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The Effect of Rules on Racially-Influenced Policing and Police Uses of Force

Joe D. Mazza
Walden University

Walden University

College of Social and Behavioral Sciences

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Joe Mazza

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Review Committee
Dr. Karen Shafer, Committee Chairperson,
Public Policy and Administration Faculty

Dr. Richard Worch, Committee Member,
Public Policy and Administration Faculty

Dr. Daniel Jones, University Reviewer,
Public Policy and Administration Faculty

Chief Academic Officer
Eric Riedel, Ph.D.

Walden University
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Abstract

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EdS, Seton Hall University, 2008

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Dissertation Submitted in Partial Fulfillment

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Abstract

Public opinion polls have shown the public lacks confidence in U.S. police to use appropriate amounts of force and treat racial minorities fairly, which undermines police legitimacy and the quality of life of all citizens. Although rules have been shown to positively constrain police uses of force, researchers have not demonstrated the effect of rules on racially influenced policing (RIP). In 2005, the RIP directive which prohibits officers from using race as a factor in taking discretionary actions was promulgated in New Jersey. The purpose of this study was to determine through the theoretical lens of Lipsky's street-level bureaucrat theory the influence of the RIP directive on municipal police officer uses of force upon non-Whites. A quantitative nonexperimental retrospective design was used to examine a stratified, proportionate random sample of 301 use of force reporting forms from municipal police agencies in one New Jersey county for a 5-year period before and after the enactment of the RIP directive. A binomial logistic regression indicated that the RIP directive had no influence on the use of force upon non-Whites. Suspect race did not significantly influence force outcomes. Scholarly implications include producing research based upon existing policy to better help inform evidence-based policymaking. Policy implications include police practitioners and policymakers actively monitoring officer uses of force for racial bias and broadening their examination to other issues affecting the problem of trust. Implications for social change include framing the problem within the public policy paradigm to promote political discourse, evidence-based decision making, and improved civilian oversight of the police, which could strengthen trust and police legitimacy.

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Dedication

This dissertation is dedicated to Kimberly. All my work, struggles, thoughts, and dreams lead me to one place—you. Thank you for being my best friend and my inspiration.

To my children, Conor, Keira, and Keegan, thank you for the times when you stayed quiet so I could get my work done, your regular visits to check on me when I was sequestered in the basement, and for the drawings and crafts that adorned my desk as I completed this dissertation. I hope by watching me that you discovered that most things worth doing are not easy, and that you can do anything, no matter how difficult, as long as you stay focused and committed. “Don't ever give up. Don't ever give in. Don't ever stop trying. Don't ever sell out. And if you find yourself succumbing to one of the above for a brief moment, pick yourself up, brush yourself off, whisper a prayer, and start where you left off. But never, ever, ever give up.” - Richelle E. Goodrich

To my parents, Brenda and Robert, thank you for always believing in me and being there when I needed you. I could never have gotten here without you.

Sir Robert Peele has been credited with saying, “The police are the public and the public are the police.” This dissertation is further dedicated to the public and the police in the hope that their cooperative pursuits to restore trust and cooperation will lead to a better future for us all.

Acknowledgments

I would never have been able to finish this dissertation without the help of several important people and groups. Thank you, Dr. Karen Shafer, for your guidance, support, and your unjustified but reassuring belief in my statistical skills. You were a tremendous help and an outstanding chair. Thank you, Dr. Richard Worch, for your quick and thoughtful reviews and recommendations. Your attention to detail helped make this study complete. Thank you, Lauren McIndoo, for being my classroom and dissertation buddy. You were a great partner through all of this. Finally, thank you, PBA, Local 160 and the Township of North Brunswick, for making the higher education of your officers possible. Be safe.

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Chapter 1: Introduction to the Study

Introduction

In the United States, citizens have a social contract with their government to protect their security. Individuals have largely sacrificed their implied right to use force for their protection by granting that right to the government—more specifically, the police—resulting in a net gain in freedom from victimization by others (Dunham & Alpert, 2015; Pollock & Reynolds, 2015). The legitimacy of policing is threatened, however, when officers misuse that authority. Recent highly publicized incidents of deadly force and in-custody deaths have further damaged the public's trust in the police (Jones, 2015). Public policymakers and police practitioners must take steps to restore that trust. Such steps must be evidence-based, using the best available research to identify what works and the gaps where evidence is insufficient so that policies can be improved (Pew Charitable Trusts, 2014).

This study was intended to contribute to the body of knowledge needed to address police-civilian trust by examining the influence of the New Jersey rule prohibiting racially influenced policing (RIP) on police uses of force. Central to this study is the concept of street-level bureaucrat theory (SLBT; Lipsky, 2010); specifically, the use of rules to constrain the discretion of public servants. The study contributes to positive social change by bridging the scholar-practitioner divide to provide public policy and police practitioners with an evidence-based assessment of the effectiveness of an administrative rule to prevent racially disparate outcomes within the framework of its implementation. In addition, the study was designed to determine the value of the New

Jersey RIP policy as a model to promote the equal treatment of minority populations for other police agencies. Further, this dissertation can serve as an example of how civilians can use open public records laws to gather records and provide oversight of their police agencies.

In this chapter, I provide a review of this study and a background of the current problem, establish the purpose and nature of the study, and review the study's theoretical framework. I also furnish the research question, hypotheses, and important definitions. Finally, I discuss the assumptions, scope and delimitations, limitations, and significance of this research.

Background

On August 9, 2014, police shot an unarmed Black teenager in Ferguson, MO, resulting in a wave of anger and accusations that police unfairly target racial minorities for unjust violence, specifically Blacks (Smith, 2016). Other high-profile incidents in the middle of the decade involved deadly force or in-custody deaths in New York City, Cleveland, OH; Bridgeton, NJ; North Charleston, SC; Baltimore, MD; Chicago, IL; and Charlotte, NC, prompting public calls for increased police accountability. Some groups demanded that police agencies be defunded by their municipalities (Smith, 2016; Melendez, 2016; Thrasher, 2016; U.S. Department of Justice [U.S. DOJ], 2014, 2015a, 2015b, 2015c, 2016a; 2016b; Yan & Karimi, 2016). After each incident, protests materialized. Some erupted into violent riots, causing widespread physical and economic destruction in the local community (Bredderman, 2014; Kent, 2015; Morice, 2015; Ortiz, 2015; Yan & Karimi, 2016). In a few cases, random officers who were not involved in

the original incident were assassinated by people acting out against killings by police officers (Carrero, 2016; Fieldstadt, 2014; U.S DOJ., 2016).

The issue of police killings of Blacks in the United States has also drawn the attention of the United Nations, where a report was made to the General Assembly indicating, “Contemporary police killings and the trauma that they create are reminiscent of the past racial terror of lynching. Impunity for State violence has resulted in the current human rights crisis and must be addressed as a matter of urgency” (Working Group of Experts on People of African Descent, 2016, p. 16). The strain in the relationship between the police and civilians, particularly racial minorities, cannot be overstated, nor can the destructiveness of the social and political consequences be overlooked.

The power of government is granted by civilians, and it does have the potential for abuse. But only anecdotal evidence suggests of widespread abuse of police power (House Judiciary Committee, 2016). Montesquieu (2011) provided an assessment of the corruptibility of power when he explained that experience has demonstrated that those with unlimited power are inclined to abuse it. This has been true in policing, such as when paid civil servants engaged in slave patrols to brutally enforce slave codes prior to the application of the 14th Amendment to the states. Other examples abound of officers abusing their power when using force (Fried, 1999; Sanchez, 2016). Still, these and other examples represent a small number of police-civilian encounters, making the claim of widespread abuse difficult to support. Despite the insufficiency of the evidence, civilian confidence and trust in the police are low (Jones, 2015).

Administrative rules and laws have been promulgated throughout the United States, prohibiting police abuses of power. The purpose of such actions is to improve public confidence in the criminal justice system, unify society, and foster trust and support for criminal justice efforts. New Jersey was the first state in the nation to outlaw RIP (New Jersey Office of the Attorney General [NJOAG], 2005a, 2005b). This prohibition is supported by criminal statutes to prosecute officers found engaging in its exercise (N.J. Stat. Ann. 2C:30-2; 2C:30-7). Research has shown that administrative rules are effective in constraining many police actions (Alpert & Dunham, 1990; Fyfe, 1978, 1979; Terrill & Paoline III, 2016). Still, researchers have not examined the ability of rules to eliminate RIP. This gap represents a significant gulf between researchers and practitioners, as practitioners must ensure the equal protection of all civilians and require evidence-based solutions to achieve that end. The concept of equal protection is paramount to citizens' social contract with the government, and that contract is vital to the legitimacy of government. Through this study, I provided an empirical assessment of the scope of police violence during a 10-year period in New Jersey, filled the research gap by examining the data for evidence of RIP during uses of force before and after the promulgation of the RIP directive, and provided needed evidence-based information required by government officials and police practitioners to judge the effectiveness of the New Jersey RIP directive.

Problem Statement

In the United States, public trust in the police is waning, prompting a need for the government to take action to restore citizen trust. While a majority of the population

remains confident in the police enterprise, a substantial portion of society believes that police use inappropriate amounts of force and unfairly treat racial minorities (Jones, 2015; Pew Research Center, 2015). This problem impacts all of society because it undermines the legitimacy and authority of the police and government, and threatens the quality of life of all citizens, particularly racial minorities (Mazerolle, Antrobus, Bennett, & Tyler, 2013; Rosenbaum, Lawrence, Hartnett, McDevitt, & Posick, 2015; Tyler, 2004; White House, 2016; Wolfe, Nix, Kaminski, & Rojek, 2015). Intense media coverage of the deaths of several Black men at the hands of police has likely contributed to this problem (Jones, 2015; Pew Research Center, 2015). In response, the federal government has recommended to all police agencies several methods to improve the public trust, including the imperative rule to prohibit RIP (President's Task Force on 21st Century Policing, 2015; Weitzer, 2015). New Jersey prohibited RIP in 2005 (NJOAG, 2005a, 2005b). Research has shown that administrative rules have been effective in controlling officer uses of non-deadly and deadly force and vehicle pursuit (Alpert & Dunham, 1990; Fyfe, 1978, 1979; Terrill & Paoline III, 2016). However, scholarly research has not addressed the influence of administrative rules prohibiting RIP where implicit biases may be unrecognized by officers and their supervisors, and where these implicit biases affect official actions. This quantitative study builds upon previous studies of the influences of administrative rules by examining the effect of the New Jersey RIP directive on officer uses of force through the theoretical lens of Lipsky’s SLBT.

Purpose of the Study

The purpose of this retrospective quantitative nonexperimental study was to examine the influence of the New Jersey RIP directive, which prohibits the use of race as a factor in officer discretion, on officer uses of force in one New Jersey county to determine if the policy altered force outcomes for non-Whites after its implementation. This study controlled for subject, officer, and encounter characteristics found to be significant in the previous scholarly use of force research. The extant literature has shown that administrative rules are effective at constraining officer actions during critical incidents involving force (see Anderson, Litzenberger, & Plecas, 2002; Fyfe, 1978, 1979; Terrill & Paoline III, 2016). If rulemaking is effective at preventing RIP, then the application of force should not disproportionately impact any racial category after the RIP directive has been implemented.

Research Question and Hypothesis

I addressed the following research question in this study:

RQ1: How did the New Jersey RIP directive affect municipal police officer uses of force on non-Whites after its implementation in one New Jersey county?

H_o1: The New Jersey RIP directive did not significantly affect municipal police officer uses of force on non-Whites after its implementation in one New Jersey county.

H_a1: The New Jersey RIP directive did significantly affect municipal police officer uses of force on non-Whites after its implementation in one New Jersey county.

Theoretical Framework

SLBT provides the framework for this study. Lipsky (2010) explained that public servants, whom he called SLBs, played an important role in society. These public servants wield considerable discretion as they fulfill their official obligations (Lipsky, 2010). They are responsible for delivering the government benefits and sanctions that structure and delimit the lives and opportunities of all citizens (Lipsky, 2010). Still, SLBs must overcome limitations in fulfilling their roles, such as ambiguous policies and insufficient resources (Lipsky, 2010). They may develop coping mechanisms contrary to established policy and which collectively embody a de facto public policy (Lipsky, 2010). SLBT will be supplemented by the works of Davis, who examined the role of rules in police work. A more detailed explanation of Lipsky and Davis's work is presented in Chapter 2.

Police officers are SLBs who are governed by policies and rules, but, in some circumstances, a gap may exist between policies and rules and their intended outcomes. Davis (1969, 1975) offered a widely accepted model within the police enterprise by which officer discretion could be confined, structured, and checked. The New Jersey RIP directive and use of force guidelines conform to the Davis model. In this study, I examined the influence of the New Jersey RIP directive on municipal police officers' uses of force. The New Jersey use of force policy has at its foundation two factors: sound judgment and the appropriate exercise of discretion (New Jersey Division of Criminal Justice, 2000). As Lipsky (2010) explained, if officers engage in RIP while administering

force contrary to stated policy, these actions might have resulted from stereotypes during the exercise of their discretion.

Nature of the Study

The study was a quantitative non-experiment using publicly accessible government records to examine the effectiveness of the New Jersey RIP directive in preventing intentional discrimination and disparate impact when officers use force. Using government records to investigate new research questions for which the data were not originally intended is a well-established method in social science research (Heaton, 2004). Specifically, I used the New Jersey use of force reporting form to generate the data. The form is generated to memorialize in public and criminal records the actions of an officer each time force is used on a civilian. The reports are required by state law and are created under the auspices of each police agency. While the report was not specifically created to serve as a data collection instrument for this study, the data contained within is well suited to examine the research problem.

The use of force reporting form collects data valuable to this line of research. Key variables captured in the form include (a) the time period, which indicates the existence of the RIP directive (independent variable); (b) force used by officers (dependent variable), and (c) the suspect's race (independent variable of interest). Other variables I studied included (a) officer tenure, (b) suspect age, (c) suspect resistance, and (d) suspect unusual conditions. Since the RIP directive outlaws the use of race as a factor in officer discretion in determining how to treat people, I hypothesized that there would be an interaction between the existence of the RIP directive and suspect race. By examining

time periods before and after the promulgation of the RIP directive, my statistical analysis determined the influence of the RIP directive and its interaction with a suspect's race on officer uses of force while controlling for suspect, officer, and encounter characteristics. An in-depth discussion of the academic literature supporting the inclusion of each of these variables is provided in Chapter 2.

The data were collected from municipal agencies within one anonymous New Jersey county through open public records requests. This included all force reports submitted to those agencies between June 2000 and June 2010. Data from municipal police agencies were entered into an Excel spreadsheet and later analyzed using SPSS version 21. The nature of the collected data resulted in the use of binomial logistic regression to determine the likelihood of mechanical force and to determine if the RIP guideline altered force outcomes for non-Whites after its implementation. A more detailed discussion of the methodology and reasoning for the analysis is provided in Chapter 3.

Definitions

Constructive authority: Actions or behaviors exhibited by a police officer which do not involve physical contact or force directed upon a subject but which are intended to induce the subject to submit to the officer's authority (NJOAG, 2000).

Critical incidents: Sudden events that expose officers to physically dangerous situations perceived to be outside the officer's control and which overwhelm an officer's coping skills, causing immediate distress (Anderson et al., 2002; Evans & Coman, 1993; Kureczka, 1996).

Deadly force: Force directed upon a subject with the purpose of causing, or which are known to create a substantial risk of serious bodily harm (N.J. Stat. Ann. 2C:3-11[b]; NJOAG, 2000).

Disparate impact: The denial of benefits to an individual of a particular race, color, or national origin without substantial legitimate justification during the course of implementing a neutral procedure or practice (*Elston v. Talladega County Board of Education,* 997 F.2d 1394, 1406 (11th Cir.), reh'g denied, 7 F.3d 242 (11th Cir. 1993); U.S. DOJ, 2001).

Encounter characteristics: Those features or qualities belonging exclusively to an encounter, such as suspect actions and charges, type of incident, and the presence of a weapon (Bolger, 2014; Klahm IV, Frank, & Liederbach, 2014).

Force: Lawful physical actions undertaken by police officers to protect persons or property or to overcome suspect resistance during the execution of their public duties that intentionally or unintentionally attempt or inflict physiological harm, impairment, or death (NJOAG, 2000; N.J. Stat. Ann. 2C:1-14[b]; 2C:3-3 et seq.; 2C:3-7 et seq.; 2C:11-1 et seq.).

Imminent danger: Possibility of harm" that may occur during an encounter absent action by the law enforcement officer". (NJOAG, 2000, p. 4).

Intoxication: The experience "of a substantial deterioration or diminution of mental faculties or physical capabilities" (*State v. Tamburro,* 346 A.2d 401, 68 N.J. 414, 1975).

Mechanical force: Force in the form of "some device or substance, other than a firearm, to overcome a subject's resistance to the exertion of the law enforcement officer's authority" (NJOAG, 2000, p. 3).

Officer characteristics: Those features or qualities belonging exclusively to a police officer, such as age, gender, and race (Bolger, 2014; Klahm et al., 2014).

Police officer: Any employed member of a municipal law enforcement agency who possesses the statutory empowerment to detect, investigate, arrest, convict, detain, or rehabilitate people for violations of New Jersey criminal laws or who has successfully completed a Police Training Commission approved training course or an equivalent training course (N.J. Stat. Ann. 40A:14-118; 40A:14-146.9[h]; 40A:14-152; 40A:14-152.1).

Physical contact: Actions by police officers involving the bodily touching of a subject without force and which are routine or procedural in nature and necessary to effectively accomplish lawful objectives (e.g., handcuffing) (NJOAG, 2000).

Physical force: Forceful actions by a police officer directed upon a subject which are not examples of mechanical force or deadly force (NJOAG, 2000).

Public duties: Conduct required or authorized by law or court order (N.J. Stat. Ann. 2C:3-3 et seq.).

Racially influenced policing (RIP): The use by police officers of a subject's race or ethnicity as a factor in drawing inferences or conclusions about the subject's involvement in criminal activity or as a factor in exercising discretion in stopping or otherwise treating a person (NJOAG, 2005a).

Racially influenced policing (RIP) directive: State policy prohibiting racially influenced policing (NJOAG, 2005a).

Reasonable belief: An objective evaluation of "how a reasonable law enforcement officer with comparable training and experience would react to, or draw inferences from, the facts and circumstances confronting and known by the law enforcement officer at the scene" (NJOAG, 2000, p. 3). Reasonable belief "designates a belief the holding of which does not make the actor reckless or criminally negligent." (N.J. Stat. Ann. 2C:1-14[j]).

Resistance: Passive, active, and violent actions and threats of such actions by subjects refusal to comply with the lawful demands of officers (N.J. Stat. Ann. 2C:29-1 et seq.; 2C:29-2 et seq.; NJOAG, 2000).

Serious bodily harm: Injury posing a "substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ" (N.J. Stat. Ann. 2C:3-11[d]; 2C:11-1[b]).

Suspect characteristics: Those features or qualities belonging exclusively to a subject, such as age, gender, race, and unusual conditions (Bolger, 2014; Klahm IV et al., 2014).

Unusual conditions: Mental state during which a subject suffers from impaired judgment, such as those resulting from intoxication or other cognitive impairments or psychological disorders.

Assumptions

I cannot demonstrate that certain aspects of this study were true, so several assumptions were necessary regarding police uses of force in the studied county. First, I

assumed that each agency promulgated their policies within the mandates of the NJOAG. Second, I assumed that the officers reported all uses of force and that the reports were truthfully completed. Third, various elements related to the circumstances regarding the use of force reporting form were assumed. All uses of force were assumed to be lawful, and unless otherwise indicated, all physical and mechanical force did not constitute deadly force. When unusual conditions were documented, I assumed that those conditions actually existed and were not merely present in the officer's subjective perceptions. Finally, I assumed that each police agency retained every use of force reporting form submitted during the period being examined. These assumptions led to a complete picture of force use in the studied county and could not otherwise be created without access to records that are denied to the public by law. These are limitations covered in greater detail later in this chapter.

Scope and Delimitations

Defining the scope of this research requires a brief discussion on the nature of government and policing in New Jersey. The state is divided into 21 counties, each consisting of several municipalities (State of New Jersey, 2016). The state and county governments have one or more types of police agencies, each with a mission substantially different from municipal police agencies. Generally, state and county police agencies play a support role to municipalities, except that they may fulfill the municipal police role in municipalities that do not have their own police department. Where municipal police agencies exist, they maintain responsibility for routine police services within the entire political boundary of the municipality (N.J. Stat. Ann. 40A:14-118). All police agencies

are overseen by the NJOAG. The attorney general is the chief law enforcement officer for the state and may issue directives, guidelines, and policies to county prosecutors and all law enforcement agencies (N.J. Stat. Ann. 52:17B-97 et seq.). Each county prosecutor administers the rules promulgated by the attorney general but also maintains the authority to establish rules for the county and municipal police agencies within his or her jurisdiction (N.J. Stat. Ann. 52:17B-97 et seq.; County Prosecutor Study Commission, 2011).

In this study, I examined the municipal agencies in one New Jersey county, specifically, the influence of the RIP directive on municipal police officer uses of force in one New Jersey county between June 2000 and June 2010. Studying municipalities in one county ensured a degree of consistency among the police agency rules and practices, which may have affected force outcomes and might otherwise have been absent when examining municipal agencies from more than one county. Consistency in rules and practices was expected because all municipal agencies within the county were subject to the authority and oversight of their county prosecutor. Excluding county and state agencies was appropriate because their missions or operational limitations may be substantially different than municipal agencies. This exclusion was needed to maintain internal validity.

While consistency was expected among these municipal agencies, each agency had the flexibility to make their rules more restrictive than those issued by the state and prosecutor. Also, agencies may seek accreditation through The Commission on Accreditation for Law Enforcement Agencies or the New Jersey State Association of

Chiefs of Police. Both accreditation agencies mandate stricter requirements for RIP and use of force than those of the state. Therefore, any agency with requirements more stringent than those of the state were excluded from analysis. This exclusion was needed to maintain internal validity.

The decision to use one county was also a matter of practicality. I avoided extensive travel throughout the state. Moreover, I anticipated that all OPRA requests could be collected from the record custodians at each municipal agency within a reasonable time period. The timeframe was focused on the 5 years before and after the promulgation of the RIP directive in 2005. Prior to that, in 2000, the use of force policy was revised and has remained unchanged to the present. In 2010, the state authorized the use of electronic control devices (i.e., Tasers) as a force option. This authorization did not alter the use of force policy, but it did represent a change in how officers could deliver force. Therefore, studying the 5 years before and after the RIP provided a degree of consistency to the force options available during the timeframe.

Caution should be used when generalizing these findings to the larger New Jersey municipal police use of force population. Data for this study was collected from municipal police agencies in only one county. The sample used for this analysis was small and did not include data from the larger range of socioeconomic environments and urban-rural classifications found in the state. Additionally, the collected data only permitted a small number of variables to be analyzed. Still, the sample used here was a subset of the New Jersey population, and the use of force reports used in the analysis were chosen at random.

The target population was all documented municipal police officer uses of force between June 2000 and June 2010 in one New Jersey county. The population excluded force used by police, sheriff's officers, and corrections officers employed by county, state, and federal agencies that conduct law enforcement activities within the county. All reports indicating the use of force by municipal police officers were eligible for inclusion into this study except those deemed unlawful or otherwise in violation of policy by an agency or a court. These exclusions were necessary to ensure internal validity.

I considered using but excluded rational choice theory to frame the research because certain assumptions were inappropriate. Rational choice assumes that actors understand their preferences and make deliberate choices based on available information and limitations to achieve the best outcomes given their aims (Wittek, Snijders, & Nee, 2013). This reasoning might help explain why officers take certain forceful actions with only limited information, but it does not help explain officer preferences. Rational choice theory must assume that officers want to use and escalate force, and desire the administrative and judicial reviews that may result in punishment. No scholarly evidence supports those assumptions. Force incidents are rare, and research has shown that officers tend to use lesser force than necessary to accomplish their objectives (International Association of Chiefs of Police [IACP], 2012; Terrill, 2001, 2005). Given the findings of prior research, rational choice theory was excluded.

I also considered racial threat theory to frame this study but found its use limited. Racial threat theory proposes that Whites use their power to implement state control over minority populations (Blalock, 1967). However, given that New Jersey has never had a

minority governor and the legislature historically has been predominantly White, the theory cannot explain the existence of the RIP directive or other laws intended to prohibit repressive state control of minority populations. This is not to suggest that the theory is inappropriate in similar studies, as it has been used with mixed results to explain disparities in police expenditures, arrests, sentencing, and capital punishment (Dollar, 2014). Still, the actions of officers that are inconsistent with the rules do not, by themselves, suggest an outcome intended by the state.

Limitations

Several important limitations influenced the outcomes and treatment of the data. The first limitation was that the New Jersey use of force reporting form was not intended for this study but rather was intended to memorialize police uses of force. As a result, many forms omitted variable responses and impacted the number of variables that could be studied.

The second limitation was the version of the use of force form submitted by officers. During this period, an older version of the report that remained in circulation did not provide for reporting officer race and gender. Also, some agency leaders created their own versions of this form that omitted officer variables. These forms were present in a large portion of the sample and resulted in the exclusion of the officer race and officer gender variables.

The third limitation involved reporting of force. The New Jersey use of force policy requires that the reporting form be completed after each use of force (NJOAG, 2000). There is no reliable method by which to know if officers in the county were

meticulous in their adherence to the rule. Therefore, I assumed that officers submitted all necessary reports to their agencies.

The fourth limitation concerned the veracity of the information supplied on the reporting form. This report is one method by which officers justify their actions. The information contained on the report cannot be considered strictly objective (Atherley & Hickman, 2014). However, officers would have been well served by providing honest answers given that providing false information could have subjected the officer to prosecution for false swearing or perjury (N.J. Stat. Ann. 2C:28-1; 2C:28-2). In the absence of a method to ensure truthfulness, I assumed that all information provided by the officers was completely truthful.

The fifth limitation involved how officers indicate the presence of unusual conditions. Items in this category include intoxication and other conditions not defined. Intoxication has a precise legal definition, but other conditions identified by the officers do not have concrete or legal definitions. Officers provided information denoting mental illness, emotional disturbances, and medical emergencies. They answered this category based on the information gathered on the scene or through the lens of their training and experience, frequently without the benefit of confirmation by forensic toxicology or professional expert opinions. It is unknown if intoxication or other unusual circumstances actually existed or their cause, so when indicated, I assumed that an unusual condition existed.

The sixth limitation concerned my ability to elevate force use into the deadly force category. As explained in the discussion of variables in Chapter 3, some instances

of physical and mechanical force might actually be deadly force because they posed a substantial risk of causing serious bodily injury or death. No reports provided evidence of this enhanced danger. Therefore, absent such indication, I assumed that the reported level of force was a proper representation of the force used.

The eighth limitation of this study was that the data did not indicate if the force used was unlawful. Unlawful uses of force are not considered force per the policy; they are considered crimes punishable under the criminal code. Because no reports were marked as unlawful, I was unable to know if a report should be excluded from examination. Therefore, all force reporting forms were considered documentation of lawful uses of force.

