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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

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U.S. Department of Justice

The Honorable Frank G. Jackson
Mayor
City of Cleveland
Cleveland City Hall
601 Lakeside Avenue
Cleveland, Ohio 44114

Dear Mayor Jackson:

The Department of Justice has completed its civil pattern or practice investigation of the Cleveland Division of Police ("CDP" or "the Division"). We have concluded that we have reasonable cause to believe that CDP engages in a pattern or practice of the use of excessive force in violation of the Fourth Amendment of the United States Constitution. We have determined that structural and systemic deficiencies and practices—including insufficient accountability, inadequate training, ineffective policies, and inadequate engagement with the community—contribute to the use of unreasonable force.

Our investigation under the Violent Crime and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141") focused on allegations of excessive force by CDP officers. Section 14141 makes it unlawful for government entities, such as the City of Cleveland and CDP, to engage in a pattern or practice of conduct by law enforcement officers that deprives individuals of rights, privileges, or immunities secured by the Constitution or laws of the United States. The investigation was conducted jointly by the Civil Rights Division and the United States Attorney's Office for the Northern District of Ohio. This letter is separate from, and does not address, any criminal investigation that may be conducted by the Department of Justice.[1]

We opened our investigation after a series of incidents of potential excessive force revealed a rift between CDP and certain segments of the communities it serves. An investigation into one of those incidents by the Ohio Attorney General concluded that the incident was the result of a "systemic failure" by CDP. Numerous leaders and organizations in Cleveland called on us to open an investigation into CDP, including a member of the U.S. Congress, leaders of several different religious communities, civil rights and community groups, and ultimately you, Mayor Jackson. Our investigation found that the concerns raised by community members, civic leaders, and other law enforcement agencies are well-founded.

We recognize the challenges faced by officers in Cleveland and in communities across the nation every day. Policing can be dangerous. At times, officers must use force, including deadly force, to protect lives, including their own. The use of force by police should be guided by a respect for human life and human dignity, the need to protect public safety, and the duty to protect individuals from unreasonable seizures under the Fourth Amendment. A significant amount of the force used by CDP officers falls short of these standards. Although CDP has taken some steps to improve the Division's use of force policies and procedures, these initiatives, by themselves, have been insufficient. The need for sustainable reform is highlighted by the fact

[1] Please note that this letter is a public document and will be posted on the Civil Rights Division's and the United States Attorney's Office's websites.

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that just over a decade ago the Department of Justice completed its first investigation of the Cleveland Division of Police. That investigation raised concerns and resulted in recommendations that are starkly similar to the findings in this letter. The voluntary reforms undertaken at that time did not create the systems of accountability necessary to ensure a long-term remedy to these issues.

Throughout our investigation, CDP's leadership has been receptive to our preliminary feedback and technical assistance. We also received cooperation from the patrol officers and supervisors we met, which we value greatly. We recognize that the men and women of CDP want to do their jobs effectively and appropriately. They are trying to do a tough job as best they can. CDP's officers serve the public at great risk. They are working under quite difficult circumstances and we appreciate their willingness to serve. However, as outlined in this letter, more work is necessary to ensure that officers have the proper guidance, training, support, supervision, and oversight to carry out their law enforcement responsibilities safely and in accordance with individuals' constitutional rights. We appreciate your expressed willingness to embrace many of the changes we have highlighted in our conversations with CDP during this investigation. We will continue to work collaboratively with you, the Division's leadership, and other stakeholders to develop sustainable reforms that will resolve our findings. The Statement of Principles that we agreed to on December 2, 2014, is a critical first step in moving toward reform, and we applaud the City's willingness to make its intent to collaborate with us explicit. However, if we cannot reach an appropriate resolution, Section 14141 authorizes the Department of Justice to file a civil lawsuit to "eliminate the pattern or practice" of police misconduct. 42 U.S.C. § 14141.

We thank the members of Cleveland's diverse communities for bringing relevant information to our attention and for sharing their experiences with us. We are encouraged by the many individuals who took an active interest in our investigation and who offered thoughtful recommendations, including community advocates, religious leaders, and members of CDP's patrol officer and management unions. We appreciate those individuals who came forward to provide information about specific encounters with CDP, even when recounting those events was difficult. We also thank the officers who shared information about the many challenges they face. We know that many residents care deeply about preventing the types of incidents described in this letter even as they have a genuine interest in supporting the men and women of CDP who uphold their oaths and work to protect the people of Cleveland.

We appreciate the cooperation and professionalism that you, CDP, and other city officials have displayed during our investigation. We received invaluable assistance from the Division's leadership, and officers. Based on this cooperation, we are optimistic that we will be able to work with the City and CDP to address our findings. We are encouraged that, just two days ago, we agreed to a Joint Statement of Principles to guide our negotiations to remedy the constitutional violations we found. Together, by promoting constitutional policing, we will make CDP more effective and will help build the community's trust in the Division.

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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:

- The unnecessary and excessive use of deadly force, including shootings and head strikes with impact weapons;
- The unnecessary, excessive or retaliatory use of less lethal force including tasers, chemical spray and fists;
- Excessive force against persons who are mentally ill or in crisis, including in cases where the officers were called exclusively for a welfare check; and
- The employment of poor and dangerous tactics that place officers in situations where avoidable force becomes inevitable and places officers and civilians at unnecessary risk.

Officers may be required to use force during the course of their duties. However, the Constitution requires that officers use only that amount of force that is reasonable under the circumstances. We found that CDP officers too often use unnecessary and unreasonable force in violation of the Constitution. Supervisors tolerate this behavior and, in some cases, endorse it. Officers report that they receive little supervision, guidance, and support from the Division, essentially leaving them to determine for themselves how to perform their difficult and dangerous jobs. The result is policing that is sometimes chaotic and dangerous; interferes with CDP's ability to effectively fight crime; compromises officer safety; and frequently deprives individuals of their constitutional rights. Based on our investigation, we find that the Division engages in a pattern or practice of using excessive force in violation of the Fourth Amendment.

Like most police departments the Department of Justice has investigated, the majority of the force used by CDP officers is reasonable and not in violation of the Constitution. Nonetheless, we found that CDP officers engage in excessive force far too often, and that the use of excessive force by CDP officers is neither isolated, nor sporadic. In fact, as we indicated when we met with the City in October 2014, determining whether a pattern or practice of the unreasonable use of force exists was not a close case. Thus, even if people have differing views regarding the propriety of any single incident, it would not change the ultimate conclusion that there is a broader pattern or practice of unreasonable force. Our findings, however, do not mean that any individual officers have acted with criminal intent, a wholly different and higher legal standard that is beyond the scope of this letter and this investigation.

We have concluded that these incidents of excessive force are rooted in common structural deficiencies. CDP's pattern or practice of excessive force is both reflected by and stems from its failure to adequately review and investigate officers' uses of force; fully and objectively investigate all allegations of misconduct; identify and respond to patterns of at-risk behavior; provide its officers with the support, training, supervision, and equipment needed to

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allow them to do their jobs safely and effectively; adopt and enforce appropriate policies; and implement effective community policing strategies at all levels of CDP.

The pattern or practice of unreasonable force we identified is reflected in CDP's use of both deadly and less lethal force.[2] For example, we found incidents of CDP officers firing their guns at people who do not pose an immediate threat of death or serious bodily injury to officers or others and using guns in a careless and dangerous manner, including hitting people on the head with their guns, in circumstances where deadly force is not justified. Officers also use less lethal force that is significantly out of proportion to the resistance encountered and officers too often escalate incidents with citizens instead of using effective and accepted tactics to de-escalate tension. We reviewed incidents where officers used Tasers,[3] oleoresin capsicum spray ("OC Spray"), or punched people who were already subdued, including people in handcuffs. Many of these people could have been controlled with a lesser application of force. At times, this force appears to have been applied as punishment for the person's earlier verbal or physical resistance to an officer's command, and is not based on a current threat posed by the person. This retaliatory use of force is not legally justified. Our review also revealed that officers use excessive force against individuals who are in mental health crisis or who may be unable to understand or comply with officers' commands, including when the individual is not suspected of having committed any crime at all.

In addition to the pattern or practice of excessive force, we found that CDP officers commit tactical errors that endanger both themselves and others in the Cleveland community and, in some instances, may result in constitutional violations. They too often fire their weapons in a manner and in circumstances that place innocent bystanders in danger; and accidentally fire them, sometimes fortuitously hitting nothing and other times shooting people and seriously injuring them. CDP officers too often use dangerous and poor tactics to try to gain control of suspects, which results in the application of additional force or places others in danger. Critically, officers do not make effective use of de-escalation techniques, too often instead escalating encounters and employing force when it may not be needed and could be avoided. While these tactical errors may not always result in constitutional violations, they place officers, suspects, and other members of the Cleveland community at risk.

Principal among the systemic deficiencies that have resulted in the pattern or practice we found is the Division's failure to implement effective and rigorous accountability systems. The fact that we find that there are systemic failures in CDP, however, should not be interpreted as inconsistent with holding officers accountable in any particular incident. Individual CDP officers also bear responsibility for their own actions once afforded due process of law. Any

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[2] For purposes of this letter, "less lethal force" means a force application not intended or expected to cause death or serious injury and which is commonly understood to have less potential for causing death or serious injury than conventional, more lethal police tactics. Nonetheless, use of less lethal force can result in death or serious injury.

[3] The division uses the Taser brand of electronic control weapons and refers to them in its policies as "Tasers." Throughout this report, we will refer to these electronic control weapons as Tasers.

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effort to force a decision between systemic problems and individual accountability is nothing more than an effort to set up a false choice between two important aspects of the same broader issues that exist at CDP. Force incidents often are not properly reported, documented, investigated, or addressed with corrective measures. Supervisors throughout the chain of command endorse questionable and sometimes unlawful conduct by officers. We reviewed supervisory investigations of officers' use of force that appear to be designed from the outset to justify the officers' actions. Deeply troubling to us was that some of the specially-trained investigators who are charged with conducting unbiased reviews of officers' use of deadly force admitted to us that they conduct their investigations with the goal of casting the accused officer in the most positive light possible. This admitted bias appears deeply rooted, cuts at the heart of the accountability system at CDP, and is emblematic of the type of practice that justifies a finding under Section 14141.

Another critical flaw we discovered is that many of the investigators in CDP's Internal Affairs Unit advised us that they will only find that an officer violated Division policy if the evidence against the officer proves, beyond a reasonable doubt, that an officer engaged in misconduct—an unreasonably high standard reserved for criminal prosecutions and inappropriate in this context. This standard apparently has been applied, formally or informally, for years to these investigations and further supports the finding that the accountability systems regarding use of force at CDP are structurally flawed. In actuality, we found that during the time period we reviewed that officers were only suspended for any period of time on approximately six occasions for using improper force. Discipline is so rare that no more than 51 officers out of a sworn force of 1,500 were disciplined in any fashion in connection with a use of force incident over a three-and-a half-year period. However, when we examined CDP's discipline numbers further, it was apparent that in most of those 51 cases the actual discipline imposed was for procedural violations such as failing to file a report, charges were dismissed or deemed unfounded, or the disciplinary process was suspended due to pending civil claims. A finding of excessive force by CDP's internal disciplinary system is exceedingly rare. A member of the Office of Professional Standards (or "OPS"), which, among other duties, has been charged with investigating use of deadly force incidents, stated that the office has not reviewed a deadly force incident since 2012. CDP's systemic failures are such that the Division is not able to timely, properly, and effectively determine how much force its officers are using, and under what circumstances, whether the force was reasonable and if not, what discipline, change in policy or training or other action is appropriate.

The current pattern or practice of constitutional violations is even more troubling because we identified many of these structural deficiencies more than ten years ago during our previous investigation of CDP's use of force. In 2002, we provided initial observations regarding CDP's use of force and accountability systems and, in 2004, we recommended that the Division make changes to address some of the deficiencies we identified. CDP entered into an agreement with us, but that agreement was not enforced by a court and did not involve an independent monitor to assess its implementation. The agreement did require CDP to make a variety of changes, including revising its use of force policy and establishing new procedures for reviewing officer-involved shootings. In 2005, we found that Cleveland had abided by that agreement and it was terminated. It is clear, however, that despite these measures, many of the policy and practice reforms that were initiated in response to our 2004 memorandum agreement were either not fully implemented or, if implemented, were not maintained over time. It is critical that the City and

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the Division now take more rigorous measures to identify, address, and prevent excessive force to protect the public and to build the community's trust. We believe that a consent decree and an independent monitor are necessary to ensure that reforms are successfully implemented and sustainable. We are encouraged that the City also recognizes that these measures are essential to sustainable reform in the Joint Statement of Principles.

Finally, CDP's failure to ensure that its officers do not use excessive force and are held accountable if they do, interferes with its ability to work with the communities whose cooperation the Division most needs to enforce the law, ensure officer safety, and prevent crime. Instead of working with Cleveland's communities to understand their needs and concerns and to set crime-fighting priorities and strategies consistent with those needs, CDP too often polices in a way that contributes to community distrust and a lack of respect for officers – even the many officers who are doing their jobs effectively. For example, we observed a large sign hanging in the vehicle bay of a district station identifying it as a "forward operating base," a military term for a small, secured outpost used to support tactical operations in a war zone. This characterization reinforces the view held by some—both inside and outside the Division—that CDP is an occupying force instead of a true partner and resource in the community it serves. While CDP's leadership recently adopted a new community policing initiative, the Division must undergo a cultural shift at all levels to change an "us-against-them" mentality we too often observed and to truly integrate and inculcate community oriented policing principles into the daily work and management of the Division.

Although we did not investigate CDP's search, seizure, and arrest practices, our force review revealed concerns we would be remiss not to address. The documents we reviewed to determine the lawfulness of CDP's force practices often described stops, searches, and arrests by officers that appear to have been unsupported. Notwithstanding the limited nature of this review, what we saw suggests that some CDP officers violate individuals' Fourth Amendment rights by subjecting them to stops, frisks, and full searches without the requisite level of suspicion. Individuals were detained on suspicion of having committed a crime, with no articulation or an inadequate articulation in CDP's own records of the basis for the officer's suspicion. Individuals were searched "for officer safety" without any articulation of a reason to fear for officer safety. Where bases for detentions and searches were articulated, officers used canned or boilerplate language. Supervisors routinely approved these inadequate reports without seeking additional information from the officers about the circumstances that justified the encounter that ultimately concluded with a use of force. Given the possibility that CDP's practices in this regard violate the Constitution and the near certainty that they breed more distrust in the community, we have asked that the Division work with us to address these concerns as well, and we appreciate your commitment in the Joint Statement of Principles to address these issues.

