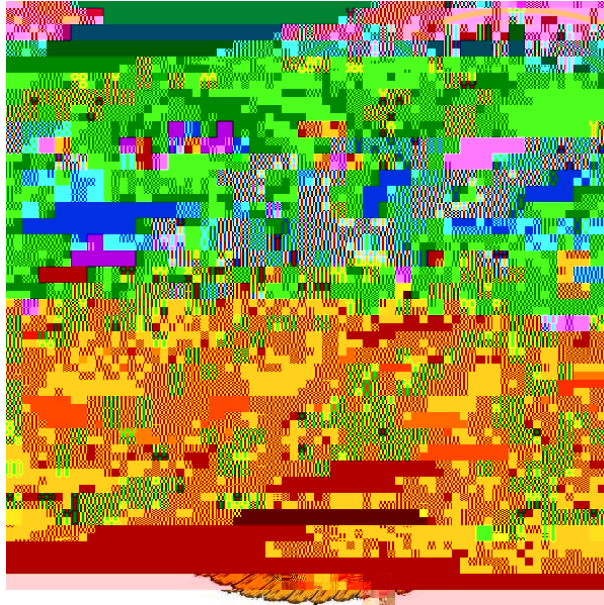


# Investigation of the Cleveland Division of Police



United States Department of Justice  
Civil Rights Division

United States Attorney's Office  
Northern District of Ohio

December 4, 2014

U.S. Department of Justice

---

The Honorable Frank G. Jackson  
Mayor

that just over a decade ago the Department of Justice

## I. SUMMARY OF FINDINGS

Our investigation concluded that there is reasonable cause to believe that CDP engages in a pattern or practice of using unreasonable force in violation of the Fourth Amendment. That pattern manifested in a range of ways, including:

- x The unnecessary and excessive use of deadly force, including shootings and head strikes with impact weapons;
- x The unnecessary, excessive or retaliatory use of less lethal force including tasers, chemical spray and fists;







officers who strive to and do uphold their oaths to protect and serve the City of Cleveland. This will foster trust with the community, allowing all CDP officers to perform their jobs more safely and effectively.

## II. BACKGROUND

The Department began this investigation in March 2013 in the wake of serious allegations that CDP officers use excessive force, and that the Division fails to identify, correct, and hold officers accountable for using force in violation of the Constitution. Several incidents eroded community confidence and suggest there were serious flaws in CDP's use of force



Plain Dealer analyzed similar CDP force data in 2007 and found that supervisors reviewed 4,427 uses of force over four years and justified the force in every single<sup>5</sup> case.

On November 29, 2012, over 100 Cleveland police officers engaged in a high speed

Rights Division of the Department of Justice review CDP's use of force policies. Subsequently, six CDP officers were indicted for their actions on November 29, 2012. The City recently

multi-day onsite tours in Cleveland in March 2013, April 2013, June 2013, December 2013, February 2014, and July 2014. Collectively during these investigative tours, we met with



were 111 resisting arrest incidents, and for seven of these over six percent CDP acknowledges that no use of force report can be located. Furthermore, but one of these seven incidents, the arrest reports describe police action that constitutes force as defined by CDP policy, and the remaining one strongly suggests that reportable force was used. In the face of

The Court has identified three factors that lower courts should consider in determining the reasonableness of force used: (1) the severity of the crime at issue; (2) whether the suspect posed an immediate threat to the safety of the police officers or others; and (3) whether the suspect actively resisted arrest or attempted to evade arrest by flight. These factors are not an exhaustive list, as the ultimate inquiry is “whether the totality of the circumstances justifies a particular sort of seizure.”

*Baker v. City of Hamilton, Ohio*, 471 F.3d 601, 606 (6th Cir. 2006) (citations omitted).

The most significant and “intrusive” use of force is the use of deadly force, which can result in the taking of human life, “frustrat[ing] the interest of . . . society in judicial determination of guilt and punishment.” *Tennessee v. Garner*, 471 U.S. 1, 9 (1985). Use of deadly force (whether or not it actually causes a death) is permissible only when an officer has probable cause to believe that a suspect poses an immediate threat of serious physical harm to the officer or another person. *Id.* at 11. A police officer may not use deadly force against an unarmed and otherwise non-dangerous subject, see *Garner*, 471 U.S. at 11, and the use of deadly force is not justified in every situation involving an armed subject. *Graham*, 490 U.S. at 386. The Sixth Circuit has recognized that “even when a suspect has a weapon, but the officer has no reasonable belief that the suspect poses a danger of serious physical harm to him or others, deadly force is not justified.” *Bouggess v. Mattingly*, 482 F.3d 886, 896 (6th Cir. 2007) (emphasis in original). In order to justify the use of deadly force, an officer’s “sense of serious danger about a particular confrontation” must be both “particularized and supported by evidence.” *Id.* In making our determination under Section 14141 it is not necessary to show that there is a pattern or practice of intentional or criminal misconduct by individual officers in their unreasonable use of force, and we make no such finding in this letter.