The final limitation was that other significant variables were omitted. Important items such as other agency policies influencing police officer actions and local crime rates are not reflected on the collection instrument. Another important omitted variable was inframarginality, or differential offending rates among races, which may have affected the outcomes of this research, making it difficult to quantify racial bias (Ayers, 2002; Horn, McCluskey, & Mittelhammer, 2013; Simoiu, Corbett-Davies, & Goel, 2016). These problems are present in most force studies. These limitations must simply be accepted as they cannot be changed until more advanced statistical methods have been deemed reliable.

Undisclosed conflicts of interest may affect the independence, integrity, and reporting of research findings. Therefore, I must disclose parts of my background that may have influenced this study. I have been employed by municipal and county New

Jersey police agencies. I retired as a police lieutenant, a position wherein I supervised and managed officers in the patrol division, a group responsible for providing the uniformed police services commonly associated with police work. At the end of my career, I was the officer in charge of my department's Internal Affairs and Professional Standards Unit, which investigated allegations of officer misconduct. I have family members who were police officers and some who remain police officers in New Jersey and other states. Finally, I established a business entity in New Jersey that offers consulting services for police misconduct litigation, agency development, and oversight. I endeavored to prevent my own conflicts and biases from influencing this research by not collecting data from my employing agencies and through proper design, analysis, and reporting.

Significance of the Study

This research contributed to knowledge within the discipline and advancing practice and policy and promoting positive social change. Previous studies of force within the criminal justice and policy disciplines were marred by difficulties in conceptualization and operationalization of variables. The design of this research may aid future force studies by providing conceptualizations and operationalizations of force variables in a manner reflective of the policy paradigm. Because of these findings, researchers may better assist practitioners and policymakers, and civilians and policy makers can better communicate. This study demonstrated how civilians can monitor the forceful actions of their police through the use of public records when data is not regularly published in public forums. Also, the results of this study added a new dimension to what is known about the effects of administrative rules to constrain police

discretion. Scholarly research had not addressed the influence of administrative rules prohibiting RIP where implicit biases may be unrecognized by officers and their supervisors, and where these implicit biases affect official actions. This quantitative study examined that scholarly gap.

Government officials, police practitioners, and civilians may find value in the conceptualizations, methods, and results of this study. The findings can help frame the policy paradigm encompassing the problem and reveal the effectiveness of the RIP directive as a tool for police administrators to uphold the social contract and guarantee the equal protection of all civilians during forceful encounters. Framing the problem within the context of policy not only leads to a discovery of policy efficacy but also provides civilians with insight into the details of how government structures and delimits their lives and opportunities. This information can be harnessed for use in political discourse to promote equal protection for all, restore trust, and advance public policy choices reflective of community values.

Government officials, police practitioners, and civilians will benefit from this study, as it demonstrates and corrects for an immanent confusion in policy terminology. The use of force policies and force continuums confuse the differences between coercion and force, preventing government officials and police practitioners from communicating with the public without ambiguous jargon. While this issue is present in scholarly literature and should be addressed in that realm, its presence in public policy serves to disrupt honest evaluations of the RIP and force phenomena during policy debates and public discourse and complicates civilian attempts to monitor police actions. This study

offers a solution to align policy with common definitions of coercion and force to so that all can communicate with a shared language while seeking to restore trust between the police and civilians.

Police practitioners might be aided by the analytical methods used in this study. The current findings serve as an example of the value of these methods in monitoring officers for explicit and implicit racism as a part of an agency's early intervention system. These methods are not inaccessible to police administrators, and, if desired, can be readily replicated in common spreadsheet programs without the need for expensive proprietary software.

The implications for positive social change include the empowerment of the public with the skills needed to monitor police uses of force through the use of publicly available information. Moreover, citizens can better understand the nuances of the force phenomenon that are contributing to the problem of trust between a large segment of society and the police, and the public policy context in which that problem exists. The dissertation and its findings provide granular detail of actual force incidents to facilitate political discourse and promote evidence-based policy decisions intended to strengthen trust between police and civilians.

Summary

The government and the people have a social contract requiring the government's equal treatment of its citizens. Recent events have called into question the government's ability to fulfill that obligation. Several highly publicized incidents involving police uses of force on members of minority populations have coincided with a historic reduction in

the public's trust and confidence in the police to treat everyone equally (Jones, 2015; Pew Research Center, 2014). The lack of trust in police damages the legitimacy and authority of the police and government, and threatens the quality of life of all citizens, particularly communities comprised of racial minority populations (Keita, 2014; Meares, Tyler, & Gardener, 2014; Nix, Wolfe, Rojek, & Kaminski, 2014; Rahr & Rice, 2014; Richardson, 2015; White House, 2014). Still, the perceptions of widespread police abuse of racial minorities is supported only with anecdotal but not empirical analysis (House Judiciary Committee, 2016). Government officials and police practitioners must address the trust problem using evidence-based steps supported by the best available research (Pew Charitable Trusts, 2014). The use of rules to prevent RIP offers one potential solution. The extant literature has shown that administrative rules are effective at constraining officer actions during critical incidents involving force (Anderson et al., 2002; Fyfe, 1978, 1979; Terrill & Paoline III, 2016). If rulemaking is effective at preventing RIP, then the application of force should not disproportionately impact any racial category. This study provided an evaluation of the ability of an administrative rule to prevent RIP during officer uses of force.

Chapter 1 furnished a synopsis of this quantitative research. In answering the research question regarding the influence of the RIP directive on officer uses of force, I determined the nature and scope of police uses of force during a 10-year period in New Jersey, the degree to which officers impartially dispense force, and the effectiveness of the RIP directive as a tool to ensure equal protection of all civilians during incidents involving force. Terms used in this study were made explicit, along with assumptions,

limitations, and delimitations. The chapter further indicated the implications of the findings to contribute to knowledge within the public policy and administration discipline, advance evidence-based policing and policy practices, and promote positive social change.

In Chapter 2, I will provide an in-depth literature review relating to the theoretical foundation of this study, the extent of the force phenomenon, and the extant research on the use of rules to constrain police discretion and use of force. I will identify those entities capable of promulgating rules to New Jersey police agencies. I will also describe the state of public policy regarding RIP and force in New Jersey.

Chapter 2: Literature Review

Introduction

Public confidence in the police continues to decline. Intense media coverage of several extrajudicial killings of racial minority members and the protests that followed have led to wide-ranging allegations about the police and intense public debate regarding police reforms (Weitzer, 2015). These incidents correspond with public opinion polls showing confidence in police at a historic low (Jones, 2015). Many people do not believe police treat minority populations fairly (Pew Research Center, 2014). This problem affects both the police and citizens as it undermines the legitimacy and authority of the police (Meares et al., 2014; Nix et al., 2014; Rahr & Rice, 2014; Richardson, 2015), and threatens the quality of life of all citizens, particularly communities comprised of racial minority populations (Richardson, 2015; White House, 2014). Administrative rules offer the ability for police agencies to structure and confine the behaviors of their officers in ways that might restore the public trust (Davis, 1969, 1975; Walker & Archbold, 2014). This study was designed to examine the influence of the New Jersey RIP directive on police uses of force to determine if it prevents officers from using race as a factor in their decisions and if RIP is an effective tool for public administrators.

The opinion that police unfairly treat minorities contrasts with established public policies in many states outlawing racial profiling. According to the National Association for the Advancement of Colored People (NAACP, 2014), 30 states have laws prohibiting racial profiling. Many of the states that have seen high-profile incidents of police violence against racial minorities, such as California, Louisiana, Maryland, Minnesota,

and Missouri, have such laws. SLBT helps explain when officers engage in RIP despite existing rules. According to the theory, the SLB is someone often faced with the task of fulfilling ambiguous policies within a rule-laden environment and treating all citizens equally; at the same time, he or she must deliver government benefits and sanctions but be responsive to the unique individual circumstances posed by those with whom the bureaucrat must interact (Lipsky, 2010). Since it is impossible to treat everyone the same while attending to special circumstances, these workers use the discretion afforded to their positions to manage their environment by developing unsanctioned coping mechanisms, sometimes in conflict with existing rules (Lipsky, 2010). These mechanisms typically involve the differentiation of clients, and without sufficient supervision, become de facto public policy (Davis, 1969, 1975; Lipsky, 2010).

Lipsky (2010) has demonstrated that police officers are such street-level bureaucrats who enjoy a wide degree of discretion in their duties, but their performance is governed by rules (Davis, 1969, 1975; White, 2001). The use of rules to constrain police behavior has been found effective in reducing incidents of deadly force, non-deadly force, and vehicle pursuits (Becknell, Larry Mays, & Giever, 1999; Crew, Kessler, & Fridell, 1995; Fyfe, 1978, 1979; Terrill & Paoline; 2016; Walker, 1993; White, 2000, 2001, 2003). Officers who do not follow the rules engage in misconduct. The extent to which such misconduct occurs is unknown, but studies have shown that most officers follow the rules (Harris, 2011; McCluskey & Terrill, 2005; Walker, 2001b). Those officers who defy rules and established public policy regarding RIP influence the public's negative opinion that police officers unfairly treat minority populations.

As a matter of public policy, New Jersey, the first state in the nation to create a policy outlawing RIP, rejects racial discrimination (NJOAG, 2005b). It also one of the few states that treat RIP as a crime punishable by a mandatory prison sentence of no less than 5 years (see NAACP, 2014). The policy is clear and only one among many created by several layers of government designed to influence policing in the state. Still, the extant literature provides no indication that a rule prohibiting RIP influences police behavior, the gap addressed in this study.

New Jersey does not suffer from the same data collection, conceptualization, or operationalization difficulties present in the media, the federal government, and scholarly analyses of police force usage. Researchers have had problems gathering data and faced inconsistent definitions and measurements (see Comey, 2015; Fryer, 2016; Klahm IV & Tillyer, 2010; Terrill & Paoline III, 2012; Walker, 2003; Withrow & Williams, 2015). Researchers have also used benchmarks fraught with limitations (see Walker, 2003; Withrow & Williams, 2015). Although New Jersey has a statewide policy overcoming most of these difficulties, the state has not overcome the benchmark obstacle. Like other assessments, external benchmarks leave room for error, such as those created by failures to accurately capture local demographics and populations, rates of police exposure, and differential offending rates (Ayers, 2002; Horn et al., 2013; Simoiu et al., 2016; Withrow & Williams, 2015). Internal benchmarking overcomes the disadvantages of external benchmarking because it is an outcomes-based assessment that compares data, such as arrests and summonses, from similarly situated units exposed to the similar contextual environments operating under similar rules. The data contained in use of force reports

allows for internal benchmark comparisons, but there is no instruction or mechanism requiring this type of analysis.

Unlike a simple count of force use frequency, New Jersey requires data collection on force usage that includes the presence of several variables present in the extant research. Over the past several decades, scholars have discovered that many variables may influence police uses of force. This literature review will explore the findings of many of these studies and demonstrate their connection to my research. Still, these studies have suffered from problems associated with conceptualization and operationalization, making it difficult to compare the findings across the various research (Bolger, 2014; Klahm IV & Tillyer, 2010). The variables found to influence officer behavior can be categorized into suspect, encounter, officer, neighborhood, and organizational characteristics. Bolger (2014) suggested certain suspect and encounter characteristics significantly influence force use, such as the seriousness of the offense and resistance. The reporting mechanism used in New Jersey collects many of the studied variables and some of those found to be most influential in the use of force. To the extent possible, this study controlled for these variables to determine the influence of the RIP directive on officer uses of force.

In this chapter, I will review information significant as a background for this study. I begin by explaining my literature collection strategy followed by a description of the theoretical framework. Finally, I provide a literature review of concepts involved in administrative rules, a description of the police non- and deadly force phenomenon, the

structure of administrative control in the New Jersey policing enterprise, rules affecting police operations, and numerous officer use-of-force decision-making variables.

Literature Search Strategy

To find literature related to this study, multiple Boolean search terms were created from a combination of words and phrases, including *accountability*, *decision making*, *discretion*, *force*, *forceful encounters*, *police*, *police-citizen encounters*, *street-level bureaucrat*, *use of force*, *use of violence*, and *working rules*. These terms were then used to gather peer-reviewed literature from the ProQuest Criminal Justice Periodicals Index, Political Science Complete, Business Source Complete, and SAGE Premier for the period between January 1, 1996, to April 31, 2017. I added literature that was known to be related to the study but gathered during my career in policing. This effort created a starting set of literature upon which a snowball method, guided by Wohlin (2014), was used to find additional literature. A subsequent Google Scholar search was conducted using the same parameters in search of literature that may not have been located followed by another snowball iteration. I gave greater attention to peer-reviewed articles and other scholarly sources within the last 10 years, particularly those within 5 years, involving studies of U.S. police officers. The scope of the literature spanned peer-reviewed articles, dissertations and theses, books, reports of professional organizations, government-published documents, and seminal literature related to the topics.

Theoretical Foundation

The Street-Level Bureaucrat

Lower-level government employees are instruments of public policy affecting the lives of those served. Lipsky (2010) named those employees *street-level bureaucrats* (SLBs). They work in a realm distinguished by a high degree of uncertainty caused by societal difficulties and the need to make frequent or rapid decisions (Lipsky, 2010). SLBs, playing an important role in society through their direct contact with citizens, deliver government benefits and sanctions that structure and delimit the lives and opportunities of those citizens (Lipsky, 2010). SLBs wield considerable discretion in the day-to-day execution of public programs, meaning that they choose from among various courses of action based on their judgment (Worden, Harris, & McClean, 2014). Their individual actions are the extension of the state's influence and control over its citizens and in aggregate embody public policy (Lipsky, 2010).

Street-level bureaucrats use discretion to overcome the combination of agency rules, unclear policies, insufficient resources, and the flood of public demands that complicate policy implementation. Facing the contradiction of following programmatic agency routines and rules designed to provide equal treatment for all clients, SLBs must respond to unique and individual circumstances (Lipsky, 2010). Their work of fulfilling an unlimited public demand is made more difficult by limited resources and equivocal objectives (Lipsky, 2010; Matland, 1995). SLBs use discretion to develop coping mechanisms filling the gap between utopian performance and reality (Lipsky, 2010; Matland, 1995). The result is that SLBs do for some what they cannot do for everyone by

rationing and restricting services through the differentiation of clients (Lipsky, 2010). Those deemed deserving are given added attention while the undeserving receive imposing degrees of burden associated with their receipt of rights and benefits (Lipsky, 2010). These mechanisms are rarely approved by their agencies but are often necessary to achieve some degree of agency success.

The cumulative effect of street-level decisions made on the basis of coping mechanisms can alter the intended policy direction and could become destructive. Dunsire (1990) called this changed direction the *implementation gap*, which differentiates intended policy outcomes from the actual positive and negative effects caused by civil servant behaviors. This gap has also been referred to it as an implementation deficit and incongruent implementation (Hupe, Hill, & Namgia, 2014). Lipsky (2010) focused most on the negative outcomes caused by coping mechanisms finding that they might undermine citizens' expectations of equal treatment. Unsanctioned mechanisms might be constructed with elements of stereotypes, prejudice, and racism normally present within the broader context of society capable of causing harm to many people. These coping mechanisms can lead to claims of reduced care and favoritism (Lipsky, 2010). The use of unsanctioned coping mechanisms provides an explanation for instances of institutionalized prejudice contradicting published policy, such as in instances where police officers have used race as a factor in drawing inferences or conclusions about a person's involvement in criminal activity.

The potential pitfalls of coping mechanisms lead to arguments to cease all SLB discretion, but such arguments fail to account for public desires (Lipsky, 2010). Public

policy cannot create algorithms for programmed decisions that provide both impartiality and flexibility (Lipsky, 2010). SLBs are afforded discretion in part because society does not want the inflexible application of standards without an ability to show compassion and pliability in unique situations (Lipsky, 2010). The result is that SLBs are expected to professionally exercise discretion within their fields.

Lipsky (2010) explained that the ability of SLBs to exercise discretion is not unrestrained by rules or directives, but such efforts achieve limited success. This was a weakness in his study, as Lipsky offered only the typical suggestions to control discretion, such as holding SLBs accountable for agency objectives, reducing discretion, and constraining alternatives through rules, audits, and sanctions. The intended effect of these measures is to standardize behavior, generate employee awareness of management oversight, and direct workers' efforts (Lipsky, 2010). Agency policies supported by significant sanctions help achieve desired behaviors. However, Lipsky acknowledged that rules may impede supervision. If rules become too voluminous or contradictory, management will be compelled to engage in selective enforcement.

Street-level bureaucrats may resist controls over their discretion because their priorities differ from their managers. Specifically, SLBs are interested in processing their work in a manner consistent with their preferences, minimizing real dangers and discomforts, and maximizing income and personal gratification (Lipsky, 2010). Managers, on the other hand, are interested in achieving agency goals and objectives. When supervision is minimal, evaluation of SLBs becomes difficult as supervisors are unable to directly observe the intangible factors leading to SLB decisions (Lipsky, 2010).

Additionally, auditing is complicated when SLBs complete paperwork in a way that guards against later adverse inspection (Lipsky, 2010). SLBs can capitalize on weaknesses inherent with insufficient supervision to maintain control of their work despite the controls applied by management.

Previous Applications of SLBT

SLBT has been successfully applied across multiple dimensions of the social sciences, but the area most similar to this study are those examining policy implementation and the degree to which outcomes are based on race (Keiser, 2010; Marschall, Rigby, & Jenkins, 2011; Morrell & Currie, 2015; Tummers & Rocco, 2015). Three recent studies in the areas of welfare, election administration, and housing involved policy implementation where outcomes are assessed based on the race of the recipient.

Ernst, Nguyen, and Taylor (2013) used SLBT to frame their qualitative examination of the quality of service of all Community Services Offices in Washington state to determine if service differed based on race. Citizens claim their social rights through these offices (Hasenfeld, Rafferty, & Zald, 1987). Ernst et al. found that White men had the most positive interactions with staff in these offices while Black women had the worst. In the face-to-face interactions, the White investigator consistently had more positive interactions and received more information than the other investigators, particularly more than the Black investigator. The results indicate a degree of institutionalized racism at the hands of SLBs, contrary to stated policy.

White, Nathan, and Faller (2015) used SLBT for their quantitative experiment intended to measure U.S. local election administrators' email responses to constituents of

different ethnicities. The study involved two emails from putative White and Hispanic sounding names. The email from the White name asked a less politicized question, while the email from the Hispanic name asked for information about voter ID laws. The authors discovered that Hispanics were less likely to receive accurate responses and less likely to receive informative responses than non-Latino emailers. While these election officials are responsible for providing a fair and voter-friendly atmosphere, the authors found that the election officials showed bias against Hispanics.

Einstein and Glick (2016) used SLBT in their quantitative experiment to gauge racial bias in affordable housing programs in large metropolitan and micropolitan areas. Similar to White et al. (2015), the authors sent emails asking how to apply for public housing. They found that response rates for Hispanics were significantly lower than those of White and Blacks. They also discovered that Hispanics also received less friendly replies. The results of this study indicate that SLBs from this sample population do engage in behavior conflicting with anti-discrimination

The previous research has found that public officials sometimes do engage in racially motivated behaviors that create a de facto policy in conflict with established public policy. The actions of the studied officials would have significantly structured and delimited the lives and opportunities of those they served. These studies serve as examples of the validity for the use of SLBT in research examining racial disparities that may occur during policy implementation

Rationale for Use of Street-Level Bureaucrats Theory

I examined the effect of the New Jersey RIP directive on officer decisions to use force across one county. The use of SLBT is appropriate as Lipsky (2010) wrote, police officers are SLBs. They operate in an uncertain environment, regularly without the benefit of complete information upon which to make decisions, generally with copious rules but without direct supervision, sometimes acting in opposition to those rules while trying to serve ambiguous objectives. Officers frequently interact with citizens and use discretion to deliver government benefits and sanctions that may have far-reaching effects on the lives of the citizens, their families, and the community (Brooks, 2015; Sekhon, 2011; Walker & Archbold, 2014). Among their discretionary tools is the absolute authority and responsibility to use of both non- and deadly force (Brooks, 2015; Sekhon, 2011; Walker & Archbold, 2014). Their use of deadly force is the ultimate extension of the state's influence and control over its citizens. There is long history in the United States of government sanctioned racial disparities involving a wide array of government benefits and sanctions, especially those offered by police (Cooper, 2015; IACP, 2016; Uchida, 2015). Recent highly publicized deaths of Black men at the hand of police have been held as evidence that police use more force, especially deadly force, on minorities (Chaney & Robertson, 2015). Where officer uses of force show racially disparate impact on citizens, SLBT would help explain that policy implementation gap.

Support for the use of SLBT in the current research can be drawn from Davis (1969, 1975). In his study of discretion in the criminal justice system, Davis (1969) found that the realm of statutes and judge-made law were overdeveloped, while those with the

greatest exercises of discretion were underdeveloped, such as administrative, police, and prosecutorial justice. Davis's (1975) qualitative study of the administrative processes of the Chicago Police Department found that local police operations were guided by the false pretense that all laws are enforced by officers while the reality demonstrated that there were insufficient resources to achieve that goal. Instead, officers regularly enforced some laws, almost never enforced others, and still other laws were enforced based on the attitudes of the officer, with those decisions sometimes based on the offending person or occasion. Davis (1975) concluded that much of the police department's enforcement policy is determined by the low-level officers, who did so without the benefit of legal advisers, and whose personal enforcement policies usually differed from department policies and that of other officers. Davis (1975) asserted that the discretionary actions of officers led to the majority of claims involving injustice.

Davis (1975) and Lipsky (2010) were similar in their belief that discretion is necessary for the work of SLBs, but the authors differed in their beliefs regarding its control. Unlike Lipsky, Davis proffered the elimination of unnecessary discretion while controlling necessary discretion. Unfortunately, Davis did not expand on what could be considered necessary discretion, perhaps a deliberate choice. He proposed a revolutionary method to determine local policing priorities that would supply greater opportunity for equal protection under the law while leaving available the individualized application of law in unique circumstances. Davis's administrative rulemaking proposal made his study a key work of scholarship in what is now known as democratic policing (Friedman & Ponomarenko, 2015). Still, Davis's idea of communities and police administrators

collaborating to establish police priorities has not been widely accepted, but his recommendations for the construction of administrative rules is widely used.

The substance of a rule was a matter a special attention as it would be the tool to control officer behavior. Officer behavior was to be confined through the use of a written policy detailing what can and cannot be done, structured by specifying factors the officer should consider when making a decision, and checked through the review of incident reports (Davis, 1975; Walker & Archbold, 2014). Later research would show that officers ranking higher than the immediate supervisor should review these reports because the immediate supervisor was frequently fulfilling a supportive role in protecting subordinate officers from unfair discipline (U.S. DOJ, 2003). The information contained within the rule itself was the vehicle by which the policy would be implemented.

New Jersey police officers have the authority and responsibility to use non- and deadly force when administering public policy. The RIP and use of force directives follow the Davis (1969, 1975) rule model by confining, structuring, and checking officer behavior to prevent unlawful uses of force. If racial disparities are found in police uses of force, SLBT serves as a framework to understand how they might have occurred.

Extent of the Force Phenomenon

The extent to which police officers use force is not known. According to Walker and Archbold (2014), only 1–2% of citizen-police encounters result in the use of force. Hickman, Piquero, and Garner (2008) concluded that, nationally, only 1.7% of all police contacts result in some kind of force. Others have described police uses of force as a small percentage of police-citizen encounters or simply rare (Alpert & Dunham, 2004;

IACP, 2012; Pollock & Reynolds, 2015; Terrill, 2001, 2003, 2005). Force is used in 15–20% of arrests (Smith et al., 2010). Still, when force is used, lower levels of force are more commonly applied (Garner, Maxwell, & Heraux, 2002; Lawton, 2007; Terrill & Mastrofski, 2002). Despite these assurances, data collection in this arena has remained a challenge.

Problems With Data Collection

The limitations for collecting data to analyze the extent of police uses of force against citizens on a national scale include (a) a lack of a common definition of force; (b) widely varying perspectives and perceptions of force within and among the police and civilian communities; (c) the absence of mandatory reporting mechanisms to collect such data; and (d) greater attention by scholars and the media on deadly force over non-deadly force, with few studies examining both.

The lack of a commonly accepted definition of police use of force makes an assessment of the phenomenon difficult. Scholars identified this dilemma for the purposes of research (Adams, 1995, 2015; Bittner, 1970; Klahm IV & Tillyer, 2010). Garner, Schade, Hepburn, and Buchanan (1995) helped researchers achieve a common scholarly definition when they applied the National Academy of Sciences definition of violence to their research. In their study, force was described as "behaviors by individuals that intentionally threaten, attempt, or inflict physical harm on others" (p. 152). Still, subsequent research has suffered from a disjuncture between conceptualizations of force and operationalization of the construct leaving the definition among most studies ill-defined and operationalization inconsistent across studies (Klahm IV, Frank, &

Liederbach, 2014). On a national scale, the criminal justice system has not had a similar level of agreement as police agencies have no commonly accepted definition of force (Walker & Archbold, 2014, p. 79), except perhaps that of deadly force (Adams, 2015).

An important limitation to understanding the extent of the force phenomenon is the lack of an effective mechanism to collect data. In the months that followed several publicized incidents, James Comey (2015), director of the Federal Bureau of Investigation, acknowledged that even he had difficulty measuring the frequency of deadly force using the Uniform Crime Report (UCR) because reporting by police agencies is voluntary, and few agencies submit data. Comey admitted that the data that have been collected by the FBI is incomplete and unreliable. Additionally, the UCR is of no value in measuring non-deadly force incidents because such reporting is not collected even on a voluntary basis. The newer National Incident-Based Reporting System is also a flawed measure in that regard. The Bureau of Justice Statistics data from the Arrest-Related Death component of the Death in Custody Reporting Program is flawed because the methodology has been demonstrated to capture only 72% of the estimated reportable deaths (Banks & Planty, 2015). Included among reportable deaths are those where someone died in the presence of a police officer but not in the officer's custody, and those not directly related to police action or negligence, such as deaths caused by intoxication, suicide, and natural causes (U.S. DOJ, 2012).

Despite the criminal justice measurement failures presented above, official government records may still provide insight into the phenomenon. Public health records have been used to measure the deadly force phenomenon. Krieger, Kiang, Chen, and

Waterman (2015) used public health records to calculate deaths caused by legal intervention. The term legal intervention was simply defined as “deaths due to law enforcement actions” without any further clarification, so it is unclear what categories of people are included in law enforcement or what actions constitute legal intervention (p. 1). Analyzing national mortality data from 1960-2010, Krieger et al. found 15,699 incidents of death attributed to legal intervention, excluding lawful executions. Of those, 63.3% involved men between the ages of 15–34, where Whites accounted for 55.3% and Blacks for 42.3%. The authors note limitations to publicly available national mortality data, specifically the likely underreporting of police killings, a lack of real-time data reporting, and the aggregation of data to the county level. These gaps cannot be filled by the National Violent Death Reporting System because that system only receives data from 32 states (Barber et al., 2016; Krieger et al., 2015). Krieger et al. recommended making all law-enforcement-related deaths a reportable health condition to improve future knowledge and accountability of the phenomenon. Doing so would require an administrative rule by public health agencies and would serve as an independent method of accountability as it would exist outside law enforcement enterprises.

