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Measuring Disproportionate Treatment in Policing: One Department’s Experience

Heidi S. Bonner and Michele Stacey

Abstract
Detecting disparate impact in policing practice is essential, but those tasked with developing such inquiry face significant challenges in designing analyses. Racial profiling research has also been plagued by an inability to gain consensus regarding valid comparison groups – commonly termed the “denominator problem” in benchmarking analyses. The current inquiry details the process and outcome of using the disproportionality index (Dolan Consulting Group, 2016) to investigate several enforcement actions at a midsize department in the southeastern United States. The findings highlight the importance of combining the appropriate benchmark with the appropriate level of analysis, and the need for more scholarly inquiry into disproportionate treatment in a variety of law enforcement outcomes. The correlation between selected geographical locations and the disproportionality index in the assessment of disparity during traffic stops, field contacts, and arrest is discussed.

Keywords
Disproportionate impact, law enforcement, disparity, racial and ethnic minority, traffic stops, searches, field contacts, arrest

It is no secret that the nature of police contact with the community can have a significant influence on how the public views law enforcement (Worrall, 1999; Tyler & Wakslak, 2004; Taniguchi et al., 2017). Thus, detecting disparate impact in policing practice is essential, but researchers and practitioners tasked with developing such inquiry face significant challenges in designing analyses. Police-community encounters are intricate, and data collected about these interactions can never

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fully capture the complexity involved. Simplifying the data for the purpose of analysis can sometimes distort results which may in turn result in misguided policy intervention (Worden, McLean, & Wheeler, 2012). There have been substantial strides made in such research made over the last 15 years, but these advances have been hampered by the “denominator problem,” or an inability to gain consensus on valid comparison groups. Further, such research remains plagued by methodological limitations, including an inability to draw cause and effect inferences (Smith, Rojek, Petrocelli, & Withrow, 2017).

This research uses a different approach, a disproportionality index (DI; Dolan Consulting Group, 2016), to present a case study of the process and outcome of investigating several enforcement actions.1 The DI is calculated by dividing the percentage observed of a particular racial category for a particular enforcement activity by the percentage expected. Previous research has compared benchmarks with actual enforcement activity and reported the results as a ratio or rate. The DI is an intuitive means of describing the degree (if any) of disparity that can be utilized across numerous enforcement activities. Although Smith et al. (2017) called for improved methodologies that could address whether observed disparities were the result of bias or discrimination, we are unable to do so with the current inquiry. However, although we cannot know its scope, training on the DI is being received by law enforcement agencies and, for many, the guidelines represent a tangible way to measure disproportionality in several enforcement decisions using data that are (or should be) available. While the measure of interest, the disproportionality index (DI), has been used in other contexts there is not (as far as we are aware) any empirical test in the disproportionate policing literature. Thus, this research uses the DI to measure disproportionality in one department to (1) review the use of alternate benchmarks for a variety of outcomes, (2) evaluate the utility of the DI as a form of analysis, and (3) consider the feasibility of measuring disparate impact in a typical midsize department in terms of geographical distribution of crime, and the availability of and access to data needed. Our findings have implications for how departments should test, and ultimately communicate, findings regarding disparate impact in policing.

**Bias, Disproportionality, and Benchmarking**

Prior research that has measured disparities in policing has hypothesized that disproportionality “may result from several mechanisms: racial animus or prejudice, the use of race as a shorthand for perceived criminal propensity (racial profiling), cognitive bias and stereotyping, and/or differential police deployment” (Tomaskovic-Devey, Mason, & Zingraff, 2004; Smith et al., 2017, p. 167). The term “bias” encompasses both implicit (subconscious biases that may create stereotypes affecting behavior) and explicit (conscious animosity toward a group) bias, and both types have been posited as explanations for disparities in enforcement action (Lum & Wu, 2017). Offending patterns that differ by race (Smith et al., 2017; Lum & Wu, 2017) and agency choices about where and when to police (if focused on places with high concentrations of people of color) (Lum & Wu, 2017) may result in unequal (but nonbiased) enforcement (Smith et al., 2017).

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1 Fridell (2005b) first proposed a similar index of disparity.
Although much previous research has referenced the terms “bias” and “bias policing” (or bias-based policing), it is important to state at the outset that disproportionality does not necessarily indicate bias. Early analyses of disproportionate impact focused on responses to claims of racial bias and furthered evaluation of bias-based policing. However, use of the word “bias” presumes the motivation behind enforcement behavior. Even if a disproportionate impact is found, it cannot be assumed that it is due to racial prejudice on the part of the officer (Engel, Calnon, & Bernard, 2002). Thus, in the review of the literature, we use the term “disparate impact” or “disproportionality” throughout to reflect this understanding – prior literature that refers to bias has been changed.

In a systematic review, Smith et al. (2017) succinctly summarized the history of research on racial disparity in police enforcement. Initial interest in the topic started in the 1960s (Black, 1971; Black & Reiss, 1970; LaFave, 1965; Reiss, 1971), and racial profiling (which focused on disproportionality in traffic and pedestrian stops) was introduced in the late 1990s (Engel & Calnon, 2004; Smith & Petrocelli, 2001; Smith et al., 2004; Withrow, 2006). More recent high-profile uses of lethal force by police have led to increased scrutiny of disproportionality in enforcement decisions, including the creation of the President’s Task Force on 21st Century Policing (President’s Task Force on 21st Century Policing, 2015; Smith et al., 2017).

Fridell (2005a) notes two criteria for taking viable measurements of data related to disparate treatment: first, that “they be linked to the race/ethnicity of the suspect or perpetrator” and second, that the “measures reflect as closely as possible actual crime as opposed to crime responded to by police” (p. 9). In order to effectively conduct research of disproportionality, it is essential that a baseline comparison group (often called a benchmark) be established. Benchmarking is the “process of measuring data against an established standard for the purpose of evaluation or judgment” (International Association of Chiefs of Police, 2006, p. 178), and benchmarks are used to determine whether disparity exists in enforcement decisions. An effective benchmark should be scientifically credible, have practical value, be politically sound (Walker, 2003), should account for any measurement challenges that exist within the jurisdiction under study (Withrow & Williams, 2015; Smith et al., 2017), and should indicate the race or ethnic proportion if no disparate treatment exists. However, the development of effective benchmarks that reflect the population at risk for a particular enforcement activity has been fraught with difficulty, and this problem can be considered the most controversial aspect of research on disproportionate impact (Withrow, 2006). The following sections summarize the existing research utilizing benchmarking analyses for several law enforcement outcomes.

**Measuring Disproportionality in Traffic Stops**

Most of the existing work on disproportionate treatment in policing has looked at traffic stops. Traffic stops are especially important to investigate because they hold “the greatest potential for police racial bias, or perceptions of it” (Fridell, Lunney, Diamond, & Kubu, 2001, p. 122). Early analyses of stops (which focused exclusively on potential disparity related to race) compared those who were stopped to the residential population. However, using Census data as a benchmark is inherently misleading because it does not appropriately consider those who do not drive, those in the driving population who are not residents, or variations in driving behavior (Farrell, Rumminger,
& McDevitt, 2004; Fridell, 2004; Engel & Calnon, 2004; Tillyer, Engel, & Cherkauskas, 2010; Worden, McLean, & Wheeler, 2012; Baumgartner, Epp, & Shoub, 2018). Some researchers weighted Census data to reflect the driving population more accurately (Novak, 2004; Rojek, Rosenfeld, & Decker, 2004; Smith & Petrocelli, 2001; Walker, 2001), but this practice is also problematic (Walker, 2001; Withrow, 2006; Smith et al., 2017).

Other studies have utilized field research to more accurately determine the racial composition of the driving population to generate more valid benchmarks (Lange, Blackman, & Johnson, 2001; Zingraff, Smith, & Tomaskovic-Devey, 2000; Smith et al., 2004). Such field observations, however, are expensive with limited geographical coverage, which limits their generalizability (Engel & Calnon, 2004; Taniguchi et al., 2017). Further, such approaches, although an improvement, still do not appropriately represent who is at risk of being the subject of a particular enforcement action (Fridell, 2005b; Ross, Fazzalaro, Barone, & Kalinowski, 2015).

Other options for benchmarks include DMV data and blind enforcement mechanisms (e.g., red light cameras, radar, air patrol) (Fridell, 2005a). Each of these, however, is not without limitations. Using DMV data is preferable if license data can be linked to racial and ethnic data. However, DMV data cannot assess who is driving in a specific jurisdiction, and some blind enforcement methods are limited in geographical scope (e.g., specific intersections). Comparing high-discretion to low-discretion stops, or daylight versus darkness stops, can expand the geographical area under consideration. Comparing stops to accident data, for example, has been proposed as a strong benchmark because accidents more accurately reflect the driving population and are less likely to be statistically biased in racial/ethnic composition (Alpert, Smith, & Dunham, 2004; International Association of Chiefs of Police, 2006; McDevitt & Iwama, 2016). Researchers have utilized data on not-at-fault drivers in two-vehicle crashes (Alpert et al., 2004) and at-fault and not-at-fault divers in accident records (Withrow & Williams, 2015). Although crashes are a stronger benchmark than the others used for stops, the use of crashes assumes a lack of variation in accidents and in how (or if) they are reported (Taniguchi et al., 2017). The majority of studies have shown that Black motorists are disproportionately stopped regardless of the benchmark used (see Smith et al., 2017, for a review), although two have determined that they are not overrepresented (Lamberth, 2003; Withrow, 2003).

Veil of Darkness

The veil of darkness (VOD) approach, proposed by Grogger and Ridgeway (2006), offers a potential solution to the problem of determining appropriate benchmarks in the assessment of racial profiling in traffic stops. The basic premise is that police are less likely to know the race of a motorist before deciding to make a stop after dark than they are during daylight, and a test for racial profiling can be done by comparing the racial breakdown of stops made during the day to stops made after dark. Thus, the VOD is an analytical approach that uses changes in natural lighting to assess disproportionality in traffic stops. Specifically, the “inter-twilight time” (the period during the year between the earliest end of civil twilight and the latest end of civil twilight) serves as the analysis period. Theoretically, restriction of the analysis to this period adds in natural controls for the quality, quantity, and location of drivers. If there were no disparity, the proportion of people of color stopped during daylight would be the same as the proportion stopped during darkness.
Stopping a significantly greater proportion during the day than at night suggests disproportionate impact because people of color are being stopped more often when an officer can determine the race of the driver.

Since the VOD method was proposed, several studies have utilized it to assess racial profiling in traffic stops (e.g., Grogger & Ridgeway, 2006; Ridgeway, 2009; Ritter & Bael, 2009; Ross et al., 2015; Worden et al., 2012). In 2017, Taniguchi et al. noted that the traditional VOD approach does not account for officer-level variation in stops, does not consider the intersection of sex and race in disparate impact, and does not explore disproportionality across different units. When they extended the VOD approach to account for these limitations, they found that the traditional approach showed no disproportionate impact, but the expanded analysis indicated that Black drivers were disproportionately affected by stops and that the overrepresentation was confined specifically to Black males. Further, racial disproportionality varied considerably between units and across officers. The authors additionally found that disproportionality was present even when they restricted their sample to control for seasonality in traffic patterns.

Horrace and Rohlin (2016) also attempted to improve the original VOD test by redefining the definition of darkness. Specifically, they sought to simulate ambient lighting by using geographical information system (GIS) software to determine streetlight and traffic stop locations, then restricted their testing to locations that had limited artificial lighting. They found that the restricted test (which did not include stops that occurred in well-lit areas) concluded that Black drivers were stopped disproportionately, whereas the full test did not. However, Horrace and Rohlin (2016) note that they cannot explain why this difference exists. It may be due to “differential police behaviors in poorly lit areas, but it could be due to differential driving behaviors or some other unobservable features of poorly lit areas” (p. 231). Kalinowski, Ross, and Ross (2017) also proposed a variation on VOD, controlling for the severity of the infraction that resulted in a stop by limiting the sample to speeding offenses.

**Measuring Disproportionate Impact in Other Enforcement Activities**

**Searches**

Although traffic stops have received most of the research attention when it comes to assessing disproportionate impact among people of color it is not the only enforcement activity of interest. Black community members are also at a greater risk of being searched (Rojek, Rosenfeld, & Decker, 2004; Tillyer, Klahm, & Engel, 2012). Research that has examined disproportionality in searches notes that the percentage searched of specific racial and ethnic groups cannot be used alone to identify the causes of disparities because other factors may account for disproportionate search behavior (Higgins, Vito, & Walsh, 2008; Higgins, Vito, Grossi, & Vito, 2012). Examining the “hit rate” of searches (percentage of searches in which officers find something) is a better way to determine if a disparity exists in the productivity of searches (Fridell, 2005a, p. 10; Knowles, Persico, & Todd, 2001). However, research on disparity in searches has been limited (see Baumgartner et al., 2018, for an exception), particularly on the use of benchmarks to assess disproportionate treatment. The same is true for other law enforcement outcomes.
Stop and Frisk

Disproportionality in stop and frisk has been examined at length in New York City as part of its practice of zero tolerance policing (Smith et al., 2017), and researchers have found that the practice disproportionately affects people of color (Fagan, 2010, 2012; Fagan, Geller, Davies, & West, 2010; Gelman, Fagan, & Kiss, 2007; Smith et al., 2017). Smith et al. (2017), in their review of research examining disparate impact in police enforcement actions, note that different benchmarks for stop and frisk lead to different results (Ridgeway, 2007). When precinct-level census comparisons are used (Fagan, 2010, 2012), Black community members are overrepresented (Ridgeway, 2007). However, census-based benchmarks do not sufficiently account for rates of criminal participation (Fridel, 2004; Smith et al., 2017). When arrestees were used as a benchmark, Black community members were underrepresented in total stops but overrepresented in certain types (e.g., drug-related) of crimes (Ridgeway, 2007). However, arrestees might not best represent the population at risk. In New York City, most individuals stopped by the New York Police Department were never arrested or cited, so arrestees were not a good benchmark for stop and frisk (Gelman et al., 2007). Finally, when reports of criminal suspects (as reported by victims) were used, Blacks were significantly underrepresented (Ridgeway, 2007).

Arrest and Use of Force

A substantial amount of research has included race as a control variable in predicting arrest and use of force. A meta-analysis by Kochel et al. (2011) concluded that people of color were more likely to be arrested than Whites. The results of research on use of force, on the other hand, have been mixed, with generally null findings in regard to race and use of force (Smith et al., 2017). A recent review did not reveal any benchmarking analyses of arrest or use of force (Smith et al., 2017).