We determined that as part of the pattern or practice of excessive force, officers fire their guns in circumstances where (c)-6(e)(r)3(s)-1(, )TJ -0.004 [(ev-4( )en-14h)2(e)6( /TT1 1 Tf 0.002 Tc p



observed "Brian" walking with an open container of beer. When officers asked Brian to stop, he initially refused and walked to a nearby porch, set down his beer and then, according to the resulting report, turned towards the officers' zone car in a manner that indicated he was going to speak with them. The first officer reportedly saw a gun in Brian's waistband, yelled "gun," and pointed his service weapon at Brian. The second officer reported that, in response, Brian raised his hands above his head and informed the officers that he had a concealed handgun license. The second officer moved behind Brian to begin to handcuff him. According to this officer's report, Brian then lowered his hands "a" below ear level. Then, the first officer fired a shot that struck Brian in the abdomen. According to reports, Brian's injuries were significant enough that he required immediate lifesaving measures. While the officer who fired the shot alleged that Brian had reached for his weapon, that account conflicts with the statement provided by the officer's partner and the other civilian witnesses who were on or near the porch at the time Brian was shot none of whom reported seeing Brian reach for his gun. Numerous witnesses reported that Brian was attempting to cooperate with officers and began lowering his hands in response to an officer's order that he place his hands behind his back.

The officer's use of deadly force in these circumstances was unreasonable. The Sixth Circuit has recognized that





May 2007 and March 2013 both prohibited officers from shooting at vehicles that were no longer a threat, yet we found that officers nonetheless have done so.

In an incident from 2010, an officer shot a fleeing individual. There, officers had responded to a home because a woman reported that her boyfriend was outside calling her and making threats. As officers were arresting the suspect, the suspect

2.

police officer and without communicating with 911 or dispatch for back up. Moreover, the officer's decision to physically engage with the suspect while holding his gun was dangerous. Barring extremely rare circumstances, an officer should never do this. This officer have killed this suspect with his blow, and he also risked shooting the suspect, himself, or innocent bystanders.

Another example of this dangerous and unlawful practice is an incident from 2011 in which an officer struck an unarmed man in the head with his gun after the man had committed a minor, nonviolent offense. Fred had tried to shoplift a bottle of wine and a can of beer from a supermarket. The officer, who was working secondary employment at the supermarket, ordered Fred to stop as he was exiting the store. Instead of stopping, Fred ran. The officer followed him and even though he did not claim to have seen a weapon, approached Fred with his gun drawn and ordered him to the ground. Fred said, "Shoot me." The officer again ordered Fred to the ground, and Fred again said, "Shoot me." As the officer stepped toward Fred, Fred moved toward the officer. The officer then hit Fred the left side of his head with his gun, forced him to the ground, and handcuffed him. The strike to Fred's head resulted in a laceration that required four staples to close. Again, this use of deadly force against a man who was unarmed, had committed a minor offense, and who presented only a minimal threat to the officer was unreasonable and dangerous.

While officers are sometimes required to use force during the course of their duties, they are always required to do so within the constitutional parameters of the Fourth Amendment. Far too often, however, Cleveland police officers use deadly force where they do not have probable cause to believe anyone is in immediate, serious danger. In some instances, their use of deadly force places themselves and others in serious danger. This unjustified use of deadly force violates the Constitution and poses unacceptable risks to the Cleveland community.

3. CDP officers use less lethal force that is disproportionate to the resistance or threat encountered.

Our review of CDP's use of force also found that in instances in which it is reasonable for officers to resort to some level of force in response to an individual's actions, CDP



impact is as powerful as it is swift. The electrical impulse instantly overrides the victim's central nervous system, paralyzing the muscles throughout the body, rendering the target limp and helpless. . . . The tasered person also experiences an excruciating pain that radiates throughout the body." Bryan v. McPherson, 590 F.3d 767, 773 (9th Cir. 2019). CDP officers, however, do not treat their Tasers as weapons which deliver such a high level of force. We found, for example, that officers use Tasers as a weapon of first resort instead of employing lower level force options. We reviewed incide

they decided to arrest him for “falsification.” They placed him in handcuffs and patted him down for weapons. Finding none, they attempted to place him in the backzone car. While they were doing so, the handcuffed Jason somehow managed to escape from the two officers and began running in the middle of the street. The officers gave chase and, when Jason did not comply with commands to stop, one officer attempted to tase him “to stop the male from