While the government has yet to develop a system to accurately collect data on police deadly force incidents, other organizations of varying degrees of reliability have started to fill the data void. Operation Ghetto Storm (OGS) has not put forth a new analysis of extrajudicial killings by police since 2014, but it is still active in providing social commentary. In 2012, OGS published a report claiming that a Black person is killed by police every 28 hours but might be closer to every 24 hours (Eisen, 2014). This

analysis showed a “War against Black people” evidenced by the “[government’s] practice of executing Black people without pretense of a trial, jury, or judge [and which] is an integral part of the government’s current overall strategy of containing the Black community in a state of perpetual colonial subjugation and exploitation” (Eisen, 2014, p. 1, 4). This figure was used by individuals with scholarly backgrounds in the mainstream and peripheral media sources and by protest groups calling for greater police accountability to indicate the frequency with which police kill Black people (Carruthers, 2014; Hamm, 2016; Hill, 2014; A. Hudson, 2013).

Although the OGS figure has been used in the media to indicate the extent of police killings, Eisen (2014) intended the report to be an examination of extrajudicial killings believed to be attributed to a racist government and its policies through state-sanctioned actors. These actors include police officers, private security guards, and vigilantes. The author’s conceptualization of extrajudicial killing by police is any death coinciding with contact by someone or something subjectively perceived to be related to the police. Extrajudicial killing by police is operationalized by measuring intentional and unintentional death at the hands of state-sanctioned actors, including those deaths caused by traffic accidents, accidental firearm discharges, and unsecured weapons used by children. The analysis provided by the author was meant neither to serve as an evaluation of only sworn police officers employed by police agencies nor an indication of the frequency with which they use deadly force during their official duties. Nonetheless, without reliable data from the government, sources such as this have been held by many

as a national estimate of extrajudicial killings by sworn police officers (Carruthers, 2014; Hamm, 2016; Hill, 2014; A. Hudson, 2013).

Other sources have emerged to fill the gap in government data claiming to count police killings. The sources have used data obtained through researchers, public records, and crowd-sourcing. For 2016, among the numerous organizations claiming to count deaths attributed to police, the following organizations reported the following deaths, Copcrisis.com–1,152; Fatalencounters.org–1,568; and Killedbypolice.net–1,162. These websites share data and include deaths through unintentional and negligent means (e.g., traffic accidents) and deaths in custodial detention (e.g., jails and prisons). None of the websites claim to measure police use of deadly force, but like the OGS report, there is a broad conceptualization and operationalization of killing by police which is quite different from deaths attributed to the intentional use of deadly force by a sworn police acting under the color of law. While the information provided by these websites is important and may have a significant public policy and risk management applications, the validity of any claim to measure uses of deadly force by police officers during their official duties is tenuous without disaggregating the data. Use of these numbers with the purpose to represent the frequency of duty-related deadly force used by police is inaccurate.

Larger mainstream media organizations have also created databases and provided analysis on police uses of deadly force. *The Guardian's* "The Counted" series tracks the number of people killed by police, including negligent deaths, while *The Washington Post* counts police fatal shootings. These sites collect their data using resources similar to

those previously mentioned including crowd-sourcing, but *The Guardian* suffers from the conceptualization and operationalization flaws found on those websites, and the journalists make no attempt to connect the incident to official duties. In contrast, *The Washington Post* calculates all police shootings including those resulting from accidental discharges but not those believed to be murder by off-duty officers. It does not capture deaths attributed to force actions not related to firearms. It is unclear if the data contain instances where a police officer's firearm was used by another person. For 2016, *The Guardian* reported 1,093 (53% White, 24% Black, 17% Hispanic, 2% Asian/Pacific Islander, 2% Native American, and 2% unknown) police-related deaths and *The Washington Post* reported 963 (48% White, 24% Black, 17% Hispanic, 4% other, and 7% unknown) police shooting fatalities (Guardian, 2016; Washington Post, 2016). These findings are remarkable but there is an important difference between the two sets of data.

I was curious to see how the inclusion of data from deaths attributed to police but not caused by the intentional use of deadly force by police officers during the execution of public duties affected the overall findings. I reviewed the 2016 New Jersey cases from the *Guardian* and the *Washington Post* but found only a small disparity. A single case, equating to seven percent of all deaths, did not involve officers acting under the color or their official duties. This case involved an alleged murder committed by an off-duty police officer. However, the 2015 data provided a better example of how including deaths attributed to other than official duties obscures the force phenomena. For 2015, the *Guardian* indicated that New Jersey police officers killed 23 people (39% White, 39% Black, 3% Hispanic, 4% Asian/Pacific Islander, and 4% unknown) while *The Washington*

Post showed 15 deaths (47% White, 27% Black, 20% Hispanic, and 7% unknown) attributed to police shootings (Guardian, 2015; Washington Post, 2015). All deaths captured by The *Washington Post* were captured by the *Guardian*. Among the *Guardian's* reported deaths were two traffic accidents involving an on-duty police officer, one traffic accident involving an off-duty police officer, one murder involving an off-duty corrections officer, and one murder by an off-duty police officer. These five deaths in the *Guardian's* 2015 reporting fail to provide a link between sworn police officers fulfilling their public duties and the intentional use of deadly force, or roughly 21% of the 2015 reported deaths in New Jersey. Such disparity reveals an urgent need to create a consistent conceptualization and operationalization of force in order to separate that construct from other data purported to be police killings.

Two online newspapers have offered methods for readers to examine variables present in scholarly research. The data collected by *The Guardian* showing the number of police killings can be filtered into categories, such as gender, race, age, and the presence of a weapon. The data can be further filtered by state and classification of death, such as gunshot or struck by a vehicle. Police shooting data from the *Washington Post* can be further subdivided into two additional categories, signs of mental illness and threat level but cannot filter on a classification of death. Most of the variables collected by these two news organizations have been extensively examined in scholarly research. Notably, absent from their list of variables is a level of the suspect's resistance, described later in this chapter, which has been found to be a significant influence on force outcomes.

The measurement of the deadly force phenomenon is difficult and contentious but the measurement non-deadly force is virtually absent but equally controversial. Fryer (2016) explained that data on non-deadly force is nearly non-existent because many agencies simply do not collect the data or simply let it exist within narrative police reports where it is difficult to extract. One option for overcoming the data collection problem from police agencies is by analyzing the Police-Public Contact Survey (PPCS) available from the Bureau of Justice Statistics (2011). This survey is collected every 3 years as a supplement to the National Crime Victimization Survey using a sample of people aged 16 and older who answer questions related to any type of police contact within the previous 12 months (Bureau of Justice Statistics, 2011). In analyzing the data from 2002, 2005, 2008, and 2011, Hyland, Langton, and Davis (2015) found an annual average of 715,500 non-deadly force incidents, including all threats of force by an officer, as well as instances where force was actually used. The PPCS has several disadvantages: (a) data cannot be disaggregated to smaller geographic areas, (b) there is an absence of contextual information, (c) jailed individuals and those under 16 years of age are omitted, and (d) the data only provide the civilian interpretations of the encounter (Fryer, 2016; Hyland et al., 2015). Additionally, the PCS does not draw distinctions between coercive threats and actual force. While the PPCS provides an estimate of the extent of non-deadly force, that estimate may be misleading due to its loose conceptualization and operationalization of non-deadly force and its several disadvantages.

The prior discussion reflects remarkable problems in collecting data on both non- and deadly force. As I have shown, national efforts to gauge the frequency of deadly force data have been fragmentary and confusing at best, and efforts to gauge non-deadly force is nearly nonexistent. As will be described in more detail later, the policies of the State of New Jersey overcome these data collection problems and makes force use by police quantifiable on several levels. This study was the first to collect data on both types of force to assess the influence of public policy using a conceptualization and operationalization of force that is consistent between the researcher and the officers carrying out public policy.

Problems Analyzing Collected Data

The extent of the national use of force phenomenon and questions of racial implications are currently a matter of best-educated guesses. Efforts to calculate the degree of racial profiling in any act of police discretion is complicated by the lack of a method for measuring racial and ethnic proportions (Alpert, Smith, & Dunham, 2004; Ramirez, McDevitt, & Farrell, 2000; Sekhon, in press; Withrow & Williams, 2015). Many researchers have attempted to gauge racial profiling in policing, with principal strategies involving analyses of traffic stops (Gelman, Fagan, & Kiss, 2007; Walker, 2001a, 2003). Two common methods from these studies can be used to analyze force data for evidence of RIP, external and internal benchmarking.

External benchmarking compares outside data to collected data. The most frequently used external benchmark to gauge racial disparities is the residential population of the police jurisdiction (Engel & Calnon, 2004; Withrow & Williams,

2015). Researchers have compared the frequency of stops, searches, arrests, and force in relation to the proportion of racial groups in the local residential population (Bejarano, 2001; Gelman et al., 2007; Goff, Lloyd, Geller, Raphael, & Glaser, 2016; Penn, 2006; Smith & Petrocelli, 2001; Verniero & Zoubek, 1999; Zingraff et al., 2000). Also, census data are frequently the benchmark provided in news analysis (see Craven, 2016; Sager, 2016; Swain, Laughland, Lartey, & McCarthy, 2015), although such research has been criticized for failing to account for transient populations, differential rates of exposure to police, differential rates of offending, and undocumented residents (Ayers, 2002; Cox, Pease, Miller, & Tyson, 2001; Horn et al., 2013; Simoiu, Corbett-Davies, & Goel, 2016; Walker, 2001a; Withrow & Williams, 2015; Zingraff et al., 2000). These failings may result in findings lacking in validity and which may influence the perceptions that police unfairly treat racial minorities. As a result of these difficulties, research has begun to shift toward internal benchmarking methods (Tillyer & Engel, 2010).

Internal benchmarking compares collected data from one unit of measure to similarly situated other units of measure within the study. The underlying assumption of internal benchmarking in policing is that similarly situated officers will perform similarly because they are exposed to the same contextual environment (Walker, 2003; Withrow & Williams, 2015). Those who differ from the others are considered anomalies requiring additional attention. This type of research is an outcomes-based assessment that analyzes differences in police performance among officers (e.g., warnings, summonses, searches, and arrests). Many police agencies have begun to use this type of benchmarking as part of

an internal affairs early intervention system to monitor for problem officers, such as the Pittsburgh and Cincinnati police departments (Walker, 2003).

Internal benchmarking has several advantages over external benchmarking but still has important limitations. Internal benchmarking does not introduce measurement error, such as those relating to transient populations; accounts for differential rates of exposure to police; and is effective at identifying officers who behave differently from others (Withrow & Williams, 2015). However, internal benchmarking suffers from two failings. First, it is difficult to operationalize similarly situated officers, as officers may be tasked to handle service calls outside their assignment or temporarily redeployed to different assignments. Second, internal benchmarking is unable to identify misconduct, such as racial profiling, if the conduct is rampant or systemic.

Internal benchmarking does not lend itself to the creation of a simple headline figure, but rather involves constant qualitative comparison among calculated statistics. Evaluators are free to utilize a broad degree of latitude in using factors for comparison. Policing is generally considered a local issue, a thought supported by a recent study that noted “precincts matter,” and such small units of measurement are important to data analysis for RIP (Fryer, 2016, p. 17; Pollock, Oliver, & Menerd, 2012; Ridgeway & MacDonald, 2013). Internal benchmarking offers promise in assessing the propensity of racial profiling and is useful in nuanced reviews of force by tailoring the analysis to local needs. By reviewing contextual details, evaluators can better decide the tactical, legal, and moral appropriateness of force use and make policy changes appropriate for local needs.

Rule Makers

The makeup of the U.S. government provides many layers of rule makers. Each branch of government at each level of government can create administrative rules that police agencies must follow (Skogan & Meares, 2004). Even the demands of insurance agencies cause rules that must be followed by police agencies (Rappaport, 2016). In this section, I address the five rule makers most influential to this study.

The Judicial System

The judicial system provides administrative rules that govern many police activities. Through federal, state, and local court decisions, also known as case law, police actions are deemed legal and proper or improper and the decision is binding upon all agencies within the courts' jurisdiction. For the purpose of this study, these decisions are considered rules because agencies must react to the decisions by ensuring all future officer actions conform with the decision. The decisions of the court are based on broad legal concepts often focused on specific officer behaviors. Sometimes these rulings help make matters clear and sometimes they do not.

The Supreme Court of the United States (SCOTUS) established the baseline standards used to guide police officer uses of force in the nation through case law in *Tennessee v. Garner* (1985) and *Graham v. Connor* (1989) and have been adopted in full by the New Jersey Supreme Court. SCOTUS recognized that officers are "… often forced to make split-second judgments — in circumstances that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation" (*Graham v. Connor,* 1989, p. 3). The Court did not go as far as to require officers' judgements to

be right, but it did require that officers use objectively reasonable force given the totality of the circumstances. The Court did not stop there, it further offered a method by which to determine if force used was excessive.

Garner and *Graham* began the objective reasonableness standard by which the actions of officers were to be judged in official legal proceedings. The Court rejected the notion that claims of excessive force could be evaluated by a single generic standard. Instead, the force used must be evaluated under a reasonableness standard requiring a "… careful balancing of " `the nature and quality of the intrusion on the individual's Fourth Amendment interests' " against the countervailing governmental interests at stake" (*United States v. Place* as cited in *Graham v. Connor,* 1989, p. 2). In the course of balancing the intrusion against government interests, one must consider severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight (*Graham v. Connor,* 1989). Such an evaluation must consider the force used by an officer "… from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight [and] without regard to their underlying intent or motivation" (*Graham v. Connor,* 1989, p. 3). Some have argued that the standard is not very objective. Terrill and Paoline (2016) asserted that the objective reasonableness standard provides an ambiguous threshold. The ambiguity results from the subjective nature of the word reasonable. Black's Law Dictionary defines reasonable as "agreeable to reason; just; proper, [or] ordinary or usual" (Law dictionary, n.d.-a). Other sources provide similar and equally arguable definitions. The required reliance on personal opinions

makes it difficult to distinguish reasonable force from excessive force (Alpert & Smith, 1994). While reasonableness is much more easily deduced when life-threatening dangers clearly exist, it is more difficult to conclude when they clearly do not. Claims that the objective reasonableness standard is equivocal are justified. However, these claims support the Supreme Court's notion that a single generic standard cannot be used to evaluate officer uses of force. Each individual act of force must be evaluated on its own merits. Within the court system, allegations of excessive force are reviewed in state criminal and tort litigation or federal criminal suites under 18 U.S.C. § 242 and civil suits under 42 U.S.C. § 1983. The findings of these cases further develop the reasonableness standard and inform officers of the actions that might be deemed excessive in similar circumstances.

The objective reasonableness standard lends itself to differences in perceptions between the public and police and might be one cause of the public's diminished trust in the police. The objective reasonableness standard offered by the Court is very different from the standards offered by many in the popular media and crowdsourced accounting mechanisms described earlier. What the courts consider reasonable may be deemed excessive by a citizen, force which is often referred to as *lawful but awful*. To complicate matters, the U.S. Supreme Court has repeatedly held that the objective reasonableness standard removes any need to consider the subjective officer intentions, such as racially biased motivations (*Scott v. United States*, 1978*; United States v. Robinson*, 1973; *Whren v. United States*, 1996). As long as the totality of the circumstances presents an objectively reasonable reason to use force, subjective motivations are unimportant. Chin

and Vernon (2015) argued that the standard endorses racial discrimination. Cooper (2015) found this fact especially troubling because of the potential it gives to racially-biased officers to commit murder without the fear of being held accountable. E. J. Miller (2015) argued the individualized focus of the objectively reasonable standard would not capture larger issues related to distributive justice. While the standard is the strict legal threshold to hold officers accountable for their actions, there are concerns by some that the threshold is too high and too deferential to police.

U.S. Department of Justice

For the purpose of this study, among the greatest influences on New Jersey police policies was the Civil Rights Division of the U.S. DOJ. That division sued the State of New Jersey under the authority of 42 USC § 14141. This code allows the U.S. Attorney General (USAG) to sue police agencies when there is a reason to believe that officers are engaged in a pattern or practice of depriving people of their constitutional rights with the purpose to bring about organizational reforms that establish standards of accountability to prevent future occurrences (Walker & MacDonald, 2008).

In 1999, the New Jersey State Police (NJSP) entered into a Consent Decree with the USAG that later became a cornerstone for the New Jersey RIP policy. The decree settled the pattern or practice lawsuit alleging that the NJSP failed to adopt and implement management practices to control officer discretion by allowing officers to target minority drivers and passengers for enforcement actions. Among the many parts of the agreement were stipulations that (a) officers of the NJSP would not be allowed to use race or ethnicity in decisions to conduct traffic stops or conduct post-stop action; (b)

NJSP officers would document the race, ethnicity, gender, the reasons for all traffic stops and all post-stop actions; (c) NJSP supervisors would review officer traffic stop reports and mobile video recordings to ensure compliance and to make recommendations for training and discipline as needed; and (d) oversight would be provided by an Office of State Police Affairs, the NJOAG, and an independent monitor (*United States v. State of New Jersey, Division of State Police*, 1999). The documented successes that resulted from this decree served as a model for the RIP directive established by the NJOAG (2005a).

The New Jersey Legislature

Legislated laws are another way to control the actions of police officers. The New Jersey legislature has outlawed the deprivation of civil rights by public officials (N.J. Stat. Ann. 2C:30-2). Enforcement of this statute falls to the charge of official misconduct, where a public servant knowingly injures or deprives another through an unauthorized act relating to the exercise of their public office, or by refraining from performing a duty imposed by law (N.J. Stat. Ann. 2C:30-2). In the case of RIP, the official misconduct charge is considered a crime with a presumption of imprisonment; a mandatory minimum term of five years and a maximum term of 10 years (N.J. Stat. Ann. 43:6-5). Where two or more acts are alleged under official misconduct, there is an additional offense known as patterns of official misconduct (N.J. Stat. Ann. 2C:30-7). The patterns of official misconduct charge is also a crime with a presumption of a prison sentence, but upon conviction cannot be merged with convictions for other offenses, such as official misconduct, ensuring that the official serves additional time in prison for the pattern

offense (N.J. Stat. Ann. 2C:30-7). These enactments were created to prevent racial profiling and when necessary to punish those offenders.

The New Jersey Office of the Attorney General

The New Jersey Attorney General is authorized to implement a statewide policy for both the police and prosecution functions. The Criminal Justice Act of 1970, declares the Attorney General to be the chief law enforcement officer for the state (N.J. Stat. Ann. 52:17B-97 et seq.). The Act prescribes an integrated and hierarchical system of law enforcement acting under the direction of the attorney general. This system is unusual in the nation as most other states keep the prosecution function separate from the police function (County Prosecutor Study Commission, 2011). However, the system ensures the most efficient and effective use of criminal justice resources throughout the State (County Prosecutor Study Commission, 2011). Two NJOAG regulations specifically influence this study.

Racially-influenced policing directive. The NJOAG (2005a) RIP directive (see Appendix A) established the first-in-the-nation statewide policy regarding the use of race and ethnicity in police actions. This policy conforms with the Davis rule model and adds a one-time pre-service and in-service training requirement using a material produced by the New Jersey Division of Criminal Justice. Officer discretion is confined and structured in this written policy that unequivocally declares that no officer will use the race or ethnicity of an individual as a factor when drawing inferences or conclusions of involvement in criminal activity or as a factor in the exercise of discretion in stopping or treating a person, including when choosing to use force. Officers are still permitted to use

race and ethnicity when used to describe physical characteristics identifying a particular individual being sought or investigated in the furtherance of an investigation. Officer discretion is checked through the review of officer incident reports and behavior. This is a policy weakness foreseen by Lipsky (2010), as supervision may be insufficient or ineffective at spotting problem officers. Agencies are left to develop the standards and mechanisms to find those problem officers without guidance from the state.

Use of force policy. The NJOAG (2000) use of force policy (see Appendix B) sets the standard for both non- and deadly force. The directive follows the SCOTUS objective reasonableness standard and the Davis rule model for confining, structuring, and checking officer discretion. Discretion is confined and structured through this written policy enunciating authorizations and limits to the use of non- and deadly force and the display of firearms. Discretion is checked through mandated reporting requirements. Also, officers are required to receive training on this policy at least twice per year. The policy is a mixture of good and bad with regard to resolving the previously described problems of conceptualization, operationalization, and measurement.

The Attorney General's Use of Force Policy unintentionally helps to confuse the matter of force conceptualization found elsewhere. The title alone confounds that issue but is supplemented with other obscuring components. This is because the force policy includes both coercion and force but offers no definition for either, and includes a force continuum with elements of both. The continuum devised by the state includes, (a) constructive authority, (b) physical contact, (c) physical force, (d) mechanical force, and (e) deadly force. Constructive authority and physical contact are exclusively coercive

while physical, mechanical, and deadly force are exclusively forceful. The obscurity of force is an unfortunate matter that can and should be rectified so that a simple reading of the policy can serve as a foundation for mutual understanding between the public and the police.

Despite the conceptualization problem found in the policy, information located in the policy and various state laws can be combined to make plain the definition of force and resolve uncertainty involving in its operationalization. Using the policy and laws, force is deduced to be the lawful physical actions undertaken by police officers to protect persons or property or to overcome suspect resistance during the execution of their public duties that intentionally or unintentionally attempt or inflict physiological harm, impairment, or death (NJOAG, 2000; N.J. Stat. Ann. 2C:1-14[b]; 2C:3-3 et seq.; 2C:3-7 et seq.; 2C:11-1 et seq.). Given this definition of force, its operationalization is made clear by the policy in the form of the force continuum. However, it is important to note that the levels on the continuum do not represent sequential steps that must be followed but are rather a range of options from which the office can choose based on the circumstances presented. There is no expectation that officers will exhaust lower level options before resorting to higher levels of force.

The policy overcomes the problem of measurement and permits practitioners and policymakers to know precisely the number of non- and deadly force incidents that occur in New Jersey. In an effort to check officer discretion, the policy requires that officers submit reports through their chain of command for every instance in which physical, mechanical, or deadly force was used. Assuming that all forceful incidents are properly

reported, not only can the incident be quality reviewed by a supervisor or other entity, but the frequency of all types of force used by officers can be easily measured at the local level in real-time. Subsequent mandatory aggregate reporting to the county prosecutor will make the frequency of force known at the county level on a regular basis. While the policy does not specify other mandatory notifications of force, except in incidents involving serious bodily injury or when any injury is caused by a firearm, it is conceivable that a mechanism could constructed so that the extent of the force phenomena within the state could be regularly quantified. Since it is possible to collect and make know the frequency of force to practitioners and policymakers, this information should be publicly and regularly published to increase police transparency and accountability in the hopes of improving public trust and police legitimacy.

The policy does leave room for other areas of improvement. First, agencies are permitted to customize the form officers complete when reporting uses of force (see Appendix A), and based on the data collected for this study, do not require that they be completed in full. This could make data collection of certain variables difficult and complicate comparisons among agencies, as it did in my study. Second, the policy proposes no required assessment of the data, at any level of government, once they are collected and reported. Finally, it offers no suggested algorithm to turn the data into meaningful information. Such tasks are left to the individuals and agencies who see those data. If included, these elements might help with issues of accountability, transparency, public trust, and legitimacy.

New Jersey Police Agencies

Police agencies may also enact rules to control officer discretion and behavior. Agency heads, known as *appropriate authorities*, are authorized under current and valid municipal ordinances to adopt rules and regulations for the government and discipline of its officers (N.J. Stat. Ann. 40A:14-118). The NJOAG (2001) requires that the rules and regulations be supplemented with policies and procedures. The rules define acceptable and unacceptable officer behavior in broad terms, while policies and procedures are detailed statements on how to accomplish job-related tasks for police operations. For example, a rule might require officers to wear a particular uniform while engaged in certain assignments while the precise details of that uniform would be expressed in the policies and procedures. Under no circumstances may agency rules become less restrictive than those of their higher authorities. To illustrate this point, my data collection revealed that several agencies promulgated their own RIP directives prior to the state mandate, choosing to establish a rule more restrictive than required. This observation will be described in greater detail in Chapter 4.

Administrative Rules Influence Police Behavior

During the police reform movement of the 1960s, the President's Crime Commission on Law Enforcement and Administration of Justice (1967) noted that police agencies are not accustomed to their roles as policy-makers. The commission recommended that police agencies develop and promulgate policies to guide officer discretion during common situations involving the exercise of discretion and that the

public is apprised in advance of the policy. Later research would confirm the utility of rules governing police discretion.

Police agencies have successfully used rules to control the use of discretion by their officers. Still, rules to control police discretion are a relatively new development occurring mostly over the last 30 years beginning with examinations of rules restricting deadly force (White, 2011). Prior to the 1970s, few departments had rules to control deadly force, and those that existed had little impact on officer actions (U.S. President's Commission on Law Enforcement and Administration of Justice, 1967). Officers followed the common law fleeing felon doctrine which permitted officers to shoot any suspected felon to prevent their escape (Walker, 1993; White, 2001). When agencies did provide rules for deadly force, they did so with ambiguous statements and language, such as requiring the use of good judgment and admonitions not to unholster their weapon in anger (Walker, 1993; White, 2001). Public discord from several high-profile police shootings created an environment that increased professional, government, and scholarly examinations of police deadly force and the use of policies to confine officer discretion.

Few other professions have been granted the degree of discretion as police, and with the exception of the military, no other profession has been granted the range of discretion to exercise force alternatives. Rules provide written guidance and the annunciation of expectations (Thibault, Lynch, McBride, & Walsh, 1998). Rules are intended to reduce discretion and help officers prepare for the situations they might encounter (Alpert & Fridell, 1992; Walker, 1993). The vein of scholarly research that has explored the use of rules in policing has shown consistently that rules do constrain police

actions, even during critical life-threatening events. Still, authors are steadfast in their warning that rules must be clear, unambiguous, and supported by meaningful supervision and discipline.

Walker and Archbold (2014) recommended that agencies develop policies to control police discretion in critical incidents, defined as those events involving police actions that pose a risk to life, liberty, and the dignity of a person. The list of possible critical incidents is potentially endless, so the following portion of the literature review will explore the more prominent critical issues that pose risks to life, liberty, and dignity of a person.

