, only time and more research will tell. Regardless, we believe that for most Miami-Dade residents, policing policy is undoubtedly better today than it was decades ago.

### III. POLICY RECOMMENDATIONS

This is not the end of the evolution of policing in America. Bringing greater professionalism into policing and amending policies to control police use of force and violence has improved the outlook and actions of police officers before, and it can do so again. For this reason, we must continue with the task of reform. In this section, we present several policy recommendations to further reduce police use of force and violence.

<sup>128</sup> *Id.*

### *A. Emphasize and Support De-escalation in Use-of-Force Policy and Training*

De-escalation is now an articulated priority of many police departments, and local stakeholders should push for it to be included in their departments' use-of-force policies. However, to truly promote successful use of de-escalation tactics, policymakers should pass state laws requiring active, scenario-based de-escalation training in police academies. Moreover, states should require expanded post-academy continuing education for mid-career officers that focuses on de-escalation and control of the use of force. Without such training, new de-escalation policies risk being no more than words on a piece of paper, and officers may be under-equipped for the often difficult scenarios at hand, risking both their safety and that of community members.

Local departments should also move to a non-stress model of police training that emphasizes academic training, physical training, and supervisor-supervisee relationships. This model is superior to the current "boot camp" model, which emphasizes military-style drills, daily inspections, intense physical demands, public discipline, withholding privileges, and immediate reaction to infractions.<sup>129</sup> While training on investigations, vehicles, weapons, and policing tactics is no doubt important, time spent on the profession of policing, use-of-force policies, and developing emotional intelligence skills is critical for controlling police use of force and violence.

### *B. Require Greater Transparency around Department Use-of-Force Policies*

Citizens have a right to know the policies of their government, particularly when it comes to government-controlled use of force. Moreover, citizen oversight has often been the impetus for positive reforms. For these reasons, state laws should require department use-of-force policies and other policies governing citizen encounters to be made public. In addition to clarifying what the use-of-force policy is within a given jurisdiction, greater knowledge around use-of-force policies will allow community members to compare local policies to those of other departments and push for improvements where they are needed.

### *C. Study and Promote Successful Field Training Officer Programs*

As seen in the historical account of policing in Miami, many reforms which aim to curb police use of force have focused on changing academy training or recruitment efforts. Although academy training is important, it is just one part of a new recruit's professional development. A recruit must also study under a Field Training Officer (FTO) who is tasked with mentoring and teaching them when they first join the force as a probationary officer. FTO programs are where great officers are forged and terrible officers are revealed. They are where a new recruit sees how policy is (or is not) put into practice. And research suggests FTOs can have a significant impact on their supervisees' future conduct.<sup>130</sup> It is thus critical that departments have strong FTO

<sup>129</sup> See Reaves, *supra* note 23.

<sup>130</sup> Ryan M. Getty, John L. Worrall & Robert G. Morris, *How Far From the Tree Does the Apple Fall? Field Training Officers, Their Trainees, and Allegations of Misconduct*, 62 CRIME & DELINQUENCY 821, 831-33

programs featuring FTOs who model the implementation of department policies and who are high-quality instructors. More research needs to be done on what makes for an effective FTO program. Moreover, departments should review and, if needed, reform current incentives and qualifications to become and remain an FTO to ensure new probates are placed under the wings of the department's highest quality instructors.

*D. Limit Police Acquisition and Use of Military Resources from the 1033 Program*

In a few cases, having military-style weapons or vehicles may be helpful to local police departments. But for the most part, tools such as armored trucks, camouflage uniforms, and assault rifles do more to create fear and confusion among the public and promote police use of force than they do to preserve public safety.

Federal standards for police acquisition of military equipment and vehicles via the 1033 Program need to be raised, as do local standards for deploying such equipment. Civilian protests should not be met with armored trucks and M-16s, nor should tanks be features of routine surveillance. It is essential that the line between police and soldier stay intact and that community members do not feel like they are living in a war zone.

*E. Ensure Greater Accountability for Misuse of Force*

There are bound to be instances in which police officers misuse their force. How departments and the larger policing community respond to these misuses of force is critical not only for the sake of justice, but also for the sake of the department's credibility and relationship with the community it has sworn to preserve and protect.