Disproportionality Index

Expanding on previous inquiry, the current research utilizes the DI to assess multiple outcomes. As mentioned, the DI has not been used in prior research on disproportionate contact with police. Similar indices have been used to examine racial disparities in child maltreatment victimization (Fluke, Yuan, Hederson, & Curtis, 2003), disproportionality in foster care representation (Summers, 2015), and disproportionate representation in special education programs (Artiles, Rueda, Salazar, & Higareda, 2005). Different benchmarks and geographical areas were utilized to determine whether there was disparate treatment in vehicle stops, field contacts, arrests, and use of force.

Methods

Research Site

Research on disproportionate policing practices was conducted at a midsize department in the southeastern United States (hereafter described with the pseudonym Darden Police Department, or DPD). As of 2017, according to the U.S. Census Bureau, the population of Darden was just under
100,000 people. The city is predominantly White, and 39% of the population is Black. The median household income was just over $35,000.

The DPD provides a definition of biased policing in its policy and procedures manual, noting the difference between criminal profiling and biased policing. Specifically, the former is recognized as one of the many tools officers may use, supported by actionable intelligence, when carrying out their duties. For example, when a suspect is described as a “Black male in his mid-twenties wearing a red shirt,” an officer may stop individuals in the vicinity of the crime who match that description. Officers at DPD, however, are prohibited from using the latter in enforcement activities. Biased policing is described as selecting an individual for enforcement action on the basis of a trait that is common to a specific group (e.g., race, ethnic background, gender, sexual orientation) without a specific cause (e.g., actionable intelligence) to support consideration of that trait.

Officers at DPD receive annual training on issues related to biased policing, and complaints of such are investigated by the department’s Office of Internal Affairs. The department has a generally positive relationship with the community, and assessments of community satisfaction reflect that relationship (Blinded, 2017). There was no specific crisis or event that prompted the current research. The chief, like those in many other jurisdictions, undertook an assessment of disproportionate treatment to proactively address any issues that might arise. Although disparate enforcement practice can be considered for many traits, the focus for the current inquiry was an assessment of disparate treatment among the Black community in the jurisdiction.

The chief of DPD sought to examine several enforcement actions, including traffic stops, field contacts, arrests, searches of persons and cars, and use of force. The benchmarks for each of these analyses were developed in collaboration with the executive leadership at the DPD, and according to best practice. As with other work of this nature, benchmarks serve as a low-discretion/no-discretion comparison to the police activity that is being evaluated for disproportionality. Since best practices regarding analyses of disparities indicate that smaller geographical areas of analysis provide more robust findings, the analyses for DPD were based on areas of strategic high enforcement – namely, hot spots and Data-Driven Approaches to Crime and Traffic Safety (DDACTS) areas.3

**Benchmarks**

The benchmark for traffic stops was crashes. Law enforcement is not involved in the events leading to crashes, so it is an occurrence that involves no discretion by officers. Crash data have been used in several prior studies assessing disproportionality in traffic stops (Alpert, Smith, & Dunham, 2004; Mosher & Pickerill, 2011; Smith et al., 2004). Neither checkpoint nor investigative stops were included in the analysis because these stops provide little opportunity for discretion. The

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2 The Hispanic population in the city is quite small, so the analysis does not include an assessment of disproportionate treatment based on ethnicity.

3 Neighborhood groups, which were identified in collaboration with DPD, were also used to conduct analyses. Neighborhood analyses, however, were based on small sample sizes, which allowed calculation of the DI in only some of the neighborhoods. The results indicated variability throughout the city, with Black community members overrepresented in some neighborhoods but underrepresented in others. Detailed results are available upon request.
benchmarks for field contacts was any known demographic of a suspect of a crime (identified from crime reports) committed in the area (Ridgeway, 2007). Because suspect characteristics (when they are known) are reported by victims, they are also a no-discretion indicator.

Most of the research examining racial disparities in arrests has relied on multivariate analyses (e.g., Brown, 2005; Klinger, 1996; Smith, 1984; Worden & Pollitz, 1984), and these methodologies often require additional information gathered through observation and often not readily available to police department crime analysts. As such, in an effort to choose a no-discretion or low-discretion benchmark that would be readily accessible to police departments, the benchmark for discretionary arrests was arrests based on warrants (issued by a court, or privately) and arrests pursuant to investigation. These arrests are directed and represent low-discretion decisions by officers.

Finally, two benchmarks were used to analyze use of force. The first was assaults on police, and the second was known characteristics of a suspect for Part 1 violent crime (aggravated assaults and robberies) or weapons charges. Both benchmarks represent violent behavior on the part of a suspect but using assaults on police as a benchmark can be problematic. For example, Legewie (2016) found that the shooting of police officers by Black suspects was directly associated with an increase in the use of force by police officers during pedestrian stops of Black individuals in New York City. Thus, an additional no-discretion benchmark was utilized to counter any potential concerns about using assaults on police as a benchmark for use of force.

**Plan of the Analysis**

The primary analytical strategy used to assess the behavior in question against the benchmark was the DI, which is calculated by dividing the percentage observed of a specific racial category for a particular enforcement activity by the percentage expected. Consider a hypothetical example in which 35% of the drivers stopped for speeding are Hispanic (the percentage observed) and 29% of speeding drivers in the area are Hispanic (the percentage expected). To calculate the DI, 35% is divided by 29% to get 1.21 (Dolan Consulting Group, 2016). A DI of 1.0 indicates no disproportionate outcome (i.e., the racial category under examination is no more or less likely to receive enforcement). A DI above 1.0 indicates that enforcement is more likely than expected, whereas a DI below 1.0 indicates that enforcement is less likely than expected. Thus, in the preceding hypothetical example, Hispanic drivers are more likely than would be expected to be stopped for speeding. Very little empirical literature about the DI is available, so determining a specific threshold for concern is difficult. However, a report that focused on providing technical assistance regarding the collection and analysis of data for the assessment of disparate impact noted that some studies used a criterion of 5% (McMahon, Garner, Davis, & Kraus, 2002). Thus, for these purposes, a DI of 1.05 or less indicates that a particular treatment can reasonably be attributed to chance, whereas a DI of 1.10 indicates a moderate amount of disproportionate treatment.
Results

Traffic Stops
To assess disproportionate treatment in traffic stops, crash data were chosen as the benchmark. The race of any driver involved in a traffic crash within the neighborhood group or DDACTS area was compared to the race of the driver in traffic stops. Table 1 presents the results of the analysis comparing traffic stops with crash data in the DDACTS areas, which are high-enforcement zones for traffic. The smallest DI is for the January-June 2015 secondary DDACTS area, at 1.41 (indicating that the likelihood of a Black driver being stopped is 41% greater than would be expected), whereas the largest DI is for the January-June 2015 primary DDACTS area, at 1.69. The average DI across all the DDACTS areas for the full study period is 1.52. Thus, within the DDACTS areas for this time period, a Black driver was 52% more likely to be stopped than would be expected.

Field Contacts
Known characteristics of Part 1 crime suspects were used as the benchmark to determine disproportionality in hot spots. Table 2 indicates that many of the DIs for hot spots fall outside the margin of error (0.95-1.05). The largest DIs, both 1.11, are for the January-June 2015 secondary hot spot and the July-December 2015 secondary hot spot. The primary hot spot for July-December 2015, the secondary hot spot for July-December 2016, the secondary hot spot for January-June 2017, and the 2016 and 2017 combined hot spots all have DIs between 0.95 and 1.05. Taken together, all the hot spot zones in the full time period indicate that a Black community member was 6% more likely to be stopped than would be expected.

Arrests
Table 3 compares discretionary arrests to those that are mandatory (i.e., warrant-based). Only two of the DIs fall outside the specified margin of error. The January-June primary hot spot in 2015 shows 27% lower odds of a Black community member being arrested than would be expected,

<table>
<thead>
<tr>
<th>DDACTS</th>
<th>Traffic Stops</th>
<th></th>
<th>Crashes</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N % Black</td>
<td>N % Black</td>
<td>DI</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jan-June 2015 Primary</td>
<td>915 54.32</td>
<td>634 32.18</td>
<td>1.69</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jan-Dec 2015 Secondary</td>
<td>3,016 52.75</td>
<td>1,298 37.44</td>
<td>1.41</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jan-Dec 2016 Secondary</td>
<td>2,015 65.26</td>
<td>1,247 45.79</td>
<td>1.43</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jan-June 2017 Secondary</td>
<td>2,959 48.23</td>
<td>3,485 31.88</td>
<td>1.51</td>
<td></td>
<td></td>
</tr>
<tr>
<td>July 2015=June 2017 Primary</td>
<td>2,716 53.68</td>
<td>1,456 35.51</td>
<td>1.51</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OVERALL</td>
<td>11,621 54.11</td>
<td>8,120 35.58</td>
<td>1.52</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
whereas the combined hot spots in 2015 show 10% lower odds of a Black community member being arrested than would be expected.

<table>
<thead>
<tr>
<th></th>
<th>Field Contacts</th>
<th>Part I Crime Suspects</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>% Black</td>
</tr>
<tr>
<td>2015</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jan-June Primary</td>
<td>124</td>
<td>88.70</td>
</tr>
<tr>
<td>Jan-June Secondary</td>
<td>123</td>
<td>95.00</td>
</tr>
<tr>
<td>July-Dec Primary</td>
<td>188</td>
<td>90.10</td>
</tr>
<tr>
<td>July-Dec Secondary</td>
<td>124</td>
<td>87.60</td>
</tr>
<tr>
<td>Combined</td>
<td>564</td>
<td>90.10</td>
</tr>
<tr>
<td>2016</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jan-June Primary</td>
<td>193</td>
<td>90.00</td>
</tr>
<tr>
<td>Jan-June Secondary</td>
<td>122</td>
<td>90.60</td>
</tr>
<tr>
<td>July-Dec Primary</td>
<td>130</td>
<td>90.70</td>
</tr>
<tr>
<td>July-Dec Secondary</td>
<td>190</td>
<td>87.20</td>
</tr>
<tr>
<td>Combined</td>
<td>535</td>
<td>89.40</td>
</tr>
<tr>
<td>2017</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jan-June Primary</td>
<td>171</td>
<td>95.10</td>
</tr>
<tr>
<td>Jan-June Secondary</td>
<td>165</td>
<td>85.40</td>
</tr>
<tr>
<td>Combined</td>
<td>336</td>
<td>90.20</td>
</tr>
<tr>
<td>OVERALL</td>
<td>1,535</td>
<td>89.50</td>
</tr>
</tbody>
</table>

**Use of Force**

To examine disproportionality in use of force, two benchmarks were used. Few incidents of use of force occurred within the DPD during the 2.5-year time frame, so that it was not possible to examine use of force within smaller geographical units. Table 4 compares the percentage of Black community members involved in use of force incidents versus the percentage of those charged with assaulting a police officer. The DI is 1.01, which is well within the margin of error. Table 5 compares the percentage of Blacks involved in a use of force incident with the percentage of Black suspects in a violent crime or a weapons charge. The DI is 0.88, which indicates 12% lower odds of a Black community member being involved in a use of force incident than would be expected.

**Supplemental Analyses**

In addition to the DI, specifically for traffic stops, a second analysis was performed in which the VOD method was used. The “inter-twilight” period for the city during the study was the period between 5:24 p.m. (the earliest end of civil twilight) and 8:59 p.m. (the latest end of civil twilight). The sample was further restricted by the removal of stops conducted as part of an investigation,
as these do not involve discretion. Consistent with prior research (Grogger & Ridgeway, 2006; Worden et al., 2012), the VOD method utilizes a logistic regression model to detect any difference between stops in daylight and stops in darkness. Time of day in 30-minute increments is included as a control.

### TABLE 3: Comparing Discretionary to Mandatory Criminal Arrests in Hot Spots

<table>
<thead>
<tr>
<th></th>
<th>Discretionary</th>
<th>Mandatory</th>
<th>DI</th>
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<tbody>
<tr>
<td></td>
<td>N</td>
<td>% Black</td>
<td>N</td>
</tr>
<tr>
<td>2015</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jan-June Primary</td>
<td>353</td>
<td>62.30</td>
<td>153</td>
</tr>
<tr>
<td>Jan-June Secondary</td>
<td>170</td>
<td>92.30</td>
<td>206</td>
</tr>
<tr>
<td>July- Dec Primary</td>
<td>210</td>
<td>90.00</td>
<td>288</td>
</tr>
<tr>
<td>July- Dec Secondary</td>
<td>245</td>
<td>87.70</td>
<td>242</td>
</tr>
<tr>
<td>Combined</td>
<td>938</td>
<td>79.60</td>
<td>889</td>
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<td>2016</td>
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<tr>
<td>Jan-June Primary</td>
<td>202</td>
<td>88.10</td>
<td>291</td>
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<tr>
<td>Jan-June Secondary</td>
<td>223</td>
<td>87.40</td>
<td>253</td>
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<tr>
<td>July-Dec Primary</td>
<td>176</td>
<td>85.20</td>
<td>201</td>
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<tr>
<td>July-Dec Secondary</td>
<td>217</td>
<td>85.50</td>
<td>228</td>
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<tr>
<td>Combined</td>
<td>818</td>
<td>86.60</td>
<td>973</td>
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<tr>
<td>2017</td>
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<td>Jan-June Primary</td>
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<td>91.40</td>
<td>102</td>
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<tr>
<td>Jan-June Secondary</td>
<td>196</td>
<td>81.60</td>
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<tr>
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<tr>
<td>OVERALL</td>
<td>2,010</td>
<td>83.00</td>
<td>2,194</td>
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Tables 6 and 7 present the results of the VOD analysis. Table 6 displays the percentages of Black drivers stopped during daylight and during darkness for the “inter-twilight period” from January 2015 to June 2017. When these percentages are examined, it appears that the percentage of stops involving Black drivers was lower during darkness than during daylight in 2016, a possible sign of disproportionality, whereas it was higher during darkness in 2015 and only slightly higher in 2017. Table 7 tests these relationships using a logistic regression model predicting the odds of a driver being Black versus White in daylight over darkness controlling for time of day. The results indicate that the odds of a Black driver being stopped during daylight rather than darkness were significantly higher in 2016, but that the difference in the odds did not reach statistical significance in 2015 or 2017. Specifically, the odds of a Black driver being stopped during daylight rather than during darkness were 45.5% higher in 2016.
The results of the analyses do not indicate widespread disproportionate treatment of Blacks by the DPD. However, evidence of disproportionality is found in some parts of the city for some time periods and for some outcomes. Whereas the DI analysis indicates some disproportionality in traffic stops in all the high-enforcement DDACTS areas, the VOD analysis paints a slightly more nuanced picture. This analysis suggests that although disproportionate treatment of Blacks may have occurred in 2016, the disparity was no longer present in 2017. It is important to note that the department conducted additional diversity training in 2017, which may account for this finding; however, an examination of the effect of the training is beyond the scope of the current analysis.