Rules Reduce Deadly Force

Research on the ability of rules to control police discretion began with James Fyfe, a New York City police officer and future deputy commissioner, who examined the influence of the department's deadly force policy. The New York City Police Department was among the first in the nation to attempt controlling police discretion in using deadly force as a matter of policy. The policy conformed with the Davis (1975) rule model. Among the controls were (a) a mandate to use the defense of life standard, (b) certain prohibitions on the use of firearms, (c) a requirement to complete a firearms discharge report, (d) the review of all firearms discharges by a review board, and (e) listing of possible sanctions for failure to conform with the policy (New York City Police Department, 1972). Fyfe (1979) found the policy helped reduce firearms discharges by 29.9% over the first four years, suggesting that the policy aided in constraining discretion. Significantly, the policy appeared to have no adverse impacts, such as

increases in officer assaults or increases in the crime rate. Later research by Fyfe (1980; 1981, 1982, 1988), Walker (1993), and White (2000, 2001, 2003) confirmed the efficacy of restrictive rules on deadly force in other large cities. The effects of the rules, however, are nuanced, as they influence non- and elective shooting differently (White, 1999). The results of this research were persuasive, leading to a national trend among police agencies to enact similar deadly force policies (Walker, 1993). Walker suggested that the success of restrictive deadly force policies should serve as a model for other efforts to control police behavior.

Rules Reduce Non-Deadly Force

Unlike the deadly force research, the influence of policy on the use of less-lethal force has not been thoroughly examined. A wealth of research has examined the structure of rules, training, tactics, reporting, audits, and the force continuum (Alpert, Dunham, & MacDonald, 2004; Bishopp, Klinger, & Morris, 2014; Hough & Tatum, 2012; McEwen, 1997; Pate & Fridell, 1993; 1995; Terrill & Paoline III, 2012). Other researchers have examined the relationship of less-lethal policy on the use of deadly force (Ferdik, Kaminski, Cooney, & Sevigny, 2014; Morabito & Doerner, 1997; Thomas, Colins, & Lovrich, 2010). Until recently, studies did not examine the influence of policy on the use of a spectrum of less-lethal force options.

Terrill and Paoline (2016) provided the first study to assess the influence of policy on the use of a range of less-lethal options. The authors reviewed force incidents from three agencies with different degrees of policy. Controlling for situationally-based factors, Terrill and Paoline found that more restrictive policies resulted in less force and

less restrictive policies resulted in more force. It is interesting to note that the department with the most restrictive policy also had the greatest number of officers and citizens, and the highest crime rate. The results of this study offer a foundation for future studies and provide promise that administrative rules may help achieve less forceful outcomes.

Rules Reduce Vehicle Pursuits

While somewhat glorified or sensationalized in the movies, television, and news media, the pursuit of fleeing vehicles presents unintended but foreseeable risks of injury or death and are a matter for public concern. Like deadly and non-deadly force, officers were generally unrestricted in their pursuit-related decisions until the 1980s (Alpert & Dunham, 1989; Walker & Archbold, 2014). Pursuits are an active attempt by police to apprehend an occupant of a moving vehicle who deliberately resists that apprehension through the continued use of the vehicle (Fennessey, as cited by Nugent, Connors, McEwen, & Mayo, 1989). They expose the officers, suspect, and the public to loss of life, serious injury, and significant property damage (Nugent et al., 1989). Without many substantive data to support the notion, early policy discussions considered pursuits more frequent than deadly force incidents and as a result of changes in deadly force, considered creating policies for pursuits.

The literature involving the influence of restrictive policies on pursuit is scant. Much of the research on the topic has examined the factors leading to decisions to pursue, structural components of policy, the amount of force used after a pursuit ended, but mostly centering on the danger of pursuits (Hicks, 2006). Research on rules began with Nugent et al. (1989), whose study was hampered by poor pre-policy pursuit data, as was

common among the police community. Although the data were poor, the authors were able to determine a trend that seemed to indicate a decrease in pursuit frequency after the implementation of the policy. Later research conducted with better data also found restrictive policies reduced pursuits (Becknell et al., 1999; Crew et al, 1995). While the literature is not as robust in this area, the existing literature shows promise that rules effectively reduce officer discretion during these critical incidents.

Value of Rules Governing Racial Profiling Is Inconclusive

Beliefs that police engage in racial profiling is at the heart of the trust problem between the public and police. The view that officers engage in such behavior threatens the principle of fair and equal treatment under the law. The 1990s presented the political tipping point as public concerns increased social and political pressures to stop the phenomenon (Warren & Tomaskovic-Devey, 2009). Since then, numerous agency and scholarly examinations have been made to determine if police agencies engage in RIP, particularly during traffic stops, searches, and arrest. Studies have shown that Blacks are disproportionately stopped, searched, and arrested in proportions greater than their representation in the general population (Engel & Johnson, 2006; Parker, MacDonald, Alpert, Smith, & Piquero, 2004; Skolnick, 2007), while other researchers have found the opposite or mixed results (Engel et al., 2005; Novak, 2004; Smith & Petrocelli, 2001). While studies quantifying the phenomenon are plentiful, studies examining the influences of policy are not.

Despite the attention given to the racial profiling problem, little attention has been given to police agencies policy responses (K. Miller, 2009). Of particular note is the

dearth of information related to the effectiveness of policies intended to prohibit RIP. Two studies were found that address the topic in limited fashion. Shultz and Withrow (2004) sought to determine the operational influence of officer-generated forms during race-based policing studies but found that neither the reports nor the study had an influence on organizational changes. They postulated that racial profiling has not developed traction among police agencies and that many agencies may enact RIP prohibitions as a symbolic gesture in response to social and political demands. In a more significant study, Warren and Tomaskovic-Devey (2009) conducted a time-series analysis of the North Carolina Highway Patrol interdiction team between 1997-2000 using agency collected data. They sought to measure searches and successful searches before and after the enactment of the North Carolina law requiring police to collect specific racial data during traffic stops. The results showed that the law significantly reduced racial disparities in traffic stops, decreased the use of consent searches, and increased the probability of finding contraband during the searches. The scarcity of studies on the topic has not helped determine the value of RIP prohibitions, but in this study I contributed to that literature.

Challenges Posed by the Findings in the Use of Force Literature

In the previous sections, I addressed limitations related to data collection and analysis of police uses of force, the effectiveness of rules in constraining police discretion during critical incidents, and the New Jersey rules and rule makers as background for this study. Recent uses of force by police on racial minority members throughout the nation has caused numerous protests and calls for police reforms from the public and elected

officials (Weitzer, 2015). Recent opinion polls have found public confidence in the police to be at an all-time low with many believing that officers do not fairly treat racial minority members (Jones, 2015; Pew Research Center, 2014). The publics' lack of trust in the police damages the legitimacy and authority of the police and government, and threatens the quality of life of all citizens, particularly communities comprised of racial minority populations (Keita, 2014; Meares et al., 2014; Nix et al,, 2014; Rahr & Rice, 2014; Richardson, 2015; White House, 2014). Administrative rules offer an opportunity to promote that trust by constraining police actions detrimental to the public trust but their effectiveness in eliminating RIP is unclear. In this study, I examined the relevant data to determine if the New Jersey RIP directive is effective at stopping racial disparities in uses of force by police.

An integral part of this study is the review of the findings of previous police use of force studies. Unfortunately, the findings of the extant literature present challenges to understanding that concept for two reasons. First, few studies conceptualize force in the same manner while some provide no conceptualization. This was an issue that Garner et al. (1995) attempted to overcome by offering a model definition that was limited to intentional threats, attempts, and infliction of physical harm. Second, the majority of studies operationalize force in different ways, leaving this field of research without a consistent list of actions that constitute force. In some cases, this was because of dissimilar force continuums. Agency force continuums widely differ across the nation (Klahm IV & Tillyer, 2010; Terrill & Paoline III, 2012). As a result, verbal commands and physical contact might be considered force at one agency while not in another. These

issues lead to the question, have police uses of force changed over time, or have actions considered force been broadened? The lack of consistency in both conceptualization and operationalization confounds the construct of force and makes a comparison of findings across studies difficult.

Force in this study is conceptualized in the manner stricter than that provided by Garner et al. (1995) who included coercion (threats). This study also goes against the recommendation of Klahm, Frank, and Liederbach (2014) who, after examining the conceptualization of force across many studies, supported the use of the Garner definition in future research. I chose to do this as a practical matter to align with the state policy. The definition for this study was chosen because it reflects the laws and policies of New Jersey which are taught to police officers in the police academy and in-service training. This study is not intended to measure nonviolent acts of coercion, and, as such, it is similar to those who have studied police use of violence by examining official government records (see Crown & Adrion, 2011; Hoffman & Hickey, 2005; Johnson, 2011; Morabito & Doerner, 1997). My decision to use a stricter definition is supported by in the writings of Garner et al.

Garner et al. (1995) asserted that their conceptualization of force, based on the National Academy of Sciences definition of violence, was simply to serve as a substitute where no precise definition existed. They chose this definition because it "did a good job in capturing what the research literature on police use of force typically means by 'force'" (Garner et al., 1995, p. 152). Their research was not concerned with creating a definition of force but rather with developing measures of the nature and extent of force

used by and against police officers that had been discussed in prior studies. The authors conceded that the presence of a heavily armed individual might be thought of as inherently threatening and could be considered forceful thus transforming all police-citizen encounters into forceful incidents. This conceptualization would be better named police coercion, of which force would be a subset. The title change would align with common and legal definitions of coercion (Law Dictionary, n.d.-b). It would also reflect the reality that all police-citizen encounters entail the risk of force when civilians resist the lawful orders of an officer.

Data for this study were based on historical and publicly available official government records. The New Jersey Use of Force Report must be completed each time force is used and releasable under the New Jersey Open Public Records Act (N.J. Stat. Ann. 47:1A-1 et seq.). The form offers predetermined checkboxes for officers to indicate the presence of factors that led to their use of force and the nature of the force that was applied. It provides only a high-level picture of the incident and does not reflect the transactional nature of the police-citizen encounter as had been done in other research (Alpert, Dunham, & MacDonald, 2004; Terrill, 2001; 2003). This is unfortunate, as many subtleties are lost but which may appear in the officers' incident reports. Those reports are unavailable as they are classified as criminal records and are exempt from public disclosure (N.J. Stat. Ann. 47:1A-1.1). While I cannot examine the transactional nature of the encounter, such an examination is beyond the scope of this research. Although those data would better aid the understanding of each incident, the loss of that contextual data

does change the outcome of the incident, which is ultimately the result being studied here.

The variables involved in the transactional nature of the police-citizen encounter are important to understanding the context in which force is used. Police have the authority and duty to use force to carry out lawful objectives and to protect their lives and the lives of others. In doing so, an officer must perceive those variables, tailor a response, and then physically respond. Decisions and responses may not be static as new information may be observed that requires changes to the initial response. Failure to appropriately carry out those mental and physical sequences could lead to unfortunate consequences for the officer, the subject, and others. Many of the variables collected on the New Jersey use of force report form have been the subject of previous research. Five categories of variables that influence police uses of force have been identified in previous research, (a) suspect, (b) encounter, (c) officer, (d) neighborhood, and (e) organization. The use of force report form collects many but not all studied factors in the suspect, officer, and encounter categories. Suspect factors include gender, race, age, weapon, intoxication, and resistance. Officer factors include gender, race, age, years of service, duty status, and the wear of a uniform. Encounter factors include suspect actions and charges, type of incident, and the presence of a weapon. A review of these categories and variables is included later in this chapter along with reviews of other studied categories and variables not collected on the report form.

Sample Force Scenario

An example scenario can illustrate the interaction of variables influencing officer decisions. This scenario represents a degree of realism demonstrating the plethora of variables officers might encounter and how events can unpredictably unfold.

Late one busy night, somewhere in Small-Town U.S.A., in an area known for violent crime, two officers are sent to a robbery in progress at a local gas station. The dispatcher tells the officers on the police radio that several callers report a man hitting and threatening to kill the attendant if he does not give the suspect the money from the register and safe. No callers report seeing any weapon. Prior to their arrival, no additional information about the events is communicated to the officers. Simultaneously, the officers arrive from different directions in their separate patrol cars to see many cars blocking the gas pumps, a small crowd of onlookers, and what appears to be a frail man in his 70s striking a young and diminutive attendant with open hands. The officers get out of their respective cars and in a show of constructive authority announce their presence and demand the suspect stop hitting the attendant. Someone yells to the officers that the man is drunk. Both officers run to the aid of the attendant. One officer approaches the suspect from the front while the other approaches from behind. The suspect stops to look at both officers but picks up a window squeegee and proceeds to assault the attendant with it. As the front officer closes to 15 feet from the suspect, he uses mechanical force by taking out his pepper spray and spraying the suspect. Seemingly unfazed, the frail man reaches into his waistband and begins to pull out an object that resembles a handgun. The man then shouts to the officer in the front, “Time to die, cop!” Believing it to be a

functional and loaded handgun that the subject intends to shoot, that officer yells, “Gun!” to alert his partner while simultaneously moving to a nearby position of cover that offers a small degree of protection and draws his handgun. Neither officer is close enough to use physical force to disarm the man, but, even if they were, the officers know that it would be an exceptionally dangerous task in which they might not be successful and during which they might get shot. The officer to the front aims his handgun at the man but decides he cannot shoot because a missed shot would endanger the crowd of onlookers that has gathered behind the man. The officer to the rear does not see the handgun but did hear his partner yell that the man had a gun, as he saw his partner unholster and point his weapon at the man while moving to cover. Fearing for the life of his partner and others, and with no danger to anyone in the background, the officer behind the suspect elects to use deadly force by upholstering his weapon, aiming it at the suspect, and pulling the trigger.

This scenario presents a quickly developing set of circumstances in which officers moved along a force continuum based upon their observation of the suspect, combined with the knowledge and experience officers may gain throughout their careers. Not only did they need to consider the variables in their force decisions; they also needed to consider factors about whether they could use force without endangering bystanders and other officers. This story might seem convoluted, but rarely are use of force incidents so straightforward.

Factors Contributing to Police Officer Uses of Force

Suspect characteristics. The characteristics of suspects is an area of literature with numerous studies. Researchers have examined factors specific to individual suspects, as detailed in the subordinate sections.

Age. The age of a suspect has not been consistently shown to influence officer decisions to use force. Most studies show that age and force use are inversely related (McCluskey, Terrill, & Paoline III, 2005; Paoline III & Terrill, 2007; Phillips & Smith, 2000; Terrill & Mastrofski, 2002; Terrill & Reisig, 2003; Terrill et al., 2003). Advancing age was found to reduce shows of constructive authority and physical force by male officers, and to reduce physical force by female officers (Paoline III & Terrill, 2007). Crawford and Burns (1998) found that younger ages were more likely to experience physical force but no more likely to experience constructive authority, mechanical force, or deadly force. Other studies found age not to be significant or not significant when officers respond to domestic disputes (Engel, Sobel, & Worden, 2000; Garner et al., 2002; Kaminski, Digiovanni, & Downs, 2004; Sun & Payne, 2004).

Demeanor. Demeanor is a well-studied factor in the literature, but one which has produced conflicting results. Suspects exhibiting hostile non-violent demeanor have been found to be more likely recipients of force (Engel et al., 2000; Garner et al., 2002; Kaminski et al., 2004; Lawton, 2007; Rydberg & Terrill, 2010; Sun & Payne, 2004; Terrill & Mastrofski, 2002). Crawford and Burns (1998) found that hostile suspects were more likely to receive physical force but no more likely to be subject to constructive authority or deadly force. Still, other studies found no effect of demeanor on force

(McCluskey & Terrill, 2005; Paoline III & Terrill, 2005; 2007; Terrill, 2005; Terrill & Mastrofski, 2002). From a practical perspective, some instances of non-violent but hostile demeanor may be lawfully protected speech. Officers who take official actions solely in response to lawfully protected speech commit a constitutional violation (*Hartman v. Moore,* 2006). The studies do not make this distinction which complicates interpretations of their results.

Gender. Another of the heavily studies variables, the gender of the suspect has shown varied influence on force. Most studies show that officers are more likely to apply force to male subjects (Engel & Calnon, 2004; Garner et al., 2002; Kaminski, DiGiovanni, & Downs, 2004; McCluskey et al., 2005; McCluskey & Terrill, 2005; Phillips & Smith, 2000; Rydberg & Terrill, 2010; Sun & Payne, 2004; Terrill & Mastrofski, 2002; Terrill & Reisig, 2003; Terrill et al., 2003). Still, others found a non-significant relationship between suspects' gender and force (Engel et al., 2000; Johnson, 2011; Lawton, 2007).

Intoxication. Intoxication has been widely researched but offers mixed results. Many studies have found intoxication to positively influence officer uses of force (Engel et al., 2000; McCluskey & Terrill, 2005; McCluskey et al., 2005; Paoline III & Terrill, 2007; Rydberg & Terrill, 2010; Terrill & Mastrofski, 2002; Terrill et al., 2003, 2008). Other studies did not find the relationship significant (Morabito & Doerner, 1997; Phillips & Smith, 2000; Schuck, 2004). A meta-analysis by Bolger (2014) found that suspect intoxication increases the likelihood of force.

Most of these studies suffered from the flaw that they did not differentiate drug-related intoxication from alcohol-related intoxication. Crawford and Burns (1998) found that the type of intoxication influences force differently; alcohol intoxication increases the likelihood of constructive authority, and drug intoxication does not. Drug intoxication increases the likelihood of nonlethal force; alcohol does not (Garner et al., 2002; Lawton, 2007; Paoline III & Terrill, 2005; Terrill, 2005). As such, further research is needed on the differences between legal and illegal intoxicating substances.

Mental illness. The realm of police encounters with those suffering from mental illness has been researched only modestly. This is unfortunate, as responding to the needs of the mentally ill is a routine part of policing (M. S. Morabito, 2007; Walker & Archbold, 2014). Police spend as much as 10% of their time handling situations involving those with mental illness (Cordner, 2006).Studies have shown that police contacts with those believed to have mental illness mostly involved low-level offenses and those who infrequently pose a risk of harm to others (Bower & Pettit, 2001; Green, 1997). Individuals do engage the police with violent or threatening behavior to induce officers to kill them, a situation known as suicide-by-cop (American Association of Suicidology, 2013; Patton & Fremouw, 2016). Despite the regularity of their interactions, many officers acknowledge they do not have sufficient resources or training to address those with mental illness (Reuland, Schwartzfeld, & Draper, 2009).

Few studies exist examining the influence of mental illness on the use of force. The studies that have been conducted found no significant relationship between mental illness and force (Johnson, 2011; McCluskey et al., 2005; Terrill & Mastrofski, 2002).

Bolger (2014) attributed these results to the possible relationship mental illness has with acts of resistance and drug and alcohol abuse.

Race. Race has been a heavily studied variable in officer force decisions but the body of literature appears inconclusive. There are several studies indicating a positive relationship between non-White suspects and force use (Belvedera, Worrall, & Tibbetts, 2005; Crow & Adrion, 2011; Engel & Calnon, 2004; Hyland et al., 2015; Leinfelt, 2005; Terrill & Mastrofski, 2002; Terrill et al., 2003). Fryer (2016) found that Blacks and Hispanics were more likely to experience non-deadly force but were no more likely than Whites to be subjected to deadly force. Blacks have been found to be more likely to experience force when not compliant with officer commands, no more likely when offering resistance, and more likely to experience force until the addition of contextual neighborhood factors whereupon they are no more likely to experience force than other races (Garner et al., 2002; Terrill & Reisig, 2003). Several other studies have indicated no significant relationship between race and force (Engel et al., 2000; Lawton, 2007; McCluskey et al., 2005; McCluskey & Terrill, 2005; Morabito & Doerner, 1997; Phillips & Smith, 2000; Sun & Payne, 2004).

Social class. Numerous studies have examined the influence of social class on police uses of force. Most studies found that lower social class is associated with higher uses of force (McCluskey & Terrill, 2005; Paoline III & Terrill, 2007; Terrill & Mastrofski, 2002; Terrill et al., 2003; Terrill & Reisig, 2003; Rydberg & Terrill, 2010). Terrill (2005) found that social class use of force was dependent on the gender of the officer. Still, McCluskey et al. (2005) and Sun and Payne (2004) found no relationship

between social class and force. The results of these studies might be considered somewhat dubious as race and ethnicity are closely related to social class (Friedrich, 1980; Hayward, Miles, Crimmins, & Yang, 2000). Additionally, in many studies, the measures were based on the perceptions of the observers and subject to possible biases. Bolger's (2014) meta-analysis found that minority males with lower social class were more likely to experience force.

Encounter characteristics. Encounter characteristics are those presented during the interaction between the officer and the citizen. These factors are not linked to suspect or officer and vary among encounters.

Arrest. Several studies have been conducted to determine if an officer is more likely to use force during an arrest. The research has consistently shown that officers are more likely to use force in arrest situations (McCluskey & Terrill, 2005; McCluskey et al., 2005; Paoline III & Terrill, 2004; 2007; Terrill et al., 2003). However, the research does not indicate if force was used before, during, or after the arrest. This leaves to speculation whether the force could be in response to an assault upon the officer, legal force necessary to affect an arrest or control a subject, or a potential instance of unlawful and excessive force. Additionally, some studies consider procedural actions such as handcuffing to be force but which may be required for all arrests per departmental rules. While the arrest variable might appear consistent, the results of these studies, on the whole, are tenuous. In this study, arrest is not a considered variable because force application without an arrest in New Jersey is considered inappropriate in most circumstances.

Conflict. Conflict is not a well-studied variable and has only appeared in the literature in the last several years. Despite the fewer number of studies, the suspect's involvement in a conflict with another person has been found to significantly influence force decisions (McCluskey & Terrill, 2005; McCluskey et al., 2005; Paoline & Terrill, 2007; Terrill & Mastrofski, 2002). In other studies, the results were mixed and varied by jurisdiction and type of conflict (Paoline III & Terrill, 2005; Terrill et al., 2003). Engel, et al. (2000) found no significant influence of the variable.

Criminal behavior. Criminal behavior has been linked to police uses of force. When there is evidence of criminal behavior on the part of the suspect, the likelihood of force application is increased (McCluskey & Terrill, 2005; McCluskey et al., 2005; Paoline & Terrill, 2007; Terrill & Mastrofski, 2002). Like studies of other variables, these studies make some interpretation difficult. Criminal behavior is not well defined and could include or be counted as another category, such as resistance or proactive contact.

Presence of other officers or citizens. The presence of other officers has become a subject of interest over the last several years and the results are mixed. Several studies have found that the presence of more officers increased the likelihood for force (Garner et al., 2002; Paoline III & Terrill, 2007; Terrill & Mastrofski, 2002). Lawton (2007) discovered that additional officers reduced the likelihood of force, while Phillips and Smith (2000) found a negative relationship only when three or more officers were present. Other studies indicated no significant relationship between the factors (Engel et al., 2000). Terrill et al., (2003) found that their results were dependent on the location of

the incident. From a practical perspective and for reasons of officer safety, more officers are typically assigned to more significant incidents or those incidents where violence is considered likely or expected. Studies linking the number of officers to increased force use did not necessarily account for this practice which may help explain correlations between the number of officers and force.

Like the presence of officers, the presence of citizens is a recent area of study. The presence of other citizens has been shown to have no influence on decisions to use force (McCluskey, Terrill, & Paoline III, 2005; Paoline III & Terrill, 2005; 2007; Schuck, 2004; Terrill, 2005; Terrill & Mastrofski, 2002; Terrill et al., 2003; Terrill et al., 2008). Crawford and Burns (1998) found that the presence of bystanders increased the use of physical force but not mechanical or deadly force. Similar to the number of officers, these studies have not accounted the reason behind the presence of other citizens. A crowd of peaceful onlookers might have a different effect on officer behavior than an unruly crowd perceived by the officer to pose a danger.

Proactive contact. Police officers come into contact with citizens in a variety of ways but they typically fall into two categories, citizen-initiated and proactive contact. Citizen-initiated contacts result from 9-1-1 calls or other requests for police services, such as waving down an officer, an activated burglar alarm, or other means (Selby, Singleton, & Flosi, 2016). When officers initiate police actions on their own volition, it is considered proactive contact, and the results on its influence in force decisions are mixed. Several studies found that proactive contact increased the likelihood of force (Johnson, 2011; McCluskey & Terrill, 2005; McCluskey et al., 2005; Paoline & Terrill, 2007;

Rydberg & Terrill, 2010; Terrill & Mastrofski, 2002). Garner et al. (2002), Paoline and Terrill (2005), Terrill (2005); and Terrill et al. (2003) found that proactive contact did not influence force unless the suspect offered resistance.

Resistance. Resistance is encountered when a suspect does not comply with officer demands. Suspect resistance has been found to increase the likelihood for force (Crew & Adrion, 2011; Johnson, 2001; Lee, Jang, Yun, Lim, & Tushaus, 2010; McCluskey & Terrill, 2005; McCluskey et al., 2005; Paoline III & Terrill, 2004, 2007; Rydberg & Terrill, 2010; Schuck, 2004; Terrill, et al., 2003; Terrill et al., 2008). Only one study found no significant relationship between these factors (Lawton, 2007). Belverere, Worrall, and Tibbetts (2005) linked suspect race to resistance in their findings that indicated Black suspects were more likely to resist than White or Hispanic suspects. Finally, Bolger's (2014) meta-analysis found the resistance increased the likelihood that officers will use force.

Weapon presence. Only a small number of studies have assessed the influence the presence of a weapon has on decisions to use force. Various studies have shown a positive influence on the presence of a weapon and force usage (Johnson, 2011; McCluskey et al., 2005; Paoline & Terrill, 2007; Rydberg & Terrill, 2010; Sun & Payne, 2004; Terrill & Mastrofski, 2002). Mixed results have also been found (Crawford & Burns, 1998; Kaminski et al., 2004; Morabito & Doerner, 1997; Terrill et al., 2003). Only one study found no significant relationship between weapons and force (McCluskey et al., 2005).

The weapon variable is fundamental to the public's confidence problem with the police. News media reporting often highlights in article titles when a suspect involved in police violence was unarmed or denounces the killing of unarmed people (Black, 2014; Brennan, 2016; Domonoske, 2016; Ferner, 2014; Southall, 2015). However, what constitutes a weapon is subjective, and the fact that someone is unarmed does not also mean that he or she presented no threat to an officer. Someone acting in a menacing manner while holding an object that a reasonable officer perceives to be a functional weapon is a threat to the officer (Fitzsimmons, 2014; Greene, 2016). Incidents such as these have resulted in multiple unfortunate injuries and deaths (Fitzsimmons, 2014; Greene, 2016). Someone possessing greater physical qualities or skills may also present a threat. For analysts to better understand these incidents, it is important to consider contextual factors rather than treating them only as a dichotomous choice between unarmed and armed.

Officer characteristics. Numerous studies have examined the relationship of officer characteristics on use of force. These characteristics are specific to the individual officer. Unlike encounter characteristics, the research has not found many consistent variables.

Age. The age of an officer is not a well-studied area and remains an inconclusive factor in force use. Garner et al. (2002) found that older officers were less likely to use force and Hein (2011) found that younger officers were more likely to employ a Taser (mechanical force). Crawford and Burns (1998) found no statistically significant relationship between age and use of force.

