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## Law Enforcement's "Warrior Problem"

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## LAW ENFORCEMENT'S "WARRIOR" PROBLEM

Seth Stoughton\*

Within law enforcement, few things are more venerated than the concept of the Warrior. Officers are trained to cultivate a "warrior mindset," the virtues of which are extolled in books,<sup>1</sup> articles,<sup>2</sup> interviews,<sup>3</sup> and seminars<sup>4</sup> intended for a law enforcement audience. An article in *Police Magazine* opens with a sentence that demonstrates with notable nonchalance just how ubiquitous the concept is: "[Officers] probably hear about needing to have a warrior mindset almost daily."<sup>5</sup> Modern policing has so thoroughly assimilated the warrior mythos that, at some law enforcement agencies, it has become a point of professional pride to refer to the "police warrior."<sup>6</sup> This is more

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\* Assistant Professor of Law, University of South Carolina School of Law. I am grateful to Geoff Alpert, Walter Katz, Mel Tucker, Hal Williamson, and Scott Wolfe for their helpful suggestions during the drafting process. In addition, I appreciate the questions and comments from the audiences at *The Thin Blue Line: Policing Post-Ferguson* symposium at the St. Louis University School of Law and the *Police Use of Force: Investigation and Best Practices* training seminar hosted by the Cuyahoga County Prosecutor's Office, as well as the many emails I've received from law enforcement officers, instructors, and executives around the country over the past few months, all of which have helped refine my thinking. I also appreciate the excellent editorial work of the *Harvard Law Review*. As always, I am deeply grateful for the support of Alisa Stoughton.

<sup>1</sup> E.g., MICHAEL J. ASKEN & DAVE GROSSMAN, *WARRIOR MINDSET* (2010).

<sup>2</sup> E.g., Amaury Murgado, *Developing a Warrior Mindset*, POLICE MAG., May 24, 2012, <http://www.policemag.com/channel/patrol/articles/2012/05/warrior-mindset.aspx> [<http://perma.cc/CK6Q-VNLR>]; Charles Remsberg, *Warrior Mindset: 8 Elements of Tactical Performance*, POLICEONE.COM (June 5, 2013), <http://www.policeone.com/Officer-Safety/articles/6261735-Warrior-mindset-8-elements-of-tactical-performance> [<http://perma.cc/R6CK-PRPP>].

<sup>3</sup> *Hank Hayes: Warrior Mindset*, POLICEONE.COM (Mar. 14, 2011), <http://www.policeone.com/hank-hayes/videos/5955798-Hank-Hayes-Warrior-Mindset> [<http://perma.cc/5JKL-JPK8>].

<sup>4</sup> The 2015 International Law Enforcement Educator and Trainers Association Conference, for example, will feature two sessions each on "Becoming Knights – Teaching Warrior Mindset to the Non-Warrior" and "Building Warrior Women Trainers." See 2015 ILEETA Conference Schedule, INT'L LAW ENFORCEMENT EDUCATOR & TRAINERS ASS'N, [http://ileeta.org/wp-content/uploads/2014/09/2015-ILLETA-CONFERENCE-3\\_2\\_151.pdf](http://ileeta.org/wp-content/uploads/2014/09/2015-ILLETA-CONFERENCE-3_2_151.pdf) (last visited Mar. 21, 2015) [<http://perma.cc/WXD8-R55G>]. Prior years offered additional training sessions with titles like "The Path of the Warrior Mentor," "Filling the Tank – Warriors and Leaders," "Always the Warrior at Every Age," and "Emotional Warrior Training: Combating Stress." Valerie Van Brocklin, *Where Have All the Warriors Gone?*, LAWOFFICER.COM (Mar. 8, 2012), <http://www.lawofficer.com/article/training/where-have-all-warriors-gone> [<http://perma.cc/XX79-QLEC>].

<sup>5</sup> Murgado, *supra* note 2.