We recognize that the Division has started to implement some reforms to address concerns raised by the Department of Justice, the community and others, but much more is needed. As the City recognized in entering into the Joint Statement of Principles, the failure to take even more remedial action places residents at risk of excessive force and further alienates the Division from the communities it serves. We believe the City's commitment to an Agreement with us that will be entered as a consent order in federal court is crucial to making these remedies effective. Making constitutional policing a core Division value, and building systems of real accountability that carry out that value, will support the vast majority of CDP

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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 suggested there were serious flaws in CDP's use of force practices, including the Division's ability and willingness to hold officers accountable for unlawful, improper, or unsafe conduct. In January 2011, a police helicopter video emerged showing that, earlier that month, officers used excessive force against an unarmed man who had led police on a chase. The force—which included kicks to his head—was used after the man had surrendered to officers and was handcuffed and prone on the ground. None of the officers involved had written a report as to either using or witnessing any force at all, and no officers were appropriately disciplined for failing to report the use of force. In addition, even after the incident received significant attention and the man was prosecuted for his flight, none of the many police officers on the scene identified the officers who had used force that night. As a result, the officers who improperly used force could not be held accountable for their conduct.

In March 2011, the Cleveland Plain Dealer began an analysis of CDP's use of force and, over the next several months, ran a series of articles that described significant problems with CDP's force practices, based on a review of publicly available data. The Plain Dealer reported that CDP officers often engaged in force that appeared to be excessive and in violation of policy; that CDP failed to identify excessive force incidents; failed to conduct adequate supervisory reviews of force incidents; and failed to adequately discipline a small group of officers who were involved in a disproportionate number of use of force incidents, many of which appear to have been unreasonable.[4] The Plain Dealer also reported that, between October 2005 and March 2011, CDP officers used Tasers 969 times, all but five of which the Division deemed justified and appropriate (a 99.5% clearance rate which one police expert said "strains credibility"). The

[4] *See, e.g.*, Henry J. Gomez, Six Cleveland Police Officers Accused of Brutality Have Used Force on 39 Suspects Since 2009, Clev. Plain Dealer, May 22, 2011, *available at* http://blog.cleveland.com/metro/2011/05/cleveland_police_officers_accu.html; *see also* Gabriel Baird, Two Cleveland Police Officers Charged with Assault are Among Department's Most Prolific Users of Force, Clev. Plain Dealer, Mar. 27, 2011, *available at* http://blog.cleveland.com/metro/2011/03/cleveland_police_officers_kevi.html; Gabriel Baird and Henry J. Gomez, Cleveland Police Chief McGrath Overlooked Conflicting Statements in Use of Force Investigations, Clev. Plain Dealer, June 5, 2011, *available at* http://blog.cleveland.com/metro/2011/06/cleveland_police_chief_michael_3.html. This material is included not because we are adopting the findings in these reports, but because they do provide appropriate background as to the community-CDP relationship.

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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 case.[5]

On November 29, 2012, over 100 Cleveland police officers engaged in a high speed chase, in violation of CDP policies, and fatally shot two unarmed civilians. The incident inflamed community perceptions, particularly in the African-American community, that CDP is a department out of control and that its officers routinely engage in brutality. The incident began when Timothy Russell and his passenger Malissa Williams drove past the Justice Center in downtown Cleveland, at which point officers and witnesses outside the Justice Center heard what they believed to be a shot fired from the car. It now appears that what they actually heard was the car backfiring. A massive chase ensued, involving at least 62 police vehicles, some of which were unmarked, and more than 100 patrol officers, supervisors, and dispatchers—about 37 percent of the CDP personnel on duty in the City. The pursuit lasted about 25 minutes, at times reaching speeds of more than 100 miles per hour. During the chase, some of the confusing and contradictory radio traffic incorrectly indicated that the occupants of the car may be armed and may be firing from the car. Other radio traffic did not support that conclusion. No supervisor asserted control over the chase, and some even participated. CDP now admits that the manner in which the chase occurred was not in accordance with established CDP policies. The chase finally ended outside the City's borders, in an East Cleveland school parking lot, with CDP vehicles located in front of and behind Mr. Russell's car. In circumstances that are still being disputed in court, thirteen CDP officers ultimately fired 137 shots at the car, killing both its occupants. Mr. Russell and Ms. Williams each suffered more than 20 gunshot wounds. The officers, who were firing on the car from all sides, reported believing that they were being fired at by the suspects. It now appears that those shots were being fired by fellow officers.

The Office of the Ohio Attorney General and its Ohio Bureau of Criminal Investigation and Identification ("BCI") conducted an investigation of the incident, at the conclusion of which BCI issued a report that raised serious questions about CDP's policies, training, supervision, communication, and technology.[6] In an accompanying statement, the Ohio Attorney General, Mike DeWine, said it was a "miracle" that no law enforcement officer was killed during the incident and added, "Our two month investigation reveals that we are dealing with a systemic failure in the Cleveland Police Department. Command failed. Communications failed. The System failed."[7] On December 27, 2012, Cleveland's mayor publicly requested that the Civil

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[5] Gabriel Baird and Henry J. Gomez, Cleveland Police Boast Near-Spotless Taser Record, but Experts Question Credibility of the Numbers, Clev. Plain Dealer, July 20, 2011, *available at* http://blog.cleveland.com/metro/2011/07/cleveland_police_boast_near-sp.html.

[6] OHIO BUREAU OF CRIMINAL IDENTIFICATION & INVESTIGATION, PROSECUTOR'S SUMMARY (Feb. 5, 2013), *available at* http://www.ohioattorneygeneral.gov/bcishootingreport.

[7] Statement, Ohio Att'y Gen. Mike DeWine, Officer-Involved Shooting of Timothy Russell and Malissa Williams (Feb. 5, 2013), *available at* http://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/Cleveland-Officer-Involved-Shooting-Investigation/Officer-Involved-Shooting-Statement-Morning-02-05.aspx. Again, these findings are not being cited because we adopt them in this letter, but because they

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Rights Division of the Department of Justice review CDP's use of force policies.[8] Subsequently, six CDP officers were indicted for their actions on November 29, 2012. The City recently agreed to pay $3 million to settle a civil lawsuit filed by the families of Mr. Russell and Ms. Williams.[9]

In conducting our investigation, we did not assess whether the officers involved in this incident violated the law. This matter is subject to an ongoing criminal prosecution and this findings letter is not intended to interfere with that process in any manner. Nor did we find predication to investigate whether CDP's practices discriminate against minority groups or otherwise deprive individuals of the protections provided by the Equal Protection Clause of the Fourteenth Amendment. We include the November 29, 2012 incident here to describe the serious allegations facing the Division when we began our investigation and the community distrust that CDP must grapple with in ensuring it provides effective and constitutional policing services to all segments of the Cleveland community. We also note that many of the concerns regarding policies, training, supervision, accountability, and equipment that were implicated by that incident were confirmed during our investigation, as set out below. Thus, our investigation revealed a clear pattern or practice of use of excessive force by officers without specific consideration of the November 29, 2012 incident.

III. METHODOLOGY

Our evaluation of CDP's use of force was informed by many sources, including: (1) witness interviews and hundreds of individuals participating in community town hall meetings; (2) the Division's officers, supervisors, and command staff; (3) other stakeholders in the City, including elected representatives of the patrol officer and management unions, the Office of Professional Standards and the Civilian Police Review Board, members of religious communities, and other community leaders; (4) Division documents, including reports documenting officers' use of deadly and less lethal force and materials associated with those reports; (5) Division policies, procedures and training materials, and (6) analysis provided by our expert police consultants.

Throughout our investigation, we sought information relevant to the Division's use of force and worked to gain a comprehensive understanding of the Division, including its leadership, systems of accountability, operations, and community engagement. We conducted

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constitute important background from another significant source that provided background for this investigation.

[8] Leila Atassi, Cleveland Mayor Frank Jackson Seeks Outside Review of All Future Use of Deadly Force Cases, Clev. Plain Dealer, Dec. 27, 2012, *available at* http://www.cleveland.com/metro/index.ssf/2012/12/cleveland_mayor_frank_jackson_5.html.

[9] John Caniglia, Judge Approve Settlement Reached with Families of Timothy Russell, Malissa Williams Over Deadly Police Chase and Shooting, Clev. Plain Dealer, Nov. 18, 2014, *available at* http://www.cleveland.com/court-justice/index.ssf/2014/11/judge_approves_settlement_reac.html.

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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 command staff, most of the district commanders, officers of various ranks and leadership, and officers within the Internal Affairs Unit, among others. We accompanied officers and supervisors in their zone cars during various shifts and in every district.[10] The Division briefed us on changes to its policies and practices. We met with representatives from the officers' and supervisors' unions. In addition to these onsite tours, which involved representatives from both the United States Attorney's Office and the Civil Rights Division, the United States Attorney's Office maintained a steady presence in Cleveland, attending community group meetings and visiting the districts to speak with officers and supervisors.

We also sought to learn more from individuals and groups who had direct interactions with the Division, and whom CDP is sworn to protect. We held multiple community town hall meetings in different regions of the City. During each of our onsite tours in Cleveland, we met with individuals who were willing to talk to us about their experiences with the police. In addition, we conducted three visits to Cleveland, in September 2013, May 2014, and October 2014 focused solely on talking to members of the community. We heard community members' concerns through outreach at community events, recreation centers, local businesses, and public housing units. We met with religious leaders, community activists, and representatives from several organizations that provide services to Clevelanders who are homeless or have a mental illness. We interviewed individuals who had either witnessed or been subjected to force by CDP officers. We verified these accounts where possible by reviewing available documentary, photographic, and video support, as well as Division records.

We were aided in our review by several expert police consultants who have significant experience in constitutional and best-practices policing, including reducing improper uses of force, ensuring officer safety and accountability, and promoting respectful police interactions with the community. Some of these consultants, who have worked for decades in police positions ranging from patrol officer to Chief, joined us during our onsite tours of the Division, participated in one or more of our town hall meetings, conducted interviews with civilians and officers, and accompanied officers and supervisors in their zone cars. The experience and knowledge of these nationally-recognized law enforcement experts has helped to inform our findings.

We reviewed an extensive volume of documents provided to us by the Division, including nearly 600 reports and investigations of officers' uses of force covering a three-year period. We reviewed more than 500 Use of Less Lethal Force Reports for uses of force that occurred between January 2012 and July 2013 and approximately 60 reports produced by the Division's Use of Deadly Force Investigation Team ("UDFIT") between 2010 and 2013, including every deadly force incident that occurred between January 2012 and April 2013. We closely analyzed these documents and applied the relevant legal standards to determine whether the Division's use of force was legally justified. Our review of individual use of force reports and investigations, along with our consultants' opinions on these documents, informed our investigation into whether a pattern or practice of excessive force exists.

[10] CDP refers to its patrol cars as "zone cars."

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To evaluate the causes of, and the factors contributing to, the use of unreasonable force, we reviewed internal and external CDP documents addressing a variety of operational issues, including policies and procedures, training, and investigations. For example, our conclusions about CDP's supervision and accountability systems are based on interviews of relevant staff, a review of policies and procedures, approximately 50 Internal Affairs investigations, more than 100 civilian complaint investigations, spreadsheets tracking outcomes of civilian complaints, and spreadsheets tracking disciplinary actions. This represented all of the 2012 and 2013 Internal Affairs investigations provided by CDP and a sample of the civilian complaints filed in 2012 and 2013.

We note that CDP's inability to produce key documents raises serious concerns regarding deficiencies in the Division's systems for tracking and reviewing use of force and accountability-related documents. These documents are necessary to assess whether officers are using force appropriately, to hold officers accountable for unreasonable uses of force, and to gauge the need for additional training, tactical reviews, or policy changes. CDP did not, for example, produce deadly force investigations that occurred after April of 2013 despite multiple requests. CDP was not able to produce some 2012 use of less lethal force reports until more than a year after our initial request for documents and failed to provide a justification for this delay. CDP reported that there were dozens of additional Internal Affairs investigations conducted during the time period we reviewed, but failed to provide these documents despite multiple requests. CDP was also unable to provide final dispositions for every civilian complaint, including complaints filed two years ago. Similarly, to date CDP has not been able to provide Taser firing histories which we requested over five months ago.

These are fundamental documents and pieces of information that should be readily accessible to CDP's leadership to inform decision-making. Instead, it appears that, at best, CDP is too often operating with incomplete or inaccurate information about its force practices. While we understand that CDP leadership may have informal ways to gather more information, a modern police force of CDP's size must have more formalized and structured mechanisms in place. CDP's inability to track the location of critical force-related documents is itself evidence of fundamental breakdowns in its systems and suggests that any internal analysis or calculation of CDP's use of force is likely incomplete and inaccurate. It also suggests that CDP does not accept that they are accountable for documenting and explaining their decisions in such matters to civilian leadership, the City, and the community as a whole.

Not only is CDP unable to track important force-related information, but it also appears that CDP's information is incomplete because some uses of force may not have been reported. CDP recently asserted in our meetings with them that total arrests involving a use of force have declined over the past eight years, as have the percentage of arrests which involve a use of force. CDP also asserted that Taser use declined significantly from 2009 to 2013. However, our review of a sample of 2012 arrest records for persons charged with resisting arrest suggests that some uses of force are not being reported.[11] For the months of February, June and August 2012, there

[11] Persons who are resisting arrest and are charged with that offense have almost always engaged in behavior which would be met with some use of force by the officers involved.

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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, in all 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 such underreporting, CDP's determination that uses of force have declined is not wholly reliable. The inability to produce Taser firing histories compounds our concerns about the reliability of the data and undermines the assertion that Taser uses have declined.

IV. FINDINGS

We have reasonable cause to believe that CDP engages in a pattern or practice of using unconstitutional force in violation of the Fourth Amendment. Our review revealed that Cleveland police officers use unnecessary and unreasonable force in violation of the Constitution at a significant rate, and in a manner that is extremely dangerous to officers, victims of crimes, and innocent bystanders. This pattern of unreasonable force manifests itself in CDP's use of deadly force, use of less lethal force, including Tasers, and use of force against restrained people and people in crisis.

