

Literature Review

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## LITERATURE REVIEW

### Introduction

The use of police deadly force has been an issue for decades, since the early 1960's when several forms of protests took center stage. The protests were centered not on the discouragement of force and use of force by the police but rather on the judgment employed by officers to make use of force. According to Levin (2015) the protests sparked interest in the law. Previously, the law allowed officers to make use of any form of force when apprehending suspects, whether such suspects were armed or not, fleeing or not. However, the Supreme Court has since voided this law, allowing prosecution of officers who are found to have made use of force unjustifiably within the workplace environment. Ross (2016) reports that there are over 1000 deaths that are attributed to officers each year. A recent spike in increased fatal shooting of criminals, and in some cases innocent bystanders have led to a renewed interest in understanding the use of violence among officers to deal with criminals. While many studies have focused on understanding the crucial moments in which officers determine to use violence and the effects thereafter, few if any have considered the importance of the procedures and processes that are applied to prosecuting the police officers. Controversy exists on whether, officers should be held to a higher standard because of their training and duty to protect the community from any form of violence, even when such violence comes from within the force or the same officers should be given leeway in cases of violence simply because of the duties and risks that they taken on to ensure the safety of the community (Panwala 2002).

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### **Arresting of officers**

In his study Levin (2015) highlights that between the year 2005 and 2017, at least 80 police officers have been arrested on murder charges. He cites that this in itself stands as a contradiction to the nature of media and news reported. Jacobi (2000) agrees stating that on a daily basis, a review of media information and newspapers, shows that there are increased cases of young innocent lives being taken away by officers. This in itself, shows a form of favoritism towards officers when the case of murder applies to them. There are many officers, who have not faced the same kind of justice that would be faced by their civilian counterparts with similar charges. Chemerinsky (2000) states that even with increasing focus on the use of firearms and other weapons by police officers whether during arrest or another engagement with civilians, there are states which are still lacking the vital procedures that are necessary to prosecute and arrest officers. However, in states where there is a large population of minorities living within, there are strict procedures that come with the use of any form of firearm or violence even during an arrest. This includes immediate collection of the weapons used and statements issued with regard to the perception of the various witnesses involved. This in itself stems from the desire to collect data and information while it is fresh and the facts are yet to be distorted.

With the media's disregard for facts and the continued sensitization of any form of shooting involving officers, witnesses and those involved are most likely to charge their facts and the information to suit what they have heard and what they think should be reported, (Costa 2011). Collection of immediate evidence provides two distinct advantages, first it provides a line of defense for the officer, and second in cases of misconduct it allows for proper investigation without bias. The law requires that all officers be investigated when a shooting whether fatal or otherwise occurs. To allow for proper investigation, officers are often taken through by an independent

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investigation body whose main focus is on gathering evidence and curbing misconduct of officers. However, such investigations rarely take the time, energy and resources that are granted to the civilian murderers facing the same criminal behavior. Majority of the time, officers involved in a shooting are back on the streets within hours of the occurrence.

**Literature gap:** it is clear that there are procedures that allow for the arrest of officers when murder or criminal injustice occurs, however the number of officers arrested remains quite low. Is this the result of poor application of the same procedures in comparison with the civilian arrest procedures or is the expected number of prosecution high because of the sensitization of police murders by the officers?

### **Gathering of evidence**

McArdle and Erzen (2001) in his study grew increasingly concerned with regard to the nature of processes and procedures applied in collection of evidence where officers were involved in a murder. His concern was two pronged: one the one hand, evidence is often subject to interpretation of the investigators and as such can be manipulated to suit the outcome of the case; while on the other hand, officers have the knowledge and are highly trained with regard to interpretation of the evidence. This therefore raises concern with regard to the authenticity of any form of evidence gathered against fellow officers. Smith and Holmes (2012) note that while officers investigating the police are independent and separate from the officers themselves, those tasked with gathering evidence and processing the same are in fact officers. Due to the nature of relationship that exists between the “brotherhoods of the blues”, they are not easily motivated to gather evidence that could begin the prosecution of their fellow officers. According to Shaw (2012) one of the solutions in terms of gathering accurate evidence has been the proposal to purchase and require the wearing of body con cameras while off duty. The cameras would record the incidence as it were, allowing