The results for field contacts show little disproportionality within the hot spots, with only a few hot spot areas showing an increase of more than 5% in the likelihood of being stopped. Similarly, the results of the arrest analysis show little disproportionality in the hot spots. The use of force analysis, restricted to the city, likewise shows little disproportionality for either
benchmark. Because the relative infrequency of use of force did not allow for additional levels of analysis, we were unable to consider disparate impact in high-enforcement areas. Future analyses should consider the benchmarks, geographical foci, and data time frames that are appropriate for the jurisdiction.

Given that this is a case study, generalizability to other police departments is limited. However, because the DPD is a midsize police department, it is like many other police departments in the United States. Several additional limitations influenced our analyses. First, it is important to note that race/ethnicity is not recorded on driver licenses in the study jurisdiction. As such, officers must identify race/ethnicity according to their perception. It is impossible to know to what extent (if any) the data were affected by mistaken identification of the race/ethnicity of a community member by an officer. Second, attempts to conduct analyses within additional geographical areas were hampered by a lack of truly defined neighborhoods. Analyses of disproportionate impact should ultimately examine geographical areas that are not focused just on enforcement (i.e., DDACTS and hot spots), as was the case in our analyses. Relatedly, such analyses should also not be conducted on a city-wide basis. This was necessary given the low overall number of use of force incidents for the DPD (combined with an inability to capture a full 10 years of data, as is suggested by the Dolan Consulting Group [2016]), but it is not ideal.

Third, we were hampered by geocoding issues for many of the analyses. It is not always possible to geocode an incomplete or incorrect address, which meant that most of these cases had to be dropped from the analysis. Fourth, the DI is unstable with small numbers, so we could not complete some of our planned analyses. For example, we had planned to utilize DWI-related crashes as a benchmark for traffic arrests. However, after we had merged the necessary data from two systems and coded for the defined geographical areas, the number of DWI-related crashes during the study period was inadequate to allow us to estimate that DI reliably. Finally, the selection of the benchmark is important when the DI is used. However, the selection is dictated by the availability of data from law enforcement systems to allow measurement of the benchmark, along with the reality of the number of incidents within defined geographical areas. For some analyses, we planned and discarded numerous benchmarks because of inefficiencies in the data. Undoubtedly, some of our planned analyses would have been stronger had we been able to use our planned primary benchmark.

The following limitation did not pertain to the findings presented, but we note the issue here to provide additional context for other researchers or practitioners who might be planning similar analyses. Our inability to conduct other planned analyses stemmed from newer data collection practices at the DPD that had not been in place long enough to generate sufficient data for analysis. For example, a traffic form policy that mandated the collection of data to inform analysis of searches of cars was established in the middle of the study period, which made it impossible to conduct the analysis for the current inquiry. The same was true of discretionary search information. This information is provided in the department’s Field Contact form, which was modified in the middle of the study period to include whether an officer safety search (weapons pat down) or consensual search was conducted. As with traffic searches, the limited amount of available data for the study time frame made it impossible to complete an analysis of disparate impact in person searches. However, even if this limitation did not exist, there are currently no
mandate the fields for the data entry into the Field Contact form – the amount of information provided is at the officer’s discretion. This is problematic because it means that information111 searches may not be collected in a systematic manner. Future inquiry should carefully consider data limitations such as these when research seeking to examine disparate impact is undertaken.

**Conclusions**

The findings highlight the importance of combining the appropriate benchmark with the appropriate level of analysis, and the need for more scholarly inquiry into disproportionate treatment in law enforcement, especially for outcomes that have not previously received much research attention. As stated previously, although both the DI and the VOD measure disproportionate impact, they do not measure bias. Neither can determine if disproportionality is due to racial profiling or criminal profiling on the part of officers, and it is important to determine if a cause and effect relationship exists between racial disparity and racial bias (Smith et al., 2017). Additional research that more deeply investigates individual officer decision making is necessary to determine why a disproportionate outcome exists. That said, it is quite difficult to determine empirically if an officer has an implicit or explicit bias against people of color that results in discriminatory behavior. Further, departments may encounter several challenges, such as those experienced at the study site, that make it difficult to present nuanced results to the public with confidence. However, this is true of any analysis that seeks to investigate racial and ethnic disparity in the criminal justice system.

Although it is not easy to conclude that bias exists where a disproportionate outcome exists, that does not mean that departments cannot (and should not) use disproportionate results to take strides in improving police-community relations. What such analyses do provide is an ability to focus on potential areas of concern, and departments that are transparent about disproportionate enforcement activities and action items that seek to address such disproportionality, whatever the cause, signal to their respective communities that responding positively to community concerns about disparate impact is important. Thus, it is important for departments and, if appropriate, their research partners to continue to investigate disproportionality in policing, and for the field to continue to refine and test measures of both bias and disproportionate impact. Future research should, for example, endeavor to determine the link between bias (implicit or explicit) and disproportionate treatment by examining the influence of anti-bias training on disparity in law enforcement outcomes (Smith et al., 2017). Further, body-worn cameras are expected to make low-visibility decisions more observable. The introduction of body cameras in an agency could be used to assess any changes in patterns of enforcement under the assumption that cameras might reduce bias if it is occurring (Lum, Koper, Merola, Scherer, & Reioux, 2015).

Ultimately, we have demonstrated that it is possible to use the DI to assess disproportionality in several outcomes, including those in which researchers have not previously used benchmarking analyses. Several alternate benchmarks were used to conduct our analyses – benchmarks that were developed in collaboration with the DPD with a focus on utilizing data that would be readily accessible to police departments. We noted several limitations in our analyses, however, which highlights the need for agency-specific foci when disproportionate impact is measured, along with a realistic assessment of the availability of necessary data.
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#Black Lives Matter? Analyzing the Effects of Police-Caused Black Deaths on Media Coverage and Public Interest in the Movement

Francesca Bordonaro and Dale Willits

Abstract
Black Lives Matter is a social movement, created and maintained on social media networks; its formation was spurred in part by the number of Black men and women who have been killed by police officers in the United States. This research focuses on the relationship between police-caused deaths of Black men and women and media coverage of and public interest in Black Lives Matter. The primary goal of the research was to determine whether traditional news coverage of Black Lives Matter was linked to the killings of Black citizens by police. We found that Black citizen deaths did not result in increased mentions of Black Lives Matter in either newspaper articles or Google searches. We did, however, find that when police officers were killed at a protest, mentions of Black Lives Matter in both the news and Google queries increased at a substantial rate, as did searches for “Blue Lives Matter.” The implications for police use of force, Black Lives Matter, and traditional news media are discussed.

Keywords
Black Lives Matter, racial disparity, police use of force, media coverage

In February 2012, George Zimmerman shot and killed Trayvon Martin, a 17-year-old Black male, in Sanford, Florida (Freelon, McClain, & Clark, 2016). Following the 2013 acquittal of Zimmerman, the hashtag #BlackLivesMatter was created by Alicia Garza, Patrisse

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Cullors, and Opal Tometi (BlackLivesMatter, 2017), although the hashtag did not begin trending on Twitter until August 2014 (Freelon et al., 2016). Responding to the acquittal of Zimmerman, Garza, a community activist in Oakland, California, wrote the following message on Facebook: “Black people. I love you. I love us. Our lives matter.” Cullors, a friend of Garza, then posted this statement: “Declaration: black bodies will no longer be sacrificed for the rest of the world’s enlightenment. I am done. I am so done. Trayvon, you are loved infinitely. #blacklivesmatter” (Cullors, 2017). This was the first use of the hashtag, which turned into a method of communicating the messages of the movement that is used worldwide, as well as a method for showing support. The hashtag spread across Twitter, Facebook, and Instagram when Ferguson police officer Darren Wilson shot and killed Michael Brown, whose body was left on the street for hours; this incident resulted in significant unrest (Buchanan et al., 2015). In essence, this hashtag spurred the formation of a social movement focusing largely on police officers’ treatment of people of color (BlackLivesMatter, 2017).

Yet the portrayal of the #BlackLivesMatter movement in the media has often been contentious. The protests and riots associated with the movement gained considerable national attention, and some commentators described the movement as “directionless” and “run by thugs” (French, 2016; Reynolds, 2015). Despite the fact that the Black Lives Matter movement has been associated with a number of policy successes, it is unclear that it has ever gained much traction from mainstream media sources, and it remains an online movement. Indeed, research demonstrates that Black Lives Matter has largely been maintained online through Twitter and other social media platforms (Ince, Rojas, & Davis, 2017).

Although the prominent deaths of Black men, like Trayvon Martin and Michael Brown, have frequently been the catalyst for increased action on the part of the movement, resulting in protests, marches, and other highly visible activities, it is unclear that these have led to substantial mainstream media coverage or public interest in Black Lives Matter. This gap in knowledge is important because prior research has highlighted the role of media coverage in the success or failure of other movements (Bond, 2001; Hall, 2005). Moreover, we argue that interest in the movement is at least partially reflective of the level of interest in police-caused violence directed toward Black men and women, and although the amount of academic interest in this topic is substantial, it is not clear that the broader public is similarly concerned.

Although Black Lives Matter focuses on a number of outcomes, this loosely knit organization has frequently been organized and mobilized to combat racially biased policing. In this study, we examine general trends in traditional news media coverage of Black Lives Matter and the extent to which police-caused deaths of Black individuals are related to news and general public interest in Black Lives Matter. This research is important for two reasons: it documents trends and patterns in the Black Lives Matter movement, and it demonstrates the degree to which coverage of the movement corresponds to police-caused deaths of Black men and women. Indeed, one of the major contributions of the study is that it demonstrates that police violence against Black citizens generates very little news and public interest, and thereby demonstrates the very real need for the movement itself, inasmuch as there is little evidence to indicate that Black lives do in fact matter to the general public.
Black Lives Matter

Black Lives Matter is organized as a “call to action in response to state-sanctioned violence and anti-Black racism” (Black Lives Matter, 2017), and as such, it attempts to engage directly the issue of differential policing previously described. To date, the organization has achieved several successes, including the launch of Campaign Zero, a comprehensive list of proposals to combat police violence, racial profiling, and misconduct through legislation and protest (WeTheProtesters, 2018). In addition, the movement has successfully secured meetings with politicians and police leaders to voice its concerns.

Despite recent debate regarding the degree to which police interactions with Black citizens are biased regarding the use of force (Rousell, Henne, Glover, & Willits, 2017; Cesario, Johnson, & Terrill, 2018), most of the literature indicates that Black communities and individuals are disproportionately policed, with outcomes often worse than those of Whites at the hands of the police. For example, evidence shows that police deployments are directed toward Black neighborhoods at disproportionate rates (Beckett, Nyrop, & Pfingst, 2006), that Black people are searched at disproportionate rates (Gelman, Fagan, & Kiss, 2007), that Black drivers are disproportionately pulled over for traffic stops (Lundman & Kaufman, 2003), and that Black citizens are more likely than Whites to be arrested (Huizinga et al., 2007).

Black Lives Matter is an online-spurred movement that attempts to draw attention to the historical devaluation of Black men and women in the United States. Some debate is ongoing regarding the extent to which Black Lives Matter constitutes a social movement, given its loosely knit nature. The classic definition of a social network set forth by Diani (1992) requires that a social movement organization involve political or culturally informed and sustained interactions by individuals on the basis of a shared, collective identity. Black Lives Matter seems to meet this basic threshold, although the interactions therein typically occur online, and it is not completely clear to what extent the individuals who use the Black Lives Matter hashtag consistently have a shared, collective identity or the same goals. Mundt, Ross, and Burnett (2018) view Black Lives Matter’s use of social media as an asset and in fact argue that its use of social media can serve as an organizing model for other social movements. Similarly, Byrd, Gilbert, and Richardson Jr. (2017) and Cox (2017) argue that the emphasis on social media as a communication and organizing framework makes Black Lives Matter different from past social movements, although importantly, a similar emphasis on organizing through social media was seen in the Occupy Movement (Kavada, 2015) and Arab Spring (Kamel, 2014). In summary, a small body of research seems to accept Black Lives Matter as a social movement, although one that is substantively different from older social movements.

Some of the successes of Black Lives Matter are evidenced by the creation of new hashtags and movements driven by social media. The hashtag #iftheygunnedmedown was used to point out discrepancies in the headlines and photographs used by news agencies when reporting the deaths of persons killed by police. Most notably, headlines for stories about young White men who had committed crimes were compared with headlines for stories about young Black men who had been killed by police. The professionally taken photos of the White men were obtained from yearbooks or family photo shoots, and the headlines referred to them as suspects and mentioned their talents or bright futures. Alternatively, the Black men were shown in candid or nonstaged photographs, or with hand
signs. The headlines described them as thugs and often blamed their deaths on actions they had taken before they were shot (Stampler, 2014). The examples given through this hashtag can reveal the discrepancies between White and Black America's interactions with police and media, just as Black Lives Matter works to illuminate those same discrepancies.

Broadly, however, it is unclear to what extent the Black Lives Matter movement has been successful in achieving its goals. Previous social movements with a racial orientation, like the Civil Rights Movement, have been linked to major federal initiatives, including the Civil Rights Act of 1964. Research also shows that the Civil Rights Movement has had a sustained effect on political outcomes over time, just as localized movements have continued to be successful in increasing Black political voices (Andrews, 1997). During its active years, the Civil Rights Movement was able to exert its influence as a social movement to generate news coverage (Andrews & Biggs, 2006). It is unclear to what extent the same can be said of Black Lives Matter, although undoubtedly racially oriented social movements can be incredibly powerful.

Broad research has been undertaken on the devaluation of Black lives and the prevalence of stereotypical views about Black people. Sociological research demonstrates, for example, that perceptions of neighborhood safety are linked to Black population levels, even after control of neighborhood crime rates (Quillian & Pager, 2001). Similarly, Hawkins (2002) directly argues that the historical devaluation of Black lives has resulted in a climate in which less attention is given to family violence in Black households. More broadly, a considerable amount of literature shows that Blacks are viewed as negative stereotypes by a substantial portion of the population (Greenwald, Poehlman, Uhlmann, & Banaji, 2009; Sellers & Shelton, 2003; Welch, 2007). Unsurprising, then, is the long history of unfavorable coverage in the media for people of color. Van Dijk (2015) has argued that contemporary news routines are based on perceptions of what is most likely to be of interest to White readers, and that these routines can serve to reproduce systemic racial biases. For example, reporters are more likely to use the term “riot” than “protest” in civil unrest events occurring in or around Black communities, which in turn may affect how news consumers view these communities. Evidence also indicates that coverage of Black individuals in natural disasters (Sommers, Apfelbaum, Dukes, Tootsi, & Wang, 2006) and in sports (Davis & Harris, 2002) often invokes stereotypes. Regarding criminality, Oliver (2003) argues that the media’s portrayal of race and crime represents the vital role that news plays in stereotyping people of color as violent and dangerous. Oliver (2003) found that news sources depict Black suspects as more dangerous than White suspects, overrepresenting them as perpetrators but underrepresenting them as victims. The subsequent effects can be seen in the attitudes and beliefs of news viewers. Those who view television news regularly are more likely to have racist views of people of color; they are more likely to believe that Black men are dangerous and more likely to suggest punitive measures (Oliver, 2003). Moreover, Chiricos and Eschholz (2002) show that television news coverage tends to portray Black (and Hispanic) crime suspects in more threatening contexts than Whites (who appear more frequently as victims in crime stories). Put simply, evidence indicates that media depictions of race and crime exaggerate stereotypes and reproduce racial biases (Van Dijk, 2015).