A pattern or practice may be found where incidents of violations are repeated and not isolated instances. *Int'l Bd. of Teamsters v. United States*, 431 U.S. 324, 336 n.l6 (1977) (noting that the phrase "pattern or practice" "was not intended as a term of art," but should be interpreted according to its usual meaning "consistent with the understanding of the identical words" used in other federal civil rights statutes). Courts interpreting the terms in similar statutes have established that statistical evidence is not required. *Catlett v. Mo. Highway & Transp. Comm'n*, 828 F.2d 1260, 1265 (8th Cir. 1987) (interpreting "pattern or practice" in the Title VII context). A court does not need a specific number of incidents to find a pattern or practice, and it does not need to find a set number of incidents or acts. *See United States v. W. Peachtree Tenth Corp.*, 437 F.2d 221, 227 (5th Cir. 1971) ("The number of [violations] . . . is not determinative. . . . In any event, no mathematical formula is workable, nor was any intended. Each case must turn on its own facts."). Although a specific number of incidents and statistical evidence is not required, our review found that CDP officers use unnecessary and unreasonable force in violation of the Constitution a significant percentage of the time that they use force.

A. CDP officers engage in a pattern or practice of unconstitutional force.

Our review revealed that Cleveland police officers violate basic constitutional precepts in their use of deadly and less lethal force at a rate that is highly significant. Claims that officers have used excessive force during an arrest or detention are governed by the Fourth Amendment's reasonableness standard. *Graham v. Connor*, 490 U.S. 386, 394 (1989). "Determining whether the force used to effect a particular seizure is 'reasonable' under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." *Id.* at 396 (internal quotations and citations omitted). The reasonableness of a particular use of force is based on the totality of the circumstances and "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* As the Sixth Circuit has stated:

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> 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, 606-07 (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." *Id*. at 891. 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 the use of deadly force is not justified, including against unarmed or fleeing suspects who do not pose a threat of serious harm to officers or others. We also discovered incidents in which CDP officers draw their firearms and even point them at suspects too readily and in circumstances in which it is inappropriate. In part as a result of this dangerous practice, which is both inappropriate and tactically unsound, officers strike people on the head with their guns in circumstances that do not justify deadly force. CDP officers use less lethal force—including Tasers, OC Spray, and strikes to a suspect's body—against individuals who pose little, if any, threat, or who offer minimal resistance, including those who are handcuffed, already on the ground, or otherwise subdued. CDP officers too hastily resort to using Tasers, often in a manner that results in excessive force and demonstrates a pervasive use of poor and dangerous tactics. CDP officers also use Tasers and other forms of less lethal force against individuals with mental illness or under the influence of drugs or alcohol or who have a medical condition affection their cognitive abilities, or who may be unable to comply with officers' demands. Collectively, these practices make up a pattern or practice of constitutional violations.

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1. CDP officers shoot at people who do not pose an imminent threat of serious bodily harm or death to the officers or others.

In reaching our conclusion that CDP engages in a pattern or practice of excessive force, we identified several cases in which officers shot or shot at people who did not pose an immediate threat of death or serious bodily injury to officers or others. An incident from 2013 in which a sergeant shot at a victim as he ran from a house where he was being held against his will is just one illustration of this problem.[12] "Anthony"[13] was being held against his will inside a house by armed assailants. When officers arrived on scene, they had information that two armed assailants were holding several people inside the home. After officers surrounded the house, Anthony escaped from his captors and ran from the house, wearing only boxer shorts. An officer ordered Anthony to stop, but Anthony continued to run toward the officers. One sergeant fired two shots at him, missing. According to the sergeant, when Anthony escaped from the house, the sergeant believed Anthony had a weapon because he elevated his arm and pointed his hand toward the sergeant. No other officers at the scene reported seeing Anthony point anything at the sergeant.

The sergeant's use of deadly force was unreasonable. It is only by fortune that he did not kill the crime victim in this incident. The sergeant had no reasonable belief that Anthony posed an immediate danger. The man fleeing the home was wearing only boxer shorts, making it extremely unlikely that he was one of the hostage takers. In a situation where people are being held against their will in a home, a reasonable police officer ought to expect that someone fleeing the home may be a victim. Police also ought to expect that a scared, fleeing victim may run towards the police and, in his confusion and fear, not immediately respond to officer commands. A reasonable officer in these circumstances should not have shot at Anthony.[14]

Another incident from 2012 in which an officer shot a man who was lawfully armed and appeared to be cooperating with the officers' orders further illustrates this problem. Two officers

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[12] Throughout this letter, we will provide two or three examples that illustrate each of the problems that we found during our investigation. These examples are far from an exhaustive list of the incidents that we found that violate the Constitution. Indeed, these examples only comprise a small subset of the total number of incidents that we found problematic and upon which we base our conclusions.

[13] We use pseudonyms for individuals who were the subject of force with CDP officers to protect against disclosing personally-identifying information. We also do not identify CDP personnel by name, as the purpose of these illustrations is not to assess individual liability but to support and illustrate the findings of a pattern or practice.

[14] This incident is a perfect example of the fact that this letter is not making judgments about individual officers' intent while using even unreasonable force. Obviously, the officer here did not intend to shoot a victim in this case. That does not change the fact, however, that under all of the circumstances of this case, firing at the victim was not reasonable and therefore violated the Constitution. In other words, simply saying that an officer's or a Department's actions are not criminal, does not mean that no Constitutional problem exists.

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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 bit" 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 eight 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 a suspect's "mere possession of a weapon is not enough to satisfy [an officer's] burden" of establishing that the use of deadly force was reasonable. *See Bouggess*, 482 F.3d at 896. The shooting officer's partner and all of the civilian witnesses confirmed that Brian informed the officers that he had a handgun license. Brian took the precise steps advised by the Ohio Attorney General's Office when a person carrying a concealed handgun is stopped for law enforcement purposes.[15] The weight of the evidence suggests that Brian was attempting to comply with officers' orders and did not pose an imminent threat of serious bodily harm to the officers or others, and the officer should not have fired his weapon.[16]

We also reviewed incidents where CDP officers shot at people who were fleeing in vehicles as the vehicle was moving away from the officer and the suspects' flights did not pose a threat of serious bodily harm to anyone, rendering the use of deadly force at that point unreasonable. Shooting at a fleeing suspect violates the Constitution when the fleeing suspect does not pose a threat of serious bodily harm to the officer or others. In the Sixth Circuit, "it has been clearly established . . . for the last twenty years that a criminal suspect 'ha[s] a right not to be shot unless he [is] perceived to pose a threat to the pursuing officers or to others during flight.'" *Sample v. Bailey*, 409 F.3d 689, 699 (6th Cir. 2005) (citing *Robinson v. Bibb*, 840 F.2d

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[15] *See* OFFICE OF THE OHIO ATT'Y GEN., OHIO'S CONCEALED CARRY LAWS AND LICENSE APPLICATION, at 14 (rev. April 7, 2014), *available at* http://www.ohioattorneygeneral.gov/Files/Publications/Publications-for-Law-Enforcement/Concealed-Carry-Publications/2011-Concealed-Carry-Laws-Manual.aspx ("If a person is stopped for a law enforcement purpose and is carrying a concealed handgun as a CCW licensee . . . he shall promptly inform the law enforcement officer that he is carrying a concealed handgun.").

[16] On June 10, 2014, the City of Cleveland settled a lawsuit Brian filed alleging that CDP resorted to excessive force in this incident. We note that certain of the lawsuits that the City has settled involving allegations of excessive force were settled on confidential terms. The use of this practice, which diminishes transparency, merits serious review in such cases going forward.

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349, 351 (6th Cir. 1988)); *cf. Plumhoff v. Rickard*, 527 U.S. ___ , 134 S. Ct. 2012, 2021 (2014) (finding officers' use of deadly force against fleeing suspect reasonable where suspect engaged in "outrageously reckless driving," leading officers on a chase that exceeded 100 miles per hour and passing more than two dozen vehicles, several of which were forced to alter course); *Hocker v. Pikeville City Police Dep't*, 738 F.3d 150, 152, 158 (6th Cir. 2013) (finding police officers' use of deadly force reasonable where officers shot an intoxicated suspect, whom the court found to be a continuing threat, after he led the officers on a seven-mile, high-speed chase at night, then reversed his vehicle, slamming into an officer's patrol car and moving it thirty feet while an officer was temporarily trapped inside). In the words of the Supreme Court, "[i]t is not better that all felony suspects die than that they escape." *Garner* at 11.

Shooting at vehicles creates an unreasonable risk unless such a real and articulable threat exists. First, it is difficult to shoot at a moving car with accuracy. Missed shots can hit bystanders or others in the vehicle. Second, if the driver is disabled by the shot, the vehicle may become unguided, making it potentially more dangerous. The dangers of this practice are recognized in Division policy, in fact. The problem is, however, that the restrictions created by this policy are not consistently enforced. Both the May 2007 and the March 2013 CDP Use of Force policies state, "Firing at or from a moving vehicle is rarely effective and presents extreme danger to innocent persons…."[17] In its 2013 review of CDP's use of force policies and practices, the Police Executive Research Forum ("PERF")[18] recommended that CDP policy be changed to prohibit the discharge of firearms at or from a moving vehicle unless deadly physical force is being used against the police officer or another person present, by means other than the moving vehicle.[19] In making this recommendation, PERF noted that shooting at a moving vehicle is dangerous because "it does not result in a stopped vehicle—it simply raises the chances of danger from an uncontrolled vehicle."[20] We commend CDP for adopting PERF's recommendation regarding shooting at moving vehicles in its most recent Use of Force policy, which was revised in August 2014.[21] However, it is too soon to determine whether CDP's actual practices will also change in light of the new policy. CDP's Use of Force policies revised in

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[17] CDP General Police Order ("GPO") 2.1.01, *Use of Force*, §VI.D.5 (rev. March 22, 2013) and §IV.E (rev. May 7, 2007).

[18] CDP retained PERF to conduct a review of the Division's policies and some of its practices related to its use of force. PERF's assessment included a review of CDP's training, supervision and management, less lethal force reporting, early intervention system, and post-traumatic stress aftercare. At the conclusion of that study, in August 2013, PERF issued a report that described its conclusion and made recommendations regarding managing the use of force in CDP, most of which CDP agreed to implement.

[19] On August 23, 2013, CDP issued Divisional Notice 13-342, which revised its Use of Force policy in accordance with PERF's recommendations.

[20] PERF, USE OF FORCE POLICY AND PRACTICES STUDY FOR CLEVELAND DIVISION OF POLICE, at 6 (August 2013) [hereinafter "2013 PERF Report"].

[21] GPO 2.1.01, *Use of Force*, §VI.D (rev. Aug. 8, 2014).

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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 ex-boyfriend was outside calling her and making threats. As officers were arresting the suspect ("Charles"), "David," who had been sitting in the passenger seat of the car in which he had arrived with Charles, started the car as if to leave. An officer approached the car, pointed his gun at David, and ordered him to turn the car off. According to the officer, David then cut the wheels to the left and sped off so that the vehicle brushed against the officer, pushing him backwards. In response, the officer reported, he fired one round at the driver as he drove off, striking him in the back of the shoulder. Again, while the officer might well have been in danger when the car was next to him, the initial threat posed by David to the officer had ended by the time the officer shot at David, and the officer did not articulate any basis for believing that David was a threat to anyone else. Under these circumstances, the officer's use of deadly force was unreasonable.[22]

These incidents are examples of precisely the type of deadly force prohibited by the Fourth Amendment. *See Smith v. Cupp*, 430 F.3d 766, 773-74 (6th Cir. 2005) (officer violated the Fourth Amendment when he shot at a suspect fleeing in a stolen police cruiser because the officer fired his weapon "after the police cruiser was past" and the potential danger to the public from the suspect's driving off "was not so grave as to justify the use of deadly force"); *Sigley v. City of Parma Heights*, 437 F.3d 527, 537 (6th Cir. 2006) (officer was not entitled to qualified immunity for shooting a suspect fleeing in a vehicle where he "sh[ot] [the suspect] in the back when he did not pose an immediate threat to other officers"). We found many additional deadly force incidents that violated the Fourth Amendment in our review. These shootings also violated the CDP policy in place at the time, which prohibited shooting at vehicles that no longer pose an imminent threat.[23]

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[22] David filed a lawsuit against the officer alleging, among other things, excessive force and false arrest in violation of the Fourth Amendment of the U.S. Constitution. On Feb. 13, 2013, the court denied the officer's motion for summary judgment in regards to these claims and in regards to the officer's qualified immunity claim, noting that the officer offered "improbable testimony" that the vehicle pushed against the officer and that the officer "never explain[ed] how the [vehicle] moved sideways into him. . . ." CA No. 1:12-CV-01920 (02/13/13 Opinion & Order, dkt. # 16, at 11. The case settled on March 1, 2013.

[23] CDP's Use of Force policy in place at the time, dated May 7, 2007, stated, "Officers shall NOT fire at a vehicle that is no longer an imminent threat." CDP's current policy prohibits officers from discharging their firearms at a moving vehicle unless deadly force is being used against the officer or another person by means other than the vehicle.

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2. CDP officers hit people in the head with their guns in situations where the use of deadly force is not justified.

In our review of CDP's use of force, we also found that CDP officers use their guns to strike people in the head in circumstances where the use of deadly force is not justified. Striking someone in the head with an impact weapon is deadly force, as CDP's own policies recognize.[24] Our review of deadly force investigations revealed that CDP officers have hit suspects in the head with their pistols in circumstances that do not warrant deadly force. This practice is partially a result of tactical errors where officers drawn their firearms at inappropriate times. In these circumstances, when officers ultimately engage physically with suspects, they do so while holding a firearm. This is an extremely dangerous practice, increasing the risk of an accidental discharge—which has happened on more than one occasion involving CDP officers—and the risk that a suspect will gain control of the weapon. It also limits the less-lethal options an officer has available to bring an actively resisting subject under control because one of his hands is occupied holding the firearm.

In an incident from 2012 that illustrates this problem, an officer's gun discharged when he struck a suspect in the head with it. The officer, who was off-duty and dressed in civilian clothes, observed what he believed to be a drug transaction take place involving two vehicles and about six suspects. The officer approached them without calling for backup and told them to leave. When "Eric" got out of one of the cars, the officer drew his handgun, pointed it at Eric, and ordered Eric to the ground, identifying himself as a CDP officer but not showing a badge. A witness reported that she saw a man, later identified as the officer, holding a gun to Eric's face while Eric asked repeatedly for the officer to show his badge and expressed disbelief that he was an officer. One of the occupants of the car later told police that he thought they were being robbed. The officer then began wrestling with Eric with his gun still drawn. During the struggle, the officer struck Eric in the head with the weapon, at which time the weapon discharged. Eric then broke free from the officer and ran away. The officer reported that he did not know whether the bullet struck Eric, but that Eric was bleeding from the face as he ran away. The extent of Eric's injuries is unclear based on the documents CDP provided.