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for faster interpretation of the evidence. However, the cameras raise a new form of challenge. First officers are not properly trained on the use of the camera and may therefore fail to turn on the cameras especially in high adrenaline situations. At the time, their concern may not be in collection of evidence but rather mitigating situations that they have been called to. Secondly, if officers are required to have the cameras on during the entire shift, the data gathered though relevant would be too much for analysis. This will in turn cause delay in gathering of relevant information, interpretation of such information and final arrest of the officers. Kartz (2014) concludes that with limited resources, and low personnel, gathering of evidence in police murder cases lacks the momentum that would ensure a successful prosecution and presentation of the case, with evidence taking time to be presented and lacking proper support and interpretation that would give preference to the case rather than the individual.

Literature gap: there is a lot that has been researched with regard to improvement of procedures involved in gathering evidence against civilian murders, yet the same is absent when it comes to officers involved in murder. The assumption is made by academicians that officers are aware of the relevant procedures, but are they able to apply the same caution and professionalism when it comes to gathering evidence against their fellow officers.

### **Prosecution and conviction of police officers**

Lersh and Mieczkowski (2005) in their research found that less than 35% of the officers brought to court are convicted on murder. And for majority of those convicted charges are often reduced to criminal negligence or manslaughter. This is in comparison to the more than 76% convictions against civilians arrested for murder. Despite growing evidence, where in many cases this may include video recordings as well as testimonies of eye witnesses, officers are rarely convicted.

Belur (2005) gives an example of 2014 shooting of Tamir Rice. There were several pieces of

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evidence that suggested gross misconduct of the officers involved. First the victim was only twelve years old, the relay of the message by dispatch was lacking in terms of details and the officers immediately opened fire of the young boy carrying a toy pistol around a parking lot which in itself had surveillance cameras. Despite all this, the officers involved were found not guilty and the charges against them dropped.

Chevigny (2003) draws from a different line of evidence, despite all prosecutions and charges against officers being dropped, families of victims going to civil court are often awarded large sums of money and sometime settlements are reached out of court to avoid rehashing of the details of the case. This in itself is a form of admission of guilt by the city employing the officers and the police officers themselves regarding the use of force. There are several studies that have focused on identifying factors that delay and in some cases cause a lack of conviction of officers facing murder charges. White (2001) found that whereas civilians are often willing to testify and play their role in putting way criminals, and even where such motivation is lacking they are forced by the law to do the same, officers abide by a strictest code of silence. Officers who testify against their fellow officers as witnesses to the fatal killing of civilians or even other officers are considered black sheep, and betrayers. Majority of the time, they are bullied and isolated so much that they develop mental illness and maybe forced to leave their place of employment. Secondly, evidence against officers is hard to come by and interpret since prosecution of officers depends largely on the perception and state of mind of the officer during the incidence which in most case they are the only ones privy to. Unlike civilians, an officer's state of mind is crucial in determining their guilt or lack thereof in any case. Finally, even for prosecutors, charging and indicting officers often seems to be in bad taste, an elements that would deactivate other officers and lead to laxity in investigating and dealing with crime. Terrill and Paoline (2017) therefore state that prosecution

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and indictment of officers is a last resort and is pursued with less enthusiasm than would be the case against civilians where it's considered a source of pride.

In addition, in order to gain conviction, prosecutors face a much larger role in establishing the burden of proof. While for civilians, the burden of proof simply is defined as evidence that the individual indeed committed the crime or caused harm to society. For police officers the burden of proof is much higher, prosecutors not only have to show that a crime was committed, but also that there was misconduct in the crime committed. This means that the officer acted in a manner that was not professional, and interpreted the situation they were involved in not just falsely but also with intention of causing harm (Jacobs 1998). Because of this, the chances of success for the prosecution are often much lower and therefore prosecutors are less than enthusiastic about pursuing such cases. Where local prosecution falls short, fails to prove the case or even falls short in terms of pursuit of justice, the federal courts are given the opportunity to pursue the same case. However, Willits and Nowacki (2014) shows that federal prosecution rarely takes place where local prosecution has fallen short. This is in exception with the largely recognized case of Rodney King which remains unique to date. Local prosecutors failed to find the officers guilty of beating Rodney to death. However, the federal court found them guilty of depriving Rodney King of his constitutional rights.