Yet, the coverage of race-based social movements is of great importance. Discussing the Civil Rights Movement, Hall (2005, p. 1236) notes that the media “made the protests
one of the great news stories of the modern era." Although it would be simplistic to state that the successes associated with the Civil Rights Movement were possible only with media coverage, the media have historically played a key role in resource mobilization for social movements (Andrews & Biggs, 2006). Regarding the Civil Rights Movement, Bond (2001) notes that media coverage can largely be divided into the “early era of factual reportage” and the later “period of increased suspicion, hostility, and cynicism,” and that these eras can be linked to some extent to the successes and failures of the movement.

To date, very little research has examined mainstream or traditional news coverage of the Black Lives Matter movement, nor has the link between police-caused deaths of Black individuals (one of the primary topics discussed by the movement) and coverage of and interest in the movement been examined. Leopold and Bell (2017) provide perhaps the only direct examination of traditional news coverage for Black Lives Matter in their qualitative analysis of news articles following the death of Michael Brown. Like the authors of much of the prior literature, they found that most coverage included language that indicated disapproval of the protests and dissent and included strong elements of blame attribution toward Black victims. To date, no research has examined Black Lives Matter in a broad, quantitative sense, nor has any research examined general public interest in the movement.

The current study begins to address the gap in the literature by examining trends in the coverage of and public interest in the Black Lives Matter movement, and whether these trends have changed as a result of Black deaths. Given the broad arguments of Van Dijk (2015) regarding news coverage and social reproduction, and the history of unfavorable coverage applied to people of color, we hypothesize that Black deaths are generally unrelated to Black Lives Matter coverage. Indeed, although we do not assume that police-caused deaths of Black men and women would necessarily lead to coverage of the Black Lives Matter movement, one might expect that increases in the number of deaths would lead to an increase in coverage because protests occur in response to some deaths and, more importantly, reporters could connect police-Black violence to the broader issues discussed by Black Lives Matter. Here, we conduct our analysis at the national level to examine the success and current state of the movement, although again, given historical racist biases, we do not expect the occurrence of Black deaths to generate increased interest in the movement.

**Methods**

To examine news coverage and public interest in the Black Lives Matter movement, we took a descriptive and exploratory approach to examining data from three sources: (1) newspaper mentions of the Black Lives Matter movement from LexisNexis Academic, (2) crowdsourced data on police-caused deaths of Black persons in the United States, and (3) Google Trends data on Black Lives Matter searches. Data cover the time period from May 2013 to November 2016. Our initial primary goals were twofold: (1) to examine aggregate coverage of the Black Lives Matter movement by traditional news media and (2) to determine by means of basic statistics and visualization techniques if media mentions of the Black Lives Matter movement correlate with police-caused deaths of Black individuals.
This research has contributed to our understanding of police use of force against Black citizens by documenting the extent to which police-caused deaths of Black men and women do or do not generate interest in Black Lives Matter, an organization that directly confronts the issue of racially biased policing. Our general methodological strategy was descriptive and exploratory. Specifically, we followed the advice of Maltz (1998, 2006) to allow the data to generate hypotheses. As detailed below, we noted a spike in Black Lives Matter coverage in July 2016, which we believe was linked to the killing of five police officers at a Black Lives Matter protest in Dallas, Texas. Therefore, although it was not our original intent to do so, we also examined July 2016 from the perspective of an interrupted time series — that is, we attempted to describe the extent to which coverage and interest in Black Lives Matter changed following this month. This analysis served as a tool to examine the degree to which police deaths appeared to matter more than the deaths of Black men and women. To do this, we used interrupted time series analysis because this quasi-experimental method is well suited for detecting instantaneous and long-term changes in an outcome variable (news mentions of Black Lives Matter). As a robustness check, we made use of Google Trends data to ensure that our news mention data were accurately capturing trends in the public interest and coverage of the Black Lives Matter movement.

**Black Lives Matter News Mentions**

Using the LexisNexis Academic search feature, we searched the term “Black Lives Matter,” expanding the search to include “blacklivesmatter” and “#blacklivesmatter” as well, to account for phrasings that were formatted differently. In addition, we searched for both “BLM” and “#BLM”, although we included the “#BLM” results only in our monthly counts of news mentions because the search “BLM” also returned results related to the Bureau of Land Management. Specifically, each month from July 2013 to December 2016 was searched for newspaper articles containing one or more of the above terms, and this search was completed for five regions (Midwest, Northeast, Southeast, Southwest, and Northwest). The LexisNexis output was a list of articles with a headline containing the search term. For each search, the title and preview panel for the articles were reviewed to ensure that they were about the correct topic, and a count per region-month was created. Mentions were manually counted and verified by the “results” feature, which listed the number of articles containing the keywords within the headline. Although these data were eventually aggregated to the entire nation and combined in a single data set, this month-by-month and region-by-region process was important for ensuring that LexisNexis Academic would produce all relevant articles (non-disaggregated searches would cap out with a maximum number of articles).

**Police-Caused Deaths**

Although much of the research on race and police violence has made use of the FBI Supplementary Homicide Reports (Jacobs, 1998; Willits & Nowacki, 2014), research suggests that these data miss many lethal force incidents (Barber et al., 2016). For this reason, a number of efforts to collect alternative measures of police violence have started since 2013. For this project, we obtained our data from “mappingpoliceviolence.com,” which aggregates data from several crowdsourced efforts. Early work comparing crowdsourced data versus a subset of data requested with the Freedom of Information Act
indicate that crowdsourced data on police violence are highly accurate (Farman, 2015), and a number of studies using crowdsourced data have been published (Campbell, Nix, & Maguire, 2017; Hirschfeld, 2015; Ross, 2015; Ross, Winterhalder, & McElreath, 2018).

Google Trends Data
Although our analysis focused first on examining the degree to which traditional news media cover the Black Lives Matter movement and the extent to which coverage is associated with police-caused deaths of Black men and women, we also used Google Trends data to examine the popularity of Google searches for Black Lives Matter during the same time period. We included Internet search data as a robustness check to ensure that the LexisNexis news data accurately captured trends in how often the public is discussing Black Lives Matter (ie, we would expect searches for Black Lives Matter to increase during months with more news coverage). Google Trends provides a normalized rating (from 0 to 100) of the popularity of a particular search term over a specified period. These data do not reflect the frequency or total number of searches, but rather the relative popularity of a particular search term. Researchers suggest that Google Trends data are a useful measure of public attention to a given topic (Ripberger, 2011), and a small body of criminological research makes use of these data (Makin & Morczek, 2015, 2016; Song, Song, An, Hayman, & Woo, 2014)

Results
We begin by examining the link between news mentions and the deaths of Black persons descriptively, with a focus on the visual examination of trends. Here, we follow the advice of Maltz (1998, 2006) to use visualization not only for description but also as an integral tool for generating hypotheses. In this case, we first examine the visual trends in news mentions and then inductively generate hypotheses to explain these trends.

Figure 1: Black Lives Matter Newspaper Mentions and Police-Caused Deaths of Blacks
Black Lives Matter did not pick up any significant traction in news coverage in any part of the country until late 2014, despite the fact that the term “Black Lives Matter” was coined in July of 2013. The absence of high-profile police-caused deaths of Black men or women during this period and the general decline in the number of police-caused deaths of Blacks from the summer peaks of 2014 suggest some other impetus for early coverage of the movement. The most likely explanation is the increased news coverage following the Ferguson protests and riots following the acquittal of a police officer charged with killing Michael Brown.

After this, the rate of news mentions declines and is relatively steady until July of 2016, at which point the coverage of Black Lives Matter increases substantially and dramatically. A total of 3,115 articles during July 2016 contained the phrase “Black Lives Matter,” although importantly, the numbers declined immediately in subsequent months. A number of people of color were killed by police around this time, but the number of Black persons killed by police was not dramatically greater than in prior months. Figure 1 presents a time series chart of the number of Black individuals killed by police officers (dotted line) and the number of newspaper mentions of Black Lives Matter (solid line) over the same period. Although the number of deaths does show some variation from month to month, no substantial variation is seen that would explain why news mentions of the Black Lives Matter movement increased so dramatically in July 2016. Interestingly, this pattern was consistent across the country. Using newspaper mention data disaggregated by region, we observed a similar pattern across the country (with slightly more mentions of Black Lives Matter in newspapers located in the Midwest and Southeast areas of the United States).

After a quick review of some of the news articles that emerged in July 2016, it became clear that the July 2016 increase was related to an incident that occurred at a Black Lives Matter protest in Dallas, Texas. On July 7, 2016, Micah Xavier Johnson ambushed officers during a Black Lives Matter protest, killing five police officers and wounding seven more, as well as two civilians (NBC 5, 2016). The protest was against the shootings of Alton Sterling and Philando Castile, who had been killed by police in separate incidents just days before. Johnson made national news, not only as the first person to be killed in America by a police robot (Selyukh & Rosenberg, 2016) but also, more predominantly, as a radical Black Lives Matter militant responsible for the deadliest incident in terms of police deaths since the September 11, 2001, terror attacks. The shooting gave validity to negative perceptions of the movement, potentially contributing to the increased number of articles in July 2016.

Although the dramatic increase in news mentions in July 2016 is visually apparent, we also present the results of a simple, single-group interrupted time series model to demonstrate that this change in the number of news mentions of Black Lives Matter was a statistically significant departure from the amount of prior news coverage. Several different approaches can be used to examine the effect of a specific interruption on a given trend, but the interrupted time series model is widely accepted as one of the strongest quasi-experimental approaches for identifying the short- and long-term effects of interventions (Bernal, Cummins, & Gasparrini, 2017; Cook, Campbell, & Day, 1979; Wagner, Soumerai, Zhang, & Ross-Degnan, 2002) and has been used in the criminological literature (Chamlin, 2017; Koslicki, 2017; Vásquez, Maddan, & Walker, 2008). Here, we make use of the
segmented regression approach to interrupted time series modeling described by Linden (2015), which uses the following formula:

\[ Y_t = \beta_0 + \beta_1 T_t + \beta_2 X_t + B_3 X_t T_t \]

where \( Y_t \) is the outcome measure at time \( t \), \( T_t \) is the time since the study start, and \( X_t \) is a dummy variable indicating whether some interruption has happened (\( X_t = 1 \)) or not (\( X_t = 0 \)). In terms of interpretation, this model is formulated such that \( \beta_1 \) is the trend in the outcome variable before the interruption point, \( \beta_2 \) is the immediate effect of the interruption, and \( B_3 \) is the trend in the outcome variable following the interruption point. In addition to displaying the trend in an outcome variable directly, this model makes use of Newey-West standard errors to account for autocorrelation. To simplify the analysis, we explored an interrupted time series for all of the Black Lives Matter mentions (not disaggregated by month). Therefore, for this study, \( Y_t \) is the number of news mentions for Black Lives Matter in a given month, \( T_t \) is the number of months since July 2013, and \( X_t \) is a dummy variable for July 2016 and onward (as we are conceptualizing the Dallas shooting as the interruption point). The results of this model are presented in Table 1.

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<th>TABLE 1: Interrupted Time Series Analysis of Black Lives Matter Newspaper Mentions</th>
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<tr>
<td>Time</td>
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<td>Intervention Point 1: July 2016</td>
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<td>Time x intervention Point 1</td>
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<td>Constant</td>
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NOTE: Regression coefficients with Newey-West standard errors (SE) in parentheses.
* p<.05, ** p<.01

These results confirm that Black Lives Matter newspaper mentions increased dramatically at the point of intervention (July 2016). Specifically, an immediate increase of more than 1,350 news mentions occurred during July 2016. The model also demonstrates that news mentions declined significantly following this month, suggesting that the news focus on Black Lives Matter was short-lived and not reflective of a change in the volume of news coverage for the movement.

As a robustness check, we also used the previously described Google Trends data to examine trends in Internet searches for Black Lives Matter. Given that our initial analysis of the news mention data had generated the hypothesis that the increased coverage was in response to the July 2016 shooting deaths of five police officers, we expanded our search criteria to include “Blue Lives Matter” as well. Figure 2 displays Google Trend results for Black Lives Matter and Blue Lives Matter from July 2013 to December 2016. The Google Trends data reveal the same basic pattern as the news mentions data. General interest in both Black Lives Matter and Blue Lives Matter is limited for much of the time series, with a large spike in July 2016, after which interest falls off. Interestingly, Google
Trends data are also available by week, and although these results are smoothed by monthly averages, Black Lives Matter received a Google Trend score of 100 during the second week of July 2016, indicating that it was among the most searched-for terms on the Internet in the United States (searches for Blue Lives Matter peaked during the week of the shooting, at a high Google Trends value of 40).

Figure 2: Google Trends on Black Lives Matter and Blue Lives Matter Internet Searches

Taken together, these data suggest that neither Black Lives Matter news mentions nor Internet searches for Black Lives Matter are related to police-caused deaths of Black individuals. Although the visual trends presented seem clear, we also examined bivariate correlations between police-caused deaths of Black men and women and Google Trends results for Black Lives Matter, and between police-caused deaths and newspaper mentions of Black Lives Matter. The results, presented in Table 2, support the conclusion that an increased number of deaths does not result in additional news coverage or Internet searches for Black Lives Matter. They do provide a robustness check for our measure of newspaper mentions as our monthly newspaper mention values correlate strongly and significantly with the Google Trends measure. Importantly, no significant correlation was found between police-caused deaths of Black individuals and news mentions or between police-caused deaths and Google searches.

| Table 2: Pearson Correlations Between Police-Caused Black Deaths and Black Lives Matter Newspaper Mentions and Between Deaths and Internet Searches |
|---------------------------------------------------|---------------------------------|------------------|-------------------|
| Black Deaths                                      | Newspaper Mentions              | Google Trends     |
| Black Deaths                                      | 0.032                           | -                |                   |
| Newspaper Mentions                               | -                               | -                |                   |
| Google Trends                                     | -018                            | 0.822**          | -                |

*p < 0.05; **p < 0.01
Discussion
Analyzing trends in newspaper mentions of and Internet searches for Black Lives Matter and examining the relationship between these trends and police-caused deaths of Black men and women suggest that the mainstream news media and the average person searching the Internet are not particularly interested in Black Lives Matter. Moreover, no evidence suggests that interest in Black Lives Matter increased over time as more Black individuals were killed or that interest in Black Lives Matter corresponded in a meaningful way with police-caused deaths of Black persons. Put simply, no great outpouring of news articles has addressed the movement or the need for the movement following the death of a Black person at the hands of police, nor is the public at large searching out Black Lives Matter in response to these actions. The only significant shift in coverage and Internet interest in Black Lives Matter happened after the tragic death of five police officers in Dallas at a Black Lives Matter protest. A cynical interpretation is that our results indicate that Blue Lives Matter more.