<sup>6</sup> E.g., LOREN W. CHRISTENSEN, *DEFENSIVE TACTICS: MODERN ARREST & CONTROL TECHNIQUES FOR TODAY'S POLICE WARRIOR* (2008). Similarly, a wide variety of sources identify police officers as warriors. See, e.g., HELEN BARNETT, *URBAN WARRIOR* (1999); LOREN W. CHRISTENSEN, *WARRIORS: ON LIVING WITH COURAGE, DISCIPLINE, AND HONOR* (2004); LARRY F. JETMORE, *THE PATH OF THE WARRIOR: AN ETHICAL GUIDE TO PERSONAL & PROFESSIONAL DEVELOPMENT IN THE FIELD OF CRIMINAL JUSTICE* (2005); LUX JAMESON, *ON THE JOB: A BLACK WARRIOR IN BLUE* (2000); BERNARD SCHAFER,

than a relatively minor change in terminology. Though adopted with the best of intentions, the warrior concept has created substantial obstacles to improving police/community relations. In short, law enforcement has developed a “warrior” problem.

In this Commentary, I first describe how law enforcement training and tactics reflect the warrior concept, identifying aspects of modern policing that, if not addressed, will continue to prevent or undermine efforts to improve public perceptions of police legitimacy. I join a growing chorus of voices contending that it is the Guardian, not the Warrior, that offers the appropriate metaphor for modern officers.<sup>7</sup> Drawing on that principle, I offer two practical changes to police training that have the potential to advance the ultimate police mission — promoting public security — in a way that fosters, rather than thwarts, public trust: requiring non-enforcement contacts and emphasizing tactical restraint.

What is the warrior mindset? In its most restrictive sense, it refers to the mental tenacity and attitude that officers, like soldiers, are taught to adopt in the face of a life-threatening struggle. In this context, the warrior mindset refers to a bone-deep commitment to survive a bad situation no matter the odds or difficulty, to not give up even when it is mentally and physically easier to do so.<sup>8</sup> So narrowly defined, the concept is difficult for anyone to criticize. Unfortunately, the homage paid to the Warrior has expanded that uncontroversial definition beyond all recognition.

The warrior mindset has mutated into the warrior mentality. Like the restrictive version, the broad definition is motivated by the undeniable importance of officer safety. But where the restrictive version represents an attitude that officers should display in the most physically dangerous and psychologically precarious situations, the broad definition instructs officers on how to approach every aspect of their job. From their earliest days in the academy, would-be officers are told that their prime objective, the proverbial “first rule of law enforcement,”<sup>9</sup> is to go home at the end of every

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WAY OF THE WARRIOR: LAW ENFORCEMENT PHILOSOPHY (2013); BRUCE K. SIDDLE, SHARPENING THE WARRIOR’S EDGE: THE PSYCHOLOGY & SCIENCE OF TRAINING (1995); BRIAN VONCANNON, LIVING BEHIND THE SHIELD: A MODERN WARRIOR’S PATH TO BRAVEHOOD (2000).

<sup>7</sup> See, e.g., U.S. COMM’N ON CIVIL RIGHTS, WHO IS GUARDING THE GUARDIANS?: A REPORT ON POLICE PRACTICES (1981).

<sup>8</sup> Charles Dahlinger, *Law Enforcement Combat Thinking*, LAW ENFORCEMENT TODAY (May 21, 2014), <http://www.lawenforcementtoday.com/2014/05/21/law-enforcement-combat-thinking> [<http://perma.cc/Z54W-9CAU>].

<sup>9</sup> Seth Stoughton, *How Police Training Contributes to Avoidable Deaths*, THE ATLANTIC (Dec. 12, 2014), <http://www.theatlantic.com/national/archive/2014/12/police-gun-shooting-training-ferguson/383681> [<http://perma.cc/7T6L-PP24>].