**Literature gap:** evidence shows that arrests are made when officers kill and go against the law, however even with growing amounts of evidence, sometimes undisputable evidence including video recording and eye witness statements, officers are rarely convicted. The same evidence facing a civilian would lead to immediate conviction and harsh sentencing, what therefore causes the disparity between the evidence, presentation of the case and final conviction of the officers?

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### **Punitive versus administrative control procedures**

For each state, procedures and process on dealing with the problem of police officers who kill differs. While for the civilians, the process of prosecution is similar in each state, for officers it not only varies with in states but sometimes also within departments. Perez (2000) states that currently, society is calling for more punitive measures to discourage the use of force among the officers. For those who encourage the use of punitive control, the focus is on discouraging the same actions among officers in the future and temptation to take the same steps. Punitive actions are mainly employed by the internal affairs unit, which not only investigates officers who are suspected of certain actions, but also determines the right course of action. Evidence collected may lead to prosecution of the officers who have been involved in fatal shooting and murder of suspects. However, the internal affairs has continuously faced many challenges in completing their mandate. On the one hand, prosecution requires presentation of evidence, which though present is often difficult to make use of and interpret. On the other hand, witnesses whether citizens or police officers, are often unwilling to testify in court and during the investigation. While they may be willing to tell the truth and tell their side of the story anonymously, citizens are unable to trust officers to police themselves, and thus fearing retaliation are often unwilling to officially make a statement and be quoted as having made specific allegations.

By 1997, many states in an attempt to calm citizens who felt that the government was failing to govern and control officers introduced civilian review boards. According to Simmons (2009), the civil review boards provide a very unique advantage in addressing prosecution of officers. The review boards are mandated to collect information from the community, review past conduct of the officers and further make recommendations based on the evidence provided. Community citizens are always wiling and more comfortable trusting their fellow civilians. They are more



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willing to make statements, and provide much needed evidence to control and prosecute the officers. The board tries to maintain independence in investigating any form of police misconduct. The police review boards, provide a unique form of transparency in addressing the issues that the citizens bring in against the officers. However, as Miller (2015) states, often the prosecutors and even the internal affairs body ignore the importance of the recommendations made by the review board which then renders the civilian review board, a toothless dog.

The processes of police prosecution came into light during the Christopher commission. The commission was formulated to investigate and provide recommendations with regard to regulating the conduct of the police officers. The history of the commission is clear. Rodney King a motorist was falsely arrested and beaten down by officers who were not only identified but also recorded. The result was an ongoing cry among the community members to deal with rising police misconduct. Following continue civil unrests; the commission was established to bring proper, structured changes to the police process. As shown by Linder (2007), one of the recommendations of the commission was the establishment of the inspector general office. The office provides proper policing of the officers and regulates the application of the processes that are needed for the prosecution of the same officers.

To curb rising cases of police brutality and scenarios where officers are involved in murder, Jenkins (2002) however makes recommendation to pursue more preventive measures. Since punishment fails most of the time, then the officers should focus more on enhancing the police face and increasing proper conduct. It is to be noted that only a few officers have been involved in murder, brutality and killing. However, because of their level of professionalism, thousands of officers are viewed negatively in the community and the once noble profession continues to fall short in terms of impressing the very people they work hard to protect. As per, Dowler and

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Zawilski (2007) a growing number of cities have developed early warning systems. The systems focus on identifying cautionary behaviors among the officers, officers who have faced several forms of complaints and flowing up on various surveillance tools. He provides an example, of the Pittsburg police who through computerization that monitors every aspect of the police officers professional life. It keeps every detail of the police officers professional life including race of individuals involved. The result is that officers are either suspended, or counseled to avoid the fatal killing of innocent victims.

**Literature gap:** the process of dealing with prosecution of officers is one that has been structured and quite clear since the Christopher commission. Yet, even for the internal affairs authority, there are challenges encountered with managing and application of the process. Has the focus been overly directed towards administrative measures, so that punitive measures which would be more discouraging to negative behavior have been rendered useless and inactive?

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