In some sense, these results are unsurprising. First, police deaths are tragic and can involve a great deal of public outcry and attention. For example, Pantti and Sumiala (2009) note that certain police deaths can produce a sense of national tragedy and instigate public mourning rituals, although interestingly, other research suggests that most police deaths go unnoticed by the public (Kynoch, 2003). Importantly, research also demonstrates that particularly tragic deaths can result in dramatic shifts in news coverage. For example, Rosie and Gorringe (2009) argue that newspaper media largely ignored police actions against protesters before the police-caused death of an innocent bystander at the 2009 G20 summit protests, and that this death was enough to cause a shift in how the media cover these protests. More broadly, substantial evidence indicates that media coverage tends to focus on sensational and violent themes, especially with regard to the coverage of social movements and related protests (Donson, Chesters, & Welsh, 2004; Juris, 2005).

Further, the fact that the only spike in news coverage of and Internet searches for the movement occurred following a negative event supports much of what we know regarding racialized patterns of news coverage. Regarding the Black Lives Matter movement specifically, Leopold and Bell (2017) have previously shown that much of the mainstream coverage of the movement is negative, and research on the Civil Rights Movement demonstrated that media coverage became more and more negative over time (Bond, 2001). We consider these findings to be supportive of the argument of Van Dijk (2015) that the routinized structure of modern news places an emphasis on stories that are attention-grabbing, fast to produce, and sensational, and that this process ultimately reproduces systemic racial bias.

The current results are supportive of these trends. Put simply, police-caused deaths of Black citizens and the resultant social movement responses may not be sensationalist enough to attract sustained media attention, whereas the deaths of five police officers fit the “if it bleeds, it leads” approach to media coverage. Of course, we do not mean to diminish the deaths of these police officers or to suggest that this incident should not have generated considerable news coverage and Internet searching. Our interpretation of our results is simply that the deaths of hundreds of Black citizens at the hands of police in the years covered by our data did not result in any appreciable increase in news coverage of or Internet searches for the Black Lives Matter movement, whereas the tragic deaths of
the police officers in Dallas did. As policing in Black communities is one of the major areas of emphasis for Black Lives Matter, the lack of general coverage of Black Lives Matter and the concurrent and heightened specific coverage of police deaths associated with a Black Lives Matter protest might have the effect of reproducing systemic biases by further devaluing the lives of Black people through both neglect and stereotyping.

In addition to the previously described studies showing that Black individuals and communities are differentially policed, broad research has examined the stereotype of the dangerous Black criminal (Dixon & Maddox, 2005; Dixon & Rosenbaum, 2004; Johnson & King, 2017), and an entire body of research suggests that being the member of a racial minority, and in particular being Black, is a focal concern that affects the degree to which a person is viewed as blameworthy (Crow & Adrion, 2011; Nowacki, 2015; Steffensmeier, Ulmer, & Kramer, 1998). Indeed, many theorists have commented on the manner in which race, ethnicity, and other ascribed characteristics can affect how people are perceived and treated by the criminal justice system. Black individuals, as well as members of other minorities, have been considered classified as the dangerous underclass (Wilson, 2012), the symbolic assailant (Skolnick, 1966), or the suitable enemy (Wacquant, 1999). In this regard, the lack of news coverage and Internet searches in response to Black deaths may simply be part of a broader pattern of discrimination and racism against Black individuals and Black communities.

Nonetheless, our results are indicative of an interesting juxtaposition. The Black Lives Matter movement was successful in helping to generate some level of criminal justice policy reform, such as legislative changes outlined by Campaign Zero, in at least 10 states (WeTheProtesters, 2018), yet the movement has not been successful in garnering ongoing news attention or in attracting broad interest from the American public. The apparent paradox between how Black Lives Matter is able to produce changes on the ground while not receiving broad coverage from the news media or generating substantial Internet searches is an interesting and important quandary. If more people are not actively discussing why Black lives matter, is the movement successful?

Of course, it is impossible to discuss the success of the Black Lives Matter movement without remembering that it started as an online movement. It is entirely possible that the social movement is fueled by instances of police violence, and that although traditional media coverage is not reflective of this pattern, noticeable increases in online mentions and hashtag use have occurred. Research suggests that Twitter has been the predominant hub for Black Lives Matter information (Freelon et al., 2016). Social movements with a strong online presence have a number of advantages (Mundt, Ross, & Burnett, 2018). For example, whereas traditional social movements often either focused on local residents or required people to travel great distances to participate, online-oriented social movements can frequently involve activists from around the world in both in-person and online activities (Hara & Huang, 2011). In this regard, it may be the case that Black Lives Matter is targeting individuals on Twitter and is quite successful at energizing and mobilizing its base. Indeed, the population that consumes traditional news media may not be broadly reflective of the Black Lives Matter message.

For example, the Pew Research Center found that the largest percentage of consumers of traditional news (network television and print newspapers) consisted of persons aged 50 and older, whereas the largest percentage of consumers of online news
Francesca Bordonaro and Dale Willits consisted of those between the ages of 18 and 29 (Mitchell, 2016). These trends are similar to those regarding support for Black Lives Matter; only 37% of adults aged 50 to 64 expressed support for the movement, and those aged 65 and older showed even less support, at 26%, whereas 60% of those younger than 30 expressed support for the movement (Horowitz, 2016). Although it would be easy to conclude that the Black Lives Matter movement is unsuccessful in that it has failed to generate news coverage in response to police-caused Black deaths, it may be that in some general sense the audience that obtains information from newspapers and, indeed, from Internet searches is not the audience that the movement is trying to reach. It is, however, more difficult to explain the lack of interest as measured by Google searches. Regardless, it is difficult to envision how the Black Lives Matter movement can be more broadly successful if it is unable to reach non-core audiences. If our results suggest that both the Black Lives Matter movement and the police-caused deaths of Black men and women are not significantly capturing the public’s attention, then clearly more work needs to be done.

Interestingly, some research suggests that the Black Lives Matter movement may have an indirect effect on news coverage of police-caused Black deaths (Freelon, McIlwain, & Clark, 2018). This does not directly contradict our results and, in fact, suggests that Black Lives Matter may lead to news coverage of such deaths without resulting in increased coverage of the movement itself. Freelon et al. purchased a data set of all public tweets from June 1, 2014, to May 31, 2015, and analyzed the public Twitter conversations started by the Black Lives Matter movement. They found that these conversations on police brutality and specific use of force incidents led to posts about similar topics by mainstream news organizations on Twitter. These results might suggest that #Black Lives Matter attention to a given incident increases media coverage of that incident, but that the media do so in a manner that strips Black Lives Matter from the conversation (as suggested by our results and data). Freelon et al. (2018) suggest that Black Lives Matter may have an indirect effect on news coverage, whereas our research only provides evidence against a direct effect.

In addition to being unable to account for a potential indirect effect of Black Lives Matter on news coverage and public attention, our research has several other limitations. First, although the interrupted time series method is a strong tool for estimating causal effects, our formal approach is a single-group time series study. These approaches have been critiqued in the literature for not being able to isolate causal effects (Linden, 2017). In our case, we cannot definitely identify that the Dallas police shootings were the cause of the spike in media coverage and public interest in July 2016, although informally, it is clearly the case that the Dallas shooting was the primary topic of many of the newspaper articles including the phrase “Black Lives Matter.” It is beyond the scope of this research to explain precisely whether the increased coverage was solely a matter of public and media interest or whether outside factors influenced how the incident was covered. The incident occurred during the 2016 presidential race, and (then) presidential candidate Donald Trump made significant mention of the killing of police officers. Moreover, other incidents, including the Colin Kaepernick U.S. national anthem protest, likely generated some of the media and public interest in the movement. Unfortunately, with no clear control group available, it was not possible to parse out the potential effect of these external factors. Although the potential
for external effects is worth considering, this does little to change the conclusion that coverage and interest in Black Lives Matter are not driven by the deaths of Black persons.

Lastly, our analysis of media coverage and public interest is narrow in that it focuses on newspaper mentions and Internet searches. Given historical trends in how the media cover racialized stories, it is possible that some stories did in fact cover Black Lives Matter events but failed to use the movement’s name or associated hashtag (and instead made use of terms like “rioters” and “looters”). Although we cannot test this possibility directly, such a result would largely coincide with the work of Leopold and Bell (2017) documenting that when Black Lives Matter is discussed following a death, it is discussed in a negative context. It is also possible that other metrics, like televised news stories, might reveal different trends. Further, as previously mentioned, much of the focus of Black Lives Matter has been on the “hashtag” social media companies (Twitter, Instagram, and Tumblr), and these data are not publicly available for analysis. Therefore, we cannot determine the degree to which the movement itself responds to and is energized by Black deaths. Moreover, although we disaggregated the data by region and found a similar pattern of media coverage, it is possible that police-caused Black deaths may have more of an effect on media coverage and Internet searches in smaller, more localized units of analysis.

Still, we believe it was important to document that police-caused deaths of Black men and women were largely unrelated to how the movement was covered. Future work should explore the degree to which the national and regional patterns we have revealed persist at the county or city level, and especially the role that the race of a population plays in coverage of the movement. Lastly, we are unable to describe the manner in which the news media covered Black Lives Matter (either in general or following the Dallas incident). Although Leopold and Bell (2017) have demonstrated that media coverage of Black Lives Matter is generally negative, important questions still remain regarding whether different types of newspapers cover the movement differently and to what extent the Dallas incident shifted how coverage occurred. This latter question is especially important as historically, a shift in media focus on protesters and their legitimate demands to a focus on “violent looters” and “kooks” has been the point at which the social movement’s cause ceases to be a story (Bond, 2001).

**Conclusions**

Our primary goal was to examine the degree to which news coverage of the Black Lives Matter movement was associated with police-caused deaths of Black individuals. As a robustness check, we also examined the degree to which Internet searches were associated with police-caused deaths of Black individuals in the United States. Interestingly, although newspaper mentions and Google searches of Black Lives Matter were strongly related, neither was related to police-caused deaths of Black men and women. Our results plainly suggest that public and news interest in Black Lives Matter is not affected by the number of police-caused deaths of Black individuals. Conversely, the tragic death of five police officers at a Black Lives Matter protest appeared to result in a large and statistically significant increase in news mentions and searches. These results suggest that Blue Lives appear to matter more than Black Lives, at least in terms of news coverage and Internet searches.
It is important to put these results in context within the broader literature on race and use of force. Although our work does not address differential rates of police use of force, the lack of public interest in the topic is interesting in that it seems to reflect an ongoing debate within academia. A number of studies have produced laboratory results suggesting that officers are in fact slower to use force against minority suspects (James, James, & Vila, 2016; James Klinger, & Vila, 2014; James, Vila, & Daratha, 2013), and researchers have suggested as a result that police may be “reverse racists” against White suspects. Other research has produced similar results, suggesting that early use of force is not disproportionately applied to Black suspects (Fryer, 2016; Wheeler, Phillips, Worrall, & Bishopp, 2017). This point remains a matter of debate, as other studies have found opposite results (Correll et al., 2007; Ross, 2015; Sadler, Correll, Park, & Judd, 2012; Willits & Makin, 2018), and the concept of “reverse racism” has been strongly called into question (Roussell et al., 2017). The debate continues, though. Ross et al. (2018) argue that much of the confusion is the result of researchers using an incident as the level of analysis, whereas aggregated levels of use of force consistently demonstrate racial disparities. In any event, our results suggest that to some extent the general public and news media are not particularly concerned with this topic, yet we know that Black Lives Matter supporters are clearly concerned. Although the comparison is admittedly imperfect, we consider the academic debate regarding the extent to which racialized police use of force and the divide among the public about the same topic to be of the utmost importance, and perhaps related to the growing trend of American polarization on political topics, including issues related to policing and race (Donovan & Klahm, 2018). More work needs to be done to better understand the academic divide both on racialized patterns of use force and on public and news interest in these and related topics.

More narrowly, and perhaps somewhat pessimistically, our results might be taken as evidence that the Black Lives Matter movement has been unsuccessful. The broader population of the United States does not in fact seem to be concerned with police-caused deaths of Black people. We caution against this interpretation, given that Black Lives Matter is ultimately a movement in its early stages and its primary focus still seems to be on online organization, which may in turn have an indirect effect on increasing the coverage of incidents of police brutality (Freelon et al., 2018). We and other scholars (Byrd et al., 2017; Cox, 2017; Leopold & Bell, 2017; Mundt, Ross, & Burnett, 2018) have approached Black Lives Matter as a social movement, but the disparate and loosely knit nature of the organization may classify it as a different type of movement altogether, and perhaps one that requires different measures of success. Still, our research suggests that more work needs to be done and that, at the current date, Black lives do not matter enough.

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**Authors’ Biographies**

**Francesca Bordonaro** graduated from Washington State University in 2017 with a bachelor’s degree in criminal justice. This article is based on her honor’s thesis.

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Andrew J. Costello

Abstract
After an examination of the death of Eric Garner, existing laws and current practices of the New York Police Department (NYPD) come into question. A step-by-step breakdown of the events after the death of Eric Garner explains the outcome of legal decisions of the criminal process against Police Officer Pantaleo made by the Richmond County District Attorney’s Office and the U.S. Attorney’s Office. An explanation and the likely outcome of the NYPD’s upcoming administrative trial are presented from an insider’s point of view. The author argues that the likely conviction of Officer Pantaleo on administrative charges, resulting in his termination, will not produce its intended effect and may be counterproductive in the effort to prevent future deaths of persons in police custody. Suggestions to change NYPD enforcement policy and training, in addition to current New York State law involving access to Grand Jury transcripts and evidence, are presented.

Keywords
Police, use of force, death in custody, NYPD, QOL, asphyxia

The death of Eric Garner raised several concerns regarding law enforcement policies and training issues within the New York City Police Department (NYPD) and how police officers are tried for criminal and administrative matters. From the first appearance of the arrest video taken with a bystander’s cell phone, a large portion of the public was taken aback at what appeared to be a “chokehold” applied to a suspect and a lack of medical care provided by either the NYPD or Emergency Medical System (EMS) technicians. Several people

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were perplexed when the officers were not indicted by a Grand Jury in Richmond County and when the U.S. Attorney’s Office did not follow up regarding civil rights violations. The author will go through the Eric Garner incident from start to finish and explain how and why most of the outcomes occurred, provide some insight into the pending administrative trial, and make a case for filing neither civil rights violations nor internal administrative charges against Police Officer Daniel Pantaleo. The author will argue that instead of allocating resources to the administrative prosecution of Police Officer Pantaleo, the NYPD should direct its efforts to reviewing its existing policy and recommending changes in state legislation related to the access to transcripts of Grand Jury testimony and evidence.