shift.<sup>10</sup> But they are taught that they live in an intensely hostile world. A world that is, quite literally, gunning for them. As early as the first day of the police academy, the dangers officers face are depicted in graphic and heart-wrenching recordings that capture a fallen officer's last moments.<sup>11</sup> Death, they are told, is constantly a single, small mis-step away. A recent article written by an officer for *Police Magazine* opens with this description: "The dangers we expose ourselves to every time we go [on duty] are almost immeasurable. We know this the day we sign up and the academy certainly does a good job of hammering the point home."<sup>12</sup> For example, training materials at the New Mexico Police Academy hammer that point quite explicitly, informing recruits that the suspects they will be dealing with "are mentally prepared to react violently."<sup>13</sup> Each recruit is told, in these words, "[Y]ou could die today, tomorrow, or next Friday."<sup>14</sup>

Under this warrior worldview, officers are locked in intermittent and unpredictable combat with unknown but highly lethal enemies. As a result, officers learn to be afraid. That isn't the word used in law enforcement circles, of course. Vigilant, attentive, cautious, alert, or observant are the terms that appear most often in police publications. But make no mistake, officers don't learn to be vigilant, attentive, cautious, alert, and observant just because it's fun. They do so because they are afraid. Fear is ubiquitous in law enforcement. As I've written elsewhere, officers are:

constantly barraged with the message that that they should be afraid, that their survival depends on it. Not only do officers hear it in formal training, they also hear it informally from supervisors and older officers. They talk about it with their peers. They see it on police forums and law enforcement publications.<sup>15</sup>

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<sup>10</sup> Seth W. Stoughton, *Policing Facts*, 88 TUL. L. REV. 847, 865-66 (2014); see also SCOTT FIELDEN, *THE MIND OF A COP: WHAT THEY DO, AND WHY THEY DO IT* 21 (2009); DAVID J. THOMAS, *UNDERSTANDING VIOLENT CRIMINALS: INSIGHTS FROM THE FRONT LINES OF LAW ENFORCEMENT* 191 (2014). For a critique of this "first rule of law enforcement," see Jack Colwell et al., *No "Officer Safety" Exception to the Constitution*, LAW & ORDER, Jan. 2015, at 10, [http://www.hendonpub.com/law\\_and\\_order/articles/2015/01/no\\_officer\\_safety\\_exception\\_to\\_the\\_constitution](http://www.hendonpub.com/law_and_order/articles/2015/01/no_officer_safety_exception_to_the_constitution) [<http://perma.cc/DN22-STU8>].

<sup>11</sup> FIELDEN, *supra* note 10, at 20.

<sup>12</sup> A.J. George, *Winning a Knife Fight*, POLICE MAG. (Feb. 11, 2015), <http://www.policemag.com/channel/weapons/articles/2015/02/winning-a-knife-fight.aspx> [<http://perma.cc/PNV5-MSFM>].

<sup>13</sup> Uriel J. Garcia, *Experts Say Strongly Worded Police Curriculum Is Risky with Cadets*, SANTA FE NEW MEXICAN (Mar. 25, 2014), [http://www.santafenewmexican.com/news/local\\_news/experts-say-strongly-worded-police-curriculum-is-risky-with-cadets/article\\_6fcb7d45-436c-5e48-aa06-2fc6fdcc35a1.html](http://www.santafenewmexican.com/news/local_news/experts-say-strongly-worded-police-curriculum-is-risky-with-cadets/article_6fcb7d45-436c-5e48-aa06-2fc6fdcc35a1.html) [<http://perma.cc/FBQ2-LYTP>].

<sup>14</sup> *Id.*

<sup>15</sup> Stoughton, *supra* note 9.

For Warriors, hypervigilance offers the best chance for survival.<sup>16</sup> Officers learn to treat every individual they interact with as an armed threat and every situation as a deadly force encounter in the making.<sup>17</sup> *Every* individual, *every* situation — no exceptions. Because the enemies' identities are unknown, everyone is a threat until conclusively proven otherwise. A popular police training text offers this advice: "As you approach any situation, you want to be in the habit of looking for cover[] so you can react automatically to reach it should trouble erupt."<sup>18</sup> A more recent article puts it even more bluntly: "Remain humble and compassionate; be professional and courteous — and have a plan to kill everyone you meet."<sup>19</sup> That plan is necessary, officers are told, because everyone they meet may have a plan to kill *them*.