impaired faculties who may be unable to comply with officers' demands or who may respond to officers erratically for reasons beyond their control. We recognize the challenges that people with mental illness, especially people in mental health crisis, pose to the delivery of police services. It is critical that CDP practices, particularly use of force practices, adequately take into account the population of people with mental illnesses CDP officers encounter and serve. The law requires officers to consider suspects' diminished capacity in assessing the appropriate level of force to use. See *Champion v. Outlook Nashville, Inc.*, 380 F.3d 893, 904 (6th Cir. 2004) (assessing reasonableness of force used on autistic detainee, finding diminished capacity of an unarmed detainee must be taken into account when assessing the amount of force exerted.); see also *Sheehan v. City of San Francisco*, 743 F.3d 1211, 1239 (9th Cir. 2014) (holding that Title II of the Americans with Disabilities Act applies to arrests). *Martin v. City of Broadview Heights*, 712 F.3d 951, 955 (6th Cir. 2013), a mentally unstable 19-year-old, who was naked and "speaking quickly and nonsensically" died after officers repeatedly struck him in his face, back, and ribs; handcuffed him; and continued to restrain him force against the ground. The Sixth Circuit held that officers violated clearly established law when they failed to take into account that the arrestee was unarmed and "exhibited conspicuous signs that he was mentally unstable." *Id.* at 962. The Court found that the Fourth Amendment required the officers "to deescalate the situation and adjust the application of force downward," and that "the officers ignored Martin's diminished mental state and used excessive force to control him." *Id.*

CDP officers, especially the majority who are not specially trained on this issue, do not use appropriate techniques or deescalate encounters with individuals with mental illness or impaired faculties to prevent the use of force and, when force is used, officers do not adjust the application of force to account for the person's mental illness. In many of the incidents we reviewed, officers' interactions with individuals with mental illness were precipitated by calls for assistance from concerned family members or civilians, and did not involve any allegations that a crime had been committed. The Sixth Circuit has recognized that "the fact that a plaintiff [alleging excessive force] . . . ha[s] committed no crime clearly weigh[s] against a finding of reasonableness."





B. CDP officers commit tactical errors that endanger the Cleveland Community and reduce officer safety as well

We found that CDP officers commit tactical errors that endanger

being dragged by the vehicle.<sup>28</sup> It is hard to believe that the officer would have made the decision to lean into the car to try to turn off the ignition if he really thought Nairn might be armed or reaching for a weapon. His decision to reach in with his gun in his hand, with his finger on the trigger, is even more difficult to explain and, in this instance, resulted in the shooting of an unarmed man who had been involved only in a minor traffic incident.

We reviewed incidents where officers accidentally shot their guns while pursuing suspects. In one instance, an officer's decision to draw his gun while trying to apprehend an unarmed hand-run suspect resulted in him accidentally shooting the man in the neck. The man was critically injured. One pattern we have observed is that CDP officers do not consider carefully enough their actions in drawing their weapons and pointing them at suspects, actions which may be necessary in some circumstances but which should be far from routine and fundamentally change the tenor of a police encounter.

We found that officers sometimes draw and/or fire their weapons without considering their environment, or the potential harm to bystanders or nearby residents. Officers do not adequately consider the potential destination of rounds, especially if, as often happens, they miss their intended targets. In an incident from 2011 officers fired 24 rounds in a residential neighborhood, striking nearby houses and vehicles. Officer C had responded to a scene where "Oscar" had allegedly shot his girlfriend and threatened to shoot officers. A very serious and dangerous situation. Nine officers arrived to find Oscar on the porch, waving a gun, and at times putting it to his head. Apparently suicidal, Oscar repeatedly told officers to shoot him. Officers approached with weapons drawn, telling Oscar to drop the gun. Oscar



tactical errors exacerbated a very dangerous situation. Similarly, in the incident discussed above, involving “Jason,” a handcuffed suspect escaped while officers were placing him in the zone car. To protect the community, officers must be able consistently to conduct basic police functions without losing control of suspects. Moreover, their loss of control of a Paul Jason required them to use greater force against these suspects which otherwise may not have been necessary. Last, in Paul’s case it obviously is extremely troubling that officers placed an armed man in the back of their zone car because they failed to find the loaded gun when they finally were able to complete the pat down.

Police officers are charged with the ultimate responsibility of protecting the public and keeping the peace and they may employ the use of force, including deadly force, to do so. However, any use of force must be within the confines of the Fourth Amendment, and we have reasonable cause to believe that CDP officers engage in a pattern or practice of resorting to unreasonable amounts of force when encountering subjects. As discussed further below, the reasons underlying CDP’s pattern of unreasonable force vary from its inadequate accountability systems to its failure to embrace and incorporate the concepts of community policing levels of CDP.