At the federal level, the DOJ should vigorously enforce constitutional policing, including the Law Enforcement Misconduct Statute,<sup>131</sup> using consent decrees as necessary. This enforcement has largely stalled under the Trump presidency thanks to a memo issued by then-Attorney General Jeff Sessions, which placed new parameters on the use of federal consent decrees (the order was not aimed at consent decrees involving police agencies specifically, but many federal consent decrees do focus on local law enforcement).<sup>132</sup> Though consent decrees have sometimes gone on too long and intrude unnecessarily on the operations of local police agencies, the literature on consent decrees suggests that they can be used successfully to promote reform in the short term.<sup>133</sup> Despite perhaps pushing for change too rapidly and without proper planning, the 1977 federal consent

decrees with the MPD successfully pushed the department to adopt more diverse hiring practices in the early 1980s. Public opinion polling suggests that communities governed by consent decrees have a better opinion of their local police than those without consent decrees.<sup>134</sup> However, in the absence of true department buy-in for the reforms and continued community oversight once a department is found to be compliant and the consent decree ends, the monitored department may return to previous practices.<sup>135</sup> Thus, consent decrees should not be the only form of police accountability.

The federal government should also provide grants supporting research around the development of effective internal accountability measures, such as the use of body-worn cameras. While some new research suggests these tools may be helpful in promoting better law enforcement, many questions surrounding their appropriate use remain unanswered.<sup>136</sup> Moreover, more research and investment should be done on the development of peer-intervention training programs, such as the New Orleans Police Department's Ethical Policing is Courageous (EPIC) program, which uses officers' unique knowledge and relationships to change police culture and increase officer wellness.<sup>137</sup>

Finally, the Supreme Court should put an end to qualified immunity. This doctrine makes public officers' civil liability dependent on proof that they violated a "clearly established right," which has evolved to require that plaintiffs find a nearly identical case in order to support their argument. With this jurisprudence, the courts have made it nearly impossible to hold individual officers financially accountable for their misuse of force.<sup>138</sup> Many legal scholars also believe that the doctrine has a relatively weak legal foundation. For these reasons, the Court should end or limit qualified immunity.<sup>139</sup>

IV. CONCLUSION

Police officers have an incredibly difficult job. They are charged to protect and to serve, and at the same time, we often call upon them as mental health professionals, crisis interventionists, and emergency responders. Many of them put their lives on the line every day.

---

[Accountability and Reform/links/59f4a76faca272607e2a83a2/Consent-Decrees-An-Approach-to-Police-Accountability-and-Reform.pdf](https://www.researchgate.net/publication/274453141_How_Far_From_the_Tree_Does_the_Apple_Fall_Field_TrainingOfficers_Their_Trainees_and_Allegations_of_Misconduct)

---

(2014), [https://www.researchgate.net/publication/274453141\\_How\\_Far\\_From\\_the\\_Tree\\_Does\\_the\\_Apple\\_Fall\\_Field\\_TrainingOfficers\\_Their\\_Trainees\\_and\\_Allegations\\_of\\_Misconduct](https://www.researchgate.net/publication/274453141_How_Far_From_the_Tree_Does_the_Apple_Fall_Field_TrainingOfficers_Their_Trainees_and_Allegations_of_Misconduct).

131 42 U.S.C. § 14141.

132 Radley Balko, *The Trump administration gave up on federal oversight of police agencies—just as it was starting to work*, WASHINGTON POST, Jan. 28, 2019, <https://www.washingtonpost.com/opinions/2019/01/28/trump-administration-gave-up-federal-oversight-police-agencies-just-it-was-starting-work/>.

133 Geoffrey P. Alpert, Kyle McLean, and Scott Wolfe, *Consent decrees: An approach to police accountability and reform*, 20 POLICE Q. 243, 243-46 (2017), [https://www.researchgate.net/profile/Geoffrey\\_Alpert2/publication/317049351\\_Consent\\_Decrees\\_An\\_Approach\\_to\\_Police](https://www.researchgate.net/profile/Geoffrey_Alpert2/publication/317049351_Consent_Decrees_An_Approach_to_Police).