This use of deadly force was not reasonable and was quite dangerous for the arrestee, the officer, and the public. An officer's use of deadly force is not justified where a suspect physically resists arrest but poses no imminent danger of serious physical harm to the officer or another. *See Bouggess*, 482 F.3d at 891 ("It cannot reasonably be contended that physically resisting arrest, without evidence of the employment or drawing of a deadly weapon, and without evidence of any intention on the suspect's part to seriously harm the officer, could constitute probable cause that the suspect poses an imminent danger of *serious* physical harm to the officer or to others."). Additionally, the officer's actions could reasonably be predicted to escalate the situation because he engaged with Eric while off-duty without any means to identify himself as a

[24] GPO 2.1.01, *Use of Force* (rev. Aug. 8, 2014), at 2 (defining deadly force as "any action likely to cause death or serious physical injury" including "head strikes with any hard object"); GPO 2.1.01, *Use of Force* (rev. March 22, 2013), at 2 (also defining deadly force as "*any* action likely to cause death or serious physical injury," including "head strikes with . . . any hard object."); GPO 2.1.01, *Use of Force* (rev. May 7, 2007), at 2 ("Deadly force includes . . . head strikes with an ASP baton or any hard object.").

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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 could 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 on 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 not armed, 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 officers too frequently resort to a type of force that is unreasonable in light of the resistance or threat encountered. Force, including less lethal force, is excessive if the level of force used is disproportionate to the resistance or threat encountered. *Ciminillo v. Streicher*, 434 F.3d 461, 469 (6th Cir. 2006) ("[I]n this Circuit, it was clearly established that individuals had a general right to be free from unreasonable use of non-lethal force."). CDP officers use less lethal force—including Tasers, OC Spray, and strikes to a suspect's body—against individuals who pose little, if any, threat, or who offer minimal resistance, including those who are handcuffed, already on the ground, or otherwise subdued. CDP officers too hastily resort to using Tasers, and they do so in a manner that results in excessive force a significant percentage of the time and demonstrates a pervasive use of poor and dangerous tactics. CDP officers also use Tasers and other forms of less lethal force against individuals with mental illness or impaired faculties, or who may be unable to comply with officers' demands.

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a. Head and body strikes.

CDP officers also use less lethal force on people who are handcuffed or otherwise subdued and pose little or no threat to officers. This practice contravenes well-settled law. *See Champion v. Outlook Nashville, Inc.*, 380 F.3d 893, 902 (6th Cir. 2004) (The Sixth Circuit has "consistently held that various types of force applied after the subduing of a suspect are unreasonable and a violation of a clearly established right."). One egregious incident in which officers resorted to an excessive amount of force, mentioned briefly in the Background section of this letter, occurred in January 2011. On the day in question, officers apprehended Edward Henderson after he fled from the police in a vehicle, leading officers on a chase that lasted about six minutes. Mr. Henderson then pulled over, exited his van, and sat on a highway guardrail. When CDP officers approached, Mr. Henderson walked into a group of trees. As one officer approached with his service weapon drawn, Mr. Henderson responded to commands to lay prone on the ground and spread his arms and legs. Infrared video from a CDP helicopter involved in the pursuit shows numerous officers approaching Mr. Henderson, including one with a gun drawn. The helicopter officer comments, "Looks like they got the male in custody." After Mr. Henderson was restrained, prone on his stomach, officers began kicking Mr. Henderson, and other officers appear to be striking him as well. Mr. Henderson was subsequently brought to the hospital with a broken orbital bone. The force officers used in this incident against an unarmed man, prone on the ground and surrounded by CDP officers, was unnecessary and excessive.

In another incident, an officer punched a handcuffed 13 year-old boy in the face several times. Officers had arrested the juvenile for shoplifting. While "Harold" was handcuffed in the zone car, he began to kick the door and kicked an officer in the leg. In response, the 300 pound, 6'4" tall officer entered the car and sat on the legs of the 150 pound, 5'8" tall handcuffed boy. Harold was pushing against the officer with his legs, but was handcuffed and posed no threat to the officer. Nevertheless, the officer continued to sit on Harold and punched him in the face three to four times until he was "stunned/dazed" and had a bloody nose. In considering the reasonableness of an officer's use of force, courts "must . . . consider the size and stature of the parties involved." *Solomon v. Auburn Hills Police Dep't*, 389 F.3d 167, 174 (6th Cir. 2004) (finding that a 120 pound, 5'5" tall woman posed "no immediate threat" to the safety of officers who weighed between 230 and 250 pounds and stood at least 5'8" tall). Moreover, this unreasonable use of force appears to have been designed to punish the boy rather than to control him. The Fourth Amendment does not permit force to be used for punishment. *See, e.g.*, *Baker v. City of Hamilton*, 471 F.3d 601, 607 (6th Cir. 2006) (finding that officer used "unjustified and gratuitous" force when he struck a suspect in the knee because "the purpose of this hit was not to subdue . . . but rather to punish him"); *Bultema v. Benzie County*, 146 F. App'x 28, 37-38 (6th Cir. 2005) (unpublished) ("[R]egardless of what the suspect may have done to the police officer prior to the arrest, the police officer is constitutionally prohibited from exacting retribution once the suspect has been subdued.").

b. Tasers and OC Spray.

Our review also found that CDP officers use their Tasers and OC Spray inappropriately. Tasers are a valuable tool for law enforcement, but they are also a weapon that exerts a significant amount of force on the person and cannot be used without adequate justification for such a high level of force. One court described the effect of a Taser on a person this way: "The

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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. 2009). 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 incidents where officers immediately resorted to the Taser despite the presence of other officers who could help contain the individual using lower levels of force, or where de-escalation techniques might have proved more effective than using force. We also found that officers tase people who are handcuffed and that, in some cases, multiple officers deployed Tasers simultaneously or a single officer deployed a Taser multiple times when only a single use was justified.

Additionally, CDP officers misuse the so-called "drive stun mode" of their Tasers. A Taser may be used in two different ways—either by discharging the pair of darts, which remain connected to the main unit by a conductive wire, or by applying the Taser directly to a person's body while pulling the trigger. In the first method, an electrical circuit is complete that temporarily incapacitates a subject. The second method, called drive stun mode, inflicts pain as a compliance measure without incapacitating the subject. The practice of using Tasers in drive stun mode as a pain compliance tactic should be reserved for situations where other less painful tactics cannot be used and, in fact, may have limited effectiveness because, when used repeatedly, it may even exacerbate the situation by inducing anger in the subject.[25] In its August 2013 report to CDP, PERF recommended that CDP discourage the use of drive stun as a pain compliance tactic, and CDP agreed to do so. PERF also recommended that CDP permit officers to use drive stun only to supplement the probe mode to complete the circuit or as a countermeasure to gain a safe distance between an officer and a subject, but CDP declined to do so, without explanation.[26] In practice, we found that CDP officers frequently use the Taser in drive stun mode.

In one incident that illustrates CDP's inappropriate use of Tasers, an officer used his Taser to drive stun a 127-pound juvenile twice as two officers held him on the ground. Officers believed that "Ivan" matched the description of a possible fleeing suspect wanted for harassing store customers and stealing. Officers chased Ivan on foot, caught up to him, and tackled him. The officers alleged that the 127-pound juvenile "continued to resist" as they both held him on ground, prompting one of the officers to deploy his Taser twice in the juvenile's back in drive stun mode, even though both officers were holding him down. In this incident, the use of the Taser in any mode was unreasonable. There were two officers present and the juvenile was already on the ground and could have been controlled using lesser force.

In another instance from 2013, officers tased a handcuffed, fleeing prisoner, and then drive stunned him twice after having lost control of him while placing him in the back of a zone car. When officers initially confronted the individual, "Jason," he falsely identified himself, so

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[25] PERF & Community Oriented Policing Services ("COPS"), 2011 Electronic Control Weapon Guidelines, at 14 (March 2011) [hereinafter "2011 ECW Guidelines"].

[26] 2013 PERF Report, at 9.

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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 back of the zone 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 causing himself severe injuries from falling or being struck." This rationale offered by the officer should have been sufficient on its own for CDP to find this use of force unjustified, as suspects normally fall after being tased. Justifying the use of a Taser to stop a feeling, handcuffed person from falling is simply not credible. *See, e.g.*, *Bryan*, 590 F.3d at 773 (officer's use of Taser caused the subject to fall face-first onto asphalt, shattering four front teeth and causing facial contusions). Jason continued running, but according to the officers, he eventually tripped and fell to the ground. When the officers caught up to him, they attempted to hold Jason down, but the handcuffed Jason "continued to resist and not comply" with orders. Despite the fact that there were two officers present, the officers drive-stunned Jason twice while he was handcuffed and on the ground. This use of force was unreasonable. The suspect was already on the ground and was in handcuffs. The decision to drive stun him twice appears to have been made more to punish Jason for running rather than to gain control of him, which could have been accomplished with less force, if any. *See Baker*, 471 F.3d at 607; *Bultema*, 146 F. App'x at 37-38. In addition to problems with the tasings, the fact that two officers completely lost control of a handcuffed suspect is concerning. This incident of tasing a person who was already handcuffed, a practice that on its face is quite hard to justify, was not the only time we saw it occur. And each and every time we saw officers write that they had tased a handcuffed suspect, the use of force was approved up the chain of command.

Officers also have unnecessarily and unreasonably used OC spray against handcuffed people. A particularly troubling incident occurred in February 2013, when CDP officers placed a so-called "spit sock" on a mentally ill suspect, "Kent," then sprayed OC spray over the spit sock while Kent was handcuffed and in the back of a zone car. Officers apparently then forced him to continue wearing the spit sock. The incident began when officers responded to a male who called 911 and threatened to "blow up the government," among other threats. Numerous zone cars responded to Kent's home. Officers placed Kent in handcuffs and, because he was spitting on them, they placed a spit sock, a hood which helps prevent the transfer of diseases from spitting, over his head. They then placed him in a zone car. Kent began to kick at the rear windows of the zone car, and a sergeant opened the door and ordered Kent to stop. Kent tried to spit on the sergeant and began kicking the window again. The sergeant then sprayed OC spray in the man's face, over the spit sock. CDP records reflect that Kent was not immediately decontaminated, but rather was transported and not decontaminated until he arrived at the hospital. The use of OC spray was unnecessary. Moreover, spraying Kent through a spit sock, then requiring him to wear it, is cruel and amounts to unnecessary punishment. Yet, this tactic was not even questioned by the chain of command.

4. CDP officers use unreasonable force, including Tasers, against individuals with mental illness, individuals in medical crisis, and individuals with impaired faculties.

Another aspect of the pattern we found is that CDP officers too often use unreasonable force against individuals with mental illness, individuals in medical crisis, and individuals with

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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, "[t]he 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, 1231-33 (9th Cir. 2014) (holding that Title II of the Americans with Disabilities Act applies to arrests). In *Martin v. City of Broadview Heights*, 712 F.3d 951, 954-55 (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 face-down 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 de-escalate 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 de-escalate 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." *Ciminillo*, 434 F.3d at 467.

We reviewed one incident where—in response to a request for assistance—a CDP officer tased a suicidal, deaf man who committed no crime, posed minimal risk to officers and may not have understood officers' commands. "Larry's" mother had requested CDP's assistance because her son, who has bipolar disorder and communicates through sign language, was holding broken glass against his neck and threatening suicide. When officers arrived, Larry went into the bathroom and sat on the edge of a half-filled tub. The officers followed and, without confirming that Larry could communicate through notes, wrote him a note saying that he needed to go to the hospital. Larry waved his hands "aggressively," which the officers interpreted as refusal. One of the officers then grabbed Larry's arm. Larry pulled back, "struggling" with the officer. The other officer then yelled "Taser" and pointed his finger at his Taser. Larry continued to struggle, so the officer tased Larry in his chest. This use of force was unreasonable. As an initial matter, Larry may not have understood officers' commands. But even more importantly, Larry was not a threat to officers—he simply was pulling away from an officer, refusing to leave the bathroom, and he was not suspected of any crime. Officers should have attempted additional crisis intervention techniques instead of resorting to force against this suicidal male.

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In another incident involving the use of a Taser against a person in crisis, a CDP officer tased a man, despite the fact that he was suffering a medical emergency and was strapped onto a gurney in the back of an ambulance, because he was verbally threatening officers. Two officers had been flagged down because the man was having seizures and, at the time, was lying on the sidewalk. When the officers spoke with "Mark," he told them that he suffers from grand mal seizures and that he had been drinking. Officers called EMS and, while waiting for EMS to arrive, observed Mark have at least four more seizures. When EMS arrived, officers assisted him into the ambulance, where he was strapped onto a gurney. Once strapped down, Mark became angry and threatened to punch one of the officers and one of the medics. He then tried to unstrap himself from the gurney and balled his fist, stating that he would prefer to walk home. One of the officers then unholstered his Taser, told Mark to calm down, and threatened three times to tase him. Mark continued to try to stand up while threatening to beat the officer. The officer then drive stunned Mark on his top left shoulder. Mark had committed no crime, was strapped down and was in the midst of a medical crisis. His repeated seizures may also have left him confused and disoriented. Indeed, there is no indication that Mark could carry out his threat against the officers, particularly when he was strapped to the gurney. The officers' decision to tase him under these circumstances was unreasonable and may have been counterproductive. *See* 2011 ECW Guidelines, at 14 (Using a Taser "to achieve pain compliance may have limited effectiveness and, when used repeatedly, may even exacerbate the situation by inducing rage in the subject").

We found several problems with officers' use of force on people who show obvious signs that they are under the influence of phencyclidine ("PCP") that resulted in constitutional violations, including many instances in which CDP officers unreasonably deployed their Tasers multiple times. These are highly volatile and dangerous situations. Based on our review of force reports, these encounters appear to be very common in Cleveland. Despite their prevalence, CDP fails to adequately address and train its officers to effectively respond to these volatile situations.[27] We have seen these ill-prepared officers respond by using excessive force against these individuals, placing themselves and others in danger. In one such instance, officers deployed their Tasers 12 times against a man who was in the street, naked, and high on PCP, including eight times in drive stun mode. In another incident, officers repeatedly tased a handcuffed man who was high on PCP, again using the drive stun mode. The goal in addressing a dangerous situation should be to use the amount of force needed to protect the officer and the public, not to continually inflict pain on a suspect who is unable to rationally comply with police commands.

[27] As the PERF guidelines on Tasers note, "there is a higher risk of sudden death in subjects under the influence of drugs and/or exhibiting symptoms associated with excited delirium." The guidelines also note that multiple applications of a Taser or simultaneous applications by more than one Taser may result in fatal or other serious outcomes. Indeed, the PERF guidelines go on to state that "exposure to the Taser for longer than 15 seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury."