### C. Systemic Deficiencies Cause or Contribute to the Excessive Use of Force.

Police departments have the ability and responsibility to detect and take steps to prevent the use of unreasonable force by their officers. The components of an effective use of force accountability system are well known. Police departments must ensure appropriate training in how and when to use force, and provide the supervision necessary for sufficient oversight of officers’ use of force. Departments must also provide their officers clear, consistent policies on when and how to use and report force. Departments must implement systems to ensure that force is consistently reported and investigated thoroughly and, finally, consistent standards and without regard to improper external factors or biases. The force investigation serves as the basis for reviewing the force incident to determine whether the officer acted both lawfully and consistently with departmental policy, as well as to determine whether the incident raises policy, training, tactical, or equipment concerns that need to be addressed for officer and civilian safety. Use of force aggregate data and trends should be monitored to enable Division to identify and address emerging problems before they result in significant or widespread CDP fails in all

## 1. CDP Does Not Ensure that Officers Adequately Report the Force they Use.

A good accountability system begins with an appropriate record of the facts of an incident. That record is far too often lacking at CDP. To help ensure that misconduct and unsafe tactics are identified and can be prevented in the future, the facts of every use of force beyond unresisted handcuffing must be documented accurately and then reviewed fairly and thoroughly. Proper use of force reporting and review are essential parts of any police department's efforts to ensure that its officers are using force in a manner that complies with the Constitution and case law. Cleveland police officers do not adequately document force incidents, rendering it quite often impossible to tell how much force they have used and why.

Until recently, when a use of force incident occurred, each officer at the scene was not required to write a report documenting the incident. Instead, in the case of a use of force, one officer (not even necessarily the one who applied the force) would typically write a report intended to summarize the actions and observations of all officers on scene. These summary reports made it impossible to discern whose account was being reported, making it difficult to hold any one officer accountable for his or her actions. Because only one officer was required to sign the report, there was no indication that the other named officers agreed with or even saw the description of events set forth in the report. Moreover, the officer writing the report often did not see the use of force. This practice is not only inconsistent with the requirements of the use of force reporting policy, but it also undermines the purpose of the policy. The use of force reporting policy requires that all officers who are present at the scene of a use of force incident must provide a written report of the incident. This requirement is intended to ensure that all officers who are present at the scene of a use of force incident are held accountable for their actions and that the facts of the incident are accurately documented. The current practice of having one officer write a summary report for all officers on scene makes it impossible to hold any one officer accountable for his or her actions and makes it difficult to determine the facts of the incident. This practice is not only inconsistent with the requirements of the use of force reporting policy, but it also undermines the purpose of the policy. The use of force reporting policy requires that all officers who are present at the scene of a use of force incident must provide a written report of the incident. This requirement is intended to ensure that all officers who are present at the scene of a use of force incident are held accountable for their actions and that the facts of the incident are accurately documented.



to light when the video of the incident surfaced. To date, no officers have identified any of the officers who used force in this incident, and no officers have been disciplined for failing to report this incident.<sup>32</sup>

2. Supervisory Investigations of Force are Inadequate.



More specifically, supervisors fail to reconcile or to follow up on key facts or discrepancies between officers', witnesses', and suspects' accounts, or discrepancies between the







that are likely to repeat themselves. At a minimum, Internal Affairs should have recognized the need for remedial training.

In another incident discussed earlier, an ~~off~~ officer without any means of identifying himself as an officer inappropriately approached a group of suspects without backup and struck a civilian in the head with his service weapon during



UDFIT, and administrative reviews are complete, yet it appears that, in practice, tactical reviews do not always occur. Though we requested all documents regarding all reviews completed by the Tactical Review Committee between January 1, 2010 and June 28, 2013, we received only 15 reviews from that time period. CDP provided none from 2010 and 2013, and only seven from 2011 and eight from 2012. For context, CDP officers were involved in 23 use of deadly force incidents in 2011 and 22 use of deadly force incidents in 2012. We understand the Tactical Review Committee does not necessarily review a use of deadly force incident during the calendar year in which the use of force took place, particularly if the incident took place late in the year. Nevertheless, these delays in the review process are unacceptable and allow failures in policy, training, and tactics to continue, potentially resulting in the further use of excessive force due to the same deficiency. We found that eight of the 15 deadly force incidents reviewed were not reviewed until at least a year had passed; four additional incidents were not reviewed until three or four years had passed. Two of the incidents reviewed in 2012 occurred in 2008, and two other incidents reviewed in 2012 occurred in 2009. The utility of these reviews, three to four years after the incident occurred, is greatly diminished.

Even when these reviews are completed, however, many of them are inadequate. Reviewers devoted no more than a single page to incidents and failed to identify basic failures in training and tactics. Tactical reviews should examine every aspect of a call from dispatch to disposition, and reviewing officers should offer substantive commentary and analysis. Yet many reviewing offices do no more than write “Reviewed” on the form. In three of the tactical reviews, training was recommended, but we did not see any evidence that recommendations were adopted. We also note that CDP has no equivalent process to review less lethal force incidents, even if the less lethal force resulted in serious injuries. Because of these failures, the Tactical Review Committee does not perform its intended function and undermines CDP’s ability to identify and address deficiencies that are resulting in the use of excessive force.

b. CDP Fails to Adequately Investigate Civilian Complaints of Officer Misconduct.