Citizen complaints. Research is unclear about the influence of complaints regarding officer behavior and use of force. Prior research has found that only a small percentage of officers are responsible for the majority of complaints (C. J. Harris, 2008, 2011; McCluskey & Terrill, 2005; Terrill & Ingram, 2016). Officers have been found to be more likely to receive complaints from proactive encounters, arrests, and felony arrests (Brandl, Stroshine, & Frank, 2001; K. M. Lersch, 2002; M. Lersch & Mieczkowski, 1996). Terrill and Ingram (2016) found that less experienced officers were more likely to receive complaints. McCluskey and Terrill (2005) found a positive relationship between complaints and use of force. However, complaints may simply be a function of productivity (Brandl et al., 2001; Hassell & Archbold, 2010; K. M. Lersch., 2002; McCluskey & Terrill, 2005). In some cases, citizens file complaints against officers in the hope that the complaint will influence the disposition of their charges. There is no indication that complaints equate to a problem officer engaged in misconduct or inappropriate behavior. Therefore, this variable might be unreliable because of its relationship to other factors.

Education. Education has been found to be a significant predictor of force use. Officers who are most educated have been found to use the least force (Aamodt, 2004; McElvain & Kposowa, 2008; Paoline III & Terrill, 2005, 2007; Rydberg & Terrill, 2010; Terrill & Mastrofski, 2002). Worden (1995) found officers with a bachelor's degree or higher were more likely to use force. Sun and Payne (2004) and Hein (2011) found a nonsignificant relationship between education and force. Interestingly, the results of Lim

and Lee (2015) suggest that education may have more influence on force than supervision in reducing force use.

Implicit racial bias. Implicit bias is an area of study spanning well beyond the concept of police use of force but in which the criminal justice community has been heavily studied. Implicit bias occurs when, although unaware, individuals base their decisions to take actions on racially biased motivations (Greenwald & Banaji, 1995). Using various methods to operationalize racial shooter bias, particularly response times and error rates, studies have shown that community members and police officers differ in simulated force scenarios. Citizens were found to be quicker to shoot Black subjects than officers and did so with more errors than police officers (Correll, Park, Judd, & Wittenbrink, 2002; Correll, Hudson, Guillermo, & Ma, 2014; Plant & Peruche, 2005). Other studies found that police participants were slower to shoot Black suspects than Whites or Hispanics evidencing some favor for racial minority suspects (James, Vila, & Daratha, 2012; James, Klinger, & Vila, 2014; James, James, & Vila, 2016). Still, other research has indicated no differences in participant reaction times to shoot Black or White targets (Harmer, 2012; Taylor, 2011). Cox, Devine, Plant and Schwartz (2014) found that police officers were faster to shoot armed Black suspects in pictorial depictions and slower in video scenarios but throughout they made few errors regardless of race. They found no pattern indicating a tendency for police officers to mistakenly shoot unarmed Black suspects more than White suspects. A possible reason is that the length of police experience is negatively related to shooting errors (Correll, et al., 2007; Peruche & Plant, 2006).

Mekawi and Bresin (2015) conducted a meta-analysis of 16 racial shooter bias studies involving participants from student and police populations. They acknowledged that a cursory review of the literature provided evidence of racial shooter bias but that the studies lack common operationalization and offer selective reporting making their interpretation difficult. Still, the analysis showed that participants were faster to shoot Blacks, slower to decide not to shoot unarmed Blacks, and had a larger shooting bias against Blacks. Mekawi and Bresin also found that increased participant contact with Blacks was related to the more liberal shooting thresholds against Blacks contrary to intergroup contact theory (Pettigrew & Tropp, 2006). However, the findings of Mekawi and Bresin do not necessarily contrast with those of Pettigrew and Tropp (2006) because intergroup contact theory has several conditions that could not be addressed in their analysis.

Comparison studies examining differences in responses between civilian samples and police officers highlights the distinction between the two groups and offers caution in attempts to generalize non-officer responses to the police actions. Research suggests that police officers are able to assert cognitive control over their implicit biases (Mekawi & Bresin, 2015). While racial shooter bias studies suffer from limitations in the ability to generalize across the nation, the results challenge popular notions that implicit bias causes officers to shoot Black suspects and may be a factor influencing this study.

Gender. Many researchers have examined the role of officer gender on uses of force, but the results are mixed. Most studies find no significant relationship (Hoffman & Hickey, 2005; Lawton, 2007; Rydberg & Terrill, 2010; Paoline & Terrill, 2007; Terrill et

al., 2008; Terrill & Mastrofski, 2002). Hein (2011) found no significant relationship in gender and deployment of a Taser. Johnson (2011) found that males officers are more likely to use force, while an older study found that male officers used more severe forms of force (Garner et al., 2002). Terill and Paoline (2005) offered a more nuanced set of results finding that male officers use higher degrees of force on men and lesser degrees on women. Bolger's (2014) meta-analysis showed that male officers were more likely to use force but this finding had a small effect size.

Race. Officer race and its relationship to force has been the subject of much research mostly indicating that there is no relationship between the variables. Several studies have failed to find a strong relationship (Engel & Calnon, 2004; Garner et al., 1995; Lawton, 2007; Paoline III & Terrill, 2005, 2007; Terrill & Mastrofski, 2002). Other studies found race to be a significant factor until neighborhood characteristics were introduced at which point race became insignificant (Garner et al. 2002; Rydberg & Terrill, 2010; Sun & Payne, 2004). Correll, Wittenbrink, Park, Judd, and Goyle (2011) conducted a study using university students and found that race and the perceived threat of the physical environment combined to influence the use of deadly force in picture and video simulations. The Correll et al (2011) study indicated that racial threat perception may be one component of a more comprehensive threat-detection process. Similar studies have not been conducted using police officers.

Neighborhood characteristics. Neighborhood characteristic studies include some of the earliest that evaluate a relationship with force and generally has discovered no significant relationships. One line of study involved neighborhoods perceived as

dangerous. Crime rates were associated with greater uses of force (Lee et al., 2010; Terrill & Reisig, 2003), although Lawton (2007) failed to find a significant relationship. Neighborhoods characterized by a disproportionate number of calls for police service and a greater likelihood of suspect resistance also increased the likelihood of force use (Alpert et al., 2004). Another line of research involved community income levels. A significant relationship was found, but the measure was included in a broader variable unrelated to income (McCluskey et al., 2005; Terrill & Reisig, 2003).

Organization characteristics. Organizational characteristics include culture, training, and managerial controls. Cooney (2009) found organizational factors had a limited effect of force. Studies have found officers apply less force when the supervisor must complete the force report instead of the officer (Alpert & MacDonald, 2001). Active supervisors increase the likelihood that officers will use force and will be more likely to use force themselves (Engel, 2015). Lim and Lee (2015) found that the education level of a supervisor is inversely proportional to the force use of their subordinates. Importantly, Lim and Lee found that officers who work for a supervisor without a bachelor's degree or higher will more likely to use force on non-White subjects, while no such relationship existed with more highly educated supervisors. Finally, the presence of a supervisor at a scene did not have a significant influence on force use (Engel, 2015).

Summary

Numerous public opinion polls have indicated an all-time low confidence level in police and their ability to fairly treat racial minority populations. This reduced confidence coincided with widespread and highly publicized deaths of Black men attributed to police

extrajudicial killings (Jones, 2015; Pew Research Center, 2014). However, public opinion stands in contrast to established public policies outlawing RIP. Many of the states in which highly publicized deaths took place have rules prohibiting RIP (NAACP, 2014). Given the allegations that police do not fairly treat minorities, the underlying assertion is that officers are not following the rules when fulfilling public policy.

Rules are common and sometimes broken in police work. Rules provide written guidance and the annunciation of expectations to officers (Thibault et al., 1998). Prior research has suggested that police agencies are able to control the behavior of their officers across a span of police actions through the use of rules (Becknell et al., 1999; Crew et al., 1995; Fyfe 1978, 1979; Terrill & Paoline; 2016; Walker, 1993; White, 2000, 2001, 2003). Additional studies show that most officers follow the rules (C. J. Harris, 2011; McCluskey & Terrill, 2005; Walker, 2001b). Still, there are instances where officers engage in misconduct. SLBT helps explain gaps between the policy and rules to the actual behavior of offending officers (Lipsky, 2010). Where racial disparities exist in police uses of force, they may be the result of explicit bias or the effect of implicit bias on the coping mechanisms created by officers in response to their working environment.

Prior research associated with police uses of force has had significant limitations. Scholarly studies have suffered from inconsistent conceptualizations and operationalizations of force (Bolger, 2014; Klahm IV & Tillyer, 2010). Similar difficulties are found in media reporting and publicly available databases concerning police killings. When frequency data are reported, external benchmarking is the predominant form of comparison and the one most used by the media and protest groups

(Engel & Calnon, 2004; Withrow & Williams, 2015). However, external benchmarking has numerous disadvantages that may lead to inaccurate findings that exacerbate the public's perception that police unfairly treat racial minorities (Cox et al., 2001; Walker, 2001a; Withrow & Williams, 2015; Zingraff et al., 2000). Inconsistent definitions and behaviors constituting force and poor benchmarking make it difficult to gauge the extent of the force phenomenon and burden efforts to compare findings across multiple sources.

Police uses of force have been shown to be the result of a combination of numerous variables. For several years, scholars have examined the role of suspect, officer, encounter, neighborhood, and organizational characteristics on officer uses of force (e.g., Bolger, 2014; Klahm IV & Tillyer, 2010). Many variables have been demonstrated to affect force outcomes, particularly those involving the seriousness of the crime and resistance (Bolger, 2014). Yet neither the federal government nor the media have collected or explained the importance of these factors on force outcomes. The flaws in defining force, collecting data, and conducting analysis cloud public discourse and complicate attempts to address public policy issues and the problem of public trust in police.

This study overcame the limitations of prior scholarly and popular research to examine the influence of rules prohibiting RIP on police uses of force in one New Jersey county. First, the conceptualization and operationalization of both RIP and force were standardized across participating sites by state law and policy. The definition and actions constituting force were aligned with common and legal definitions and were consistent with most high-profile incidents which have influenced public confidence in the police.

Second, non- and deadly force data was collected through a mandatory reporting mechanism established by state policy. Third, that mechanism collected data on several variables that have been the subject of previous scholarly research. Finally, I analyzed force outcomes for racial disparities using statistical methods that do not suffer from the limitations present in benchmarking methods. This study filled the gap in scholarly research related to the use of rules to prevent RIP. The findings address the value of such rules in controlling police behavior, particularly the influence of rules prohibiting RIP on officer uses of force. In Chapter 3, I explain the details of the research design and methodology of this study.

Chapter 3: Research Method

Introduction

I examined the influence of the New Jersey RIP directive on police uses of force to determine if it prevents officers from using race as a factor in their decisions and whether it is useful as a tool for public administrators. A quantitative retrospective analysis of government records documenting police uses of force was used for this purpose. The extant literature has shown that administrative rules are effective at constraining officer actions during critical incidents involving force (Anderson et al., 2002; Bishopp et al., 2014; Fyfe, 1978; 1979; Terrill & Paoline III, 2016). If rules are effective at preventing RIP, then applying force should not disproportionately affect any racial category.

Chapter 3 provides the quantitative methodology used to examine the influence of the RIP directive on officer uses of force. In it, I discuss the statistical designs and sampling procedures. I also detail the procedures for data collection, analysis, and threats to validity.

Research Design and Rationale

A nonexperimental retrospective quantitative design was used to examine the influence of the New Jersey RIP directive on documented officer uses of force upon people of various races between June 2000 and June 2010 in one New Jersey county. The independent variable was the existence or absence of the RIP directive. The dependent variable was the highest level of force used by the officer. The independent variable of interest was the race of the subject. Numerous variables affect force outcomes. I had

intended to control for all factors found on the model use of force reporting form but due to imperfections in the collected data, I was required to conduct a binomial logistic regression controlling for six factors and an interaction term. The controlled factors were: (a) the promulgation of the RIP directive, (b) officer tenure, (c) suspect race, (d) suspect age, (e) suspect resistance, and (f) unusual conditions. These factors are described later in this chapter.

The force use examined was bounded by location, employing agency, and time. I examined documented municipal police officer uses of force in one New Jersey county. Municipal police are the predominant form of policing in the state—the officers with whom the public has the greatest contact. Municipal police officers are also differentiated from other police officers by statute (N.J. Stat. Ann. 40A:14-152; 40A:14-152.1). Therefore, force used by police officers, sheriff's officers, and corrections officers employed by the county, state, and federal agencies that conduct law enforcement activities within the county were excluded. Two time periods were examined: June 2000 to June 2005, after the communication of the New Jersey use of force policy but before the RIP directive, and July 2005 to June 2010, after the promulgation of the RIP directive and before any policy changes expanding force options were available to officers.

A data set was created from completed use of force reporting forms. Using government records to create this data set was appropriate for three reasons: (a) such records provided access to a specific population to which I lacked personal access; (b) they provided a large amount of data to examine empirical questions about populations that were not anticipated when the data were collected; and (c) there was a strong fit

between the data and research question (Fisher & Anushko, 2008). Further, Bazley, Lersch, and Mieczkowski (2007) used similar reporting forms during their examination of officer force and suspect resistance in an urban police department. Quantitative nonexperimental retrospective designs using government records and regression analysis have been used in several examinations of public policy involving political economy and recidivism, the impact of child passenger safety programs, and the influence of financial aid policies on college completion (Everett, 2014; Phillippe, 2012; Ragland, 2016).

Time and legal constraints were influential in choosing this design. At least 151 municipal police agencies are located throughout New Jersey's 8,723 square miles (New Jersey State Association of Chiefs of Police, n.d.; U.S. Census Bureau, 2010.). I was the only researcher conducting this study and was unable to effectively manage data collection from this number of agencies over such a large geographic area to achieve my proposed stratified proportionate random sampling method (see the methodology section). Moreover, I needed to expeditiously collect data before a potentially devastating New Jersey Supreme Court decision that could have limited my access to the needed data. Collecting data from one county eased the difficulties associated with data collection and permitted me to more speedily collect data before a ruling by the New Jersey Supreme Court.

Resource constraints were also influential in choosing this design. First, to conduct this study as an observation would have been impossible. One could not observe force use during a time when the RIP directive was not in force, as those years have passed. Second, the use of force by police is rare, and the time it would take to do an

observational study, particularly with only one researcher, would be prohibitive. Therefore, creating a data set from submitted force reporting forms was the most achievable and accurate way to conduct this study.

Methodology

Population

The target population for this study was all documented municipal police officer uses of force in one New Jersey county between June 2000 and June 2010. I elected to use municipalities in only one county to ensure a degree of consistency among the police agencies' rules and practices, which may have affected force outcomes and might otherwise have been absent when using municipal agencies from more than one county. Consistency in rules and practices was expected because all municipal agencies within the county are subject to the authority and oversight of their county prosecutor. Neither the state of New Jersey nor the subject county publishes in public forums information related to the force used by police officers in that county.

Sampling Design and Procedures

I studied a sample of documented uses of force from municipalities in one New Jersey county. A sample is a subset of the population used to estimate the characteristics of the population (Frankfort-Nachmias et al., 2015; O'Sullivan & Rassel, 2008). The sampling frame for this study was all uses of force within the county that were documented by officers employed by the municipal agencies existing within the county between June 2000 and June 2010 and whose agency RIP and use of force policies are no more restrictive than mandated by the state. The sampling unit was each use of force

incident reported by municipal officers within the county during the period being examined. I collected a total of 1,274 use of force reports from eight municipalities but discovered that only 499 reports from four municipalities satisfied the requirements of my study (described later in this chapter). Those 499 reports served as my sampling frame.

I used a probability design and a stratified proportionate random sample. Probability designs allow for an equal chance of inclusion in the study for all sampling units (Frankfort-Nachmias et al., 2015). Stratified samples ensure that each stratum is adequately represented in the sample (Frankfort-Nachmias et al., 2015). I used each 12-month period of the 10-year study timeframe as a stratum. I selected a random sample of force reports from each municipality proportionate to their representation in the population size of each stratum. The five strata before the promulgation of the RIP directive were combined and analyzed against the combined five strata that came after. The sample size for this study was established using the Raosoft (2004) sample-size calculator (.05 significance level and a 95% confidence level). These levels are common in social science research (Djimeu & Houndolo, 2016). Based on a population estimate of 499, the required sample for this study was 301, with 123 reports from the pre-RIP period and 178 from the post-RIP period.

Data Collection

The New Jersey use of force reporting form was used to collect data for this study. The latest version was produced by the NJOAG in 2001 (see Appendix A). However, previous versions were used over the period studied, which prevented the

collection of data on officer variables (see the discussion on limitations in Chapter 1). The reporting form was the most appropriate instrument for this study for four reasons. First, unlike other criminal investigatory records, completed use of force reporting forms are releasable under the OPRA and readily available for public review. Second, because of the mandatory reporting requirements established by law, the form captures all reported uses of force by municipal police officers. Third, the instrument established a set of variables which have been examined in scholarly research. No other data sources provided the consistent breadth of data contained in this instrument.

Other data collection instruments were considered for this study, but they would not have answered the research question. Five other instruments might have provided information concerning police officer uses of force, but they each suffer from shortcomings, as follows:

- Arrest reports are publicly releasable under OPRA, but there is no prescribed format for departments to model. The format of arrest reports is established by each police agency to suit its needs and may not include use of force information or relevant variables. Any narratives in the arrest report that might have provided details of force use are subject to redaction.
- Police blotter/call sheets lack standardization among municipalities and provide only summaries of incidents that police agencies attended. Blotter/call sheets likely would have lacked sufficient detail of any force incident.

- Continuation and incident reports were likely to contain some, perhaps all, of the data needed for this study, but the value of each report is dependent upon a police officer's ability to write a comprehensive narrative that includes a detailed description of the variables leading to the force outcome. However, despite their potential value, continuation and incident reports are not releasable under OPRA, and permission to gain access has regularly been denied by police agencies and court rulings.
- Force incidents caught on video would have been useful for this study, but car-mounted video cameras were not common during the first half of this study period, and body-mounted cameras had not yet been considered a viable option. Also, reviewing numerous years of video recordings would have been impractical for only one researcher.
- Finally, radio transmission recordings are releasable under OPRA but likely would neither capture all uses of force nor the details surrounding their use.

Data collection was accomplished through the mechanisms established by New Jersey law. OPRA mandates that all New Jersey government records are subject to public access with limited exceptions (N.J. Stat. Ann. 47:1A-1 et seq.). Government records are those required by law to be made, maintained, or kept on file in the course of official business by any officer, commission, agency, or authority of New Jersey or its political subdivisions (N.J. Stat. Ann. 47:1A-1.1). All material needed for this study was categorized as government records under OPRA and relevant case law.

In addition to identifying publicly available government records, OPRA prescribes the procedure to request those records. While any of several methods of communication are permissible, I used the municipal copy of the OPRA request form to identify the records I wished to collect (see Appendix C for a generic model form). I requested the following records for the period between June 2000 and June 2010: (a) use of force policies, (b) RIP policies, (c) aggregate reporting made to the county prosecutor, and (d) use of force reports. I emailed those request forms directly to each municipal records custodian to ensure their delivery and to document its receipt via Mailtrack software. Where necessary, I drove to the municipal clerk to obtain paper copies of my requested documents but otherwise received those records in portable document format via email.

Operationalization

The original plan for this study was to examine all variables present on the use of force reporting form to examine their influence on force outcomes. These variables included (a) the RIP period, (b) officer sex, (c) officer race, (d) officer age, (e) officer tenure, (f) officer duty status, (g) officer wear of a uniform, (h) suspect sex, (i) suspect race, (j) suspect weapon, (k) suspect resistance, and (l) unusual circumstances. I also planned to use an interaction term, RIP period by suspect race. For various reasons described here and in Chapter 4, many of these variables were discarded. As a result, I was only able to use the following variables in my regression analysis, (a) the RIP period, (b) officer tenure, (c) suspect race, (d) suspect age, (e) suspect resistance, (f) suspect

unusual conditions, and (g) an interaction term, RIP period by suspect race. The operationalization of these variables is described in this section.

Independent Variable

The independent variable, a binary variable, was the RIP period indicating the promulgation of the NJOAG RIP directive. The directive was established as official policy for all New Jersey police agencies in June 2005. Therefore, the variable was either the first half of the studied timeframe (June 2000–June 2005) before the promulgation of the RIP directive or the second half (July 2005–June 2010) after the RIP directive was established (see Table 3 for coding).

Dependent Variable

The dependent variable in this study was force, an ordinal variable representing the type of force used by officers. In this study, force was defined as lawful physical actions undertaken by police officers to protect persons or property or to overcome suspect resistance during the execution of their public duties that intentionally or unintentionally attempt or inflict physiological harm, impairment, or death (NJOAG, 2000; N.J. Stat. Ann. 2C:1-14(b); 2C:3-3 et seq.; 2C:3-7 et seq.; 2C:11-1 et seq.). In terms of the New Jersey policy, this definition excludes constructive authority and physical contact (e.g. verbal commands, pointing a firearm without firing, fingerprinting, and handcuffing). Neither prompt the reporting requirement, and therefore they were not reflected in the collected data. Further, this definition excludes illegal uses of force (e.g., excessive force), a distinction expressed in the policy.

Operationalization of force is represented by the options indicated on the New Jersey use of force reporting form. Force consists forceful actions divided into eight subcategories (a) compliance hold, (b) hands/fists, (c) kicks/feet, (d) chemical/natural agent, (e) strike/use baton or other object, (f) canine, (g) firearms discharge, and (h) other. Firearms discharges are further divided into intentional and accidental discharges. In this dissertation I examined policy rather than tactics, so I originally planned to collapse these subcategories into the those specified in the use of force policy, (a) physical force, (b) mechanical force, and (c) deadly force. However, the collected data did not produce a single incident of deadly force. Had there been a need to create a deadly force category, it would have included all firearms discharges. Therefore, the dependent variable was made dichotomous, physical force and mechanical force (see Table 1). If more than one level of force was used by an officer, the highest level of force was used in my analysis.

These two categories are mutually exclusive and collectively exhaustive. Physical force involves behaviors that do not qualify for inclusion in the mechanical force subcategory. Mechanical force involves behaviors that involve a device, canine, or substance, other than a firearm. Had instances of deadly force been collected, a third category of deadly force would have included all forms of force that posed a substantial risk of causing serious bodily injury or death. See Table 3 for coding.

Table 1

Collapse of Force Tactics into Force Continuum Subcategories

Physical force	Mechanical force
Compliance hold	Chemical/natural agent
Hands/fists	Strike/use baton or other object
Kicks/feet	Conducted energy device
	Canine

Note. The instrument permits officers to choose an additional subcategory of other. Where a response indicated other, I evaluated the response and entered it into one of these categories. All collected data points were considered lawful.

Independent Variable of Interest

I examined the influence of the RIP directive on officer uses of force upon people of different races. Therefore, the subject race variable was particularly important to this study. Race was operationalized as White and not-White (see Table 3 for coding) and made a binary variable because the RIP policy does not specify a particular race. Given that the issues of police trust center around events where Black men were killed by White police officers (Jones, 2015), the White race was used as the baseline for comparison to all others. I expected there would be an interaction between the RIP directive and race, so an interaction term was included in the statistical analyses.

Confounding Variables

In addition to the independent and dependent variables, and the independent variable of interest, other confounding variables were included based on previous force literature where each variable has shown mixed influence on force outcomes. They include suspect characteristics (age, unusual conditions, and resistance), and an officer characteristic (officer tenure). See Table 5 for coding.

Suspect age. Age was treated as a continuous variable (see Table 3).

Suspect unusual conditions. Unusual condition is a categorical variable subcategorized on the use of force report into under the influence and other unusual condition. The answers provided by officers for other conditions was varied, lacked consistency, and often indicated multiple conditions. These answers made it difficult to create defined and exclusive subcategories. Therefore, I treated this variable as binary, either present or not (see Table 3).

Suspect resistance. Resistance is an ordinal variable identified as suspect actions on the use of force reporting form. The New Jersey use of force policy does not define resistance, yet the extant literature has shown that resistance is a significant predictor of force (Bolger, 2014). The conceptualization of resistance is derived from state law, policy, and police training material. Resistance is defined as passive, active, and violent actions and threat of such actions, by subjects that are indicative of a refusal to comply with the lawful demands of officers (N.J. Stat. Ann. 2C:29-1 et seq.; 2C:29-2 et seq.; NJOAG, 2000; New Jersey Division of Criminal Justice, 2000). Including threats is important because it represents an act of defiance on the part of the subject. The threat implies that any further actions taken by the officer in the execution of their public duties will be met with that level of resistance. The law does not require officers to desist in their duties when faced with threatened or actual resistance and allows officers to escalate force to compel the subject's compliance (New Jersey Division of Criminal Justice, 2000). Therefore, when the subject indicates either a threat of resistance or presents actual resistance, officers must accordingly respond to fulfill their duties.

Because this was a retrospective study, resistance is operationalized according to the choices indicated on the force reporting form. On the form, resistance is divided into eight subcategories, (a) resisted police officer control, (b) physical threat/attack on officer or another, (c) threatened/attacked officer or another with blunt object, (d) threatened/ attacked officer or another with knife/cutting object, (e) threatened/attacked officer or another with motor vehicle, (f) threatened officer or another with firearm, (g) fired at officer or another, and (h) other. These subcategories offer options to indicate that weapons were involved in the act of resistance, causing me to discard the use of a weapon variable due to independence of observations. These subcategories found on the form relate to specific tactics of resistance and can be collapsed in a manner similar to force. The collected data did not provide a sufficient number of observations for resistance involving more than personal weapons (e.g., hands and fists), causing me to collapse these eight subcategories into two. They were collapsed into passive and active resistance (See Table 3). If the suspect used more than one level of resistance, the highest level of resistance posed by the suspect was used in my analysis. Coding is provided in Table 3.

Table 2

Collapse of Suspect Actions Subcategories into the Resistance Continuum

Passive resistance	Active resistance
Resisted police officer control	Physical threat/attack on officer or another
	Threatened/attacked officer or another with blunt object
	Threatened/attacked officer or another with knife/cutting object
	Threatened/attacked officer or another with motor vehicle
	Threatened officer or another with firearm
	Fired at officer or another

Note. The instrument permits officers to choose an additional subcategory of other. Actions detailed in this category were evaluated for inclusion into these categories.

Officer tenure. This variable indicates the number of years the officer has served as a police officer. It was treated as continuous variable.

Table 3

Summary and Coding of Variables

Variable Name	Variable Coding
RIP period (IV)	0 = Not promulgated, 1 = Promulgated
Force (DV)	0 = Physical force, 1 = Mechanical force
Suspect race (IV of interest)	0 = White, 1 = Not White
Suspect age	Continuous
Suspect unusual conditions	0 = Not present, 1 = Present
Suspect resistance	0 = Passive, 1 = Active
Office tenure	Continuous

Data Analysis Plan

The collected data was scrubbed and entered into an Excel spreadsheet. Three hundred and one use of force reports were drawn to fulfill the required sample. Where a use of force report was found to be incomplete in any variable except officer tenure, it

was replaced with a complete report from the same year and municipality. In 10 instances a report was replaced with a randomly chosen report from a neighboring town during the same year because there were no additional reports from that municipality to choose. The data from the study sample were entered into an Excel spreadsheet for ultimate analysis with IBM SPSS Statistics, version 21. I addressed the following research question and hypotheses in this study:

RQ1: How did the New Jersey RIP directive affect municipal police officer uses of force on non-Whites after its implementation in one New Jersey county?