**An Analysis of the Eric Garner Incident**

Eric Garner was arrested for selling untaxed cigarettes on a sidewalk in the Tompkinsville area of Staten Island on July 17, 2014. For some reason, unlike during previous encounters with the NYPD, on this day Eric Garner decided to make a stand and resist arrest. Officer Daniel Pantaleo was one of the many arresting officers who subdued Eric Garner, a large, 6 ft 2 in, 350-lb male (Murray, Marcius, & Parascandola, 2014). According to emergency medical technicians (EMTs) and police at the scene, Eric Garner was breathing when it was decided to transport him to Richmond University Medical Center (Baker, Goodman, & Meuller, 2015). During transport, he went into cardiac arrest. Doctors at the hospital emergency department administered cardiopulmonary resuscitation (CPR), but Eric Garner died at 4:34 p.m. in the hospital (Associated Press, 2016). Although several excerpts of the report were released, the Medical Examiner’s report in its entirety was never fully released. The manner of death was homicide. The cause of death was never fully reported, and it is still unclear if his death was related to the “chokehold” (Goldstein & Schweber, 2014). Needless to say, the untimely death of any person is tragic.

To determine criminality and violation of department rules, the reason for the NYPD enforcement of the law against selling untaxed cigarettes must be explored. In addition, the specific reason why Eric Garner was a particular subject for the enforcement action should be explained. First, the NYPD has enforced the law against the sale of untaxed cigarettes at a precinct level since 1996. The practice was considered to be a Quality of

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1 Andrew J. Costello retired from the NYPD after a 26-year career and has the utmost respect for the department as the premiere law enforcement agency in the world. He greatly admires Police Commissioner O’Neill and has worked with and for him during his career in the NYPD. The author rose through the ranks from Police Officer through Deputy Inspector and has administered most parts of the NYPD disciplinary process, including issuing command disciplines, suspending police officers, and even assisting in their termination and imprisonment. Command disciplines are low-level informal disciplinary sanctions resulting in up to the loss of 10 days of accrued vacation time. Modification of an officer’s duty status involves the removal of firearms and assignment to administrative duties while the officer is still receiving pay. When an officer is suspended from service, firearms are removed and the officer does not receive pay. Termination and imprisonment are self-explanatory. The author fully understands the need for disciplining and convicting police officers of crimes and has done so. He understands that the NYPD, like other institutions, has problems and is not its apologist.
Life (QOL) issue initially, involving the use of brick and mortar storefronts to conceal the sale of illegal drugs, and was considered a nuisance under the abatement laws of the City of New York. In addition, the existence of these storefronts denied tax revenue to the state as well as the control of cigarette sales. If three incidents at a particular storefront were considered to be a nuisance within a 6-month period, the NYPD Legal Bureau obtained a temporary court order to shut the storefront down. The storefront was secured by padlock, and the owners appeared in court to reopen their business, usually within 3 days. In most cases, the reopening was a negotiated settlement between the NYPD Legal Bureau and the owners (see NYPD Patrol Guide 214-01 “Padlock Law” Program). It should be remembered that although these abatement actions were initiated by an offense under New York State (NYS) Tax Law or NYS Penal Law, they were civil proceedings.

A typical nuisance abatement enforcement action performed by the NYPD is overseen by a supervisor of the rank of Sergeant or Lieutenant, who directs an undercover police officer to purchase a loose cigarette, a package of cigarettes without a NYS tax stamp, or marijuana. If the complaint is about the sale of alcohol to a person younger than 21 years of age (the legal age for alcohol consumption in NYS), a minor is recruited by the NYPD to make the purchase. After the sale at the storefront, the undercover officer returns to the supervisor, provides the evidence (an audio or video recording if available), and describes the person who sold the evidence to the undercover officer. The supervisor instructs the apprehension team to enter the storefront and confront the suspect. The undercover officer indicates that the apprehension team has the correct individual, and the team either issues a summons or makes an arrest, as appropriate (see NYPD Patrol Guide 214-01 “Padlock Law” Program). After a few of these operations in conjunction with a nuisance abatement proceeding, storefronts quickly stop engaging in these activities.

Eric Garner was the subject of a QOL action originally designed for storefronts. The enforcement action against Eric Garner for selling untaxed cigarettes in an open-air market was initiated by 311 complaints and QOL complaints. Most such complaints come from legitimate storefront owners who lose business to illicit street sellers. The 311 complaints are monitored by different management levels of the NYPD Patrol Bureau and the Chief of Department. The Chief of Department presents specific QOL issues during the weekly Compstat meetings. Eric Garner’s activity was specifically brought up at a Compstat meeting, and the 120th Precinct Commander was directed to address the issue (Daly, 2014). If the Chief of Department specifically indicates a QOL condition, it is expected that the commander will address it immediately.

Eric Garner sold untaxed cigarettes to an undercover police officer in violation of NYS Tax Law 1814. Although the crime is an unclassified misdemeanor and although it is debatable whether the NYPD should be involved in such enforcement, the law made Eric

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2 Nuisance abatement incidents are considered to be selling marijuana, selling alcohol to minors, selling drug paraphernalia, and selling untaxed and loose cigarettes.
3 The author was in the second NYPD pilot precinct to initiate this program in Spanish Harlem as the conditions sergeant.
4 New York City has a 311 system for citizens to call for any type of city service. This system is also the preferred way to call the NYPD for police-related requests that do not pertain to an emergency or a crime in progress requiring an immediate response.
Garner subject to an enforcement action. Criminal court summonses are issued for most misdemeanors outside the Penal Law of New York. Misdemeanors in New York that carry a penalty for a previous conviction for the same offense are not eligible for criminal court summonses. To establish a previous conviction for the same offense, the fingerprints of the offender obtained from the current offense are verified against the fingerprints obtained from the previous conviction. Thus, all misdemeanors and violations that raise an offense to a felony upon previous conviction must be fingerprinted. To be fingerprinted, an arrestee must be removed to a facility capable of capturing fingerprints. This necessitates the removal of a suspect to a station house.

The NYPD policy for violation of NYS Tax Law 1814 is to remove the suspect to the station house to be processed and fingerprinted. Although an arrestee may have previous convictions for the same offense, the crime is considered a misdemeanor at the time of arrest. The arrestee may be eligible for a Desk Appearance Ticket (DAT), and the court resolves the felony status of the offense at a later hearing. If eligible for a DAT, the arrestee is released from the station house. If the arrestee does not qualify for a DAT, the arrestee is processed and brought before arraignment in the county of arrest (see NYPD Patrol Guide 208-03 Arrests – General Processing and 208-27 Desk Appearance Ticket – General Procedures).

The arrest of Eric Garner was not a summary arrest initiated by an individual police officer, but a coordinated effort to enforce laws against QOL violations. Similar operations involving Eric Garner occurred without incident. On July 17, 2014, Eric Garner decided not to submit to arrest willingly after requests by several police officers. The police officers used physical force to handcuff Eric Garner and place him under arrest. During the brief struggle, police officers brought Eric Garner to the ground and handcuffed him. While resisting the attempts to handcuff him, Eric Garner said “I can’t breathe!” 13 times (Goodman & Baker, 2014). Also during the struggle, Police Officer Pantaleo placed his arm in the neck area of Eric Garner.

The placement of the arm, which lasted for less than 10 seconds, was deemed unacceptable to most observers and was the major focus of attention by critics. Actions by the rest of the officers did not receive as much scrutiny as this one. The uniformed Police Sergeant who was on the scene and appeared not to take any significant supervisory action eventually received department charges. While the EMTs had the primary responsibility for medical assistance, the police officers were responsible for reasonable medical assistance up to the moment the EMTs arrived. There seemed to be a lack of enthusiasm or urgency until this point. As well, the EMTs also seemed unenthusiastic after their arrival, doing the bare minimum. Except for the further appearance of a tepid medical response by the police officers, apart from the slow response of the EMTs, no other officers were subjected to inquiry for their actions.

After being handcuffed, Eric Garner was rolled onto his side to promote free breathing, per NYPD policy. EMTs from Richmond University Medical Center arrived and quickly checked for breathing, a radial pulse, and a carotid pulse per FDNY guidelines. The actions of the EMTs in the video indicate that they had determined that Eric Garner was breathing, had an adequate pulse in his wrist and neck, and was stable for transport. The police officers and the EMTs placed Eric Garner on a gurney and removed him to Richmond
University Medical Center. Eric Garner arrived at the hospital and was pronounced dead there 1 hour later (Queally, 2015).

The New York Daily News obtained a video recording of the arrest and published it on its website, sparking outrage and criticism of the NYPD. A bystander named Ramsey Orta recorded the video, and Orta claimed that Eric Garner had done nothing wrong and had just broken up a fight. Without further information at the time of the video release, reactions to the video prompted protests. Officer Pantaleo’s firearms were removed, and he was assigned to administrative duties. The two EMTs were suspended from answering medical calls under the Fire Department of the City of New York (FDNY)/EMS dispatch service because an FDNY review of the incident erroneously stated that the EMTs had not followed FDNY procedure (NBC New York, 2014, July 17).

An autopsy of Eric Garner conducted by the Office of the Chief Medical Examiner of the City of New York (OCME) determined the manner of death to be a homicide with no direct reference to the cause of death. The autopsy did not reveal any damage to the windpipe or neck bones, a finding that would have been consistent with strangulation or indicative of “chooking” (Celona & Boniello, 2014). Statements released by the Medical Examiner implied that restraint to the neck was the aggravating factor in a person who was obese and who had asthma and heart disease, but it did not provide details about how the Medical Examiner had reached such conclusions (Goldstein & Santora, 2014). Generally, the OCME provides the manner of death and specific details of the cause of death in public statements.

There is a public perception that all homicides are murders and that if a Medical Examiner determines the manner of death to be a homicide, a murder or manslaughter charge must follow. Although a Medical Examiner may classify the manner of death as a homicide, this does not mean there is criminality. Homicide simply means death caused by another human being, as opposed to suicide or death due to accidental or natural causes. Prosecutors determine criminality. The Richmond County District Attorney’s Office conducted a criminal investigation into the death of Eric Garner and presented evidence to a Grand Jury, including the complete autopsy report and testimony of witnesses. Police Officer Pantaleo testified before the Grand Jury for 2 hours (NBC New York, 2014, November 21).

After District Attorney Daniel Donovan presented the case to a Richmond County Grand Jury from September 29 through December 3, 2014, he could not secure a true bill — that is, a majority of the members of the Grand Jury did not find objective facts that would warrant a felony indictment (NBC New York, 2014, November 21). In NYS, Grand Jury records are sealed to prevent the compromise of witnesses and to protect the accused in cases in which no indictment is made. In addition, all evidence, including the autopsy report, is sealed (Queally, 2015). Although the sealing of information given to the Grand Jury is regulated by state law, the lack of transparency contributed to the perception of an inadequate presentation of evidence by the Richmond County District Attorney’s office. Because it is not possible for outsiders to review the Grand Jury presentation made by the Richmond County District Attorney, there is no way to determine if the Richmond County District Attorney made a strong case or introduced all relevant evidence to the Grand Jury. The lack of an indictment was perceived as a lack of procedural justice and was met with
criticism and protests (Goodman & Baker, 2014). At this point, all NYS remedies for criminal sanctions were exhausted.5

On the same day, December 3, 2014, U.S. Attorney General Eric Holder announced that the U.S. Attorney’s Office would conduct its own investigation into the death of Eric Garner (Danna, 2014). Staten Island falls under the jurisdiction of the Eastern District of New York, which was under the control of Loretta Lynch at the time, before she became the U.S. Attorney General. Federal prosecutors generally charge police officers for the excessive use of force under 18 USC § 242 – Deprivation of Rights Under Color of Law. To bring charges, the federal government would be required to show that Officer Pantaleo had deprived Eric Garner of his rights under the Constitution or federal law “… on account of such person being an alien, or by reason of his color, or race.” For this claim to be made successfully, it would have to be shown that Officer Pantaleo willfully initiated the encounter on the basis of Eric Garner’s race under the guise of a state action.

The government would have several problems bringing a federal charge. Officer Pantaleo did not initiate the encounter. The enforcement action against Eric Garner for selling untaxed cigarettes was initiated because of 311 complaints, QOL complaints, and instructions given to the 120th Precinct Commander at Compstat sessions. Also, there was no guise of a state action. Eric Garner sold untaxed cigarettes to an undercover police officer in violation of NYS Tax Law 1814. Although the crime is an unclassified misdemeanor and it can be debated whether the NYPD should be involved in such enforcement, it did subject Eric Garner to arrest. Therefore, Officer Pantaleo and the other officers at the scene neither initiated the action nor used an enforcement action as a guise for discrimination.

The Eastern District of New York under U.S. Attorney General Loretta Lynch declined to proceed with any action at the time of Eric Garner’s death despite objections by the U.S. Department of Justice Civil Rights Division in Washington. Furthermore, the case was not pursued after Loretta Lynch became the U.S. Attorney General (Apuzzo, 2018). Although technically the statute of limitations has not been exceeded, it is unlikely that the current U.S. Attorney General will pursue any action against Officer Pantaleo, having observed no action on the part of his predecessors Loretta Lynch and Eric Holder.

Without the possibility of criminal prosecution, Officer Pantaleo will be tried by the NYPD. The NYPD is bound by case law and therefore could not have started administrative investigations earlier. The NYPD did not take statements from the subject officers to proceed. Under a decision made by the U.S. Supreme Court in Garrity vs. New Jersey (1967), although police administrators and supervisors can compel police officers to testify against their penal interest and Fourth Amendment protections during administrative investigations, these statements may not be introduced in criminal proceedings. Under the

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5 Despite public perception, the NYS Attorney General has limited criminal prosecution power under NYS Executive Law 63 and only that specifically authorized by the governor. The shooting or death of a person in custody in which police are involved generally does not fall within these guidelines. In response to several deaths in police custody, Governor Cuomo has signed an executive order authorizing the NYS Attorney General to investigate deaths in police custody and prosecute when appropriate. Still, although it is legally possible to present a case to a new and different Grand Jury in New York, the reasons to do so must be extremely compelling, or new evidence must have been discovered.
“fruit of the poisonous tree” doctrine (Nardone v. United States, 1939), any future evidence related to the testimony of the subject officers would also be inadmissible.