This approach inevitably affects the way that officers interact with civilians. First, it creates a substantial, if invisible, barrier to true community policing. Although now a painfully nebulous phrase — the victim of expansive overuse<sup>20</sup> — community policing is, at its core, a strategy that relies on building "[c]ollaborative partnerships" between police agencies and communities so as to better identify problems and "develop and evaluate effective responses."<sup>21</sup> To fulfill the promises of community policing, officers must establish meaningful short- and long-term relationships with individual community members. To see the friction between relationship building and the warrior mentality, with its hypervigilant focus on preserving officer safety at all costs, consider this thought experiment: Imagine that you are a

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<sup>16</sup> Thomas C. Knowles, *Cops Aren't Your Enemy*, POLITICO MAG. (Dec. 23, 2014), <http://www.politico.com/magazine/story/2014/12/cops-arent-your-enemy-113794.html> [<http://perma.cc/B5UL-JB3A>] ("From the start of any police academy, we are taught as cops to be ever vigilant — to apply laser-like attention to our surroundings at all times.").

<sup>17</sup> Richard Fairburn, *Cooper's Colors: A Simple System for Situational Awareness*, POLICEONE.COM (Aug. 9, 2010), <http://www.policeone.com/police-trainers/articles/2188253-Coopers-colors-A-simple-system-for-situational-awareness> [<http://perma.cc/5PU5-5957>].

<sup>18</sup> RONALD J. ADAMS ET AL., STREET SURVIVAL 155 (1980).

<sup>19</sup> John Bennett, *How Command Presence Affects Your Survival*, POLICEONE.COM (Oct. 7, 2010), <http://www.policeone.com/Officer-Safety/articles/2748139-How-command-presence-affects-your-survival> [<http://perma.cc/CKF3-Y8C6>].

<sup>20</sup> "One reason for its popularity is that community policing is a plastic concept, meaning different things to different people." John E. Eck & Dennis P. Rosenbaum, *The New Police Order: Effectiveness, Equity, and Efficiency in Community Policing*, in THE CHALLENGE OF COMMUNITY POLICING: TESTING THE PROMISES 3, 3 (Dennis P. Rosenbaum ed., 1994). Because it is so variable, "[c]ommunity policing has become the new orthodoxy for cops." *Id.* In this way, community policing offers a sad parallel to the original, limited meaning of the warrior mindset.

<sup>21</sup> CMTY. ORIENTED POLICING SERVS., U.S. DEP'T OF JUSTICE, COMMUNITY POLICING DEFINED 1 (2014), <http://www.cops.usdoj.gov/pdf/vets-to-cops/eo30917193-CP-Defined.pdf> [<http://perma.cc/7JG2-AMMC>].

rookie police officer driving down the street, windows down,<sup>22</sup> and looking for people in the community with whom you can begin building positive relationships. But you have been told (repeatedly) that your survival depends on believing that everyone you see — literally *everyone* — is capable of, and may very well be interested in, killing you. Put in that position, would you actually get out of your car and approach someone? And if you did, would you stroll up to start a casual conversation or would you advance cautiously, ask for identification, run a criminal background check, and request consent to search . . . and then, maybe, try to start that casual conversation? The latter, of course, is what many officers are taught to do. It is what I was taught to do as a rookie officer. My first ever “consensual encounter,” only hours into my first day of field training, followed exactly that pattern. It takes no great imagination to recognize how badly that approach, repeated over hundreds or thousands of police/civilian interactions in any given jurisdiction, hinders the creation of meaningful, collaborative relationships.

Counterintuitively, the warrior mentality also makes policing less safe for both officers and civilians. Either through formal training or informal example, officers learn to both verbally and physically control the space they operate in.<sup>23</sup> It is essential to set the proper tone for an encounter,<sup>24</sup> and the tone that best preserves officer safety is widely thought to be one of “unquestioned command.”<sup>25</sup> Even *acting* friendly, officers may be told, can make them a target.<sup>26</sup> But like the use of physical force,<sup>27</sup> the assertive manner in which officers set the tone of encounter can also set the stage for a negative response or a violent interaction that was, from the start, avoidable. From the warrior per-

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<sup>22</sup> One of the classic criticisms that community police advocates level against contemporary policing is the tendency for officers to drive around their assigned patrol zone with their windows up, effectively shutting themselves away from the public.