An effective and transparent system for investigating civilian complaints of misconduct is a critical element of a police department’s accountability system to prevent the use of excessive force. The Charter of the City of Cleveland requires OPS to conduct “a full and complete investigation” of each complaint of police misconduct filed by a civilian.<sup>38</sup> CDP’s policies recognize that, in order to ensure that officers “serve the community in a[n] . . . accountable manner,” there should be “a readily accessible process” to submit complaints of misconduct.<sup>39</sup> CDP’s investigations of these complaints should be “timely and thorough” to both “protect citizens from police misconduct and members from complaints that are retaliatory, manipulative or simply misunderstanding of police protocol.” But it is apparent that the reality falls far short of the written policies on these matters. Our review revealed that CDP’s investigations are neither timely nor thorough, that civilians face a variety of barriers to completing the complaint process and that the system as a whole lacks transparency. As a result, CDP falls woefully short of meeting its obligation to ensure officer accountability and promote community trust.

---

<sup>38</sup> Charter of the City of Cleveland, § 145 Investigation and Disposition of Complaints.

<sup>39</sup> GPO 1.3.15, Investigations of Police Misconduct (at 1 rev. September 10, 2007).

During our previous investigation of CDP completed in 2004, we noted significant concerns regarding the civilian complaint process. We concluded that OPS was understaffed; investigators were not provided with the guidance and resources necessary to do their jobs effectively; investigations were untimely; civilians' access to the complaint process was limited; and some complaints that should have been investigated were not. More than ten years later, these problems remain and, in some cases, have worsened. Current deficiencies in the complaint process include impossibly high caseloads for investigators, the inappropriate and premature rejection of civilians' complaints, substandard investigations, significant delays in completing investigations, and the failure to document and track outcomes.

We discovered a troubling pattern of OPS inappropriately rejecting complaints that may have warranted an investigation. Specifically, CDP policy permits complaints to be "administratively withdrawn" in limited circumstances.<sup>40</sup> For example, the OPS administrator has the authority to administratively withdraw "[c]omplaints regarding citizens receiving Uniformed Traffic Tickets (UTT)," but only "if the complaint is based entirely on the belief that the citizen did not deserve the UTT . . . because they did not violate the law."<sup>41</sup> Despite this strict limitation, we reviewed examples of OPS withdrawing complaints that alleged that an officer engaged in misconduct. The alleged misconduct occurred during the issuance of a ticket but the complaint was not "based entirely on the belief that the citizen did not deserve the UTT." Instead, it alleged that the officer violated the law or Division policy. These complaints should have been investigated.

In other instances, OPS inappropriately closed or administratively withdrew civilians' complaints solely for "lack of response" or "lack of cooperation." OPS's manual only permits administrative withdrawal on this basis where there is no other information on which to base an investigation.<sup>42</sup> In addition, investigators must first have made diligent efforts to reach the complainant. In practice, however, OPS routinely closes cases after little effort to reach the complainant and despite other information upon which to base an investigation. When complainants fail to cooperate with an investigation, CDP should continue the investigation when it has enough information to do so, because CDP has an independent interest in ferreting out misconduct by its officers. Indeed, it has an obligation to do so. Complainants may seek to withdraw complaints or fail to continue to cooperate for reasons wholly unrelated to the merits of their complaints. Moreover, a policy of discontinuing investigations where complainants fail to cooperate may result in subtle or overt efforts by investigators or officers to discourage complainants from proceeding.

When a civilian's complaint is accepted for investigation, investigations are frequently delayed and substandard. OPS does not have sufficient investigators to investigate complaints in a timely and thorough manner. Some investigators reported that, while they would prefer to conduct more comprehensive investigations, their staggering caseloads make it

---

<sup>40</sup> OPS Manual §8.0.

<sup>41</sup> See OFFICE OF PROFESSIONAL STANDARDS/CIVILIAN POLICE REVIEW BOARD, ANNUAL REPORT, at 13(2011) [hereinafter "2011 OPS Annual Report"]

<sup>42</sup> OPS Manual §8.0



impossible to take even some basic investigative steps such as seeking out witnesses or visiting the scene of the alleged misconduct. Underscoring the dire need for additional OPS investigators, our recent review revealed that, on average, complaints take six months to complete, which is far longer than is appropriate. We saw many complaints that took more than a year to resolve—a delay that is unreasonable both to the civilian looking for resolution and the officers who bear the burden of recalling the details of the incident. OPS staff reported that, due to the sheer volume, “We just can’t touch some complaints.” For dozens of complaints, we saw no record they were ever resolved, indicating that the complaints simply fell through the cracks—an unacceptable outcome in a functioning civilian complaint process