Although it is technically true that the NYPD could have started an administrative investigation immediately, in practice, this rarely happens without the consent of the involved prosecutors. Most prosecutors fear that such statements, if taken, will be difficult to separate from future statements and the evidence collection needed for a criminal trial. In addition, the statements may be leaked and prejudice a potential jury pool, directly decreasing the likelihood of a successful prosecution. In practice, the NYPD, or any other law enforcement agency, will seek consent from the involved prosecutors before questioning the subjects of an administrative investigation that is likely to lead to criminal charges. In a case such as that of Officer Pantaleo, the consent of the Richmond County District Attorney and the U.S. Attorney for the Eastern District of New York would typically be obtained before the NYPD moved forward.

After the exhaustion of state criminal actions and U.S. civil rights prosecutions, Officer Daniel Pantaleo will be tried in the NYPD trial room under use of force guidelines and other miscellaneous administrative charges. At some point, Officer Pantaleo will be notified by his roll call administrator to report to the Department Advocate. Officer Pantaleo will arrive at One Police Plaza and report to the fourth floor. He will briefly meet with an attorney from the Patrolmen’s Benevolent Association (PBA) and then be directed to sign for his Charges and Specifications. The Charge is simply the Patrol Guide rule that allegedly was broken; the Specification is a brief statement describing the conduct that was in violation of the rule. This would be similar to a prosecutor’s information, which lists the specific violation of the law, and the “to wit” statement, which briefly describes the action. Officer Pantaleo will be questioned by investigators from the Civilian Complaint Review Board (CCRB), the NYPD Internal Affairs Bureau, or both. Officer Pantaleo will be compelled to answer questions. Failure to answer questions related to the investigation will result in his termination from employment.

Although only a single incident occurred and only one action is in question, the Charges and Specifications will be exhaustive and comprise at least five specifications related to the one action. Officer Pantaleo will be charged with specifications that include inappropriate use of force, unauthorized restraining techniques, use of a chokehold, and administrative charges such as incomplete activity log entries. To be more specific, the top charge most likely will be violation of Patrol Guide 221-01 Force Guidelines rule number 2 subdivision a, which reads as follows: “2. Members of the service SHALL NOT: a. Use a chokehold.” As defined earlier in the Patrol Guide, “A chokehold shall include, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air.” The second charge will likely be Patrol Guide 221-02 Use of Force rule number 11, which instructs officers to “apply no more than the reasonable force necessary to gain control.” Additional charges will be related to the use of force procedures. The last charge listed against him will likely be “engaging in conduct prejudicial to good order, efficiency, or discipline of the Department.” This rule is embedded in Patrol Guide 203-10 Public Contact – Prohibited Conduct. The last charge is not clearly defined and is
meant to be ambiguous. It is basically a catch-all similar to disorderly conduct or disturbing the peace.⁶

Officer Pantaleo will leave the office of the Department Advocate after briefly talking to his PBA attorney. The PBA attorney may already have prepared a pre-negotiated plea bargain consisting of loss of vacation days and extended disciplinary probation, but this is unlikely. Officer Pantaleo will either be offered a punishment so excessive that he will not accept it, simply be told he will be going to trial, or be asked to resign with a stipulation of loss of accrued time, loss of pension, or a monetary fine.

A department trial is similar to a military tribunal except that there is only one judge, with the title of Trial Commissioner. Unlike in a special military court martial for cases involving fatalities, in which there is the premise that the three senior commissioned officers sitting on the tribunal have had direct combat experience, a Trial Commissioner does not have any direct field law enforcement experience. The prosecutors from the CCRB will make a case against Officer Pantaleo, and his union attorney will make counterarguments. Despite a semblance of procedure and the use of rules of evidence, some of the rules are relaxed compared with the rules of evidence in a typical criminal or civil trial in New York.

Although the NYPD has exhaustive procedures for preparing and serving Charges and Specifications, no published procedures or guidelines for a department hearing exist. Witnesses will be brought in to testify, a video will be shown, and Officer Pantaleo’s past discipline and training records will be introduced. As to what constitutes the standard of proof to prevail in a case, no one can entirely agree. From experience, it is somewhere between preponderance of the evidence and clear and convincing evidence (both rather loosely understood) and can vary from trial to trial and from Trial Commissioner to Trial Commissioner.

The Trial Commissioner will have to determine if Officer Pantaleo acted within department guidelines, whether a chokehold was applied, and whether the chokehold was intentional or inadvertent. If the Trial Commissioner fairly looks at the training methods given to Officer Pantaleo, the Trial Commissioner will have to determine if Officer Pantaleo acted in a manner consistent with department training and if the training methods led to Officer Pantaleo’s placing his arm in the area of Eric Garner’s neck and shoulder.

From an outside point of view, it would appear that Officer Pantaleo violated department guidelines by engaging in a prohibited act. Unfortunately, the use of force procedures in the NYPD Patrol Guide are proscriptions – that is, the manual dictates what a police officer should not do. In fact, most of the use of force procedures are written as prohibitions. Little is stated about how a police officer should use force. Use of force is prescribed through training. Use of force methods are taught during the initial police academy training, plain clothes training, and, to a limited extent, in-service training. Police recruits are trained on one-man takedowns, two-man takedowns, and the “seat belt” takedown. Additionally, when a police officer is assigned to a plain clothes unit in the NYPD, the police officer must report to tactical training before assignment and be trained on variations of these techniques again.

⁶ Editor’s note: Officer Pantaleo’s departmental trial has been set to begin on May 13, 2019 (Morales, 2018).
The two-man takedown and the "seat belt" takedown involve placing the arm across the subject's chest and one shoulder to bring the subject to the ground. The concept is that a forward motion above a person's center of gravity will bring the person to the ground and remove the person's stable base to fight back. While the individual is on the ground, the officers can handcuff the individual. Once the individual is handcuffed, the police officers are instructed to place the person on one side to promote free breathing. The preference is to place the person on the left side to facilitate blood flow from the heart. On any given day throughout the nation, police officers successfully use these techniques to control those who resist arrest, with no fatal outcomes. There is no guidance on what to do if the arm accidentally slides up to the neck region, nor are police officers trained on persons other than police academy instructors who are in peak physical condition and whose body types vary little. Officer Pantaleo was trained in these techniques at least twice, first during his academy training and again before he was assigned to a plain clothes unit.

Certainly, asphyxia, the condition in which the deprivation of oxygen leads to unconsciousness or death, was such a concern to the NYPD that they banned chokeholds involving nightsticks in the late 1980s. Before this prohibition, NYPD officers were trained on how to place and use their nightstick against one of the carotid arteries in the neck to force arrestees into submission. There was a concern that once partially denied of oxygenated blood, a person would never recover from such oxygen loss and would die. This false concept was reinforced in a study conducted by Reay et al. (1988), which showed the effects of position on the oxygen saturation of subjects who were hog-tied. In hog-tying, a person's hands are restrained behind the back (usually with handcuffs), the ankles are restrained with either rope or ties, and the ankle restraint is then connected to the restrained hands. As a result of this study and other factors, the NYPD banned chokeholds with nightsticks and hog-tying.

Asphyxia is a serious concern to law enforcement officers as both a form of attack and means of submission. Physiologists and medical doctors have proved that blood oxygen levels recover quickly after physical asphyxia. In other words, if a chokehold is applied and then removed, the subject will recover and not continue into a death spiral due to the initial lack of oxygen. In fact, the U.S. District Court of Appeals for the Ninth Circuit, arguably the most liberal circuit in the United States, determined in *Price v. County of San Diego* (1998) that hog-tying was not a contributing factor in the death of Daniel Price. The court heavily relied on a study by Dr. Tom Neuman about an experiment he and others had conducted in an attempt to duplicate the findings of Dr. Reay. Dr. Neuman could not replicate Dr. Reay's results and in direct contrast found that hog-tying did not cause clinically relevant changes in oxygenation or ventilation (Chan, Vilke, Neuman, & Claussen, 1997). In the decision, the court completely rejected Dr. Reay's finding, determining that "the UCSD study, which Dr. Reay concedes rests on exemplary methodology, eviscerates Dr. Reay's conclusions." (*Price v. County of San Diego*, 1998, p. 14). Although the NYPD prohibition of chokeholds is still an admirable policy, it relied on poor science.

If the Trial Commissioner has field experience, he or she may understand that even with the best of training, mishaps occur during field operations. Given the current political pressure, the most likely outcome for Police Officer Pantaleo is termination. The large, multimillion-dollar settlement that was pre-negotiated, not awarded, to the Garner family by Mayor de Blasio makes it unlikely that any of his appointees will allow any other
outcome, including the NYPD Trial Commissioners and the CCRB prosecutors. Police Commissioner O’Neill has one layer of separation from the CCRB trial of Officer Pantaleo, but he will nonetheless experience the wrath from any outcome of this administrative trial because he must personally approve the penalty.

If Officer Pantaleo is found guilty, he may request an Article 78 motion to have the entire procedure reviewed by the NYS Supreme Court (which is a trial level court in the NYS judicial system), so that the entire transcript and evidence rules of this particular hearing will be exposed. Review of the case by the court could have a favorable outcome. The NYS Supreme Court would review introduced evidence under the generally accepted practice of Civil Practice Laws and Rules, without being subjected to the political pressure imposed on the Trial Commissioner. It is possible that the decision could be reversed at a state hearing, forcing the City of New York to make another settlement involving this incident.

The exhaustive demonstration of the disciplinary process of the NYPD for just this one police officer is in stark contrast to the effort to review policies continually. Had the NYPD put one-fifth of the effort that will be expended in disciplining Police Officer Pantaleo into policy review, perhaps it would have been determined that existing policies such as the Padlock Program are outdated. The policy simply outlived its useful purpose and was allowed to creep into different enforcement facets where it was never originally intended to be applied. A simple review would have at least discovered the mission creep. A comprehensive review involving a basic cost-benefit analysis would have determined that the Padlock Program has the potential to be abused by actors unaware of the downstream effects.

No matter the outcome of the Pantaleo administrative trial, the conviction of this solitary police officer will have little effect on the operational considerations of the NYPD. The city administration will be proud to demonstrate how harsh it is when police officers violate department rules. Advocates for Eric Garner will view city administrators as inept because they could not get a criminal conviction. The PBA will advise its officers not to perform self-initiated actions, to take less risk in their law enforcement actions, and await direct supervision for any arrest that may result in conflict. In short, everybody loses. Instead of trying the police officer, an examination of NYPD policy would be more productive and appropriate.

After an explanation of some of the nuances of the Eric Garner incident, one must ask several questions. How did an enforcement action based on a policy designed to close down illicit storefronts causing nuisances in communities in the mid-1990s lead to the death of a man in 2014? How do a police agency and a district attorney’s office show greater transparency in the criminal investigation of a person killed by the police? What can be done to prevent the future injury and death of people taken into custody? The author suggests the following changes in policy and legislation.

Re-Examine Civil Enforcement Programs to Determine if They Should Continue

The inception of the nuisance abatement program in the mid-1990s had a noble goal of removing stores acting as fronts for illegal activities; it was not designed or intended to prevent loose cigarette sales in streets, on sidewalks, or in park areas. The program was
successful and accomplished its mission quickly. Instead of re-evaluating the usefulness and effectiveness of the program, the NYPD allow mission creep to occur, and the program expanded into residential locations and public spaces. This expansion should be re-examined. Is it appropriate to execute a nuisance abatement procedure on an apartment rented by the grandmother of a drug dealer 6 months after the fact (Baker, 2016)?

The NYPD, or any law enforcement agency with nuisance abatement programs, should re-examine its current policies and determine how they can be implemented immediately without a need for the consent of a legislative body. The analysis should focus on the original purpose for the program, whether it has accomplished its original goal, and whether it should be continued or reapplied to other, similar conditions in a controlled manner. Because these steps are within complete control of the agency, they can be implemented immediately.

Allow Grand Jury Transcripts to be Released When a Person Dies While in Police Custody

The sealing of Grand Jury records for unindicted cases is guided by NYS Criminal Procedure Law 190.85 and other applicable laws. The legal reasoning, among other concerns, was to protect witnesses from retaliation in cases that did not go forward and to prevent harm to the accused (People v. DiNapoli, 1970, p. 235). The legislation should be changed to allow the release of Grand Jury transcripts and evidence in cases involving deaths in police custody because the logic of the legal reasoning is not generally applicable to accused police officers.

The argument that sealing Grand Jury transcripts from the public will prevent accused officers from learning the identities of witnesses testifying against them in a Grand Jury proceeding is frail. This is not to suggest that rogue police officers would not attempt to retaliate against witnesses. Subject police officers could learn the identity of witnesses testifying against them through means other than Grand Jury transcripts. In most cases, the subject officers were directly involved in the incident and collected the preliminary information, including witness names, for the investigation. In addition, it is less likely that a subject police officer would retaliate against a witness as a consequence of the increased scrutiny of an internal investigation and the lack of a reaction because of the lack of an indictment.

Changing state law requires action of the state legislature with approval of the executive branch, in most cases. In New York, this would require the introduction of a bill by the Assembly or Senate, approval by both houses, and a signature by the governor. A proposed bill could be introduced and enacted within one legislative session, or approximately one year in most states.

Examine the Possibility of Using Takedown Techniques That Preferably Avoid Neck Placement

Agencies should explore realistic techniques that will reduce injuries to both arrestees and police officers. These techniques should be simple, teachable, and retainable, and it should be possible to replicate them for large training groups. Although martial art techniques may be effective, the moves can be complex and rely on consistent retraining, practice, and
mental memory. However, most agencies do not have the luxury of providing such training time in consideration of their operational needs (Williams, 2000). The NYPD has attempted to adopt techniques that avoid the neck but has fallen into the trap of attempting to train officers in the use of a Jujitsu arm bar hammerlock technique during a short session on the last day of a 3-day training course (Weiss, 2015), with no planned follow-up training to maintain proficiency. Techniques that do not require advanced placement skills and involve no more than three moves, in addition to basic skills such as pulling, pushing, twisting, and bending, should be considered. The development of motor memory techniques to avoid the neck may assist in reducing the number of deaths (Flosi, 2011). Although most agencies have the resources to develop physical training, the development of such techniques will most likely need some outside guidance.

Mechanical force options such as oleoresin capsicum (OC) spray and conductive electronic devices (CEDs) should be considered, and their use in taking down resistant arrestees is strongly encouraged. Although not 100% effective, OC spray may provide a means to enforce compliance with a minimum of effort and is an alternative that is available to most police officers in their utility belt. OC spray has been in use since the 1990s (Morabito & Doerner, 1997) and is available to all NYPD officers in the field.

The NYPD experience with CEDs prompted the creation of policies that restricted their use to supervisors and specialty personnel. Ironically, the policy to restrict the use of CEDs by police officers in the NYPD was prompted by abuse by a police supervisor. Specifically, after Sergeant Pike in 1985 used a stun gun on a teenage male suspect (Raab, 1985), CED use was restricted to supervisors and members of the NYPD Emergency Service Unit. To reduce the number of physical takedowns, CEDs should be issued to police officers in the field, not kept in reserve for police supervisors and emergency service personnel, who will likely arrive at an arrest scene too late to use them effectively.