<sup>23</sup> Bennett, *supra* note 19.

<sup>24</sup> Lawrence N. Blum & Joseph M. Polisar, *Why Things Go Wrong in Police Work*, 71 POLICE CHIEF, July 2004, at 49, [http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display\\_arch&article\\_id=336&issue\\_id=72004](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=336&issue_id=72004) [<http://perma.cc/4DDR-Y4XZ>]. Officers may establish this authority more firmly in some interactions than others. See Christopher Cooper, *Mediation in Black and White: Unequal Distribution of Empowerment by Police*, in NOT GUILTY 125, 125–26 (Jabari Asim ed., 2001).

<sup>25</sup> *Michigan v. Summers*, 452 U.S. 692, 702–03 (1981) (stating that, in the context of a traffic stop, “[t]he risk of harm to both the police and the [vehicle] occupants is minimized if the officers routinely exercise unquestioned command of the situation”).

<sup>26</sup> ANTHONY J. PINIZZOTTO ET AL., U.S. DEP’T OF JUSTICE, VIOLENT ENCOUNTERS: A STUDY OF FELONIOUS ASSAULTS ON OUR NATION’S LAW ENFORCEMENT OFFICERS 19 (2006), <http://www.secondcalldefense.org/sites/default/files/pdfs/Violent-Encounters.pdf> [<http://perma.cc/4UJB-69XK>].

<sup>27</sup> Cf. GEOFFREY P. ALPERT & ROGER G. DUNHAM, UNDERSTANDING POLICE USE OF FORCE 88–91 (2004) (presenting data on officer/suspect interactions and the impacts of the use of force).

spective, the solution is simple: the people with whom officers interact must accede, respecting officers' authority by doing what they are told. The failure to comply is confirmation that the individual is an enemy for the Warrior to vanquish, physically if necessary. And this creates avoidable violence. Sue Rahr, a former sheriff and currently both the Director of the Washington State Criminal Justice Training Commission and a member of President Obama's Task Force on Twenty-First Century Policing, put it this way: "We do our recruits no favor if we train them to approach every situation as a war. To do so sets them up to create unnecessary resistance and risk of injury."<sup>28</sup>

Admittedly, violence is relatively uncommon in police/civilian encounters and most uses of physical force involve relatively low-level violence, with injuries to both officers and civilians being correspondingly uncommon,<sup>29</sup> but an officer who needlessly aggravates a situation doesn't just increase the risk he faces in *that* encounter. He also increases the risk that other officers face in *other* encounters. Consider that of the ten most destructive and violent riots in United States history, fully half were responses to perceived police abuses.<sup>30</sup> An aggressive approach in individual interactions can exacerbate underlying social tensions in a way that fuels a dangerous fire. This is not a new observation. The Wickersham Commission, which investigated the failures of Prohibition enforcement, made exactly this point in its 1931 report: "High-handed methods, shootings and killings, *even where justified*, alienate[] thoughtful citizens, believers in law and order. Unfortunate public expressions . . . approving killings and promiscuous shootings and lawless raids and seizures and deprecating the constitutional guarantees involved[] aggravate[] this effect."<sup>31</sup> The expansive version of the warrior mentality promotes the use of tactics that needlessly create use of force situations, and the fierce rhetoric that follows further fans the flames.

The Warrior has created problems for law enforcement, but the Guardian may offer some solutions that enhance both officer and civilian safety in ways that increase public trust in the police. This has not

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<sup>28</sup> JOHN S. DEMPSEY & LINDA S. FORST, AN INTRODUCTION TO POLICING 127 (8th ed. 2014) (quoting Sue Rahr) (internal quotation marks omitted).