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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 themselves and other members of the community and may result in the use of excessive force. They too often carelessly and accidentally fire their weapons, at times seriously injuring people who were not a serious threat to officers and placing bystanders at unwarranted risk of serious injury and death. We also found that CDP officers too often fail to de-escalate confrontations and instead engage in questionable and dangerous tactics which place them in danger or result in their use of force that may not have been necessary. While these tactical errors may not always result in constitutional violations, they do at times, and moreover they place officers, suspects, and other members of the Cleveland community at risk. Especially in light of the broader pattern and practice we have observed, these incidents are legally significant.

1. CDP officers carelessly fire their weapons, placing themselves, subjects, and bystanders at unwarranted risk of serious injury or death.

We reviewed incidents in which officers carelessly or accidentally fired their weapons, at times critically injuring people, in instances where it may not have been appropriate to have drawn their firearms at all. An officer's decision to reach into a man's vehicle while the officer had his gun drawn and in his hand resulted in the officer shooting the man in the chest. "Nathan" had tried to make a right turn from the center lane, cutting off and almost colliding with a car that was proceeding straight through the intersection. It was 2:30 in the morning, and the area was crowded with pedestrians who had emptied out of the local bars and restaurants. Nathan was unable to complete the right turn because the street was blocked off, but by this time there were pedestrians crossing behind his vehicle, such that he could not back up into his lane. Consequently, he was stuck in the middle of the intersection, blocking traffic. At this point, an officer approached Nathan's vehicle with his gun drawn. The records of the incident provide no written basis to explain why he drew his gun, which is in itself a troubling fact. In his video-taped statement, the officer merely said he felt "uneasy" because he could not see Nathan's hands. With his gun pointed at Nathan, the officer ordered Nathan to turn off his ignition and to show the officer his hands. The officer claims Nathan did not obey these commands and that he had his right hand down where the officer could not see it. Nathan claims that he had his hands up and was afraid to move them because the officer was pointing his gun at him. When Nathan did not comply, the officer himself attempted to turn off the vehicle. To do so, he leaned his entire upper body into the car and, with his right hand, attempted to turn off the car. Meanwhile, his gun was in his left hand, pointed at Nathan, and his finger was on the trigger. He claims that he then felt force on his hand "like [Nathan] was trying to grab my weapon." The gun discharged, striking Nathan, who had been stopped originally for a potentially unlawful left turn, once in the chest.

This shooting resulted from poor tactics by the officer – both in pulling and pointing his gun and reaching into the car. These tactics resulted in an unnecessary and unreasonable use of force which, at the very least, resulted from the officer having made the dangerous choice to reach into a vehicle while holding his weapon. CDP's current use of force policy, which was in place at the time of this incident, prohibits officers from reaching into vehicles at all, let alone with their gun in their hands, because it is "extremely dangerous and can result in the officer

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being dragged by the vehicle."[28] 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 Nathan 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 hit-and-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-civilian encounter.

We found that officers sometimes draw, point 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 fired 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. Officers 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 refused and began walking down the street, telling officers they would have to kill him. Officers followed. Oscar again put the gun to his head and then pointed it at officers. In response, five officers fired a total of 24 rounds. Three of the five officers fired more than six rounds each. By the time CDP officers stopped firing, six rounds had struck nearby residences; eleven rounds struck a pickup truck parked along a curb; two other rounds struck a second nearby parked pickup; and one round struck the passenger side pillar of an automobile parked along the curb. Oscar ended up in critical condition with gunshot wounds to his right buttocks, right calf, right foot, and left hip.

While we are not concluding that this response represents an application of unreasonable force, this incident illustrates several tactical errors that resulted in too many officers firing too many shots, placing residents of a neighborhood at risk of serious injury. CDP officers failed to follow basic, generally accepted techniques for responding to an armed suspect threatening suicide. For example, although there were nine officers on the scene, it appears that no one person was commanding or controlling the scene. A supervisor or the first-responding officer should have designated various locations from which the officers could seek cover and contain the movement of the suspect. No negotiator was called to the scene. Instead, the officers responding to the scene were unsupervised and grouped together with little or no cover. As a result of these poor tactics, officers placed themselves in harm's way and increased the likelihood that multiple officers would fire their weapons in response to a threat by the suspect. In this instance, the first CDP officer who opened fire appeared justified in doing so because the suspect pointed his weapon at officers. Other officers reported they fired their weapons because

[28] GPO 2.1.01, *Use of Force*, §VI.D.4 (rev. March 22, 2013).

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they thought the suspect was firing at them. He was not—the suspect's gun was later determined to be inoperable. A police force must be trained to deal with situations in which officers are firing their weapons and take efforts to ensure that officers are firing in response to suspect fire and not in response to fire from other officers. While no residents were inadvertently struck by the errant rounds, the actions CDP officers took in response to Oscars' actions created a scenario in which they unnecessarily subjected neighborhood inhabitants and one another to a heightened risk of death or serious injury.

2. CDP officers use other dangerous and poor tactics, placing members of the Cleveland community at risk.

We also found additional instances in which CDP officers used inappropriate and dangerous tactics that resulted in uses of force that may have been avoidable. We reviewed instances in which officers used force when they should have de-escalated the situation and used a lower level of force, or perhaps avoided the need to use force at all. This is especially true, and troublesome, in the instances described above in which officers used force against people who were in a mental health crisis. But we observed this troubling pattern in other contexts as well, especially where police officers essentially lost their patience with people who were not cooperating or who were verbally abusive to officers.

We also found other instances of poor and dangerous tactics that may have resulted in constitutional violations or other dangerous situations. When handcuffing or searching a suspect, for example, we found incidents in which Cleveland police officers lost control of the suspect, requiring the officers to use force that would not have been necessary had they used sound tactics in the first place that would have enabled them to maintain control. In one incident that illustrates this problem, officers lost control of a suspect during a pat down, used force to gain control of him, and then failed to locate a loaded gun on the suspect before placing him in the zone car and transporting him to jail. In May 2013, two officers approached "Paul" because he looked "suspicious" and might have been urinating in front of a store. After approaching Paul, an officer patted him down "for officer's safety." During the pat down, an officer located a kitchen knife. The officer then informed Paul that he was under arrest. Paul tried to pull away, but the officer's finger got caught in Paul's clothing, breaking the officer's finger. The other officer on scene then stepped in and "tackled" Paul, who was "actively resisting." Once Paul and the officer were on the ground, the officer punched Paul several times, including in his forehead, in the back of his head, and in the middle of his back. The officer who punched Paul did not write a report, and so it is impossible to tell how many times he punched Paul in the head, or the level of resistance he was encountering that he felt necessitated this use of force. The officers reported to the supervisor the conclusory, boilerplate statement that Paul was "actively resisting." The first officer then assisted in the struggle and the two were able to get Paul handcuffed. After transporting Paul to the Central Prison Unit for booking, the officers found a loaded gun in Paul's coat pocket.

Aside from the fact that the officer only used the boilerplate "actively resisting" language in the CDP report, it is troubling that officers lost control of a suspect while they were patting him down. This incident is not discussed because we are making a finding that the officer used too much force, but rather because it is impossible to tell from the record whether the amount of force used was appropriate or not and because the written record demonstrates that the officers'

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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 Paul and 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 at all 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 fairly, using 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 the Division to identify and address emerging problems before they result in significant or widespread harm. CDP fails in all of these areas, and this has created an environment that permits constitutional violations. It has also created an atmosphere within CDP in which there is little confidence in the fairness of the disciplinary process — a lack of confidence which extends from the rank and file all the way to the highest levels of the Division and City leadership. Along with police practitioners, courts have long acknowledged that deficiencies in systems and operations can unequivocally lead or contribute to constitutional violations.[29]

[29] In *City of Canton, Ohio v. Harris*, 489 U.S. 378 (1989), the Supreme Court held a municipality liable for failing to adequately train its law enforcement officers, recognizing that a law enforcement agency's practices and decision-making can cause constitutional harm. *Id.* at 387.

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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 less lethal 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 every officer on scene. These summary reports made it impossible to discern whose account of events 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 less lethal force report frequently was not the officer who used the force. At the time of our investigation, this practice was consistent with CDP policy.[30]

CDP's use of force reports also suffer from additional deficiencies. Officers' reports repeatedly do not adequately convey the force they have used or why, and CDP therefore has no way of evaluating whether its officers are using force that is excessive, against policy, or that implicates tactical, training, or equipment concerns. Officers use canned or boilerplate language that does not describe with sufficient particularity the type of force they used. They say, for example, that they "employed a takedown maneuver" or that they "took [the subject] to the ground" or even "escorted [the subject] to the ground." This language does not adequately describe the level and type of force used for a supervisor to review and ensure that the force was within constitutional limits. Officers also commonly are unclear regarding exactly how they used a Taser — i.e., whether darts were deployed or whether drive stun was used. In some instances, when officers employ a Taser, they will use it multiple times without justifying each successive use. Officers also fail to adequately describe the level of the threat, if any, posed by those against whom force was used. They justify their use of force with non-specific language about subjects' actions such as "continued to resist" or "took an aggressive stance." And they frequently justify force by expressing a fear that a subject had a weapon without articulating any basis for that fear.

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[30] The most recent Use of Force policy, made effective in August 2014, states that supervisors investigating force incidents must require all officers at the scene of an incident to complete a narrative describing "any actions of the member and what the member observed and heard." GPO 2.1.01, *Use of Force* (rev. Aug. 8, 2014), at 10. We commend the Division for making this change after our informal discussions with CDP's leadership. As discussed later in this letter, however, it is not yet clear that this policy revision has been adequately implemented.

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These deficiencies in officers' report writing and other shortcomings regarding use of force reporting are due, at least in part, to inadequacies in CDP's policies. Officers are giving to their supervisors precisely what is required of them, and supervisors are not requiring enough. In short, there is a boilerplate culture when it comes to use of force reporting. Though CDP has revised and improved its force and related policies, the current policies still provide insufficient guidance to officers on how to report force and what information the reports must contain. There is no requirement, for example, that officers describe with specificity the force they used, or the resistance they encountered. Instead, officers are directed to fill out the "action response continuum" section of the Division's "Use of Less Lethal Force Report."[31] This section of the form contains a series of check boxes, with descriptions such as "other deadly force," "wrestling/pushing member," "striking," and "punching." The policies also contain no prohibition on using conclusory or boilerplate language to describe an officer's or suspect's actions. Additionally, CDP policy does not consider pointing a firearm at someone to be a use of force, and therefore officers are not required to report when they have done so. These shortcomings in CDP's policies inhibit supervisors' ability to review force and ensure that it is within constitutional limits.

In addition to inadequate policy guidance, we are also concerned that policies, as they exist, are not being followed a significant amount of the time. For example, it appears that force sometimes is not being reported at all, despite CDP policy that requires officers to report any force beyond unresisted handcuffing. During our interviews, officers and command staff alike evinced a poor understanding of when force must be reported. One commander stated that he does not believe a shove to be a use of force. Officers also told us that far from punishing an officer who failed to report a use of force, some supervisors discourage officers from reporting force. The policy requires that, when officers use force, they are to notify a supervisor, who is to come to the scene and, in the case of less lethal force, conduct a full investigation. Officers told us that some supervisors express annoyance that they have been called to the scene and have to perform the work necessary to conduct a use of force investigation. Officers reported to us that they sometimes do not call supervisors to the scene of a use of force (and do not otherwise report it) for fear of getting on the wrong side of their supervisor. Officers also told us that some supervisors, upon arriving on scene and assessing the force, instruct officers not to report it, especially where the person upon whom force was used did not receive any injuries.

Finally, none of the approximately 10 officers who participated in or witnessed the use of force against Edward Henderson, described above, filed the required written use of force report or otherwise documented that they had used or witnessed any force against Mr. Henderson. This is despite the fact that Henderson was taken to the hospital with a broken orbital bone and that numerous other officers were on the scene. In other words, officers did not report the force knowing that anyone who conducted an even cursory review of the situation would be able to determine that some force was used. Of course, documenting the incident would likely have required an officer to state the identity of those officers who applied the force in writing, something that has not occurred to this day. This example of an excessive use of force only came

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[31] This form formerly was called a "Use of Non-Deadly Force Report." The division's decision to change the name of this form is consistent with best practices and we commend the division for having made this change.

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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.[32]

2. Supervisory Investigations of Force are Inadequate.

Compounding the problem of inadequate reporting, supervisors conduct insufficient reviews of officers' uses of less lethal force. They make little effort to determine the level of force that was used and whether it was justified. In some cases, supervisors take steps to justify a use of force that, on its face, was unreasonable. Of the hundreds of force incidents we reviewed, supervisors almost never found the force to be unreasonable. That is a record that is simply not credible even in the very best police department. Supervisors also fail to identify and rectify tactical deficiencies that place officers, suspects, and the community at serious risk of harm. In short, the Division is not identifying and preventing unlawful force committed by its officers.

Pursuant to CDP policy, whenever an officer uses force, the officer is to immediately notify a supervisor—typically a sergeant—who is to respond to the scene. In the case of less lethal force, the supervisor is to conduct an "objective, impartial, and complete investigation" of the use of force, by taking action that includes interviewing all witnesses, reviewing all known videos and audio evidence, and checking the officers' reports for accuracy and completeness. GPO 2.1.01, Use of Force, §V.E (rev. Aug. 8, 2014). After completing the investigation, the supervisor is required to write a synopsis of the event, including an evaluation of whether the force used was appropriate and in compliance with CDP policy. The complete investigation packet is then to be sent up the chain of command to a deputy chief, with approvals and appropriate recommendations required at each level.

In practice, these supervisory investigations are cursory and too often appear to be designed from the outset to justify officers' actions. The supervisory synopses often fail to identify necessary information that is missing in the initial officers' reports, and not only do these inadequate reports not result in discipline, but supervisors all the way up the chain of command sign off on these deficient reports. Often, the language included in the supervisor's synopsis is simply a repetition of the language included in the officer's report that itself is facially insufficient. The hundreds of less lethal force reports we reviewed were almost entirely devoid of any analysis by anyone in the chain of command regarding whether the force was reasonable. Instead, they simply state that use of force was within Division guidelines. It is almost as if the goal of the chain of command in many incidents is *not* to create a complete record of the incident that can be subjected to internal and external review, instead of the opposite.

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[32] Although we have been advised that four officers involved in this incident spent some time on administrative leave without pay, they were not formally disciplined. In addition, CDP did not discipline an additional half dozen officers who witnessed the use of force but failed to report it and failed to identify which officers kicked Mr. Henderson. The City, nevertheless, paid a substantial settlement in a civil suit brought based on this incident.