The tragic death of Eric Garner exposed policy and training issues. Convicting a police officer of administrative charges to produce some type of closure is politically expedient, but it does not solve the problem at hand. A close review of enforcement strategies such as QOL and civil enforcement methods must be undertaken immediately. Criminal proceedings involving police officers need to be more transparent. Takedown techniques that can reduce exposure to the neck area must be explored. These changes in policy would be the most productive tribute to the legacy of Eric Garner.

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Author Biography

Andrew J. Costello has been an Assistant Professor of Criminal Justice at the New York Institute of Technology since 2016 after retiring from a 26-year career with the New York City Police Department (NYPD). He received his doctorate from John Jay College in 2013 while working full time for the NYPD. Andrew Costello has worked in the Patrol, Transit, and Detective Bureaus of the NYPD in addition to working for the Police Commissioner’s Office of Analysis, Management, and Planning (OMAP). In addition performing enforcement duties, he has analyzed and drafted agency-wide policies for the NYPD while assigned as an analyst in OMAP, in addition to policies directly related to investigations for the Detective Bureau.
The Eric Garner Incident: Sentinel Calls for Greater Scholarly Support in Policymaking

Joe D. Mazza 1

Abstract
The Eric Garner incident serves as a sentinel event exposing weakness in our system of policing low-level offenses. The New York Police Department policy at the center of this encounter lacked a foundation of sound evidence. Administrative mandates forced officers to make a custodial arrest instead of releasing a low-level offender in the field. Combined, they created a condition ripe for tragic results. Custodial arrests should serve important public interests, but none are apparent here. This incident presents a call for greater scholarly partnerships with police and other stakeholders to provide studies with evidence on which better public policy can be based.

Keywords
Eric Garner, police, sentinel event, Broken Windows, arrest, resisting arrest, use of force, summons in lieu of arrest, policymaking

The last several years have seen a series of highly publicized incidents in which Black men have allegedly died at the hands of the police. These incidents have resulted in pronounced criticism of modern policing methods and tested the public’s trust in the police. Typically, the media analysis has involved a broad range of opinions – from the purely emotional to the agenda driven. In few cases has that analysis provided a thorough examination of the public policies surrounding the events. Andrew Costello (this issue) provides a thoughtful analysis of the policies surrounding the 2014 Eric Garner incident, viewed through the lens of an experienced New York City police commander. Specifically, he reviews the New York City Police Department (NYPD) policies and a state procedural law that have influenced this matter. His analysis shows how scholars, the public, and police can learn from a sentinel event to inform policy and create change. The Garner incident represents a local

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incident with national implications worthy of careful consideration by scholars, the police, and the public for the betterment of public policy.

The Eric Garner Incident

According to the NYPD, on occasions before July 17, 2014, unidentified civilians reported to the police that Eric Garner was selling untaxed loose cigarettes (Costello, this issue). Garner had been arrested for this particular offense several times in the past. On July 17, as part of a coordinated enforcement effort resulting from these complaints, an undercover officer purchased cigarettes from Garner. Shortly thereafter, Officer Daniel Pantaleo, other officers, and a supervisor attempted to arrest Garner for this offense. Garner denied selling cigarettes when confronted by the officers. He went on to say, “Every time you see me you want to mess with me. … I’m tired of this. … It stops today.” Garner continued to voice his discontent until officers moved in to make the arrest. Garner then told the officers at least three times not to touch him. Pantaleo then put his arm around Garner’s neck in an attempt to subdue him – a maneuver described in the media and elsewhere as a chokehold (Chung, 2015; Peters & Eure, 2015). Garner continued to resist his arrest physically by struggling to stay on his feet and prevent the officers from gaining control of his hands until he was finally brought to the ground by four police officers. Once on the ground, Garner told officers that he could not breathe. Officers called for emergency medical services, and Garner was transported to a local hospital.

At Richmond University Medical Center, Eric Garner was pronounced dead. The medical examiner’s report and death certificate have not been publicly released. Garner’s death was reported to have been classified as a homicide (Nathan, 2014). In a statement by Julie Bolcer, a spokeswoman for the Office of Chief Medical Examiner of the City of New York, Garner’s death was said to have resulted from neck and chest compression and prone positioning during physical restraint by the police, with his medical conditions serving as contributing factors (Nathan, 2014). Garner’s death generated widespread outcry and elevated the chokehold to a major public concern (Peters & Eure, 2015).

The State of New York convened the Richmond County Grand Jury to examine the matter and determine if criminal charges against Pantaleo were warranted. The grand jury conducted 9 weeks of hearings and deliberations involving 50 witnesses (including four officers given immunity from criminal prosecution and 22 civilians); 60 exhibits, including video, police policies, and autopsy material; and training on the principles of law and officer use of force (Fagan & Harcourt, n.d.). In December 2014, the grand jury concluded that the evidence to charge Pantaleo with a crime was insufficient (Fagan & Harcourt, n.d.). Subsequently, U.S. Attorney General Eric Holder announced that the U.S. Department of Justice would conduct a federal civil rights investigation into Garner’s death (U.S. Department of Justice, 2014). In 2015, Garner’s family settled a wrongful death suit against the NYPD for $5.9 million and another against Richmond University Medical Center for $1 million (The Associated Press, 2016; Goldman, 2015).

As of this date, 4 years later, the Department of Justice has made no decision to address this matter further, but the New York City Civilian Complaint Review Board has recommended an internal hearing (Mueller, 2017). Given the inertia of the Department of Justice, the NYPD asked for and was given permission to proceed with its own internal
disciplinary proceedings against Pantaleo (Mueller, 2017). As of the time of this writing, that administrative hearing has not concluded.

**Sentinel Events**

When unexpected negative outcomes happen in complex systems, a single act is rarely the cause. Such outcomes are sentinel events that may serve as indicators of system or process weaknesses (National Institute of Justice, 2017). Thoughtful and considered analysis of sentinel events can lead to change that strengthens systems and improves performance for the benefit of everyone. The Garner incident was such an event, but with media and political attention focusing almost exclusively on blame, society is being deprived of an opportunity to learn and to improve its system of justice. The death of Eric Garner demands a better review.

**Broken Windows Policing**

The stage for policy discussion is set by the cause for police action against Garner. The police were responding to quality of life complaints by using a nuisance abatement approach (Costello, this issue). This approach is based on the Broken Windows model of policing developed by James Q. Wilson and George L. Kelling (1982), who describe a causal link between disorder and crime that necessitates aggressive policing of low-level offenses. William Bratton (1995) wrote about the influence of this model in his creation of the “Reclaiming the Public Spaces of New York” strategy, which included several substrategies to address quality of life issues. He proclaimed, “We’re going to fix the broken windows and prevent anyone from breaking them again” (Bratton & Knobler, 1998).

Police strategies founded on Broken Windows are not based on evidence. The claim that Broken Windows policing leads to a reduction of crime is empirically unsupported. Bratton (1995) and Bratton and Knobler (1998) claimed that this effort resulted in steep reductions in reported crime within the city. Although steep reductions did occur, the National Research Council (2004) found that these results could not be attributed solely to Broken Windows policing because a set of large organizational changes was simultaneously implemented by the NYPD, including Compstat. Additionally, external factors were taking place at that time. A meta-analysis of disorder policing studies found that aggressive order maintenance strategies alone do not cause significant reductions in crime (Braga, Welsh, & Schnell, 2015). Providing no evidence to support the efficacy of Broken Windows policing, these findings buttress the argument of Costello (this issue) that the NYPD and other police agencies should review the need to continue similar civil enforcement programs.

**Was Garner’s Custodial Arrest for a Low-Level Offense Reasonable?**

The NYPD required officers to arrest certain low-level offenders (Costello, this issue; NYPD conditions of service [P.G. 209-01], 2018). This NYPD policy – an administrative regulation – translated into the custodial arrest of Garner at all costs because that was what the officers were trained and ordered to do. That policy was the driving force pitting the officers against Garner that day because it required a custodial arrest and traditional booking
procedures at the stationhouse before Garner’s release or arraignment (Costello, this issue).

One must ask if requiring the custodial arrest of low-level offenders is sound policy. Presumably, the NYPD should reasonably require custodial arrest to achieve important state interests, such as when it is believed that a suspect (a) has failed to appear on other summonses, (b) is a danger to self or others, (c) has existing warrants for arrest, (d) is insufficiently identified, (e) will obstruct justice if released, (f) will not appear for this summons, or (g) requires pretrial monitoring conditions. However, according to the available records, none of these circumstances applied to Garner. An examination of the NYPD Patrol Guide (2018) reveals the reason for his mandatory arrest, assuming that the version of the policy therein closely mirrors the version of the policy effective at that time. NYPD officers were required to arrest offenders who violated the New York City Administrative Code (NYPD conditions of service [P.G. 209-01], 2018). Certainly, state interests are involved, but are they sufficiently important to warrant custodial arrest in this or similar cases?

Custodial arrest should serve important state interests and should be used judiciously after the benefits have been weighed against the costs. Decisions about what constitutes important state interests should be made by elected officials in consultation with stakeholders. Custodial arrests represent formal government control over the accused, a significant point with much influence in the founding of our nation. Arrest curtails individuals’ freedom, even if only briefly. Arrests also entail financial costs to the criminal justice system and the arrestee (CBS News, 2012; Eisen, 2014; Harmon, 2016). They may have cascading effects on the arrestee, such as loss of time at work, loss of employment, and a reduction in income and available cash for day-to-day and family expenses. Arrest records may affect the ability of arrestees to secure and maintain future employment. These effects, in turn, may influence housing, food, and child care, to name a few issues, and eventually spiral into additional costs for society. The previously listed costs do not include the intangible costs associated with arrest, such as trust in the criminal justice system and its legitimacy, especially if the police used force. The benefits of arrest should be considered against these costs. When the benefits do not outweigh the costs, an alternate method of handling the matter and entering the person into the system should be considered.

Zero Tolerance for Resisting Arrest
Because officers were complying with a NYPD policy to make a mandatory arrest, many have argued that Garner would still be alive today if he had not resisted. The video makes clear that while officers attempted to arrest him, Garner refused to submit to their control. He voiced his intent to resist arrest and physically attempted to prevent the officers from handcuffing him. The thought process underlying such opinions is sound, as it represents the current public policy. Society has an expectation that officers will not retreat from uncooperative offenders who do not wish to be arrested. If officers retreated, it would diminish the authority of the police and embolden offenders. We offer absolutely no opportunity for offenders to resist arrest, as evidenced by the New York State Consolidated Penal Law (CPL), under which the act is punishable by up to a year in jail in addition to any penalties for underlying offenses (CPL §205.30). We expect that officers will arrest offenders even when they resist or attempt to escape. In New York State, the people have
authorized their officers to use reasonable and necessary force in such instances (CPL §35.30). Foregoing the obvious questions surrounding the chokehold, these laws underpin the policies that led to the officers’ actions against Garner.

Alleged offenders must submit to their arrest. Any debate concerning the validity of their arrests must be addressed before a judge. Alleged offenders who resist arrest invite forceful encounters that endanger themselves, officers, and bystanders. Garner, especially given his criminal history, should have known that officers would respond to his resistance with force. Still, attempts to view the Garner matter only through this paradigm miss the bigger picture. Given the known negative outcomes associated with arrests, policymakers should consider allowing officers to use alternatives in clearly defined circumstances.

**Summons in Lieu of Arrest**

The custodial arrest and subsequent use of force to overcome Garner’s resistance was a function of policy, but the mandatory arrest of Garner for his offense defies the public policy of the State of New York. The state’s preference is for officers to issue a universal summons rather than make a custodial arrest for a minor offense (People v. Hazelwood, 104 Misc. 2d 1121, 429 N.Y.S.2d 1012 [Crim. Ct. 1980]). The state policy is codified in CPL §150.20 and would have permitted officers to issue a summons/notice of violation and release Garner at the scene (NYPD conditions of service [P.G. 209-01], 2018).

Summons in lieu of arrest is a tool that allows officers and the criminal justice system greater flexibility in handling offenders and that might have been useful in the Garner matter. A large majority of agencies throughout the country have for several years permitted the summons and release of offenders instead of arrest for minor offenses (International Association of Chiefs of Police, 2016). The practice is endorsed by leading criminal justice organizations, including the American Bar Association (Phillips, 2014). Additionally, in 2013, former Chief Judge of New York Jonathan Lippman called for the release of nonviolent offenders with the least restrictive conditions possible unless evidence of threats to public safety or legitimate risks of failure to appear could be demonstrated (Lippman, 2013). Although we can never know, one can imagine how the narrative surrounding the Garner incident might have been different if the police had attempted to issue a summons or, if later they needed to arrest Garner under the authority of a judicially approved warrant for his failure to appear at the scheduled hearing.

The International Association of Chiefs of Police (2016) identified several reasons supporting summons in lieu of custodial arrest. Among them are protection of the rights of the accused, reduction in the jail population and unnecessary community disruption, and evidence that the practice frees officers to resume their patrol duties while improving efficiency and reducing costs. Importantly, it may also improve officer and suspect safety, as arrest encounters have resulted in a substantial number of injuries and death (Federal Bureau of Investigation, 2018; Miller, et al., 2017). Each of these reasons is salient because much anecdotal evidence indicates that our criminal justice system is overburdened, our police are understaffed and underfunded, jails are overcrowded, communities and families are being damaged, people are being hurt, and costly settlements are piling up, placing increasing hardship on taxpayers. Unfortunately, few studies have attempted to examine the effectiveness of summons in lieu of arrest at achieving these goals. Most recently, Baumer and Adams (2006) found that jail populations can be reduced when summonses
are issued for certain low-level offenses instead of arrests being made. As with Broken Windows, little empirical evidence is available to show the effectiveness of the summons and release of low-level offenders.

Conclusion
The Garner incident is a sentinel event because it illustrates a systematic weakness in police responses to low-level offenses. It shows that we continue to establish public policies without evidence of their value and largely ignore potential alternatives when they might be preferred. We should study this and other sentinel events because they serve as a reminder that we still need to learn much more about policing and offending as they relate to public policy. In this case, in addition to a greater scrutiny of Broken Windows, we should look to determine if summonses in lieu of arrest programs for low-level offenders reduce associated burdens while ensuring community safety and defendants' appearance in court.

The Eric Garner incident is outside the usual realm of scholarly criminal justice studies, but it represents a large portion of police-offender encounters. As social science scholars, we sometimes lose sight of how we can direct our efforts to improve society. As members of the public or police, we often focus too greatly on assigning blame instead of examining underlying causes. Together, we must partner and refocus our attention on identifying and producing studies useful to the development of evidence-based public policies.

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