H_o1*:* The New Jersey RIP directive did not significantly affect municipal police officer uses of force on non-Whites after its implementation in one New Jersey county.

H_a1*:* The New Jersey RIP directive did significantly affect municipal police officer uses of force on non-Whites after its implementation in one New Jersey county.

I used binomial logistic regression to analyze the data and chose to reject the null hypothesis at the 0.05 level of significance, when the odds ratio shows a difference in force used between Whites and non-Whites, indicating the RIP directive did significantly affect municipal police officer uses of force on non-Whites after its implementation in one New Jersey county.

Threats to Validity

Validity is crucial in all research. It represents the best approximation of the truth in what is being studied. The findings of research may be diminished due to external, internal, construct, and statistical conclusion validity. This section addresses how those threats affected this study and how those threats were reduced.

Threats to external validity may prevent generalizing the findings of research to populations, but such threats to this study were minimal. The two main threats to external validity are representativeness of the sample and reactive arrangements (Frankfort-Nachmias et al., 2015). Ondercin (2004) divided reactive arrangements into artificial laboratory environments and testing effects. In this study, I used a probability design incorporating a proportional stratified random sample across various years and municipalities for a known population to improve the representativeness of the sample. The historical data used reflects incidents as they occurred during actual police-civilian encounters and was not affected by a laboratory environment. Finally, it is unlikely that officers were given a pretest that biased their actions against subjects. The degree of the external validity threat to this study was minimal and allow for generalization to the population (use of force incidents within the studied county).

Threats to internal validity reduce confidence in the findings and limit the ability of the researcher to rule out rival explanations for associations between the independent and dependent variables, but these threats were significant in this study. Campbell and Stanley (1963) and Frankfort-Nachmias et al. (2015) explained that history, maturation, testing, instrumentation, statistical regression, biased selection, experimental mortality, selection-maturation, and selection-interaction affect internal validity. Many of these extraneous variables affect experimental research, which this research was not. History, testing, statistical regression, experimental mortality, selection-maturation, and selection-interaction, which are influential in experimental studies, are not influential in this retrospective non-experiment. Still, the other factors were relevant. I avoided biased

selection through random selection methods for inclusion in the sample. Instrumentation posed little threat because the variables collected and used in this study were consistent throughout the reports used in the analysis. However, officers matured during their tenure in policing, which may have altered their usage of force. Overall, threats to internal validity were minimal.

Finally, threats to construct and statistical conclusion validity posed little threat to this research. Construct validity is threatened when test measures do not accurately measure their intended construct (Frankfort-Nachmias et al., 2015). The use of force reporting form was designed in conjunction with New Jersey law and the use of force policy to accurately measure force and, therefore, has construct validity. Conclusion validity is threatened when data sets are insufficient. I determined an appropriate sample size using reliable means. Therefore, the conclusions reached through the chosen statistical methods were valid.

Ethical Procedures

All necessary steps were taken to ensure this research conformed to the ethical requirements of Walden University. I gathered data previously and lawfully collected by others and that are now part of the New Jersey public record. Research involving publicly available records and archival or secondary data poses little risk to human subjects. Walden University requires that the Institutional Review Board (IRB) review studies using data collected by others. All data collection was done in accordance with Walden IRB approval (#02-14-17-0505878).

The publicly available data that I collected included information that identified the subjects, officers, departments, and county involved in each forceful incident. Reporting this information does not violate confidentiality because state law requires such information to be made available for public release within 24-hours of the citizen's arrest (N.J. Stat. Ann. 47:1A-3[b]; 47:1A-10.). Many of the incidents that I gathered for this study, as well as the identities of those involved in the incident, were reported in the press. Still, I chose to keep this information confidential in this study.

Despite the lawfulness of identifying suspects, officers, and departments involved in this study, I was concerned about the safety, security, and well-being of all involved. Allowing past criminal activity to resurface may cause undue harm for some (Bender & Crowley, 2015). Identifying the involvement of officers and organizations in uses of force in the current environment, particularly when examining force use along racial lines, has the potential to increase physical and economic harm posed to officers, and social and economic harm to communities (Chang, 2015; Fernandez, Perez-Pena, & Bromwich, 2016; Jansen, 2016; Yuhas & Laughland, 2016). Therefore, identifying information of the suspects, officers, and county are not reported in this dissertation.

Paper documents supplying data for this study were physically protected from loss and unintended disclosure. When not in use, the paper documents were kept a fire-resistant safe secured with a key and combination. They will remain secured in the key and combination safe for 5 years after the publication of this dissertation, at which time they will be securely destroyed.

Portable digital format files involved in this study were electronically protected to prevent loss and unintended disclosure. When not in use, these files were kept in a password-protected encrypted folder. They will remain secured in the password-protected encrypted folder for 5-years after the publication of this dissertation, at which time they will be securely destroyed.

The data for this study were protected from direct and indirect unintentional disclosure. Only my dissertation committee and I had direct access to protected data. All demographic details and site descriptions below the state-level were withheld to prevent releasing the location of the study.

This research presents implications for social change by contributing context and empirical evidence to the discussion of the public's trust in the police by examining the force phenomena and its relationship to the public policy that guarantees equal protection to all people. It illustrates how previous research has treated the phenomenon and how future research could better aid civilians, police leaders, and policymakers in advancing evidence-based public policy. My research also serves as an example to civilians by showing how they can collect records under the authority of open public records laws and thoughtfully examine the data to prevail over diminished government transparency where these data are not regularly published in the public domain. The findings were made available to all of those required to complete my degree as identified by Walden University and are now available to civilians, community organizations, participating agencies, government officials, and the NJOAG, as appropriate.

Summary

In Chapter 3, I explained that this study examined the influence of the New Jersey RIP directive on police uses of force to determine if it prevents officers from using race as a factor in their decisions. I used a nonexperimental retrospective quantitative design and a proportional stratified random sample for that purpose. The independent variable was the existence of the RIP directive. The dependent variable was the highest level of force used by the officer. The independent variable of interest was the race of the subject. Other variables previously shown to influence force outcomes were controlled during my analysis. Data were collected from publicly available government records, specifically, the New Jersey use of force reporting form. In Chapter 4, I will provide the details of my collected data and the finding of my analysis.

Chapter 4: Results

Introduction

The purpose of this retrospective quantitative nonexperimental study was to examine the influence of the New Jersey RIP directive on officers' use of force. I sought to answer the following research question: How did the New Jersey RIP directive affect municipal police officer uses of force on non-Whites after its implementation in one New Jersey county? My null hypothesis was that the New Jersey RIP directive did not significantly affect municipal police officer uses of force on non-Whites after its implementation in one New Jersey county. My alternate hypothesis was that the New Jersey RIP directive did significantly affect municipal police officer uses of force on non-Whites after its implementation in one New Jersey county.

To answer the question, I collected the following publicly available records from municipal police agencies in one New Jersey county: use of force and RIP policies, aggregate reporting made by municipal police agencies to their county prosecutor, and use of force reports. I encountered multiple difficulties in collecting the data and discovered loopholes in the OPRA law that serve to subvert governmental transparency Nevertheless, once the data were received, they were coded and analyzed using binomial logistic regression in SPSS. The findings failed to generate the significance level needed to reject the null hypothesis. However, the results also indicated that the race of the suspect was not a significant factor in force outcomes for this sample. In this chapter, I will further discuss my data collection experience and the results of my study.

Data Collection

As required by law, I submitted OPRA request forms to the municipal clerks at each municipality to gather use of force policies, RIP policies, aggregate reporting made to the county prosecutor, and use of force reports. The requested records consisted of those effective during or created between July 2000 and June 2010. These OPRA requests were transmitted to each municipal clerk by email on February 14, 2017, and tracked using MailTrack software.

The OPRA law indicated that I might receive all reasonably available records within 7 days and that I might be required to pay special fees. Still, I anticipated that many of my requested documents would have been placed in archives, so I established a reasonable data collection period and a ceiling for special assessment charges. Under OPRA, municipal clerks are required to provide responses to government record requests within 7 business days and expeditiously deliver records that are currently available and not in storage (N.J. Stat. Ann. 47:1A-5[i]). Where the municipal clerks are unable do so, they must contact the requestor with an anticipated delivery date to ask for an extension (N.J. Stat. Ann. 47:1A-5[i]). Where the production of these records requires extraordinary expenditure of time and equipment, the clerks may assess a special service charge (N.J. Stat. Ann. 47:1A-5[c]). Based on the initial responses I received from the clerks and their requests for additional time to fulfill my requests, I assigned March 26, 2017 as the end date for my data collection period. Most clerks expressed that special assessment charges would be nominal while others were unsure but suggested it might be costly. Therefore, I

established a threshold of $250 as the amount I would pay for all special service charges combined. The result of my effort was mixed.

On March 27, 2017, I received the last set of requested documents used in this study. My data collection period ended on March 31, 2017 and while I remained open to the possibility of receiving more records after that date, I did not receive any. The time needed to provide an initial response to my request and then to provide a complete set of available records widely differed among the municipalities. The range of time before receiving initial responses from the clerks ranged from 0 to 11 business days (M = 5 days, SD = 3), not including the day of my request. Of the eight municipal clerks who provided records, the time needed to provide the complete set of requested records ranged from 7 to 28 business days (M = 16, SD = 7). This range excludes one business day where all municipal offices were closed for a major winter storm. I paid $19.20 in total service charges for these records.

On April 1, 2017, I began to evaluate my data. I examined the provided policies for conformity with NJOAG guidelines and reviewed the aggregate reporting made to the county prosecutor. I also constructed an Excel spreadsheet to account for every collected force reporting form from the agencies that met my assumptions and used it to establish the sampling frame for the two 5-year periods of my study.

My data collection effort was met with several discrepancies relative to my plan. Overall, by the end of my collection period, I received records from eight municipal clerks who I contacted, largely representing communities from the middle and higher portions of the county's socioeconomic scale but with lower levels interspersed within

them. The remaining four clerks recited explanations that included complete record destruction due to a recent natural disaster, lost or misplaced records, and that a substantial or indeterminate amount of time was needed to gather them. For those municipal clerks who did not claim the data were irretrievable, all implied various degrees of willingness to cooperate, but none fulfilled my request by the end of the collection period or by June 9, 2017.

The first part of my OPRA request sought police agency use of force policies so that I could compare them to NJOAG (2000). I received use of force policies from all the clerks who provided records in response to my request. Of the policies, six were in effect during all or most of my study period. The other clerks provided the most current version of the use of force policy dated after my study period, stating that they did not retain older versions. This violated my assumption that all agencies would retain copies of the policies that were in effect at that time. Still, none of these municipal police agencies were certified by the Commission on Accreditation for Law Enforcement Agencies or the New Jersey State Association of Chiefs of Police, which would have required more stringent standards than those mandated by the NJOAG. As a result, their current policies do not substantially differ from requirements of the NJOAG. Therefore, because the current policies do not differ from that which was mandated, I continued to assume that the policies in effect during my study period also conformed with the NJOAG requirements.

The second part of my OPRA request sought police agency RIP policies so that I could compare them to NJOAG (2005). The clerks produced the most current version of

the RIP policy. Four of these policies showed revision histories indicating promulgation dates years earlier than the 2005 NJOAG mandate (M = 3.5, SD = 0.86). It is an exceptional finding that the leadership of these departments voluntarily chose to provide civilians with added protections above the state's minimum threshold. This finding resulted in these departments being excluded from my research because of the impact they would have on the reliability and validity of this study. For the other four policies, the only date listed shown was when the current version of the policy was approved, and none included a policy revision history. Again, none of the municipalities were certified by the Commission on Accreditation for Law Enforcement Agencies or the New Jersey State Association of Chiefs of Police, which would have required more stringent standards than those mandated by the NJOAG. The current policies are nearly mirror images of the state model. Therefore, I continued to assume that the policies in effect during my study period also conformed with the NJOAG requirements.

The third part of my OPRA request sought each police agency's aggregate reporting of force to the county prosecutor so that I could compare the number of force reports I received to the official data provided to the prosecutor. The responding municipal clerks provided a poor response to this request. Of the responses provided by municipal clerks, only three contained these records. Clerks explained that their police agencies (a) send copies of the use of force reports in lieu of an aggregate report, (b) lost or misplaced these records, or (c) are not required to keep copies of these reports once they are sent to the prosecutor. It is interesting that of the provided aggregate reports, only 30% of the reported years reflected the frequency of force indicated by officers on

their force reporting forms; 45% of the documented years were overreported (M = 5.56, SD = 3.98), and 25% were underreported (M = -3.25, SD = 1.92). In light of the dearth of county prosecutor aggregate reports and the inaccuracies of those provided, these reports were not helpful in fulfilling their planned role to confirm the sampling frame.

The final part of my OPRA request sought all individual officer use of force reporting forms submitted to their agencies so that I could conduct data collection on my intended variables. The municipal clerks who responded to my OPRA request supplied 1,274 use of force reporting forms representing incidents from 54.17% of the department-years I hoped to use in this study. With the removal of the agencies that promulgated a RIP policy prior to the NJOAG, I was left with 499 use of force reporting forms from four agencies representing 31.67% of the total department-years I hoped to use in this study. The collected forms were a mixture of the NJOAG (2000) model report, an older version of the model NJOAG report, and one agency-created version that did not conform to the NJOAG model. In many years, officers were permitted to report their force usage on more than one version of the form. In 10 instances, nonconforming force reports were randomly selected for inclusion in my sample. These reports were replaced by others from within the department during that year or from neighboring agencies during that year which were not otherwise entered into the sample.

Collecting my requested documents was fraught with added complication. These complications highlight the difference between how the law is written and how it is actually applied by municipal clerks. First, some of the municipal clerks told me that they needed to route my request through the county prosecutor for approval. However, all

municipal clerks in New Jersey were notified by the NJOAG in 2006 that routing requests through the county prosecutor was improper and that the clerks alone are responsible for making decisions concerning OPRA requests (H. Goldberg, personal communication. September 30, 2011). Second, certain clerks unlawfully redacted documents requiring me to recite statute and case law before they finally delivered unredacted or lawfully redacted reports. In another similar case, the municipal attorney redacted the department's use of force policy, citing the security exception to OPRA. This was an odd response to my request because the unredacted portions were an exact copy of the NJOAG model policy (see Appendix B) and the redacted words were easily discovered. Third, one municipality denied my request citing that it amounted to a request for the clerk to conduct research, which was prohibited by OPRA. This was an incorrect and unlawful response, but I was unable to resolve the problem in time to conduct data analysis despite the involvement of an attorney specializing in OPRA. A fourth complication involved apparent deceptiveness where an agency effectively denied having its own use of force policy by sending an exact copy of the NJOAG policy, completed with a filename of "use of force AG Directive." This agency also denied the existence of a RIP policy. A conversation with the clerk revealed that the police department will not disclose the existence of either policy, citing the security exception under OPRA. This matter also required the involvement of an OPRA attorney. The lesson to be learned from this experience is that requestors of public documents must be fully aware of the OPRA law, its nuances, and previous court decisions, and must be prepared

to respond with the vehemence allowed by law to ensure that the clerks provide an appropriate response to their requests.

My final discovery about the operation of the OPRA law directly relates to the special assessment fee and the missing 46.97% of the years of use of force data I expected to receive. Large special assessment fees can become an effective denial of a request. Only three of my requests were met with complete data responses involving all department-years requested. In most cases, the clerks advised me that they would need to examine archived records or review every police incident file for each year where the records were not readily available to see if the files contained a use of force report. Special assessment fees ranged between $35 to $55 per hour. I was quoted over $500 by one clerk, and a fee in excess of $300 by another. Because of the cost of these fees, I instructed the clerks to end their data collection.

Study Results

From the population of 449 force reports, a combined stratified proportionate random sample of 301 force reporting forms was determined with the use of the Raosoft (2004) sample-size calculator, a 0.05 significance level, and a 95% confidence level. The sample consisted of stratums representing 12-month periods and municipal police agencies. The sample size required for the first five-year period (July 2000 – June 2005) was 123 documented incidents, representing 90% of the department-years in that period for those agencies. The average number of force incidents for all departments combined in each year of the first period was 34 *(SD* = 20.24). The second 5-year period (July 2005–June 2010) required a sample of 178 documented force incidents, representing

100% of the department-years in that period for those agencies. The average number of force incidents for all departments combined in each year of the second period was 65.80 *(SD* = 9.54).

The sample was drawn and data were entered on the Excel spreadsheet. Unique labels were created for each of the seven variables used in this study. These variables have been used in past scholarly research of police uses of force and have been found to influence force outcomes. Variable data from each report was entered in the appropriate column exactly as it appeared on the form. Where the officers' years of service were missing, I consulted with the *Asbury Park Press's* Data Universe to gather publicly available information from the New Jersey Division of Pension and Benefits, Police and Fireman's Retirement System to calculate those degrees of tenure. These data were then coded as planned (see Table 5) and uploaded to SPSS, version 21 for analysis. The descriptive characteristics of the variables used in this study are presented in Table 6. My data use and research design conformed to Walden IRB approval #02-14-17-0505878.

Table 4

Summary of Descriptive Statistics of the Study Sample (N = 301)

Variables	Pre-RIP (*n* = 123)	Post-RIP (*n* = 178)
Officer force		
Physical	98	147
Mechanical	25	31
Officer years of tenure		
Observations	93	170
Mean [range]	7.39 [0 – 29]	8.18 [0 – 27]
Stand. Dev.	6.16	6.13
Suspect race		
White	61	104
Not-White	62	74
Suspect age		
Observations	123	178
Mean [range]	31.87 [12 – 62]	33.42 [15 – 70]
Stand. Dev.	13.49	12.93
Suspect resistance		
Passive	76	110
Active	47	68
Unusual conditions		
Not present	78	80
Present	45	98

I used binomial logistic regression to conduct my data analysis. Binomial logistic regression attempts to predict the probability of categorical outcomes given certain independent variables but requires the satisfaction of several assumptions. Laerd Statistics (2015) explained that the assumptions begin with a dependent variable that is ordinal, and independent variables that are continuous, ordinal, or categorical. All variables must have independence of observations, be mutually exclusive and collectively exhaustive, and must have at least 15 observations (Laerd Statistics, 2015). Additionally, there must be a linear relationship between the continuous variables and the logit

transformation of the dependent variable, no multicollinearity, and no significant outliers (Laerd Statistics, 2015).

The statistical assumptions concerning my variables were satisfied in the following ways prior to analysis. As indicated in Table 6, the dependent variable, officer force, is ordinal and dichotomous. It is ordinal because in the NJOAG (2000) policy physical force is considered a lesser severity than mechanical force. The independent variables, suspect race and unusual conditions, are categorical, and their possible values are not ordered (see Table 6). Suspect resistance is ordinal, as passive resistance requires no threat to the officer while active resistance indicates an increase in threatening behavior or an attack upon the officer. Suspect resistance is treated as a continuous variable in this regression. Officer years of tenure and suspect age are continuous (see Table 6). All variables possess independence of observations as none are not affected by common influences. Variables are related in such a way that observation in one precludes observation in any other variable or category. All variable categories cover the entire realm of possibilities and are therefore collectively exhaustive.

The number of observations within the originally planned variables for this study presented a challenge to some factors but was overcome by discarding certain variables and collapsing the subcategories of the suspect resistance variable. I originally had hoped to include the variables (a) officer sex, (b) officer race, (c) officer duty status, and (d) suspect sex. Unfortunately, there were fewer than 15 female observations in either sex variable and too few observations of non-White officers and off-duty officers. These variables were necessarily discarded from my analysis. Also, the suspect resistance

variable did not allow me to include more levels of resistance. The more severe forms of suspect resistance, mechanical resistance (use of a device or substance that was not a firearm) and deadly resistance (use of a firearm or other device or substance that posed a substantial risk of death or which caused serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ), had fewer than 15 observations in either period. I combined them with physical resistance to create the subcategory called active resistance. This resulted in the suspect resistance category becoming binary. Once this process was completed, I determine that all variables contained 15 or more observations (see Table 6).

Prior to conducting the final regression, I performed analysis of my variables for linearity to the logit transformation of the dependent variable. To test for linearity, I conducted a binomial logistic regression using the Box-Tidwell (1962) procedure. This procedure required that I create natural log transformations of the continuous variables and interaction terms with their respective variable (e.g., natural log of officer tenure by officer tenure). All were all entered into the binomial regression. Tabachnick and Fidell (2007) recommended that a Bonferonni correction be applied to account for multiple comparisons of all the terms in the regression, including the intercept, before interpreting the results. This required me to divide the commonly accepted significance level of .05 by the 10 terms in my regression. As a result, I accepted significance at .005 and I discovered that the officer tenure variable violated the assumption (p = .003). I created a histogram of the variable and found it was positively skewed. Therefore, I transformed the variable to its square root and repeated the regression. Once again, significance was

accepted at .005. The results of the second regression indicated that all continuous independent variables were linearly related to the logit transformation of the dependent variable.

Finally, before conducting the final regression, I examined my data for highly correlated variables (multicollinearity). I performed a bivariate correlation using the Spearman coefficient to detect monotonic relationships. I found that the transformed officer tenure variable correlated above .8 with officer age. I then performed a multiple regression to examine more closely for multicollinearity by obtaining standard errors, tolerances, and variance inflation factors (VIF). I found that the highest VIF values were the transformed officer tenure and officer age, at 2.89 and 2.92, respectively. While these values showed moderate correlation, I decided these variables warranted additional attention, as younger officers will typically have fewer years of service. Since I obtained more data on officer tenure than officer age, I elected to discard the officer age variable from further analysis. I then conducted another test for linearity and multicollinearity. All continuous variables were found to be linearly related to the logit transformation of the dependent variable (officer force). No variables showed significant correlation with each other and none shared a large portion of their variance with other variables (see Table 7).

Table 5

Test for Multicollinearity

Model	Unstandardized Coefficients		Standardized Coefficients	*t*	Sig.	Collinearity Statistics	
	B	Std. Error	Beta			Tolerance	VIF
(Constant)	.108	.101		1.075	.283		
RIP period	-.031	.049	-.037	-.628	.530	.975	1.025
Transformed officer tenure	.054	.021	.155	2.639	.009	.984	1.016
Suspect race	.081	.049	.101	1.636	.103	.890	1.124
Suspect age	-.004	.002	-.132	-2.165	.031	.913	1.096
Suspect resistance	.193	.048	.239	4.049	.000	.973	1.028
Unusual conditions	-.028	.048	-.036	-.591	.555	.927	1.079

a. Dependent variable: Officer force

My final test of assumptions involved the detection of outliers, leverage, or influential points during the final regression analysis. The analysis indicated 14 studentized residuals with values of 2.5 or greater standard deviations existed in the data. Upon closer examination, I discovered that these cases involved officers use of mechanical force in response to low levels of resistance. These force responses are permitted by law and policy, so I elected to keep these cases in my analysis.

I performed the binomial logistic regression to ascertain how the New Jersey RIP directive affected municipal police officer uses of force on non-Whites after its implementation in one New Jersey county. My logistic regression model was statistically significant, $\chi 2\ (7) = 38.484$, $p < .05$. The model had a good fit based on Hosmer and Lemeshow, $p = .195$. The model explained 21.6% (Nagelkerke R^2) of the variance in force use and correctly classified 81.4% of cases. Sensitivity was 15.4%, specificity was 97.6%, positive predictive value was 61.54%, and negative predictive value was 82.4%.

Of the seven independent variables, three were statistically significant: officer tenure, suspect age, and suspect resistance (see Table 8). Increases associated with officer tenure were associated with an increased likelihood of using mechanical force. Increases associated with suspect age were associated with a decreased likelihood of mechanical force. Finally, increased suspect resistance was associated with increased use of mechanical force by the officers. Neither the interaction term (RIP period by suspect race) nor suspect race were significant. Based on these findings, I could not reject the null hypothesis which states that the New Jersey RIP directive had no significant effect on municipal police officer uses of force on non-Whites after its implementation in one New Jersey county.

Table 6

Binomial Logistic Regression Analysis (n = 301)

Variable	*B*	*SE*	Wald	*df*	Sig.	Exp(B)	95% C.I for EXP(B)	
							Lower	Upper
RIP period	-.705	.505	1.949	1	.163	.494	.184	1.329
Officer tenure	.353	.150	5.578	1	.018	1.424	1.062	1.909
Suspect race	.048	.562	.007	1	.931	1.050	.349	3.155
Suspect age	-.036	.015	5.416	1	.020	.965	.936	.994
Suspect resistance	1.282	.346	13.735	1	.000	3.605	1.830	7.102
Unusual conditions	-.056	.361	.024	1	.878	.946	.466	1.921
Interaction RIP period by Suspect race	.892	.699	1.627	1	.202	2.439	.620	9.602

Model $\chi 2 = 38.484$ $p < .05$
Hosmer and Lemeshow = .195
Nagelkerke $R^2 = .216$

Note. All variables were calculated during simultaneous analysis.

Despite my inability to reject the null hypothesis, the findings are still an important indicator of the value of the RIP directive. The results indicated that race was not a factor in force outcomes over this 10-year period. I chose to explore this significant finding more closely. I examined each period individually to establish if race had been a factor in force outcomes either before or after the promulgation of the RIP directive. The RIP period variable and interaction term were removed from the model. Although the samples were small, I found that race was not a significant factor in force outcomes during either period.

The logistic regression model for the pre-RIP period was statistically significant, χ^2 (5) = 17.90, $p < .05$. The model had a good fit based on Hosmer and Lemeshow, $p = .337$. The model explained 26.7% (Nagelkerke R^2) of the variance in force use and correctly classified 78.5% of cases. Sensitivity was 28.6%, specificity was 93.1%, positive predictive value was 54.54% and negative predictive value was 81.70%. The analysis indicated two studentized residuals with values of 2.5 or greater standard deviations existed in the data that involved cases where officers used of mechanical force in response to low levels of resistance. This force response is permitted by law and policy, so these cases were kept in the model. Of the variables, only one was significant, suspect resistance, for which increasing resistance was associated with a greater likelihood of mechanical force (see Table 9). Therefore, race was not a significant factor in force outcomes during this period. This finding gives the appearance that the RIP directive was unnecessary from a practical standpoint for this sample. Although, given the 1999 consent decree between the NJSP and the USAG which settled a 42 USC §

14141 lawsuit, the promulgation of the RIP directive to all police agencies in the state was, if nothing else, a political necessity.

The logistic regression model for the post-RIP period was statistically significant, χ^2 (5) = 22.33, $p < .05$. The model had a good fit based on Hosmer and Lemeshow, p = .062. The model explained 20.1% (Nagelkerke R^2) of the variance in force use and correctly classified 82.4% of cases. Sensitivity was 16.1%, specificity was 97.1%, positive predictive value was 55.56% and negative predictive value was 83.85%. The analysis indicated 11 studentized residuals with values of 2.5 or greater standard deviations existed in the data that involved cases where officers used of mechanical force in response to low levels of resistance. Again, that force response is permitted by law and policy, so these cases were kept in the model. Three variables were found to be significant, officer tenure, suspect age, and suspect resistance (see Table 10). Increases associated with officer tenure were associated with an increased likelihood of using mechanical force. Increases associated with suspect age were associated with a decreased likelihood of mechanical force. Suspect resistance was associated with increased use of mechanical force by the officers. Once again, race was not a significant factor in force outcomes.