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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 force described and injuries sustained by subjects, or any other available evidence. Supervisors have even failed to hold officers accountable after discovering that officers misreported the force they used. In one incident, in which an officer apparently choked "Gwendolyn," a woman who was handcuffed to a chair, the officer had written in his report that a fellow officer had "attempted to grab the offender in the chest area." After reviewing security camera footage of the incident, however, the supervisor wrote that the officer had grabbed the subject "by the front of the neck." The supervisor did not take any action or follow up in any way on the fact that the officers had mischaracterized the force they used. Instead, the supervisor approved this use of force and did not feel the need to express any opinion regarding the fact that the officer was minimizing the extent of the incident. The captain who reviewed the investigative packet took no issue with the force used, the different characterizations of the force, or the numerous other deficiencies in the investigation. Instead, he approved the use of force, noting that "although [he] would not normally condone grabbing a handcuffed prisoner by the neck," the limited space in the room and Gwendolyn's attempt to kick the officer justified the officer's use of force. Supervisors' failure to follow up on discrepancies in force reporting undermines CDP's accountability systems and allows unreasonable force to continue.

Indeed, supervisors' analyses of use of force incidents is superficial at best and, at its worst, appears to be designed to justify their subordinates' unreasonable use of force. The incident in which the officer punched the handcuffed 13 year-old in the face three to four times illustrates this problem. There, the officer weighed twice what the handcuffed boy weighed, and there was at least one other officer present who could have helped control him. The supervisor who reviewed the incident noted the size difference, the presence of other officers, and the fact that the boy was handcuffed, yet nevertheless found that this clearly excessive and punitive use of force was "arguably the best response." He justified the face punches because the boy had kicked the officer and attempted to escape the zone car. The supervisor failed to even consider that the punches might have been retaliatory (perhaps because the officer was angry) and unnecessary to secure the boy. He said that, while "at first review" other tactics such as joint manipulation, assistance from other officers, pressure point control, and other tactics might have been considered, to do so would be to view the incident with the benefit of hindsight and therefore inappropriate. This abdication of supervisory responsibility allows unreasonable uses of force to continue unchecked.

In addition to failing to identify and address excessive uses of force, supervisors fail to identify officers who have used poor or dangerous tactics, or who have broken Division rules relating to use of force, and may be in need of additional training or other corrective action. For example, we saw instances in which officers enlisted the assistance of passersby or bystanders to help gain control of and handcuff a suspect. While it is laudable for the public to seek to help the police, this practice of actively seeking public intervention is extremely dangerous and unprofessional—the person could easily be injured, or could interfere with or undermine the officer's efforts or, worse, attempt to hurt the officer or reach for the officer's weapon. Or, the person might use excessive force or tactics that violate the law or CDP policy. In none of these instances did a supervisor note that this practice was inappropriate or recommend training or counseling to discourage it. Moreover, some CDP officers justify the use of unreasonable force against handcuffed or restrained people by asserting that they have lost control of suspects. The

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use of force against handcuffed suspects should always be subjected to great scrutiny because it generally is unnecessary. Instead, we found instead that this practice is tolerated – that it is effectively presumed that each time an officer applies force to a handcuffed person that it is one of the rare cases when it was necessary —and, as a result, the practice is tacitly authorized by the Division.

In our review of these investigations, we saw no accountability for supervisors who conducted inadequate less lethal force investigations. In almost all instances, these inadequate reports and investigations were approved all the way up the chain of command with no comment. We saw very few instances in which supervisors up the chain of command conducted any analysis to determine if the use of force was Constitutional and within the established guidelines of CDP. By tolerating supervisors' failures to investigate uses of force, CDP misses the opportunity to correct dangerous behavior, and instead sends the message that there is little institutional oversight or concern about officers' use of force.

On a systemic, Division-wide level, our review of CDP policies and practices revealed that CDP does not examine and analyze force reports to detect common patterns and trends regarding officers' uses of force. Such analyses would help CDP identify disproportionate types of force, which can implicate a need for policy revisions as well as an adjustment to the supervisory review process. As discussed more thoroughly in this letter's section on Training, these analyses can also help pinpoint important topics for training or re-training.

As discussed in more detail later, one root cause of these deficiencies in supervisor review of use of force is a lack of experienced, well-supported, well-trained supervisors. Supervisors also reported that their workloads are simply unmanageable. Sergeants told us that "it's the worst job in the department" and "the work never stops," noting that they might be responsible for five less lethal force investigations during one shift in addition to various other duties. Sergeants also reported that they are isolated from others who have similar positions in different parts of the City, which could be an important source of training and support, and there are too few lieutenants to provide needed guidance and support. For instance, some sergeants reported that they may only see the Lieutenant assigned to their platoon once each week. More broadly, supervisors appeared to have difficulty balancing their responsibility to effectively lead, manage, and hold officers accountable. The level of discomfort with these responsibilities is an indication that CDP is not providing supervisors with the training, guidance, resources, or support required to perform their jobs effectively. Many of these individuals enter the force wanting to excel at their work and serve the public, but they report that their enthusiasm and morale is quickly sapped by a structure that does not provide them with the tools they need to succeed in their jobs.

3. CDP's Internal Review Mechanisms are Inadequate.

Inadequacies in CDP's internal investigation and review mechanisms also contribute to the pattern or practice of unreasonable force that we identified. CDP has several components that share responsibility for investigating officers' alleged violations of criminal law or Division policy and holding officers accountable if violations are found: the Use of Deadly Force Investigation team, the Office of Professional Standards, the Internal Affairs Unit, and the Inspection Unit. CDP has several policies and manuals that attempt to define the varying

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responsibilities of these components, but we found that the division of labor was unclear, allowing violations of Division policies to slip between the cracks. Moreover, some responsibilities conferred to particular components by policy are not fulfilled in practice. For example, CDP policy dictates that the Office of Professional Standards, which is primarily responsible for investigating civilian complaints, and the Internal Affairs Unit both investigate an officer's use of deadly force to determine if the officer violated Division policy.[33] In practice, the Office of Professional Standards apparently has not conducted a proper investigation of an officer's use of deadly force since 2012.

During interviews, some members of CDP's staff expressed confusion about which component is responsible for carrying out which particular duties and why. Even with full access to CDP's staff, policies, and procedures, we found the Division's accountability systems to be difficult to navigate; it is unlikely that civilians seeking information on how a particular complaint or investigation will be handled will find a clear answer. Moreover, the lack of clarity regarding who is responsible for what interferes with competent investigations and consistent and fair adjudication of discipline.

a. CDP Fails to Adequately Investigate and Hold Officers Accountable for Misconduct.

Our review found that several of CDP's systems for investigating and holding officers accountable for the use of excessive force are flawed, including Internal Affairs, the Use of Deadly Force Investigation Team, and the Tactical Review Committee. In some cases, these flaws prevented the Division from holding officers accountable for serious misconduct. The deficiencies were apparent in both the quality of the investigations and the outcome of those investigations. The quality of the investigations is compromised by investigators' apparent bias in favor of clearing the officer instead of objectively pursuing all of the available facts – a bias that more than one investigator actually admitted to our team. Many investigations also lacked key documents and appeared incomplete, further undermining their quality. And CDP's improper use of *Garrity* warnings may severely interfere with investigations and prosecutions of criminal misconduct by officers.[34]

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[33] *See, e.g.*, OFFICE OF PROFESSIONAL STANDARDS, DEPARTMENT OF PUBLIC SAFETY, PROCEDURAL MANUAL, at 1.3 (undated) [hereinafter "OPS Manual"]; STANDARD OPERATING PROCEDURE MANUAL: THE USE OF DEADLY FORCE INVESTIGATION TEAM, at 13 (rev. March 27, 2013) [hereinafter "UDFIT Manual"].

[34] *Garrity v. New Jersey*, 385 U.S. 493 (1967), prohibits a police department from compelling an employee, through the threat of termination, to provide incriminating statements and then subsequently using those statements in a criminal prosecution.

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i. The Internal Affairs Unit and the Use of Deadly Force Investigation Team do not conduct thorough and objective investigations of alleged officer misconduct.

CDP's Internal Affairs Unit is responsible for providing guidance to supervisors regarding officers' alleged involvement in criminal activity and "investigat[ing] all incidents as directed by the Chief of Police."[35] Internal Affairs also investigates any allegation that a CDP officer violated Division policy, unless the allegation arose out of the use of deadly force. Deadly force investigations are conducted by the Division's Use of Deadly Force Investigation Team ("UDFIT"). The UDFIT team does not determine whether the use of deadly force violated criminal law or Division policy, however. It only investigates the incident. Internal Affairs then reviews the UDFIT file and conducts any additional investigation necessary to determine if the officer violated Division policies. CDP's chain of command also reviews the UDFIT file, and it is forwarded to the Prosecutor's Office for review.

While the investigations conducted by the UDFIT team are more thorough than less lethal force investigations, we observed deficiencies in how detectives approached uses of deadly force that were not clearly justified. The reviews appeared to be biased in favor of clearing the officer as opposed to gaining a full and objective understanding of the incident. During officer interviews, for example, detectives asked leading questions, failed to ask important follow-up questions, and failed to resolve inconsistencies. In some instances, investigators failed to take basic investigatory steps. These failures resulted in determinations in favor of the officer that may not have been justified had an adequate investigation been conducted. Indeed, during our interviews with UDFIT investigators, one UDFIT investigator told us that he assumed the officer's use of force was reasonable in 98 percent of the cases. Other UDFIT investigators told us that they intentionally cast an officer in the best light possible when investigating the officer's use of deadly force.

Similarly, our review of Internal Affairs (or "IA") investigations found they frequently lacked key documents, such as transcripts or comprehensive summaries of officer interviews. The quality of investigations, including deadly force investigations, is further compromised by the investigators' failure to ask key questions and take important investigatory steps. Even more troubling, however, is that multiple IA investigators are applying an inappropriate standard of proof when conducting administrative investigations. When we specifically asked several IA investigators what standard they applied, they struggled to find an answer before deciding on "beyond a reasonable doubt." Only one IA investigator responded with the less stringent—and appropriate—"preponderance of the evidence" standard. That raises the probability that for years the great majority of IA investigations have been using a "beyond a reasonable doubt" criminal law standard. These failures fundamentally undermine CDP's ability to hold officers accountable. Indeed, we reviewed investigations where it was clear that CDP should have taken swift action to address an officer's conduct but failed to do so. For example, Internal Affairs reviewed the 2013 incident in which an officer shot at a victim as he ran from the house where he was being held against his will. Internal Affairs determined that there were no violations of Division policy and recommended that the investigation be closed without further action. This is an unacceptable outcome. This case almost resulted in tragedy, and it arose from circumstances

[35] GPO 1.3.16, *Integrity Control Section Call-Up Teams*, §I.D (rev. October 14, 2009).

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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-duty 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 a struggle. The officer's use of force in this incident was excessive and he demonstrated poor tactical decisions that placed him and others in danger. Internal Affairs determined that the officer's actions were justified and that no further action should be taken. In addition to failing to recommend further action, in both of the above examples, the officers were referred to in the files by investigators as the "victim," despite the fact that the officers had used excessive force, in one instance against a crime victim the officer had come to rescue.

ii. CDP applies *Garrity* protections too broadly.

CDP applies *Garrity* protections too broadly, potentially compromising criminal prosecutions of officers who have committed acts of criminal misconduct. *Garrity v. New Jersey*, 385 U.S. 493 (1967) prohibits a police department from compelling an employee, through the threat of termination, to provide self-incriminating statements and then subsequently using those statements in a criminal prosecution. However, departments can and should give officers the opportunity to provide voluntary statements. Officers may be willing to give statements without being compelled to do so. Indeed, in many instances, an officer's willingness to provide a statement at the outset of the investigation allows the investigation to proceed more quickly, expeditiously resolves questions of officer misconduct, and identify opportunities to improve tactical and scenario-based training.

CDP has not developed an appropriately nuanced approach when providing *Garrity* warnings and protections to officers' statements regarding their uses of force. It is our understanding that the county prosecutor determines whether officers will receive *Garrity* protections regarding the use of deadly force. Although the prosecutor should be consulted and precautions should be taken to make sure the criminal investigation is not tainted, in all use of force incidents CDP should make an independent determination of when and whether to issue *Garrity* warnings in order to ensure that it meets its obligation to administratively investigate potential violations of CDP's policies in a timely manner. Even more importantly, however, CDP's current practice, as mandated by its Internal Affairs manual, is to provide *Garrity* warnings and protections for all statements made in administrative investigations. In at least some of these instances, however, officers may not be entitled to *Garrity* protections. For *Garrity* to apply, the officer must have wanted to invoke his or her Fifth Amendment rights, but was prevented from doing so by the threat of termination. These circumstances will not be present in all administrative investigations. As a result of CDP's current practices, officers' statements cannot be used in a criminal case even though officers may have been willing to provide statements without being compelled to do so, or may not have been entitled to *Garrity* protections at all. This overly-broad invocation of *Garrity* may result in the exclusion of important evidence from an investigation, including exculpatory evidence that would clear the officer. Moreover, while CDP's procedures note that "[e]very measure shall be taken to ensure that a one-way fire wall will exist between concurrent criminal and administrative investigations" to prevent the compelled statement or any information derived from that

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statement from being used in the criminal investigation, CDP's policies do not outline how this should occur.[36] This failure may result in tainted criminal prosecutions.

Internal Affairs also fails to adequately investigate civilian complaints that officers used excessive force. Per policy, when the Office of Professional Standards receives a civilian complaint that it determines includes allegations of criminal misconduct, including excessive force, it is to refer the case to Internal Affairs for investigation. As discussed in the following section, investigations of misconduct referred to Internal Affairs through the civilian complaint process were routinely substandard—they are often limited to an interview of the complainant and the collection of basic documents. Internal Affairs failed to take additional necessary steps to investigate these allegations.

iii. CDP does not implement appropriate corrective measures.

Finally, our review of CDP's practices for implementing corrective measures, including discipline against individual officers and changes in tactics or training, revealed several troubling practices. For example, we found instances where an investigation was complete and administrative charges were brought, but the case remained "pending" for an unreasonably lengthy period. In some cases, the reason for the delay was unclear and in other cases the reason for the delay was clear, but not legitimate. We reviewed one instance, for example, where CDP delayed its disciplinary process because of a pending civil case. According to OPS records, the Police Review Board sustained the complaint but, nearly four years later, the case continues to be listed as "pending" in documents tracking CDP' s disciplinary decisions. A pending civil case is not a valid reason for delaying CDP's internal disciplinary processes. It can be many years before a civil lawsuit is fully resolved. This practice prevents the Division from swiftly holding officers accountable and sends a message to other officers that they need not fear discipline for their actions.