<sup>29</sup> Stoughton, *supra* note 9, at 867–68.

<sup>30</sup> The five riots in response to perceived police abuses were a 2001 Cincinnati riot, the 1992 Rodney King riots, 1967 riots in Detroit and Newark, and the 1965 Watts riot in Los Angeles. Daniel Bukszpan, *America's Most Destructive Riots of All Time*, CNBC.COM (Feb. 1, 2011), <http://www.cnbc.com/id/41372364> [<http://perma.cc/ET8E-LGZZ>]. That does not include the 1973 riot in the Oklahoma State Penitentiary, which was at least partially attributable to abuses within the corrections system, and the 1999 Seattle World Trade Organization riot, which was, by many accounts, exacerbated by police tactics. *Id.*

<sup>31</sup> NAT'L COMM'N ON LAW OBSERVANCE AND ENFORCEMENT, REPORT ON THE ENFORCEMENT OF THE PROHIBITION LAWS OF THE UNITED STATES 82 (1931) (emphasis added).

gone entirely unrecognized in law enforcement circles, and I add my voice to others that have called for precisely this change.<sup>32</sup> Of course, the guardian concept is no more inherently self defining than "warrior mindset" or "community policing," raising questions about what exactly it entails. Both Warriors and Guardians seek to protect the communities they serve, of course, but the guardian mindset takes both a broader view and a longer view of how to achieve that goal. Put simply, the guardian mindset prioritizes service over crimefighting, and it values the dynamics of short-term encounters as a way to create long-term relationships. As a result, it instructs officers that their interactions with community members must be more than legally justified, they must also be empowering, fair, respectful, and considerate.<sup>33</sup> The guardian mindset emphasizes communication over commands, cooperation over compliance, and legitimacy over authority. And in the use-of-force context, the Guardian emphasizes patience and restraint over control, stability over action.

To flesh out the changes that could promote guardian policing, I offer two practical suggestions for police training.<sup>34</sup> The first can be addressed very quickly. To encourage officers to connect with community members, law enforcement agencies should require would-be officers to initiate non-enforcement contacts with members of their community. Both early in field training and near its conclusion, rookie

<sup>32</sup> See PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, INTERIM REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING 9-10 (2015), [http://www.cops.usdoj.gov/pdf/taskforce/Interim\\_TF\\_Report.pdf](http://www.cops.usdoj.gov/pdf/taskforce/Interim_TF_Report.pdf) [<http://perma.cc/L9JX-KS96>]. The Task Force's Interim Report is the most prominent call for such a transition to date, but it was hardly the first such call. As the deputy director of the Washington State Criminal Justice Training Commission explained late last year, recruit training must be "guided by the underlying goal of producing officers who are *guardians* as opposed to *warriors*." Christopher Moraff, *Can Different Training Make Police Officers Guardians, Not Warriors?*, NEXT CITY (Dec. 4, 2014), <http://nextcity.org/daily/entry/change-police-training-task-force-empathy-policing> [<http://perma.cc/YC5M-QWKM>].

<sup>33</sup> One approach, referred to as "Justice Based Policing," instructs officers to "Listen and Explain with Equity and Dignity." SUE RAHR ET AL., THE FOUR PILLARS OF JUSTICE BASED POLICING 1 (2011), <http://www.portlandonline.com/auditor/index.cfm?a=368336&c=56523> [<http://perma.cc/ZN62-GGB6>].

It explains that officers should:

Listen — Allow people to give their side of the story; give them voice, and let them vent.

Explain — Explain what you're doing, what they can do, and what's going to happen.

Equity — Tell them why you are taking action. The reason must be fair and free of bias, and show their input was taken into consideration.

Dignity — Act with dignity and leave them with their dignity.

*Id.* at 2 (emphasis omitted).