OPS investigations are also frequently substandard. The OPS Manual provides little guidance on the steps that should be taken in order to conduct a thorough investigation, leaving officers to their own devices and resulting in investigations that are inconsistent in content and quality. The investigations we reviewed consistently lacked basic follow up, such as going to the scene and seeking out witnesses. Even when a complaint alleges that an officer engaged in serious misconduct, the entire investigative file may consist only of officer statements, the complainant’s signed form and recorded interview and little, if any, additional documentation. Pursuant to policy, OPS investigators do not interview the involved officer unless the officer requests an oral interview in lieu of a written response.<sup>43</sup> As a result, OPS investigators must rely on written questions and answers to probe the validity of a civilian’s complaint, to assess inconsistencies in police reports, or to evaluate the officer’s credibility by recounting his or her version of events. Therefore, an effective investigative interview of an officer is impossible. This undermines the investigative process. Additionally, i

CDP’s complaint intake process makes it difficult for complainants to successfully make complaints in the first instance. In 2002, we asked that CDP “work with the appropriate union officials to permit the CDP to investigate all citizen complaints, whether signed and written in the complainant’s handwriting or not.”

successfully make complaints.<sup>46</sup> The City must work with the unions to ensure that it is able to investigate all complaints, including from anonymous and third party complainants, whether signed or unsigned.

Once OPS completes its investigation of a complaint, the civilian Police Review Board reviews it and reaches a disposition. The Board's review of these investigations is likewise inadequate. First, the Board's review is based on inadequate information. Investigators are not invited to attend meetings, and, as a result, Board members have no opportunity to discuss cases with the investigators who are the most familiar with them. Additionally, the Board has inexplicably instructed investigators not to include an officer's prior complaint and disciplinary history in the investigative file. The Board's failure to assess an officer's conduct interferes with its evaluation of the credibility of the current complaint and impedes its ability to discern potential patterns of misconduct.

Second, the Board's decisions lack transparency, which, in turn, undermines accountability. The Board's case files frequently lack final dispositions and, when dispositions are included, there is no evidence of the Board's rationale supporting its decisions. The problems inherent in this practice are demonstrated when the Board sustains a complaint and recommends discipline. The Board members play no role in any disciplinary conference. Rather, OPS investigators, who were excluded from the Board's decision-making process, are required to defend the Board's disposition and disciplinary recommendations at the Chief's conferences. Neither the Chief nor the investigators have the benefit of knowing the Board's rationale. The Board's failure to justify its decisions in writing makes the civilian review process less transparent, places an unnecessary burden on investigators, and increases the likelihood that the Board's decisions will be overturned. Moreover, when the Board's recommendations are overturned, complainants are not informed of this fact, further reducing the transparency of the process. This system is likely to produce uninformed decisions and unfounded results.

Finally, the Police Review Board and OPS are not fulfilling their obligation to review deadly force incidents. Under the City Charter, the Police Review Board has immense power to review deadly force incidents.<sup>47</sup> The Board may issue subpoenas, compel witnesses, and order that relevant documents be produced. Moreover, the OPS Manual requires OPS and the Board to review deadly force investigations and requires that the OPS Administrator be called to the scene following a use of deadly force.<sup>48</sup> After reviewing a use of deadly force investigation, the Board has the authority to hold a public hearing on the incident or recommend a change in police procedure.<sup>49</sup>

---

<sup>46</sup> See Collective Bargaining Agreement between the City of Cleveland and the Cleveland Police Patrolmen's Association, Article 4(d)-5(s)1(A)4(s)1(s)1(o)2(c)6(ia)6(tio(tio(t15-2(s)-1(s9(ill o)2(i)5





as to whether it is appropriate or safe to fire them. In more than one incident we reviewed, including the November 29, 2012, shooting deaths of Ms. Williams and Mr. Russell, officers justified having fired their guns on the stated belief that the suspect was firing at them when in fact the gunfire was coming from other officers. We also saw instances in which officers shot someone and claimed that the shooting was accidental. Alarming trends such as these should be identified by the Division and then training should be evaluated to ensure that, in the future, officers have received training sufficient in content and quality to correct these obvious deficiencies.

We also discovered that officers do not effectively de-escalate situations, either because they do not know how, or because they do not have an adequate understanding of the importance of de-escalating encounters before resorting to force whenever possible. They also are sometimes unable to safely and effectively control subjects, resulting in dangerous situations and situations in which officers resort to more force than would have been required had the officer been well-trained. Many officers told us they believe they do not receive enough training, especially scenario-based training and training on appropriate techniques to control subjects. That should change.