Table 7

Pre-RIP Period Binomial Logistic Regression Analysis (n = 123)

Variable	*B*	*SE*	Wald	*df*	Sig.	Exp(B)	95% C.I for EXP(B)	
							Lower	Upper
Officer tenure	.321	.245	1.720	1	.190	1.378	.853	2.226
Suspect race	.154	.616	.062	1	.803	1.116	.349	3.899
Suspect age	-.051	.026	3.727	1	.054	.951	.903	1.001
Suspect resistance	1.707	.598	8.150	1	.004	5.512	1.707	17.794
Unusual conditions	.463	.322	.553	1	.457	1.588	.469	5.378

Model $\chi^2 = 17.940$, $p < .05$

Hosmer and Lemeshow = .337

Nagelkerke R^2 =.267

Note. All variables were calculated during simultaneous analysis.

Table 8

Post-RIP Period Binomial Logistic Regression Analysis (n = 178)

Variable	*B*	*SE*	Wald	*df*	Sig.	Exp(B)	95% C.I for EXP(B)	
							Lower	Upper
Officer tenure	.409	.194	4.454	1	.035	1.506	1.030	2.203
Suspect race	.864	.451	3.661	1	.056	2.372	.979	5.746
Suspect age	-.029	.019	2.289	1	.130	.971	.936	1.009
Suspect resistance	1.004	.431	5.412	1	.020	2.728	1.171	6.355
Unusual conditions	-.379	.448	.715	1	.398	.685	.285	1.647

Model $\chi^2 = 22.333$, $p < .05$

Hosmer and Lemeshow = .062

Nagelkerke R^2 = .201

Note. All variables were calculated during simultaneous analysis.

Summary

In this chapter, I described my data collection and analysis processes. I further reported the difficulties that I encountered in collecting publicly available information from the municipal agencies that I intended to study. I designed this retrospective quantitative nonexperimental study to examine the influence of the New Jersey RIP directive on officer uses of force in one New Jersey county to determine if the policy altered force outcomes for non-Whites after its implementation in June 2005. My inferential analysis revealed that only officer tenure, suspect age, and suspect resistance significantly influenced officer uses of mechanical force between July 2000 and June 2010. Therefore, the null hypothesis was not rejected. The New Jersey RIP directive had no effect on officer uses of force on non-Whites after its implementation in the studied county. Further analysis revealed that the race of the suspect was not a significant factor in force outcomes in either period. In Chapter 5, I will provide an interpretation of my findings and discuss their implication on public policy and social change.

Chapter 5: Discussion

Introduction

The purpose of this retrospective quantitative nonexperimental study was to examine the influence of the New Jersey RIP directive on officer uses of force to determine if the promulgation of the policy in 2005 altered force outcomes for non-Whites in one New Jersey county. If the administrative rule was effective at preventing RIP, then the application of force should not have disproportionately impacted any racial category after the RIP directive was implemented. Using publicly available police agency records, I conducted a binomial logistic regression on data from a stratified random sample consisting of the 5-year period before and after the promulgation of the New Jersey RIP directive. An interaction term was used for the RIP period by race to account for the influence of the directive on suspect race. My results show that the RIP directive did not significantly affect force outcomes for non-Whites. In this chapter, I will provide an interpretation of my findings, discuss issues related to the limitations of this study, offer recommendations for further research, and discuss the implications these findings may have for social change.

Interpretation of the Findings

As described in Chapter 3, the state of research into police uses of force is marred with problems concerning the conceptualization and operationalization of force. I am cautious in drawing comparisons to those studies because few researchers have approached the topic with the conceptualization or operationalization used here. Despite the differences between my study and the existing literature, my findings support

previous discoveries regarding the degree of force used by officers. My findings indicate that 81% of the force used by officers was of the lowest level of force possible (physical force). Garner et al. (2002), Lawton (2007), and Terrill and Mastrofski (2002) also found that officers more commonly apply lower levels of force. While conceptualizations and operationalizations differ among those studies and mine, all have shown that officers tend toward lower levels of force.

Instead of attempting to draw other comparisons to dissimilar studies, I will compare the results discovered in this study with the results from a meta-analysis of force studies by Bolger (2014) who sought to identify key correlates of police decisions to use force. The intent of that study was to permit other researchers to overcome some of the difficulty in comparing prior research by allowing them to directly compare their findings to the findings in his meta-analytic review (Bolger, 2014).

Bolger (2014) admitted significant methodological limitations in the analysis but established that variables tapping into encounter and suspect characteristics show the greatest impact on the likelihood of force being used. Variables in Bolger's study that have consistently shown an increase in the likelihood of force include evidence of criminal behavior, weapon possession, suspect resistance, and arrest. The race of the suspect was also found to be significant despite the prior research finding mixed results.

Unfortunately, the nature of my retrospective research using government records prevents me from drawing comparisons to Bolger's results for criminal behavior, weapon possession, and arrest. The data I collected indicated a great amount of uncertainty surrounding these variables because of missing contextual data, errors and omissions in

the officer answers, or insufficient frequencies. For example, while criminal charges were often listed, they generally took the form of statute titles or incomplete statutes numbers. Because many statutes provide for a range of similar offenses and offense levels, it became impossible in many cases to determine the exact criminal behavior for which the suspect was charged. This issue complicated the interpretation of weapon possession. The charges gave rise to ambiguity regarding officer awareness of the weapon prior to using force and made useless any possibility of using an assumption of foreknowledge. Also, there were insufficient instances where arrests were not made to draw valid conclusions. Nonetheless, I could compare my findings to two variables correlating significantly to force outcomes presented by Bolger.

Bolger (2014) determined that resistance increases the likelihood of force use. My finding extends that conclusion. While my study did not examine resistance relative to compliance, it did examine passive resistance as well as active resistance to determine the likelihood of mechanical force usage. Active resistance included threats and use of physical, mechanical, and deadly resistance. I found that active resistance increased the likelihood that an officer would respond with mechanical force.

Bolger (2014) also determined that the race of the suspect was a significant factor in force outcomes. In particular, minorities were more likely to have force used against them. My findings disconfirm that hypothesis. I found that the race of the suspect was not a significant factor in force outcomes over the 10-year period of my study and in either of the two 5-years periods examined.

In addition to the concrete findings of the meta-analysis, Bolger (2014) also correctly criticized the available research into intoxication and force outcomes because they failed to draw distinctions between alcohol and drugs. This was an issue present in my unusual condition variable. While many reports did provide some indication of the type of alleged suspect intoxication, many others were simply described as under the influence. Therefore, I was unable to extend knowledge regarding this variable.

Although not found to be significant by Bolger (2014), my findings provide the first indication of other significant factors influencing force outcomes under the New Jersey policy paradigm. The data reflected that increasing officer tenure is directly correlated with increased mechanical force. Advancing suspect age is inversely related to the use of mechanical force.

A final observation about my results concerns the 14 cases identified as studentized residuals. These cases involved instances where suspects offered passive resistance (10 cases) and active resistance (four cases). In all cases, officers responded to the posed resistance with mechanical force using chemical spray in 11 of these cases, baton strikes in two, and a K-9 in one. In the 10 cases of passive resistance, the officers' lawfully chose not to respond with physical force but instead used the next higher level of force, mechanical force. I have no other data to help further analyze these cases but they do offer at least two possibilities. These observations might reflect lawful but awful force where the force used was in compliance with policy but may give rise to the potential for excessiveness. They may also represent officers' sound judgment in fulfilling their official duties by choosing to minimize the potential for injuries to the suspects and

themselves, particularly in the instances where chemical sprays (e.g., oleoresin capsicum [OC spray]) were used. Using chemical sprays has been found to quickly incapacitate suspects and is associated with lower rates or injury to both suspects and officers (see Smith et al., 2010). However, more data are needed to draw conclusions.

My research does allow for more than a simple comparison to prior research. The experience of collecting and analyzing the data are relevant to the context of my theoretical framework, Lipsky's SLBT. My study generated three types of findings relative to this theory. The first relates to my experience utilizing the OPRA law to collect data for municipalities. The second involved the auditing of police actions through paperwork. The third related to the supervision of officers.

Lipsky (2010) theorized that SLBs resist controls over their discretion because their priorities differ from their managers. They exercise their discretion in a manner consistent with their preferences to minimize real dangers and discomforts. In this study, I exercised my right as a citizen to oversee the function of police agencies and their employees through the use the New Jersey OPRA law. My requests were met with the several difficulties explained in Chapter 4. One reason might be that the collection of police use of force data during this difficult period in history might have posed a subjective degree of danger and discomfort to the municipal clerk or other municipal personnel. I received several unlawful responses to my requests that required me to make calls and send emails explaining my familiarity with statute and case law before I received my requested records. In a small number of cases, I had to retain the services of a lawyer. While these actions resolved several of my data collection problems, I still had

not received all the information that I requested. Lipsky's notion that SLBs resist controls over their discretion is supported by my data collection experience.

Lipsky (2010) further theorized that SLBs use of discretion is not unrestrained by rules or directives, but that such efforts achieve limited success when not supported by significant sanctions to help achieve desired behaviors. The New Jersey OPRA law offers sanctions but the degree of their usefulness is questionable. The New Jersey OPRA law provides for escalating monetary penalties to be assessed to any public official who knowingly or willfully violates the provisions of the law (N.J. Stat. Ann. 47:1A-11). It also allows for the recovery of reasonable attorney fees by the requestor should the requestor prevail in court (N.J. Stat. Ann. 47:1A-6). There may also be additional sanctions offered by municipal governments, but I did pose that question during my data collection. Based on my data collection experience, the sanctions provided in the OPRA law do not serve as a sufficient deterrent to prevent violations of the law. Circumstantial evidence might endorse the conclusion that the clerks' or supporting public officials ignored the potential fines and knowingly and willfully provided intentionally unlawful responses to my requests. Still, this is only one possibility, and the burden of proof to buttress this conclusion is high. Another and perhaps more likely possibility is that the clerks and supporting public officials were not sufficiently trained on the operation of the OPRA law and that the risk of paying court assessed legal fees is preferable to municipal leaders than the actual cost of training personnel to ensure the correct application of the law. Whatever the actual motivations were that complicated my data collection, the

sanctions enumerated in the OPRA law do not compel complete compliance with the law and support Lipsky's belief that insignificant sanctions do not restrain SLB discretion.

Lipsky (2010) explained that the auditing of SLB behaviors is complicated when SLBs complete paperwork in a way that guards against later adverse inspection. Through various methods, SLBs can capitalize on weaknesses inherent with insufficient supervision to maintain control of their work despite the controls applied by management. This notion was grossly apparent in the force reporting forms I collected. Officers commonly submitted incomplete forms. These omissions limited my ability to examine officer variables and ultimately altered my original research and analysis plan. Were it not for the *Asbury Park Press's* Data Universe (http://php.app.com/agent/), which reports publicly available pension data, I would have lost the ability to include any officer variables in my study. While I cannot conclude that officers willfully omitted information from their reports, my study does support Lipsky's (2010) assertion about auditing of SLB behaviors through paperwork.

The New Jersey RIP directive and Use of Force guideline do conform with Lipsky's (2010) need for rules to be clear, unambiguous, and supported by significant sanctions. The New Jersey RIP directive is an explicit and unequivocal order to all police officers in the state forbidding the use of race as a factor in their discretionary actions. The Use of Force guideline is slightly ambiguous because it is impossible to create an algorithm addressing all possible scenarios an officer might face. Instead, the Use of Force guideline provides defined limits that can be applied to all scenarios given the totality of the circumstances faced by the officer. Both the RIP directive and Use of Force

guideline follow the Davis (1969, 1975) model for confining, structuring, and checking officer behavior. They are supported by disciplinary processes subjecting violative officers to agency sanction, criminal prosecution, and civil litigation under state administrative, criminal, and tort laws; and under 42 U.S.C.A. § 1983. They are also supported by laws that subject agencies permitting the existence of a pattern or practice of violations to litigation from the U.S. Attorney General under 42 U.S.C. § 14141 and civil litigation for municipal liability under 42 U.S.C.A. § 1983. Sufficient supervision is the obvious requirement to make both these rules work as devised.

Lipsky (2010) argued that when supervision is minimal, the evaluation of SLBs becomes difficult as supervisors are unable to directly observe the intangible factors leading to SLB decisions. This notion is true, especially in policing, because most officers work with little direct supervision. Still, extant research shows that it is possible to examine force outcomes for intangible factors used in officer decisions through data analysis. Despite my inability to directly observe the actions of these officers, I was able to provide a degree of supervision by examining their force reporting forms. I discovered that even during the period when the RIP directive was not promulgated, officers still provided equal protection to all citizens from unlawful force.

Ultimately, my observations during the data collection process support some of Lipsky's (2010) conclusions regarding the operation of the OPRA law. However, my data analysis of the force used by police officers did not uncover evidence of Lipsky's theorized coping mechanisms reflecting racial bias.

Limitations of the Study

My retrospective quantitative nonexperimental study suffered from limitations, particularly those of effectively denied access, a relatively small sample size, and a lack of available data. These limitations affected my analysis. As a result, they affected my findings and conclusions.

I had expected to receive all the data I requested, given the published records retention schedule defined by the New Jersey Division of Archives and Records Management and the right to access legislated in the OPRA law. For this reason, combined with issues of practicality and avoidance of extensive travel throughout the state, I elected to examine only one county. Unfortunately, by the end of my study, I had not received data from one third of those agencies from which I had made a request. As such, I collected no instances of deadly force used by officers, leaving me to examine only physical and mechanical force.

I did not expect to discover agencies had promulgated a RIP directive before the state's mandate in 2005. While this discovery indicates a positive social and political step on the part of those agencies, it forced me to exclude them from my examination and reduced my sample size. This did not prevent me from finding significant results, but when combined with the issue of limited data, it did prevent me from fully exploring the complete set of variables present in the force reporting forms.

I expected to find instances of incomplete forms but had not imagined that I would have encountered so many of them. The number of incomplete reports left me with far too few observations of officer characteristics to analyze. As a result, I had to drop

several officer characteristic variables that had been demonstrated in prior literature to be an important factor in force use.

Included in the limitation described above was the lack of data regarding officer gender. I overcame this limitation by using the putative sound of the reporting officers' names listed on the reports. In very few instances were the names androgynous. However, the sample did not generate enough female officers for analysis, and the variable was dropped from examination.

Despite the identified limitations, my study involved observations that were not complicated by artificial laboratory environments or testing effects, and which were selected for analysis using a stratified random sample. Typical validity threats present in experimental testing were not present here, except for the maturation of the officers over the 10 years examined. The method of collecting data was consistent throughout this period. Therefore, the results of this study are valid, reliable, and trustworthy. Still, given the small sample size, great caution should be exercised in generalizing the results beyond the sample.

Recommendations

My research used data collected from one New Jersey county to determine how the New Jersey RIP directive affected municipal police officer uses of force on non-Whites after its implementation. Future research seeking to more broadly examine this influence should not be as limited and should include data collected from multiple municipalities across the state. However, researchers should be cautious in extending the timeframe from that found in this study and should do so only after thorough

consideration of the policy nuances present during those added periods. Careful attention should be paid to data collection and development of the sample.

I recommend that future researchers collect data in two parts, starting with OPRA requests for the relevant policies and aggregate reporting made to the county prosecutor followed by requests for the use of force reports. These requests should be directed to the clerks of a stratified proportionate random sample of municipalities representing the full range of socioeconomic and urban-rural classifications present in the state, as well as, the range of small, medium, and large police departments found here. The first part of the data collection would allow the researchers to discover anomalous agencies that promulgated their own RIP directives prior to the state and adjust their sample or statistical method. It would also offer insight into the degree of cooperation they can expect to receive from those municipalities prior to the second part, the OPRA requests for the use of force reports. The initial request would also provide an opportunity to develop a concrete sampling frame prior to the second OPRA request for the use of force reports, provided that the agencies retained their aggregate reports and correctly reported the force used by officers. The second request may expose the researchers to the potential for the difficulties present in my study, so the experiences found in the first request may help the researcher prepare for those difficulties.

While the OPRA law indicates that complete data collection should occur in an expeditious fashion, the reality did not live up to that expectation. I recommend that researchers be prepared to keep their data collection period open for several months and have a prepared cash reserve to pay special service charges. It would also be useful to

have an attorney who specializes in the OPRA law to help prepare and follow-up with the OPRA requests.

Unlike this study, future researchers examining a larger area of the state would inevitably collect the complete range of force options available to officers and lead to greater statistical scrutiny. Binomial logistic regression would not be sufficient to analyze data with more force options. Prior researchers have used ordered probit to analyze a larger number of force options with sufficient observations. However, Terrill et al. (2008) found that when analyzing force data, the suspect race variable could be statistically insignificant in an ordered probit analysis but statistically significant in a hierarchical logistic model. Therefore, after collecting their data, researchers should consult with their statistical advisors to derive the most appropriate statistical method for use in their study.

I also recommend conducting similar studies in different locations. The promulgation of RIP directives is still a relatively new practice in the police enterprise. Where force reporting forms are publicly available, researchers presently have better opportunities to collect data than they might in the future before records are archived, lost, or destroyed, and perhaps before public access is restricted. Researchers conducting similar studies in other states should also be prepared to have extended collection periods, reserved funds to pay special service fees, and to enlist the help of an attorney knowledgeable in the applicable laws concerning public access to government records.

Future research, either in New Jersey of elsewhere, would greatly benefit from contrasting these force incidents against the total number of police-citizen encounters. Currently, in New Jersey, there is no mandated or consistent method among agencies

regarding how these incidents are logged. Overcoming this challenge would likely require an agreement with the police agencies being studied so that archival data can be accessed and non-encounters properly eliminated from the comparison (e.g., perimeter checks of local businesses for attempted or completed burglaries).

Finally, while I sought to examine the influence of a rule on police uses of force, the nature of police use of force itself was necessarily examined. The literature review uncovered problems with the operationalization and conceptualization of force across the scholarly realm, which did not adequately reflect the phenomena or its interaction with policy in the field. Future force studies should bridge this scholar-practitioner divide. Also, better instrumentation that collects suspect, officer, encounter, neighborhood, and organizational characteristics is needed to leverage research and networks that influence force policies. Instrumentation should be developed through community-based research practices that reflect community needs and the needs of public policymakers so future research findings can better serve the community, police, policymakers, and scholars.

Implications for Positive Social Change

Walden University requires that doctoral students explore how their research can impact positive social change. I sought to create social change by contributing context and empirical evidence to the discussion of the public's trust in the police by examining the force phenomena and its relationship to a public policy guaranteeing equal protection to all people. I intended my research to illustrate how previous research has treated the phenomenon and how future research could better aid civilians, police leaders, and policymakers in advancing evidence-based public policy. I also intended my research to

show civilians how they can collect records under the authority of an open public records law and thoughtfully examine the data to prevail over diminished government transparency where these data are not regularly published in the public domain.

My study contributes to social change on a broad scale by alerting civilians, police practitioners, public policymakers, and scholars to the troubles inherent in their communications between and among themselves and the role this communication plays in the distrust of the police. Current discussions and scholarly research are muddled by basic conceptions that widely differ and by insufficient concrete relatable data. In providing a commentary about the largely uncertain extent of the phenomenon, opaque conceptualizations, and the current state of research, this dissertation can bolster police legitimacy and improve trust between the public and police by serving as a primer to begin greater and clearer discourse, and serve as the starting point on the map leading to studies better capable of informing the public, police practitioners, and policymakers during their pursuit of just and effective public policies.

My study contributes to social change in New Jersey by offering to police practitioners and policymakers the first known analysis of the interaction between two policies that influence officer uses of force and impact the trust between the public and police. It illustrates areas in policy requiring improvement but serves as testimony to government officials of the value of examining their records as a regular method to detect and resolve disparate treatment of minority populations and to discover positive findings that inspire trust in the police and strengthen legitimacy. These findings contained herein demonstrate that this sample of officers made race-neutral force decisions contrary to

opinions presented in national surveys and serve as an affirmation of their dependability to use force appropriately. Despite these findings public trust in police remains low revealing that deeper issues must exist and indicates to New Jersey police practitioners and policymakers that additional efforts are needed to uncover and rectify issues affecting the problems of public trust in the police and police legitimacy.

Perhaps the largest contribution that my study makes to social change is by serving as an exemplar that civilians can use to regularly conduct and maintain oversight of their police agencies. By taking advantage of their rights under open public record laws, civilians can obtain access to reports not normally published by police agencies so that they may evaluate the actions of officers. Vigilance of this nature increases the transparency of police agencies and improves police accountability by putting police on notice that civilians intend to enforce the social contract between them for the provision of equal protection and security. Also, increased civilian awareness and regular use of these laws will serve to challenge future administrative and legislative efforts that may seek to reduce the scope or power of these laws.

Conclusion

The President's Task Force on 21st Century Policing (2015) has acknowledged the problem of trust between the community and the police and recommended that police agencies throughout the nation institute policies outlawing the practice of RIP while citing only anecdotal evidence of its value. The experiences of New Jersey municipal police officers afforded an opportunity to examine the value of such a rule. My examination uncovered no confirmation of biased-based force use in this sample. Officers

have maintained a policy of using force in a race-neutral manner. Notwithstanding my results, the promulgation and enforcement of policies outlawing the practice of RIP is a practical initial step to ensuring the equal protection of all people and clearly and profoundly demonstrates the government's willingness to hold police accountable for unlawful acts and to treat everyone equally.

In hopes of contributing to positive social change, I examined the use of force by municipal police officers in one New Jersey county to determine if an administrative rule could prevent RIP. My results do not provide evidence that administrative rules prevent RIP and may raise questions regarding the need for these policies. However, this was the first study of its kind and used a small sample with a limited number of variables. Thus, this study should serve as a call to action for civilians, practitioners, policymakers, and researchers to examine this topic elsewhere so that their findings may help influence public policies that enhance public trust in the police and strengthen police legitimacy.

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Appendix A: New Jersey Racially-Influenced Policing Directive

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2005-1

ESTABLISHING AN OFFICIAL STATEWIDE POLICY DEFINING AND PROHIBITING THE PRACTICE OF "RACIALLY-INFLUENCED POLICING"

WHEREAS, selective enforcement, the discredited practice that is commonly referred to as "Racial Profiling," is a longstanding criminal justice issue that needs to be addressed by every police agency in every jurisdiction throughout the nation; and

WHEREAS, it is the sworn duty of every police agency and officer to protect the civil rights of all persons, and to safeguard the inalienable right to the equal protection of the laws; and

WHEREAS, if a police officer were to rely upon a person's race or ethnicity when making decisions and exercising law enforcement discretion, the result would be to undermine public confidence in the fairness and integrity of the criminal justice system, alienate significant segments of our society, foster disrespect for law enforcement authority and the institutions of government, and ultimately erode public support for law enforcement efforts to investigate and deter crime; and

WHEREAS, the law of selective enforcement under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution is complex and evolving. While judicial decisions interpreting the Constitution serve as important guideposts for the law enforcement community, the courts are not the sole guardians of the Constitution; the Executive Branch is equally sworn to uphold it. Furthermore, in New Jersey the Attorney General may establish law enforcement policies designed to safeguard civil rights that go beyond the requirements of federal and State constitutional law. It is, therefore, appropriate to promulgate a uniform and comprehensive statewide policy that explains in clear terms when and under what circumstances police officers are permitted to consider, and are prohibited from considering, a person's race or ethnicity; and

WHEREAS, the documented success of the New Jersey State Police in addressing the racial profiling issue by establishing a clear nondiscrimination policy, and by providing state-of-the-art training and effective management to all State Police members can and should serve as a model to be followed by other law enforcement agencies in New Jersey and throughout the nation; and

WHEREAS, the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., provides that it is the responsibility of the Attorney General, as the chief law enforcement officer of the State, to ensure the uniform and efficient enforcement of the criminal laws;

NOW, THEREFORE, I, PETER C. HARVEY, Attorney General of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., do hereby **DIRECT** the following:

1. Official State Policy Prohibiting Discriminatory Policing

a. No police agency or sworn officer or civilian employee of a police agency, while operating under the authority of the laws of the State of New Jersey, shall engage in or tolerate any practice or act constituting "racially-influenced policing" as described in Section 2 of this Law Enforcement Directive.

b. Every police agency operating under the authority of the laws of the State of New Jersey shall, within 60 days of the effective date of this Directive, promulgate and enforce a Rule, Regulation, Standing Operating Procedure, Directive or Order, in a form as may be appropriate given the customs and practices of the agency, which shall prohibit all sworn officers and civilian employees of the agency from engaging in or tolerating any practice or act constituting racially-influenced policing as described in Section 2 of this Law Enforcement Directive. Such Rule, Regulation, Standing Operating Procedure, Directive, or Order shall be consistent with the provisions of this Law Enforcement Directive, and with the training materials distributed by the Division Criminal of Justice in the Attorney General's Office, pursuant to Section 3a of this Directive, and shall provide that any sworn officer or civilian employee of the agency who knowingly violates the agency's Rule, Regulation, Standing Operating Procedure, Directive or Order shall be subject to discipline.

2. Conduct Constituting Racially-Influenced Policing

a. A sworn officer or civilian employee of a police agency acting under the authority of the laws of the State of New Jersey shall not consider a person's race or ethnicity as a factor in drawing an inference or conclusion that the person may be involved in criminal activity, or as a factor in exercising police discretion as to how to stop or otherwise treat the person, except when responding to a suspect-specific or investigation-specific "Be on the Lookout" (B.O.L.O.) situation as described both in this Directive and in training materials developed by the Division of Criminal Justice pursuant to Section 3a of this Law Enforcement Directive.

b. Nothing in this Law Enforcement Directive shall be construed in any way to prohibit a police agency or sworn officer or civilian employee from taking into account a person's race or ethnicity when race or ethnicity is used to describe physical characteristics that identify a particular individual or individuals who is/are the subject of a law enforcement investigation, or who is/are otherwise being sought by a law enforcement agency in furtherance of a specific investigation or prosecution.

3. Development and Dissemination of Training Materials and Curricula

a. The Division of Criminal Justice shall within 30 days of the effective date of this Law Enforcement Directive develop and disseminate initial training materials, which shall consist of a video presentation in a DVD format and accompanying written reference materials (a Companion Guide and Skills Assessment), that explain and discuss the nondiscrimination policy set forth in this Law Enforcement Directive. A copy of these initial training materials shall be provided without cost to every police agency operating under the authority of the laws of the State of New Jersey. The Division of

Criminal Justice may periodically review and update these training materials to account for new developments in the law.

b. The Division of Criminal Justice shall within 90 days of the effective date of this Law Enforcement Directive develop curricula on the subject of racially-influenced policing for use in the pre-service training of police recruits. The Division shall submit this curricula to the Police Training Commission for its approval for use at all Police Academies that are subject to the jurisdiction of the Police Training Commission.

c. In order to institutionalize and build upon the successful reforms that have already been undertaken by the New Jersey State Police, the Division of State Police shall include the curricula developed by the Division of Criminal Justice on the subject of racially-influenced policing in the pre-service training of Trooper recruits in the State Police Training Academy. This comprehensive training on racially-influenced policing shall be included for all recruits who attend the State Police Academy in any class beginning on or after September 1, 2005.