Also of concern is CDP's threshold for determining that officers have been held accountable for serious misconduct. For example, CDP reported to us that from 2010 through early May 2014, 51 officers had been disciplined related to uses of force. Our review of the particular incidents to which CDP referred showed that discipline for the majority of cases involved either procedural infractions such as failure to submit a timely report, or instances where officers actually suffered no consequences because hearings were not held in time or charges were dismissed for other unexplained reasons. CDP's portrayal of these cases as officers being disciplined in connection with use of force indicates a problematic view of what constitutes holding officers accountable.

Similarly, as part of its deadly force review process, CDP has established a Tactical Review Committee that is responsible for "review[ing] relevant documents, confer[ring] with appropriate technical experts, and decid[ing] recommendations on training, tactics, and equipment issues," but this committee is not being appropriately utilized.[37] CDP policy states that the Tactical Review Committee is to review all deadly force incidents once any criminal,

[36] *See* UDFIT manual.
[37] UDFIT Manual at 14.

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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 same 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 many 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 officers 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 the 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.[38] 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.[39] 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." *Id*. But 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.

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[38] Charter of the City of Cleveland, § 115-4, Investigation and Disposition of Complaints.

[39] GPO 1.3.15, *Investigations of Police Misconduct*, at 1 rev. September 10, 2007).

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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.[40] 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."[41] 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. [42] 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 investigative staff 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

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[40] OPS Manual §8.0.

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

[42] OPS Manual §8.0

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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.[43] 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 in recounting his or her version of events. Therefore, an effective investigative interview of an officer is impossible. This undermines the investigative process. Additionally, in many of the OPS files we reviewed, it was not clear whether an investigation ever took place or whether the complaint was ever resolved.

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."[44] However, pursuant to CDP policy, the Division still does not investigate all of the complaints it receives—only those that are signed by the complainant. Thus, CDP will not accept anonymous or third-party complaints.[45] This process, which appears to be a result of the Collective Bargaining Agreement between the City and the officer's union, appears to be designed to make it difficult for victims of police misconduct to

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[43] GPO 1.3.15, *Investigations of Police Misconduct*, §IV (rev. September 10, 2007).

[44] Letter from the Chief of the Special Litigation Section to the Director of the City of Cleveland Law Department, at 8 (July 23, 2002) [hereinafter "2002 DOJ letter").

[45] *See* GPO 1.3.15, *Investigations of Police Misconduct*, §I.C; Office of Professional Standards, Department of Public Safety Procedure Manual 3.4.

[45] GPO 1.3.15, *Investigation of Police Misconduct*, § III.A; Office of Professional Standards, Department of Public Safety Procedure Manual 3.4.

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successfully make complaints.[46] 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 prior 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 ill-informed 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.[47] 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.[48] 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.[49] The Use of Deadly Force Investigation Team's manual further permits OPS to

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[46] *See* Collective Bargaining Agreement between the City of Cleveland and the Cleveland Police Patrolmen's Association, Article VIII Bill of Rights, 12(m).

[47] Charter of the City of Cleveland, ch. 25, § 115-3, Powers and Duties of Board.

[48] OPS Manual §4.1-4.3.

[49] OPS Manual §4.4.

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decide that an officer should be charged with violating Division policy or receive reinstruction or training.[50]

In practice, Board members and OPS staff reported that they have little involvement in the review of deadly force incidents. The Board has not reviewed an UDFIT investigation since early 2012. This failure undermines community confidence. If the Board and OPS were to appropriately utilize their authority, they could serve as the community's eyes and ears during deadly force investigations, increasing the transparency of the process, and giving voice to the community's concerns by shaping CDP policy and ensuring that any officer who uses deadly force without justification is held accountable and that those who are justified benefit from the community's confidence that the review process was fair and effective.

CDP's civilian complaint system, as a whole, is disorganized and ineffective. CDP was only able to produce a fraction of the case files we requested, and the files produced were often incomplete and lacked basic information about dispositions and outcomes. CDP does not have systems in place to track its performance or decision-making regarding civilian complaints. CDP should have such tracking ability, including the types of complaints it receives, against which officers, and whether those complaints were sustained, unfounded, administratively withdrawn, or closed for other reasons, and what, if any, discipline resulted. CDP should also have mechanisms in place to accurately collect, analyze, and report the critical information that can be derived from civilian complaints, such as areas where additional officer training may be necessary. In addition, CDP has no systems in place to track the performance of OPS and the Police Review Board. While the OPS Manual requires that OPS issue periodic reports and statistical analyses, we found no evidence that this occurs. OPS has not produced an Annual Report that we were shown in three years.[51] Given these deficiencies, and others detailed above, CDP's complaint process has little legitimacy in a City that would benefit greatly from an effective system for addressing the community's concerns regarding its police force.

4. CDP Officers are Inadequately Supported and Trained.

Our review of reports and investigations of officers' use of force, both deadly and less lethal, revealed that CDP officers lack some of the basic support, skills, and knowledge required to safely and effectively respond to situations that commonly arise in law enforcement encounters. We saw evidence that officers do not know how to safely and effectively control subjects. In some cases, officers reported that they lost control of handcuffed subjects and in many instances officers were unable to handcuff a subject, at times resulting in the application of significant force, or in the enlisting of a passerby to help gain control of the subject. We also saw officers' over-reliance on Tasers, and a propensity to too readily draw and even point their firearms, which may be a result of officers' lack of confidence that they will be able to control a situation. Officers also sometimes do not appear to know how to safely handle firearms. We saw too many incidents in which officers accidentally shot someone, either because they fired their guns accidentally, or because they shot the wrong person. In additional incidents, it was pure luck that officers did not accidentally shoot a suspect, a bystander, or another officer. CDP

[50] UDFIT Manual at 13.

[51] 2011 OPS Annual Report.

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needs to ensure that its officers are properly trained; that the training is reinforced through ongoing training and instruction; and that officers are consistently held accountable for failing to abide by their training. Its failure to do so has contributed to the pattern or practice of excessive force that we identified and has placed officers and the community in danger.

CDP does not have effective mechanisms in place to ensure that its officers have received training that is adequate in its content, quality, and quantity. It is critical for a major city police department the size of Cleveland's to have in place ways to evaluate and analyze its training, and to build and revise training programs based on an objective review of trends identified in force reports, civilian complaints, and disciplinary proceedings, as well as changes in the law and emerging issues in the field. CDP lacks many of these mechanisms.

CDP provides its recruit classes with more than the minimum number of hours required by the state, and the number of hours it provides is similar to other departments of its size. However, CDP has not engaged in enough analysis to determine whether the number of hours overall and the content of the training it provides are sufficient for its recruits, or whether the content of the training has been absorbed by the recruits by examining their behavior once they leave the academy. CDP does not devote enough time to some important use of force topics. For example, CDP does not devote enough time to teaching its recruits about its use of force policies. Many officers told us that they do not understand the use of force policies. In its August 2013 report, PERF noted that CDP was only providing four hours of classroom instruction to recruits regarding the basis and legal background of its use of force policies, and that civil liability was also included in this single four-hour block. As stated above, civil liability is a wholly different concept than following CDP policies, and it too often seems to drive the basic review of a use of force incident at CDP. It appears that, since the report was issued, CDP has added an additional four-hour class regarding constitutional issues and CDP use of force policies. If true, one day may still be insufficient for a topic as important as use of force policies.

CDP also has not conducted sufficient analysis to determine whether its in-service training is sufficient or appropriate. Based on our review, not enough in-service training hours are devoted to use of force topics. CDP does have an in-service Training Review Committee that reviews the curriculum and lesson plans for in-service training programs. The committee also develops training topics and is tasked with ensuring that training complies with relevant laws and policies. However, there appears to be little hard analysis behind the committee's methods—members have no data analysis or any other tool with which to analyze training needs. The committee does review use of force investigations and determines whether training topics can be gleaned from those incidents. However, as described below, these measures are insufficient.

CDP should regularly be examining and analyzing force reports to identify deficiencies in training. Currently, the Division does not engage in any analysis of force reports to discover trends, including whether the reports indicate there may be a department-wide issue in a particular area. Indeed, when we asked CDP to provide us with all less lethal force reports for a given time period, it was not able to produce them in a coherent or organized fashion. It is clear that CDP itself has not attempted to analyze these reports to discover on its own the trends we identified during our review. For example, during our review of deadly force investigations, we discovered that many officers do not safely handle their firearms, and they make poor decisions

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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 of that change in roll-call. Officers informed us that no training accompanies that advisement—the 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 in-service 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 "furtive movement," "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

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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 when 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 confusing about when officers may use various levels of force and appears to authorize some of the excessive force we found in our review. For example, the "action response" continuum, which officers are to fill out as part of their less lethal force report, includes an actual check box for hitting someone on the head with a firearm. As an initial matter, it is unclear why a less lethal force report includes a section for deadly force options. It is also unclear why CDP appears to be categorizing hitting someone with a gun as a conventional response when force is needed. This is uniformly understood to be a dangerous practice that should never be permitted except in very unusual and exigent circumstances in which the use of deadly force is authorized; yet, it was a practice we saw CDP officers engaging in too frequently. Additionally, the policy's definition of "Actively Resistant/Self-Destructive Behavior" includes a warning that officers are to be "particularly vigilant of persons presenting cues of an imminent attack" and, as an example of such a cue, lists "yawning with outstretched arms" and "glancing around, assessing the environment." Officers cannot meaningfully apply this definition, given that the policy appears to authorize significant force, including the use of Tasers, against people because they are yawning with outstretched arms or are glancing around, but do not pose an immediate threat. The policy's definition of "Actively Resistant/Self-Destructive Behavior" also includes the action of ingesting narcotics, and thus indicates that an appropriate response may include the use of the Taser. Tasing someone who is trying to destroy evidence by swallowing it can cause the person to choke and die.

The revised force policy also lacks sufficient guidance as to how force should be reported. It does not require specificity in officers' descriptions of the force used and resistance encountered. Instead, it directs officers to describe the force and resistance by checking boxes in the "Action Response section" on the related form. There is no requirement in the policy that an additional explanation of each of these actions be included in a narrative. The revised force policy still does not include the pointing of a firearm at a person in the definition of force, and does not require officers to report having pointed a firearm at a person. The dangers inherent in such a policy choice have played themselves out in Cleveland—officers draw and/or point their

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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-on 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 pointing their firearms or under what circumstances, and the Division is unable to identify and rectify training and tactical concerns that this behavior may raise.

This is an example of how a policy decision has enormous ramifications for CDP's ability to engage in effective community policing. When officers point their guns at people without proper justification, even if the encounter does not progress any further, it can be a traumatic event for the citizen. Done enough, communities can come to feel as if they are under siege. Then, instead of seeing the police as an agency that is there to protect them and their communities, they come to see officers as a force that is there to control them through fear. This mentality fosters distrust of the police, reduces cooperation, and interferes with CDP's ability to fight crime while ensuring officer safety.

Officers also reported that official policy does not reflect the practices of the Division, in part because they do not have the technology or equipment to follow policy. A near-universal refrain from officers was that the policies are used to discipline officers when a significant event comes to light, even where the officer's actions reflected the practice of the entire Division and instructions from supervisors. In other words, officers believe that high publicity events are treated differently in terms of discipline by CDP than uses of force that no one is watching. If true, that would also tend to erode community confidence in the police. Although officers do not want to be disciplined, of course, they are more willing to accept consequences when they believe that the result, whether they agree with it or not, is not influenced by external factors but is driven wholly by the facts, the law, and policies that govern their actions.

CDP has expressed a willingness to revise its policies, and has proactively sought input from the Department of Justice and others as to how its policies should be revised. The Division also has quickly responded to suggestions regarding deficiencies in its policies. That is laudable, however, its response has not always been effective. For example, we raised with CDP our concern that not all officers who use or witness force are required to report it. CDP agreed to begin requiring officers to write these reports. While we are encouraged by the Division's response to that feedback, the implementation of this change was carried out haphazardly. Though CDP has now changed its policy to require all officers at the scene of a use of force to write a narrative describing the incident, initially, a deputy chief simply sent an email to the command staff informing them that, effective immediately, all officers on the scene of a less lethal force incident are each to complete a memorandum, to be included in the investigative file, detailing their actions. Officers informed us that they were told of the change in roll-call, but received no explanation of the reasoning behind the change, nor did they receive any training on what it meant or how to implement it. They expressed confusion over what it meant and why it was being required.

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Officers told us that they view that process as typical 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 no 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 uses 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 participate. This is contrary to national standards and our 2002 recommendation that CDP make participation mandatory. In January of 2014, CDP drafted a revised policy and reported that it is transitioning to a mandatory early intervention program.[52] This is an important and necessary improvement. CDP also reported that it is in the process of securing software that will allow the Division to electronically link data from various components that provide information about officers' activities, including the Internal Affairs Unit and the Office of Professional Standards. It is too early to assess whether CDP will be able to effectively integrate their data analysis through this new software.

However, the system CDP intends to implement still has significant failings. It will not be effective in disrupting problematic patterns of behavior before they occur because the indicators CDP tracks are too limited and those that are tracked may not provide timely information. CDP's draft policy regarding its revised early intervention program appropriately

[52] GPO 1.1.20, *Early Intervention Program (EIP)*, (January 28, 2014 draft).

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states that the intent of the program is to "intervene before discipline is required. It is designed to prevent inappropriate conduct which may, without intervention, rise to a level where discipline becomes necessary."[53] We found, however, that the substantive provisions of the policy and CDP's practices fall short of this goal. Some of the indicators tracked in the current system only provide information that is untimely and based on past events. Moreover, there are additional factors that CDP's early intervention system should be tracking, including criminal allegations and civil claims against officers, in order to provide a more complete picture of officers' activities and potential need for intervention.

Finally, although CDP is tracking some relevant performance indicators, it is not clear when those indicators trigger an assessment of whether intervention is required. Although the revised policy refers to "pre-determined thresholds," such thresholds have not been determined. A precise threshold should be standardized for all officers and incorporated into CDP's policy.

7. CDP Is Not Engaging in Community Policing Effectively at All Levels of the Division.

We began our investigation in the aftermath of a series of high profile incidents that contributed to and highlighted an enormous amount of distrust between CDP and certain communities it serves. Members of racial, ethnic, and language minorities, expressed public outrage at the way they perceive that their communities are treated by CDP. Reports of the enormous amount of force that culminated in the fatal shooting of two unarmed African-Americans in East Cleveland on November 29, 2012; the revelation that officers were caught on tape kicking an African-American man in the head, who was handcuffed, prone on the ground, and appeared to have surrendered, and then did not report having used any force; and claims by a Latino family that officers chased and forcibly handcuffed their teenage son who has Down syndrome while looking for robbery suspects who did not resemble the boy, all had brought to the fore the distrust that had been percolating between the police and the community for years. This level of distrust between the police and the community interferes with CDP's ability to work with the various communities it serves to effectively fight crime and ensure the safety of the people of Cleveland.