CDP also does not provide sufficient and current training on new and revised policies. When a policy is revised, even significantly so, officers are advised that change in role call. Officers informed us that no training accompanies that advice when a new or revised policy simply is distributed to officers and read aloud. The officer in charge of the training division informed us that no training on that revised policy will occur until the next exercise training, which may be many months away. During our investigation, we observed the inadequacies of this practice with regard to two policies that recently had been revised. CDP recently changed its vehicle pursuit policy to, among other things, limit the crimes for which officers may pursue suspects. This change is important, and in line with national best practices. Officers, however, expressed that they did not understand why the change was made or how it should be implemented. They also expressed their feelings that it was simply an inappropriate overreaction to the November 29, 2012, pursuit and would interfere with their ability to do their jobs effectively. We observed a similar reaction to the Division's decision in response to our recommendation and consistent with national best practices, to require all officers who observe or use force to write their own report documenting what they saw and did. Again, officers did not understand why the change was made, how it should be implemented, or how it would benefit them. If officers had received formal, coherent training on these policy revisions, including how they will benefit officers and increase safety, their reactions may have been more positive. Moreover, this training would have allowed CDP to ensure that all officers understand the policies and could be held accountable for abiding by them.

CDP also fails to ensure that officers abide by their training and that the practices taught in the academy reflect the actual practices of the Division. For example, we reviewed CDP's curriculum for its training regarding report writing and found that it appropriately instructs officers to avoid police jargon and canned, inexact phrases such as "no involvement," "suspicious activity," and "suspect resisted." However, we consistently found these phrases and similar ones throughout officers' reports, and these reports were accepted and even endorsed by supervisors. We also saw frequent instances in which officers clearly violated CDP policy, and these violations were neither identified nor corrected by supervisors. And, in most of the

instances of excessive force we identified, supervisors all the way up the chain of command approved the use of force as appropriate. Regardless of what officers learn in the academy or in service training, in the field officers learn that policy violations, unsafe practices, and ultimately—excessive force are all acceptable to CDP. Often supervisors fail to hold officers accountable to the policies and training that are in place.

#### 5. CDP's Use of Force Policy is Still Deficient

Deficiencies in CDP's use of force policy also contribute to the pattern or practice of excessive force that we found. The use of force policy has changed, but the policy in place at the time of our investigation was confusing, at times conflicted with the law, and did not provide sufficient guidance to officers. Indeed, many officers reported to us that they did not understand the policy and, more generally, did not understand what level of force they were permitted to use under what circumstances. In August 2014, the Division revised its use of force policy to provide additional guidance to officers as to when and how officers may use force. We are encouraged by the Division's efforts to revise the policy and its stated commitment to reform. We still have some concerns about the revised policy, however, as well as the Division's implementation of this and other significant policy changes.

The revised policy remains the

firearms too quickly, perhaps because they do not think of it as something that must be justified by the circumstances they are facing. As we have seen, officers' decisions to draw their firearms have resulted in unnecessary escalations of force, accidental discharges, and dangerous hands encounters with suspects while officers are holding their guns. Another consequence of failing to include this action as a reportable use of force is that supervisors do not even know that it has occurred unless it resulted in the use of force or occurred in conjunction with other types of force. Even in these instances, investigators do not investigate the propriety of the officer's decision to have drawn the gun in the first place and instead make conclusory statements about it being done "for officer safety." As a result, no one in CDP knows how often officers are

thion to have drcurPeonm(d )TJ -0.004 Tc heth ot(i)-2(c)-6(e)(s)-1( how)2( [(de)4(c)4(i)-2(s)-5.31runt, rrw -5.08runt)4(7(e)2(i))TwaCuro(he)4(w)2(h)-5(f-5(e)-1(u)4(e)2(2)-6(2)-6(2)1)5(T)BT(w)-7.7 do2(hi). Ansa(e)4(nge)33.66-1.15 T- >>BTd33rha 4( )TJ Ta ssber4(-12r(-10(ain)-4n0 4-14(-12r(-1(r)-11m

Officers told us that they view the process as atypical of the way policy changes are implemented at CDP, and they expressed frustration over not knowing exactly what policies and procedures are currently in effect. According to officers, policy changes are usually communicated to officers through "Divisional Notices," with no explanation or training. Moreover, the changes are not reflected in the official policy manual and there is no indication, even in the electronic version of the manual, that a Divisional Notice was issued that changed the requirements of a particular policy. Consequently, officers are confused as to which policies are in effect and have no way of knowing if they are referencing current CDP policy when looking to the manual for guidance as to their actions. Additionally, CDP has a way of holding officers accountable for failing to adhere to policy changes that have been implemented where it is unclear which policy currently is in effect.

#### 6. CDP's Early Intervention System is Inadequate.

CDP does not use an adequate early intervention system to help identify risky and problematic trends in officer behavior before a pattern or practice of misconduct arises, such as the pattern or practice of excessive force that we found here. An early intervention system is a tool used by police departments to provide individualized supervision and support to officers and to manage risk. Specifically, an early intervention system is one or more databases that track various officer activities, including use of force, civilian complaints, stops and arrests. An effective early intervention system both tracks this activity and allows the department to analyze patterns of behavior by individual officers or groups of officers to identify those who might be in need of support or intervention from the department. An early intervention system is not a mechanism for imposing discipline. Instead, the goal of an early intervention system is to manage the potential risk to officers, the department, and the community by taking corrective action and providing officers with resources such as counseling, training, additional supervision, or monitoring, and action plans for modifying future behavior before serious problems occur.