<sup>34</sup> Changing two aspects of police training is just the tip of the iceberg, of course, and I have spoken publicly and privately about other suggestions. See, e.g., Seth Stoughton, Reflections on Policing Police at the 2015 *Saint Louis University Public Law Review* Symposium (Feb. 20, 2015), <http://law.slu.edu/event/thin-blue-line-policing-post-ferguson> [<http://perma.cc/2QLJ-RP7U>]. I limit myself here to two particularly important suggestions so as not to exceed the boundaries of a single essay.



officers should have to spend a certain set amount of time — perhaps one day a week, perhaps a block of two weeks or longer — approaching civilians just to have meaningful conversations. Building on the “Good Strangers” and “Tact, Tactics and Trust” training that grew out of the Defense Advanced Research Projects Agency’s Strategic Social Interaction Modules training,<sup>35</sup> a “non-enforcement contact” requirement means officers would have to interact with their constituents while being prohibited from taking enforcement actions: no asking for identification, no running criminal history checks, no issuing tickets, and no making arrests.<sup>36</sup> Further, the law enforcement agency should emphasize that officers are expected to continue making regular non-enforcement contacts even after completing field training. The purpose is threefold: giving officers and community members the chance to get to know each other as individuals, emphasizing the agencies’ commitment to community policing for both internal and external audiences, and teaching officers the valuable communication skills that they will use countless times over the course of their careers.

The second suggestion is to emphasize tactical restraint through both training and after-action review of use-of-force incidents. Tactical restraint has received significant attention and criticism recently, and so requires slightly more explanation. Simply put, tactical restraint instructs officers to avoid *avoidable* risks when doing so is consistent with the police mission. Tactical restraint doesn’t teach officers to run away from violent confrontations; it teaches them to approach every situation in a way that minimizes the threat of having it turn violent in the first place. To be clear, not all violence is avoidable. The use of force, including deadly force, will sometimes be necessary. But when violence *is* avoidable and when avoiding it doesn’t sacrifice the police mission, officers should be required to use tactical restraint even when that means holding their position or temporarily withdrawing.<sup>37</sup> From the guardian perspective, the value of this approach is that it minimizes the risk to civilians by reducing the chances that the officer

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<sup>35</sup> Jon Schuppe, *Science of Strangers: Military Research Could Boost Cops’ People Skills*, NBC NEWS (Oct. 22, 2014, 4:58 AM), <http://www.nbcnews.com/news/us-news/science-strangers-military-research-could-boost-cops-people-skills-n230951> [<http://perma.cc/53U6-J5H9?type=image>].

<sup>36</sup> In some cases, of course, emergency situations will require an enforcement-oriented response.

<sup>37</sup> Influential police scholar Carl Klockars went as far as suggesting that excessive force be defined as “the use of more force than a highly skilled police officer would find necessary to use in that particular situation,” taking into consideration the tactical choices that an officer made when approaching the situation. Carl B. Klockars, *A Theory of Excessive Force and Its Control*, in *POLICE VIOLENCE: UNDERSTANDING AND CONTROLLING POLICE ABUSE OF FORCE* 1, 8–10 (William A. Geller & Hans Toch eds., 1996).

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will find himself in a situation that requires a high level of force. In short, because officers are safer, civilians are safer.

Nothing that I've suggested is entirely new to policing, and tactical restraint is no exception. Officers are already taught to use tactical restraint in certain situations. For example, many agencies instruct officers not to make an arrest without a second officer present. Why not? Why not allow an officer, working alone, to loudly issue verbal commands (perhaps even emphasizing the seriousness of commands with profanity) or charge in and go hands on? Because having backup on scene reduces the chance the suspect will resist and, in the event the suspect does resist, it gives officers an advantage. When officers are in a tactically superior position — here, having the advantage of numbers — it is easier for them to overcome resistance with less force. And using less force is ultimately more protective of the suspect that the officers are called upon to arrest.