4. Confirmation of Initial In-Service Training

a. Every police officer operating under the authority of the laws of the State of New Jersey, regardless of rank or duty assignment, shall participate in the training program developed by the Division of Criminal Justice within 180 days of the employing agency's receipt of the training materials described in Section 3a of this Law Enforcement Directive. The Chief Executive of every police agency operating under the authority of the laws of the State of New Jersey shall also designate those civilian employees of the agency (e.g., dispatchers) who will participate in this initial training program. A person shall be deemed to have participated in the training program by viewing the entire video presentation developed by the Division of Criminal Justice, or by reading the entire contents of the Companion Guide. The viewing of the video presentation may be done at such location(s) or time(s) as may be approved by the Chief Executive of the law enforcement agency, and may be accomplished in multiple sessions at which one or more employees view a selected portion of the video presentation during any one session.

b. Within 180 days of receiving a copy of the training materials described in Section 3a of this Law Enforcement Directive, the Chief Executive of every police agency operating under the authority of the laws of the State of New Jersey shall confirm in writing to the Attorney General that all sworn personnel and all appropriate civilian employees of the agency have either viewed the video presentation or read the entire Companion Guide. The Division of Criminal Justice shall prepare and disseminate forms to facilitate the confirmation process for State, county and local police agencies.

5. Notification of Criminal Investigations and Prosecutions for Official Deprivation of Civil Rights

Whenever a law enforcement agency conducts a criminal investigation into possible commission of the crime of official deprivation of civil rights in violation of N.J.S.A. 2C:30-6, or pattern of official misconduct in violation of N.J.S.A. 2C:30-7 which is based on two or more violations of N.J.S.A. 2C:30-6, the law enforcement agency shall promptly notify the Director of the Office of Government Integrity, and shall provide such information as the Office of Government Integrity may require. Whenever a prosecuting authority files a complaint, accusation or indictment charging a violation of N.J.S.A. 2C:30-6, or N.J.S.A. 2C:30-7 which is based on two or more violations of N.J.S.A. 2C:30-6, the prosecuting authority shall promptly notify the Director of the Office of Government Integrity, and shall forward a copy of the charging documents to the Director. When the Director is notified of a criminal investigation or the filing of a criminal charge, the Office of Government Integrity shall promptly review the matter, and take such action as it determines to be appropriate. The Office of Government Integrity, in consultation with the Division of Criminal Justice and the County Prosecutors, may issue standards and procedures for these notifications and for its review of the offenses covered under this Section.

6. Questions and Controversies

All questions concerning the interpretation, implementation or enforcement of this Law Enforcement Directive shall be addressed to the Attorney General or his designee.

7. Effective Date

This Law Enforcement Directive shall take effect immediately and shall remain in full force and effect unless and until repealed, amended, or superceded by Order of the Attorney General.

Given under my hand and seal, this 28th day of June, in the year of our Lord Two Thousand and Five, and of the Independence of the United States, the Two Hundred and Twenty-Ninth.

Peter C. Harvey
Attorney General

Attest:

Vaughn L. McKoy, Director
Division of Criminal Justice

Appendix B: New Jersey Use of Force Guideline

USE OF FORCE

Attorney General's Use of Force Policy

Issued April 1985
Revised June 2000

Preface

The provisions of this revised policy are a product of the collective efforts and judgment of the New Jersey Use of Force Advisory Committee. Throughout the deliberation process, each member of the committee worked conscientiously to reach a consensus in this area of critical importance to law enforcement officers and the citizens of this state. The New Jersey Use of Force Advisory Committee realized that the law alone could not achieve the goal of properly guiding the use of force by the police. The letter of the law needed to be supplemented with clear policy guidance designed to prepare officers to react appropriately when confronted with a use of force situation.

Policy

Sworn law enforcement officers have been granted the extraordinary authority to use force when necessary to accomplish lawful ends. That authority is grounded in the responsibility of every sworn law enforcement officer to comply with the laws of the State of New Jersey regarding the use of force and to comply with the provisions of this policy. Equally important is law enforcement's obligation to prepare individual officers in the best way possible to exercise that authority.

In situations where law enforcement officers are justified in using force, the utmost restraint should be exercised. The use of force should never be considered routine. In determining to use force, the law enforcement officer shall be guided by the principle that the degree of force employed in any situation should be only that reasonably necessary. Law enforcement officers should exhaust all other reasonable means before resorting to the use of force. It is the policy of the State of New Jersey that law enforcement officers will use only that force which is objectively reasonable and necessary.

This policy reinforces the responsibility of law enforcement officers to take those steps possible to prevent or stop the illegal or inappropriate use of force by other officers. Every law enforcement officer is expected and required to take appropriate action in any situation where that officer is clearly convinced that another officer is using force in violation of state law. Law enforcement officers are obligated to report all situations in which force is used illegally by anyone. This policy sends a clear message to law enforcement officers that they share an obligation beyond the requirements of

the law. Officers are encouraged to do whatever they can to interrupt the flow of events before a fellow officer does something illegal and before any official action is necessary. Law enforcement officers can serve each other and the public by simply saying or doing the right thing to prevent a fellow officer from resorting to force illegally or inappropriately.

Deciding whether to utilize force when authorized in the conduct of official responsibilities is among the most critical decisions made by law enforcement officers. It is a decision which can be irrevocable. It is a decision which must be made quickly and under difficult, often unpredictable and unique circumstances. Sound judgment and the appropriate exercise of discretion will always be the foundation of police officer decisionmaking in the broad range of possible use of force situations. It is not possible to entirely replace judgment and discretion with detailed policy provisions. Nonetheless, this policy is intended to provide the best guidance and direction possible to police officers throughout this state when called upon to confront and address the most difficult of situations. Law enforcement officers whose actions are consistent with the law and the provisions of this policy will be strongly supported by the law enforcement community in any subsequent review of their conduct regarding the use of force.

Definitions

A. Constructive Authority

1. Constructive authority does not involve actual physical contact with the subject, but involves the use of the law enforcement officer's authority to exert control over a subject.

2. Examples include verbal commands, gestures, warnings, and unholstering a weapon.

3. Pointing a firearm at a subject is an element of constructive authority to be used only in appropriate situations.

B. Physical Contact

1. Physical contact involves routine or procedural contact with a subject necessary to effectively accomplish a legitimate law enforcement objective.

2. Examples include guiding a subject into a police vehicle, holding the subject's arm while transporting, handcuffing a subject and maneuvering or securing a subject for a frisk.

C. Physical Force

1. Physical force involves contact with a subject beyond that which is generally utilized to effect an arrest or other law enforcement objective. Physical force is employed when necessary to overcome a subject's physical resistance to the exertion of the law enforcement officer's authority, or to protect persons or property.

2. Examples include wrestling a resisting subject to the ground, using wrist locks or arm locks, striking with the hands or feet, or other similar methods of hand-to-hand confrontation.

D. Mechanical Force

1. Mechanical force involves the use of some device or substance, other than a firearm, to overcome a subject's resistance to the exertion of the law enforcement officer's authority.

2. Examples include the use of a baton or other object, canine physical contact with a subject, or chemical or natural agent spraying.

E. Deadly Force

1. Deadly force is force which a law enforcement officer uses with the purpose of causing, or which the officer knows to create a substantial risk of causing, death or serious bodily harm.

2. Purposely firing a firearm in the direction of another person or at a vehicle, building or structure in which another person is believed to be constitutes deadly force.

3. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the officer's purpose is limited to creating an apprehension that deadly force will be used if necessary, does not constitute deadly force.

F. Reasonable Belief

1. Reasonable belief is an objective assessment based upon an evaluation of how a reasonable law enforcement officer with comparable training and experience would react to, or draw

inferences from, the facts and circumstances confronting and known by the law enforcement officer at the scene.

G. Imminent Danger

1. Imminent danger describes threatened actions or outcomes that may occur during an encounter absent action by the law enforcement officer. The period of time involved is dependent on the circumstances and facts evident in each situation and is not the same in all situations.

2. The threatened harm does not have to be instantaneous, for example, imminent danger may be present even if a subject is not at that instant pointing a weapon at the law enforcement officer, but is carrying a weapon and running for cover.

H. Substantial Risk

1. Any discharge of a firearm entails some risk of an unintended outcome. A substantial risk exists when a law enforcement officer disregards a foreseeable likelihood that innocent persons will be endangered.

2. For example, firing a weapon into a confined space (room, vehicle, etc.) occupied by innocent persons exposes those persons to a substantial risk of harm.

I. Law Enforcement Officer

1. Any person sworn to enforce the criminal laws of the State of New Jersey, who is certified by the Police Training Commission, or is currently employed by a public safety agency and is authorized to carry a firearm under *N.J.S.A.* 2C:39-6.

I. Authorization and Limitations

A. Use of Force

1. A law enforcement officer may use physical force or mechanical force when the officer reasonably believes it is immediately necessary at the time:

a. to overcome resistance directed at the officer or others; *or*

b. to protect the officer, or a third party, from unlawful force; *or*

c. to protect property; *or*

d. to effect other lawful objectives, such as to make an arrest.

B. Use of Deadly Force

1. A law enforcement officer may use deadly force when the officer reasonably believes such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm.

2. A law enforcement officer may use deadly force to prevent the escape of a fleeing suspect

a. whom the officer has probable cause to believe has committed an offense in which the suspect caused or attempted to cause death or serious bodily harm; *and*

b. who will pose an imminent danger of death or serious bodily harm should the escape succeed; *and*

c. when the use of deadly force presents no substantial risk of injury to innocent persons.

3. If feasible, a law enforcement officer should identify himself/herself and state his/her intention to shoot before using a firearm.

C. Restrictions On The Use of Deadly Force

1. A law enforcement officer is under no obligation to retreat or desist when resistance is encountered or threatened. However, a law enforcement officer shall not resort to the use of deadly force if the officer reasonably believes that an alternative to the use of deadly force will avert or eliminate an imminent danger of death or serious bodily harm, and achieve the law enforcement purpose at no increased risk to the officer or another person.

2. A law enforcement officer shall not use deadly force to subdue

persons whose actions are only destructive to property.

3. Deadly force shall not be used against persons whose conduct is injurious only to themselves.

4. Under current state statutes the discharge of any projectile from a firearm is considered to be deadly force, including less lethal means such as bean bag ammunition or rubber bullets. For that reason, these and similar less lethal means of deadly force can only be used when an officer reasonably believes such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm.

5. A law enforcement officer shall not discharge a weapon as a signal for help or as a warning shot.

6. While any discharge of a firearm entails some risk, discharging a firearm at or from a moving vehicle entails an even greater risk of death or serious injury to innocent persons. The safety of innocent people is jeopardized when a fleeing suspect is disabled and loses control of his or her vehicle. There is also a substantial risk of harm to occupants of the suspect vehicle who may not be involved, or involved to a lesser extent, in the actions which necessitated the use of deadly force.

   a. Due to this greater risk, and considering that firearms are not generally effective in bringing moving vehicles to a rapid halt, officers shall not fire from a moving vehicle, or at the driver or occupant of a moving vehicle unless the officer reasonably believes:

      (1) there exists an imminent danger of death or serious bodily harm to the officer or another person; *and*

      (2) no other means are available at that time to avert or eliminate the danger.

   b. A law enforcement officer shall not fire a weapon solely to disable moving vehicles.

D. Exhibiting a Firearm

1. A law enforcement officer shall not unholster or exhibit a firearm

except under any of the following circumstances:

a. For maintenance of the firearm;

b. To secure the firearm;

c. During training exercises, practice or qualification with the firearm;

d. When circumstances create a reasonable belief that it may be necessary for the officer to use the firearm;

e. When circumstances create a reasonable belief that display of a firearm as an element of constructive authority helps establish or maintain control in a potentially dangerous situation in an effort to discourage resistance and ensure officer safety.

II. Training Requirements

A. Every law enforcement agency is required to conduct and document semi-annual training for all officers on the lawful and appropriate use of force and deadly force. This training must be designed to reflect current standards established by statutory and case law, as well as statewide, county and individual agency policy. It should include but not necessarily be limited to the use of force in general, the use of physical and mechanical force, the use of deadly force, and the limitations that govern the use of force and deadly force.

III. Use of Force Reports

A. In all instances when physical, mechanical or deadly force is used, each officer who has employed such force shall complete

1. Any reports made necessary by the nature of the underlying incident; *and*

2. Use of Force Report (Attachment A or agency required format)

IV. Notifications and Reporting

A. Immediate Notifications

1. County and municipal law enforcement agencies shall immediately notify the county prosecutor when the use of physical, mechanical or deadly force results in death or serious bodily injury, or when injury of any degree results from the use of a firearm by a law enforcement officer.

2. County prosecutor's offices shall immediately notify the Division of Criminal Justice when a member of their agency uses physical, mechanical or deadly force which results in death or serious bodily injury, or when injury of any degree results from the use of a firearm by agency personnel.

3. State law enforcement agencies shall immediately notify the Division of Criminal Justice when the use of physical, mechanical or deadly force results in death or serious bodily injury, or when injury of any degree results from the use of a firearm by a law enforcement officer.

B. Reporting

1. County prosecutors shall within 24 hours report to the Division of Criminal Justice all situations where the use of deadly force by a law enforcement officer results in death or serious bodily injury, or in situations where any injury results from the use of a firearm by a law enforcement officer.

2. For all situations involving the use of physical, mechanical or deadly force, county and municipal law enforcement agencies shall report at least annually to the county prosecutor in a manner established by the prosecutor.

3. For all situations involving the use of physical, mechanical or deadly force, state law enforcement agencies shall report at least annually to the Division of Criminal Justice in a manner established by the Director of the Division of Criminal Justice.

Attachment A

Model Use of Force Report

_____ POLICE DEPARTMENT

USE OF FORCE REPORT

A. Incident Information

Date	Time	Day of Week	Location	INCIDENT NUMBER

Type of Incident
☐ Crime in progress ☐ Domestic ☐ Other dispute ☐ Suspicious person ☐ Traffic stop
☐ Other (specify)

B. Officer Information

Name (Last, First, Middle)		Badge #	Sex	Race	Age	Injured Y / N	Killed Y / N
Rank	**Duty assignment**	**Years of service**		**On-Duty Y / N**		**Uniform Y / N**	

C1. Subject 1 (List only the person who was the subject of the use of force by the officer listed in Section B.)

Name (Last, First, Middle)	Sex	Race	Age	Weapon Y / N	Injured Y / N	Killed Y / N

☐ Under the influence
☐ Other unusual condition (specify)

Arrested Y / N

Charges

Subject's actions (check all that apply)
☐ Resisted police officer control
☐ Physical threat/attack on officer or another
☐ Threatened/attacked officer or another with blunt object
☐ Threatened/attacked officer or another with knife/cutting object
☐ Threatened/attacked officer or another with motor vehicle
☐ Threatened officer or another with firearm
☐ Fired at officer or another
☐ Other (specify)

Officer's use of force toward this subject (check all that apply)
☐ Compliance hold
☐ Hands/fists
☐ Kicks/feet
☐ Chemical/natural agent
☐ Strike/use baton or other object
☐ Canine
☐ Other (specify)

Firearms Discharge
☐ Intentional
☐ Accidental

Number of Shots Fired _____
Number of Hits _____
[Use 'UNK' if unknown]

C2. Subject 2 (List only the person who was the subject of the use of force by the officer listed in Section B.)

Name (Last, First, Middle)	Sex	Race	Age	Weapon Y / N	Injured Y / N	Killed Y / N

☐ Under the influence
☐ Other unusual condition (specify)

Arrested Y / N

Charges

Subject's actions (check all that apply)
☐ Resisted police officer control
☐ Physical threat/attack on officer or another
☐ Threatened/attacked officer or another with blunt object
☐ Threatened/attacked officer or another with knife/cutting object
☐ Threatened/attacked officer or another with motor vehicle
☐ Threatened officer or another with firearm
☐ Fired at officer or another
☐ Other (specify)

Officer's use of force toward this subject (check all that apply)
☐ Compliance hold
☐ Hands/fists
☐ Kicks/feet
☐ Chemical/natural agent
☐ Strike/use baton or other object
☐ Canine
☐ Other (specify)

Firearms Discharge
☐ Intentional
☐ Accidental

Number of Shots Fired _____
Number of Hits _____
[Use 'UNK' if unknown]

➤ **If this officer used force against more than two subjects in this incident, attach additional USE OF FORCE REPORTS.**

Signature:	Date:
Print Supervisor Name:	Supervisor Signature:

7/2001

Appendix C: New Jersey Open Public Records Act Request Form

Place Logo Here

AGENCY NAME HERE

OPEN PUBLIC RECORDS ACT REQUEST FORM

Agency Address

Agency Telephone Number & Fax Number

Agency e-mail address

Name of Agency Custodian

Place Logo Here

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information -- Please Print

First Name _____ MI _____ Last Name _____

E-mail Address _____

Mailing Address _____

City _____ State _____ Zip _____

Telephone _____ FAX _____

Preferred Delivery: Pick Up _____ US Mail _____ On-Site Inspect _____ Fax _____ E-mail _____

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I ***HAVE / HAVE NOT*** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature _____ Date _____

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash Check Money Order

Fees: Letter size pages - $0.05 per page
Legal size pages - $0.07 per page
Other materials (CD, DVD, etc) – actual cost of material

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

AGENCY USE ONLY

Est. Document Cost _____

Est. Delivery Cost _____

Est. Extras Cost _____

Total Est. Cost _____

Deposit Amount _____

Estimated Balance _____

Deposit Date _____

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open _____

Denied - Closed _____

Filled - Closed _____

Partial - Closed _____

AGENCY USE ONLY

Tracking Information

Tracking # _____

Rec'd Date _____

Ready Date _____

Total Pages _____

Final Cost

Total _____

Deposit _____

Balance Due _____

Balance Paid _____

Records Provided

_____ **Custodian Signature**

_____ **Date**

DEPOSITS

The custodian may require a deposit against costs for reproducing documents sought through an anonymous request whenever the custodian anticipates that the documents requested will cost in excess of $5 to reproduce.

Where a special service charge is warranted under OPRA, that amount will be communicated to you as required under the statute. You have the opportunity to review and object to the charge prior to it being incurred. If, however, you approve of the fact and amount of the special service charge, you may be required to pay a deposit or pay in full prior to reproduction of the documents.

YOUR REQUEST FOR RECORDS IS DENIED FOR THE FOLLOWING REASON(S):

(To be completed by the Custodian of Records – check the box of the numbered exemption(s) as they apply to the records requested. If multiple records are requested, be specific as to which exemption(s) apply to each record. **Response is due to requestor as soon as possible, but no later than seven business days**.)

N.J.S.A. 47:1A-1.1

- ☐ Inter-agency or intra-agency advisory, consultative or deliberative material
- ☐ Legislative records
- ☐ Law enforcement records:
  - ☐ Medical examiner photos
  - ☐ Criminal investigatory records (however, N.J.S.A. 47:1A-3.b. lists specific criminal investigatory information which must be disclosed)
  - ☐ Victims' records
- ☐ Trade secrets and proprietary commercial or financial information
- ☐ Any record within the attorney-client privilege
- ☐ Administrative or technical information regarding computer hardware, software and networks which, if disclosed would jeopardize computer security
- ☐ Emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein
- ☐ Security measures and surveillance techniques which, if disclosed, would create a risk to the safety or persons, property, electronic data or software
- ☐ Information which, if disclosed, would give an advantage to competitors or bidders
- ☐ Information generated by or on behalf of public employers or public employees in connection with:
  - ☐ Any sexual harassment complaint filed with a public employer
  - ☐ Any grievance filed by or against an employee
  - ☐ Collective negotiations documents and statements of strategy or negotiating
- ☐ Information that is a communication between a public agency and its insurance carrier, administrative service organization or risk management office
- ☐ Information that is to be kept confidential pursuant to court order
- ☐ Certificate of honorable discharge issued by the United States government (Form DD-214) filed with a public agency
- ☐ Social security numbers
- ☐ Credit card numbers
- ☐ Unlisted telephone numbers
- ☐ Drivers' license numbers
- ☐ Certain records of higher education institutions:
  - ☐ Research records
  - ☐ Questions or scores for exam for employment or academics
  - ☐ Charitable contribution information
  - ☐ Rare book collections gifted for limited access
  - ☐ Admission applications
  - ☐ Student records, grievances or disciplinary proceedings revealing a students' identification
- ☐ Biotechnology trade secrets **N.J.S.A. 47:1A-1.2**
- ☐ Convicts requesting their victims' records **N.J.S.A. 47:1A-2.2**
- ☐ Ongoing investigations of non-law enforcement agencies (must prove disclosure is inimical to the public interest) **N.J.S.A. 47:1A-3.a.**
- ☐ Public defender records **N.J.S.A. 47:1A-5.k.**
- ☐ Upholds exemptions contained in other State or federal statutes and regulations, Executive Orders, Rules of Court, and privileges created by State Constitution, statute, court rule or judicial case law **N.J.S.A. 47:1A-9**
- ☐ Personnel and pension records (however, the following information must be disclosed:
  - An individual's name, title, position, salary, payroll record, length of service, date of separation and the reason for such separation, and the amount and type of any pension received
  - When required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the US, or when authorized by an individual in interest
  - Data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information **N.J.S.A. 47:1A-10**

N.J.S.A. 47:1A-1

- ☐ "a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy."

Burnett v. County of Bergen, 198 N.J. 408 (2009). Without ambiguity, the court held that the privacy provision "is neither a preface nor a preamble." Rather, "the very language expressed in the privacy clause reveals its substantive nature; it does not offer reasons why OPRA was adopted, as preambles typically do; instead, it focuses on the law's implementation." "Specifically, it imposes an obligation on public agencies to protect against disclosure of personal information which would run contrary to reasonable privacy interests."

Executive Order No. 21 (McGreevey 2002)

- ☐ Records where inspection, examination or copying would substantially interfere with the State's ability to protect and defend the State and its citizens against acts of sabotage or terrorism, or which, if disclosed, would materially increase the risk or consequences of potential acts of sabotage or terrorism.
- ☐ Records exempted from disclosure by State agencies' proposed rules.

Executive Order No. 26 (McGreevey 2002)

- ☐ Certain records maintained by the Office of the Governor
- ☐ Resumes, applications for employment or other information concerning job applicants while a recruitment search is ongoing
- ☐ Records of complaints and investigations undertaken pursuant to the Model Procedures for Internal Complaints Alleging Discrimination, Harassment or Hostile Environments
- ☐ Information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation
- ☐ Information in a personal income or other tax return
- ☐ Information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness, except as otherwise required by law to be disclosed
- ☐ Test questions, scoring keys and other examination data pertaining to the administration of an examination for public employment or licensing
- ☐ Records in the possession of another department (including NJ Office of Information Technology or State Archives) when those records are made confidential by regulation or EO 9.

Other Exemption(s) contained in a State statute, resolution of either or both House of the Legislature, regulation, Executive Order, Rules of Court, any federal law, federal regulation or federal order pursuant to N.J.S.A. 47:1A-9.a.
(Please provide detailed information regarding the exemption from disclosure for which you are relying to deny access to government records. If multiple records are requested, be specific as to which exemption(s) apply to each record.)

REQUEST FOR RECORDS UNDER THE COMMON LAW

If, in addition to requesting records under OPRA, you are also requesting the government records under the common law, please check the box below.

A public record under the common law is one required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence of something written, said, or done, or a written memorial made by a public officer authorized to perform that function, or a writing filed in a public office. The elements essential to constitute a public record are that it be a written memorial, that it be made by a public officer, and that the officer be authorized by law to make it.

☐ Yes, I am also requesting the documents under common law.

If the information requested is a "public record" under common law and the requestor has a legally recognized interest in the subject matter contained in the material, then the material must be disclosed if the individual's right of access outweighs the State's interest in preventing disclosure.

Please set forth your interest in the subject matter contained in the requested material:

_____

_____

_____

Note that any challenge to a denial of a request for records under the common law cannot be made to the Government Records Council, as the Government Records Council only has jurisdiction to adjudicate challenges to denials of OPRA requests. A challenge to the denial of access under the common law can be made by filing an action in Superior Court.

1. All government records are subject to public access under the Open Public Records Act ("OPRA"), unless specifically exempt.
2. A request for access to a government record under OPRA must be in writing, hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian. N.J.S.A. 47:1A-5.g. The seven (7) business day response time does not commence until the records custodian receives the request form. If you submit the request form to any other officer or employee of the ***Name of Agency***, that officer or employee must either forward the request to the appropriate custodian, or direct you to the appropriate custodian. N.J.S.A. 47:1A-5.h.
3. Requestors may submit requests anonymously. If you elect not to provide a name, address, or telephone number, or other means of contact, the custodian is not required to respond until you reappear before the custodian seeking a response to the original request.
4. The fees for duplication of a government record in printed form are listed on the front of this form. We will notify you of any special service charges or other additional charges authorized by State law or regulation before processing your request. Payment shall be made by cash, check or money order payable to the ***Name of Agency.***
5. ***You may be charged a 50% or other deposit when a request for copies exceeds $25.*** The ***Name of Agency*** custodian will contact you and advise you of any deposit requirements. You agree to pay the balance due upon delivery of the records. Anonymous requests in excess of $5.00 require a deposit of 100% of estimated fees.
6. Under OPRA, a custodian must deny access to a person who has been convicted of an indictable offense in New Jersey, any other state, or the United States, **and** who is seeking government records containing personal information pertaining to the person's victim or the victim's family. This includes anonymous requests for said information.
7. By law, the ***Name of Agency*** must notify you that it grants or denies a request for access to government records within seven (7) business days after the agency custodian of records receives the request. If the record requested is not currently available or is in storage, the custodian will advise you within seven (7) business days after receipt of the request when the record can be made available and the estimated cost for reproduction.
8. You may be denied access to a government record if your request would substantially disrupt agency operations and the custodian is unable to reach a reasonable solution with you.
9. If the ***Name of Agency*** is unable to comply with your request for access to a government record, the custodian will indicate the reasons for denial on the request form or other written correspondence and send you a signed and dated copy.
10. Except as otherwise provided by law or by agreement with the requester, if the agency custodian of records fails to respond to you within seven (7) business days of receiving a request, the failure to respond is a deemed denial of your request.
11. If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the ***Name of Agency*** to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council ("GRC") by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at PO Box 819, Trenton, NJ, 08625, by e-mail at *grc@dca.state.nj.us*, or at their web site at *www.state.nj.us/grc*. The Council can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.
12. Information provided on this form may be subject to disclosure under the Open Public Records Act.