CDP's early intervention system is ineffective and poorly utilized. Until very recently, it was voluntary and officers identified for inclusion in the program could choose whether or not to





goals that include initiating neighborhood improvement plans and working with community

In recent years, and throughout the course of our investigation, CDP's concept of community policing has been implemented only superficially.



comment here or there would not itself be worthy of report, leadership and messaging do matter, especially in light of the other findings and observations set forth in this letter

CDP policy<sup>59</sup> places responsibility for establishing community policing strategies for the Division with the Deputy Chief of Field Operations. Nonetheless, Chief Williams, who at the time was Deputy Chief of Field Operations, told us that CDP has no Divisionwide community policing strategy and instead relies on district commanders to establish community policing plans. Many district commanders told us that they have an excellent relationship with those they police, citing, for example, their monthly meetings with community members. We attended several of these meetings, and indeed, those in attendance evinced respect and appreciation for CDP. However, as set forth above, these meetings are not a strategy for every day community policing and they attract a small number of people who are only a fraction of the communities CDP serves. Citizens n-4( )JTJ <5-2(m)-2(ap)20( c)h( )-6(e)o2(y)20( )-10(a)44( )JTJ T\* [ fit, Chi

On another occasion, a commander noted that he had tried to address crime outside of the usual responses to calls for service by contacting the law department and a City councilperson about ways to address the theft of scrap metal, which is a primary problem in his district. Such actions can be an important part of community policing, as a successful community policing strategy depends on cooperation between the police department and other government entities within the city. However, this commander's personal efforts appear to be an exception to CDP's overall policing strategy, which relies very little on communication and proactive daily partnerships with those they police.

officers have been called to the scene by concerned family members who are only seeking help for their loved ones. Frequently, these individuals in crisis have not committed any crime. Too often in Cleveland, however, officers handle these difficult situations poorly and resorting to unconstitutional force against people in crisis. Although CDP has invested in improving its response to people in crisis over the last few years, critical work still remains to ensure that officers' interactions with people in crisis are appropriate.

CDP contracts with Cuyahoga County's Alcohol, Drug Addiction, and Mental Health Services ("ADAMHS") to provide some of its officers with crisis intervention training. Once officers have completed this 40-hour block of training, CDP designates them as crisis intervention team ("CIT") officers. Many officers describe this training as the best and most effective training they have ever received while at CDP. The problem, however, is that frequently these trained officers are not the people responding to calls of people in crisis in real time. That needs to change. Currently, the beginning of each shift, supervisors are to inform dispatchers which zone cars have CIT officers so that dispatchers may assign CIT officers to assist with calls involving individuals experiencing a mental health crisis. However, CDP policy only requires dispatchers to "attempt" to dispatch a CIT officer to a call involving a person in mental health crisis. If CIT officers are already on other assignments, dispatchers are allowed to send only non-











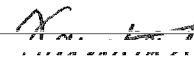
## V. CONCLUSION

We recognize that many Cleveland officers have been trained in the use of force, and that many officers have a strong sense of duty and a desire to protect the public and keep the peace. However, the City and the Division have a responsibility of protecting the public and keeping the peace, and that may require the use of force, including deadly force, to do so. *See Hayes v. Memphis Police Dep't*, 634 F.2d 350, 362 (6th Cir. 1980).


Amendment, and we have found that CDP engages in a pattern or practice of using unreasonable amounts of force in violation of the Constitution. While CDP has taken initial steps to implement new policies and procedures designed to remedy some of the deficiencies described in this letter, it is imperative that the City and the Division now take more rigorous measures to identify, address, and prevent excessive force to protect the public and to rebuild the community's trust. To that end, we believe the only effective mechanism to address the significant problems is to reach a consent decree that provides for a meaningful implementation of systemic reform in the CDP. The City's agreement, as reflected in the Joint Statement of Principles, is a critical step on the path to reform.

We share your desire to ensure that the City of Cleveland has an effective mechanism to protect the public it is charged with protecting. Recent events have galvanized many in the community to join the civil unrest and the devastation of the riot and the destruction of property. We look forward to working with you, the Division, and the community to address our findings and to restore public trust and promote constitutional policies in Cleveland.

Sincerely,

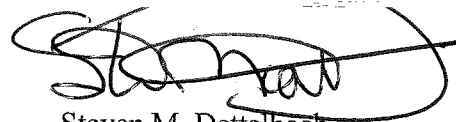


Venita Gupta

  
Venita Gupta  
Acting Assistant Attorney General  
Civil Rights Division

Department of Justice

Department of Justice



Steven M. Dettelbach  
United States Attorney  
Northern District of Ohio