Foot pursuits offer another example of how officers and agencies already employ tactical restraint. Most departments instruct officers, through policies or training, to keep a fleeing suspect in sight but to not physically engage until backup is on scene.<sup>38</sup> Why? Because a suspect who runs is more likely to be a suspect who fights. A fight is more dangerous for a single officer than it is for multiple officers, which means that a single officer might need to use more force than two officers would need to use to deal with the situation. That means that by waiting for other officers to arrive, the chasing officer reduces the amount of force that may be necessary to take the suspect into custody. By delaying, the officer can reduce the risk to both himself and the suspect. Some officers take a slightly different approach to tactical restraint. An officer I worked with used to encourage fleeing suspects to keep running. He'd stay behind them and shout, "Keep going! I've almost got you!" He did so because he didn't want to have to fight the suspect — which would have endangered both of them — so he made sure that the suspect was physically exhausted. From a crime-fighting standpoint, this approach had costs: the suspect could not be charged with resisting because he had never ordered the suspect to stop (in fact, the suspect was doing exactly what he had been told to do!). But avoiding violence was well worth it. In some cases, it can be safer and just as effective to not pursue. As Chuck Wexler, Executive Director of the Police Executive Research Forum, wrote, "If the suspect's identity is known, it may be safer if police arrest the person later, rather than engaging in a foot pursuit."<sup>39</sup> The Denver Police

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<sup>38</sup> Stoughton, *supra* note 9, at 868.

<sup>39</sup> Chuck Wexler, Op-Ed., *Police Curb Use of Lethal Force: Another View*, USA TODAY, Nov. 25, 2014, <http://www.usatoday.com/story/opinion/2014/11/25/ferguson-grand-jury-police-lethal-force-editorials-debates/19516001> [<http://perma.cc/P5JX-44QT>].

Chief adopted a similar approach in the context of a recent protest, ordering his officers to *not* immediately arrest two protestors who defaced a police memorial by pouring red paint on it.<sup>40</sup> Rather than move in right then and there, which might have sparked a confrontation between officers and the crowd of protestors, Denver officers waited to arrest the two vandals, safely apprehending them after the protest and away from the crowds.<sup>41</sup> What all of those approaches have in common is a commitment to not rushing in recklessly when officers can use a safer option to accomplish the mission. *That's* tactical restraint.

Tactical restraint is a valuable concept precisely because it offers a principled way to broadly apply the lessons that officers have already learned in some contexts. Using restraint doesn't give suspects any more of an opportunity to resist than they already have. It gives officers a way to reduce both the probability of resistance and the amount of force that may be necessary to overcome that resistance. It encourages officers to work smarter, not harder, by relying more on good tactics and communication than on violence. It protects officers and civilians alike, which is exactly what so many of our officers already do and exactly why all of our officers should be expected to exercise tactical restraint.

It will take more than a couple of isolated changes to heal the longstanding divide between law enforcement agencies and the communities they police, particularly communities of color. Earning public trust will take decades and require rethinking how officers are trained as well as the legal and administrative standards used to review police violence. It will require changing the very culture of policing by reaffirming that policing must be done *with* a community, not *to* a community. There is deep tension between community policing and the warrior identity that has become so prevalent in modern law enforcement. We can resolve that tension and improve policing, in part, by replacing the concept of the police warrior with that of the guardian officer.

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<sup>40</sup> *Denver Police Upset After Memorial Vandalized During Protest*, N.Y. TIMES (Feb. 15, 2015), <http://www.nytimes.com/aponline/2015/02/15/us/ap-us-police-protest-vandalism.html>.

<sup>41</sup> *Id.* It should be noted that this approach was not universally popular. Some officers found the vandalism, as I do, deeply reprehensible, and undoubtedly some intensely disliked not being able to intervene at the time. *Id.* This is an excellent example of the Warrior and the Guardian in microcosm — a Warrior may very well have moved to immediately apprehend the two vandals. Such a move might have led protestors to attempt to resist, of course, but such interference would have been unlawful. So if the other protestors had interfered, they, too, would have been subject to both immediate arrest and, had they resisted, however much force was necessary to overcome their resistance. Although certainly lawfully justified, that approach creates obvious and substantial risks to both officers and civilians. The guardian approach, in contrast, certainly resulted in psychological distress to some number of officers, but that distress is one of the sacrifices required of officers as they protect and serve their communities.