134 Balko, *supra* note 132.

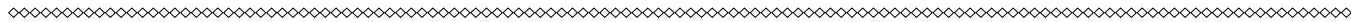
135 Alpert et al., *supra* note 133; SteVon Felton, *Policing Requires an 'EPIC' Shift 1*, R Street Institute (April 2019), <https://www.rstreet.org/wp-content/uploads/2019/04/Final-Short-No.-70.pdf>.

136 Brett Chapman, *Body-Worn Cameras: What the evidence tells us*, Nat'l Inst. of Justice (Nov. 14, 2018), <https://nij.ojp.gov/topics/articles/body-worn-cameras-what-evidence-tells-us>.

137 Felton, *supra* note 135, at 1.

138 David French, *End Qualified Immunity*, NATIONAL REVIEW, Sept. 13, 2018, <https://www.nationalreview.com/2018/09/end-qualified-immunity-supreme-court/>.

139 For a pathbreaking discussion of the "shoddy" underpinnings of this judge-made doctrine that calls for a reworking of immunity doctrine from the bottom up on textualist grounds, see generally William Baude, *Is Qualified Immunity Unlawful?*, 106 CAL. L. R. 45 (2018).



We also grant them the unique authority to use force, and we expect them to wield that power with great care and discretion. Unfortunately, there is a long history of law enforcement officers in this country not using their power in an appropriate manner, particularly when dealing with people of color. U.S. Senator Tim Scott described his own experiences of multiple seemingly trivial and targeted police stops:

While I thank God I have not endured any bodily harm, I have however felt the pressure applied by the scales of justice when they are slanted. . . . There is absolutely nothing more frustrating, more damaging to your soul than when you know you're following the rules and being treated like you're not.<sup>140</sup>

This is absolutely detrimental to the police image and the trust between police and the community.

To be arbiters of peace and safety as well as the guardians of public trust, police officers must use violence sparingly and discernment constantly. Over the last century, police forces have sought to fulfill this mandate by bolstering their use-of-force policies, amending hiring and recruitment practices, and instituting new training methods and priorities. This paper recounted how this occurred in the Miami-Dade area. At the same time, police militarization has infected police attitudes and mindsets, and new fractures have opened in the relationships between the police and the communities they serve.

Much work remains to be done. Police still routinely misuse their power of enforcement and lack the professionalism appropriate for encounters with community members.<sup>141</sup> Police use of excessive force is still all too common for a society that prides itself on its limited government. And police militarization has created new fears and distance between police officers and the public.

Everyone has a role to play in ensuring mechanisms to control and limit police use of force are strong. At the local level, departments should incorporate de-escalation practices into their use-of-force policies, move to a non-stress model of academy training, invest in stronger FTO programs, greatly limit police use of military equipment, and create new internal accountability policies and programs. At the state level, policymakers should require greater transparency around department use-of-force policies, require scenario-based de-escalation training, and support research around successful FTO programs and internal accountability mechanisms. At the federal level, the DOJ can use its investigation and enforcement authority via consent decrees, Congress can levy its power of the purse by investing in research and the development of new accountability mechanisms, and the

Supreme Court can review past legal doctrines such as qualified immunity.

Miami's example shows that change is possible. Innovative, transparent, and progress-oriented local safety institutions, community partnership, and state and federal support can move the needle on these issues. Our police officers play an integral role in preserving the public safety of our society, but as a society, we have a critical role in ensuring their enforcement powers are used for good and justice.

140 *Senators Scott and Boxer on Race Relations*, C-SPAN, July 13, 2016, <https://www.c-span.org/video/?412664-9/senators-scott-boxer-race-relations>.

141 Jason Meisner, *2 gang officers used police powers 'to lie, cheat and steal,' prosecutors allege as trial starts in earnest*, CHICAGO TRIBUNE, Oct. 9, 2019, <https://www.chicagotribune.com/news/criminal-justice/ct-chicago-cops-corruption-trial-20191008-7xrxbwah6rapbcxmncje4ogbm-story.html>; Richard Luscombe, *Florida police duo who slammed black teen's head suspended as outrage grows*, THE GUARDIAN, April 24, 2019, <https://www.theguardian.com/us-news/2019/apr/24/florida-police-broward-county-delucca-rolle>.