A police department dedicated to community policing not only reactively responds to calls for service but also proactively works with the community to create safer, more secure neighborhoods by identifying and addressing the root causes of crime.[54] In so doing, the community and the police department together promote greater public safety. This type of police-community partnership is desperately needed in Cleveland. Recently, CDP put into place a new community policing philosophy, including a mission statement and an emphasis on community engagement, professionalism, and respect; has created new community policing

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[53] GPO 1.1.20, *Early Intervention Program (EIP)*, at 1 (January 28, 2014 draft).

[54] ROBERT CHAPMAN & MATTHEW SCHEIDER, COPS, COMMUNITY POLICING FOR MAYORS: A MUNICIPAL SERVICE MODEL FOR POLICING AND BEYOND, at 1 (undated); GAYLE FISHER-STEWART, COPS, COMMUNITY POLICING EXPLAINED: A GUIDE FOR LOCAL GOVERNMENTS, at 6 (undated).

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goals that include initiating neighborhood improvement plans and working with community groups to create a safer city; and has launched new community policing training. While these initiatives are encouraging, it is far too early to determine their thoroughness, effectiveness, or success. At this point, we can only assess CDP's community policing efforts based on those policies, training, and tactics in place throughout the course of our investigation.

During our investigation, we found that CDP's method of policing contributes to the community's distrust of and lack of respect for officers—officers escalate situations instead of diffusing them and using them as an opportunity to build trust and rapport; officers draw their service weapons on people who are suspected of minor crimes or who do not otherwise pose a threat; and officers use force against people in mental health crisis after family members have called the police in a desperate plea for assistance. Any attempt CDP makes to establish and maintain a positive and beneficial relationship with the community is potentially also undermined by the frequency with which officers appear to stop and search people without meeting the requisite threshold of reasonable suspicion or probable cause. As noted previously in the Summary section of this letter, it appears preliminarily that officers often subject people to stops and searches without the requisite level of suspicion.[55] In addition, despite the fact that we are making no finding regarding racial profiling, we must report that when we interviewed members of the community about their experiences with the police, many African-Americans reported that they believe CDP officers are verbally and physically aggressive toward them because of their race. We also found that, when community members attempt to file complaints about mistreatment at the hands of CDP officers, they are met with barriers and resistance.

Given this backdrop, a comprehensive community policing strategy must be a central component of any police reform in Cleveland. An effective community policing strategy enables law enforcement agencies and the individuals and organizations they serve to develop solutions to problems and increase trust in the police. Community policing involves building partnerships between law enforcement and the people and organizations within its jurisdiction; engaging in problem-solving through proactive measures; and managing the police agency to support community partnerships and community problem-solving.[56] And it translates to all ranks, sectors and units of a police department.

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[55] We note as an example that the field reports and other documents associated with the incident involving Paul did not cite any justification for the pat-down of individual the officers suspected of urinating in public. To justify a pat-down of an individual, an officer must have "reason to believe that he is dealing with an armed and dangerous individual." *Terry v. Ohio*, 392 U.S. 1, 27 (1968); *Bennett v. City of Eastpointe*, 410 F.3d 810, 822-823 (6th Cir. 2005) ("A lawful stop does not necessarily carry with it the authority to conduct a pat-down search."). If there was such a justification, it should have been in the officer's report, a failure that is far too common in the records that we reviewed.

[56] COPS, COMMUNITY POLICING DEFINED, at 1 (undated); DREW DIAMOND & DEIRDRE MEID WEISS, ADVANCING COMMUNITY POLICING THROUGH COMMUNITY GOVERNANCE: A FRAMEWORK DOCUMENT, at 4 (2009).

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In recent years, and throughout the course of our investigation, CDP's concept of community policing has been implemented only superficially. CDP does participate in many programs that are aimed at building relationships with the community to enhance the services it provides. It has a community policing unit. It participates in multidisciplinary efforts, like STANCE[57] and through the Cleveland Rape Crisis Center, to reach out to community members and groups. Its commanders host and attend community meetings to hear citizen complaints. It participates in federal/state/local task forces that encourage data driven policing and cooperative law enforcement. These efforts are to be praised and recognized. They should, we believe, be continued and enhanced. But these programmatic efforts are not enough. True community policing, discussed herein, must encompass a philosophy of how individual officers interact with and view the communities that they police each and every day. It is about more than attending meetings; it is about how officers talk to and act towards the people they encounter every day. That ethos needs significant improvement throughout CDP.

During our tours, we additionally observed that neither command staff nor line officers were able to accurately or uniformly describe what community policing is or how CDP implements a community policing model. Our review revealed in addition to the programmatic aspects of community policing, that CDP's community policing strategy, at least until recently, has consisted of three elements: a Bureau of Community Policing and district Community Service Units that perform limited community policing functions; supervisors instructing patrol officers to get out of their zone cars and walk around the community while providing little additional guidance or training; and monthly CDP-sponsored community meetings that do not appear to attract the members of the community who have the most strained relationships with the police. This model is insufficient to address the disconnect that currently exists between CDP and some members of the community. CDP's failure to implement a proactive, positive relationship with all of the communities it serves in order to address community concerns and issues has created an environment in which CDP officers will likely have to resort to force more often than they would otherwise.

In a well-run community policing program, the concepts that underpin community policing would permeate all aspects and functions of the police department. CDP lacks many comprehensive strategies that make a community policing program effective. The Bureau of Community Policing consists of one section to which 18 individuals, 16 of whom are officers, are assigned. According to documents provided by CDP, their duties include assisting patrol officers with traffic control; running crime prevention programs in schools and elsewhere; acting as crossing guards at schools; teaching students about substance abuse and gang violence; and recruiting new officers to the force. Yet, we also learned that in recent years CDP has greatly reduced its involvement in key programs in the Cleveland Municipal School System. CDP should ensure that its community policing efforts are comprehensive, and focus on schools and children in addition to neighborhoods in order to build trust. According to an assignment posting provided by CDP, the officers assigned to the Community Services Units within the districts are charged with focusing on quality of life issues by attending community meetings, addressing drug activity, responding to the District Commander's crime initiatives, and performing riot and

[57] STANCE is part of a comprehensive prevention, reentry and enforcement effort to help prevent gang problems across the nation. *See* http://www.safercleveland.org/stance.html.

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crowd control functions.[58] While some of these functions assigned to the Bureau of Community Policing and the Community Service Units are part of community policing, they are only a small part of an effective community policing model. Indeed, several Community Services Unit officers we spoke with told us that they did not consider the functions they performed to be community policing. Those officers said they spend much of their time addressing burglaries, traffic, and drug problems

Many district commanders, as well as former Chief McGrath, told us that supervisors tell patrol officers to get out of their zone cars, walk around, and get to know residents and store owners. Although we observed that some officers were engaged in thoughtful and effective community policing strategies, we found that there is no organizational support for community policing activities. Instead, they are ad hoc and officer specific. One officer with whom we spent time during a ride-along greeted many residents by name and stopped to speak with some of them. Children in the neighborhood called out to him and waved as he drove by. The officer told us, however, that he got to know members of the community due to his own interest in doing so and that such actions were not mandated by command staff. He does it because like many officers in CDP he cares, but not because it is required as part of his job. A sergeant we spoke with in the same district confirmed that the officer was acting entirely on his own initiative with no encouragement from command staff. But personal dedication and commitment, even if present in a large number of good and honest CDP officers, is not a modern strategy for an organization of the size and importance of CDP. For instance, one district commander we spoke with affirmatively stated that his patrol officers are not held accountable for community policing and are trained solely to answer radio calls in order to "put out fires and move the problem" because, he said, "that is what police do." Several officers we rode with stated that they got out of their zone cars or initiated contact with civilians only when responding to calls. Officers also indicated that they were too busy responding to calls to take time to do anything else, such as walking through neighborhoods or business districts.

Deficiencies in CDP's community policing efforts are, to a certain extent, not surprising. Even with the advent of CDP's new community policing philosophy, we are aware of no CDP policies regarding community policing. We have seen no formal, systemic community policing plan to ensure officers are interacting with civilians; and we have seen no efforts to analyze those interactions and to use the information gained to improve CDP's ability to fight crime. In addition, performance evaluations of officers do not include a community policing component.

We also saw evidence that some officers hold views that are incompatible with community policing principles, and that this attitude is tolerated and encouraged by at least some members of command staff. A former actual Commander of community policing for CDP told us that he believes the culture within CDP is antithetical to a community policing mentality and that officer training instills in officers an "us-against-them" mentality. During an interview with one district commander, he referred to his district as a "forward operating base," and we later observed a large sign hanging in the vehicle bay of that district station identifying it as such. Such metaphors have no place in a community-oriented police department. While a stray

[58] CDP Inter-office correspondence, Anticipated Assignment to the Community Services Unit (undated); CDP Intra-District Assignment Posing, Anticipated Assignment Community Services Unit (December 1, 2011).

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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[59] 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 Division-wide 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 reflect only a fraction of the communities CDP serves. Citizens need to know not only the "brass," but they need a trusting relationship with the patrol officers who are in their communities every single day. Many Cleveland residents fear and mistrust CDP and feel that they are in an adversarial relationship with the Division. Although it is harder to accomplish, more needs to be done to try to involve the members of the community who have a less favorable view of CDP.

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 again 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.

CDP has taken some initial steps to establish an effective community policing approach to interacting with the people of Cleveland and proactively addressing crime. Holding community meetings, encouraging officers to get to know residents, working with the city council and other government entities, and other strategies are all basic building blocks of an effective community policing framework. But much more must be done. CDP must target the communities where distrust of the police is most pervasive. Community meetings must entail a broader representation of community members and must dig deeper into how those members can work with officers to prevent crime. In addition, community policing principles must be formalized and inculcated into the culture of the Division. Underpinning all of CDP's efforts must be a community-oriented philosophy that positions community members and groups as partners in an effort to proactively problem-solve together.

8. CDP's Approach to Individuals in Crisis Is Underdeveloped.

CDP's crisis intervention policies and practices are underdeveloped, and CDP has not yet fully integrated these practices into its response to individuals in crisis, resulting in the use of unreasonable force against these individuals. When individuals experience a mental health crisis, law enforcement officers often are the first responders. In many of these situations,

[59] GPO 1.2.01, *Organizational Structure*, §IV. (Rev. Dec. 30, 2011).

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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 end up 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, at 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-CIT officers.[60] Partly as a result of this practice, officers who have not received CIT training are dispatched to handle calls involving individuals in crisis. We saw no evidence that CDP's staffing plan or car plan attempts to ensure that there is adequate CIT coverage or that CIT officers are assigned to shifts with a greater need for their skills.

As discussed above, we reviewed force reports in which officers responded to a call, often from a family member, to assist with an individual in mental health crisis, and the officers used excessive force to control the situation. Had officers used proper de-escalation techniques, it is possible these situations could have been resolved without resorting to force. In many of the problematic incidents we reviewed in which officers used excessive force against a person in crisis, no CIT officer was on scene. The presence of a properly trained CIT officer might have improved the safety of the person in crisis, the person's family, and the officers present.

CDP must change its policies and procedures to require CIT officers to respond to every incident involving an individual in known mental health crisis, even if a non-CIT officer who is first on scene must immediately begin addressing the situation. CDP must also ensure that enough officers respond to these calls. CDP's policy currently requires two officers to respond to calls involving individuals with mental illness.[61] According to the documentation provided by CDP, however, it is common for only one CDP officer to respond to such a call. To ensure that CIT officers are always available in all parts of the city to respond whenever an encounter with someone in mental health crisis occurs, CDP needs to conduct an analysis to determine whether it currently has enough CIT officers and whether it is deploying those officers effectively, and then correct any discovered deficiencies.

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[60] GPO 3.2.17, *Crisis Intervention Officers*, at 1 (effective October 27, 2004).

[61] *Id*.

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In addition to ensuring that it has a sufficient number of CIT officers, CDP must also ensure that its personnel, including its officers and dispatchers, are adequately trained. When choosing which officers will attend CIT training, CDP should select only those officers who have volunteered for the training. All other patrol officers must be given basic training to ensure that they have a general working knowledge of how to respond to and assist individuals who are mentally ill. This will allow patrol officers both to recognize when someone might be experiencing a mental health crisis so that the officer may request the assistance of a CIT officer, and to safely and effectively handle the situation until that CIT officer arrives. Currently, CDP recruits are not receiving sufficient basic mental health training, and it does not appear that CDP has offered any in-service mental health training since at least 2010. CDP's training also must emphasize to all officers that they are to employ verbal de-escalation techniques whenever practicable as a first resort when encountering individuals experiencing a mental health crisis, regardless of whether the individual is violating or has violated the law. CDP policy currently limits the definition of "crisis" in the mental health context to situations when there is no law violation.[62] CDP must expand this definition.

Finally, CDP should establish at least one CDP officer to act as a mental health liaison to facilitate communication between CDP and members of the mental health community. A police department can best serve and respond to individuals with mental illness when it has strong partnerships with mental health professionals, advocacy organizations, and others in the mental health community. CDP needs to involve these partners when creating and revising CDP policies, procedures, and training regimens related to crisis intervention. CDP should also solicit feedback from the mental health community on a regular basis regarding the efficacy of its CIT program. The CIT coordinator can establish and facilitate these relationships and should be available at all times as a resource for families, advocates, caregivers, and others in the mental health community.

One cannot overstate the importance of a robust CIT program. A well-trained cadre of CIT officers, together with patrol officers armed with a basic understanding of mental illness and how it can affect individuals, would provide the proper foundation CDP needs to effectively assist individuals with mental illness. A fully implemented CIT program also would improve the safety of officers as well as individuals with mental illness and their family members. A comprehensive crisis intervention program requires CDP to partner effectively with advocates, service providers, and families in the mental health community to ensure officers are appropriately assisting individuals experiencing mental health crises. While we recognize that CDP has taken significant steps to interact more appropriately with individuals with mental illness, it is imperative that CDP take additional measures to ensure that officers encountering people with mental illness consistently do so in a manner that respects their constitutional rights and provides them with the assistance they need.

9. CDP Equipment, Technology, and Staff Planning are Inadequate.

CDP's failure to appropriately allocate resources—including staffing and equipment—contributes to the pattern or practice of unconstitutional force. In addition, Cleveland police officers are not given the basic equipment, the physical structures, and the technology required to

[62] GPO 6.1.01, *Crisis Intervention Report*, at 1 (effective March 1, 2002).

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perform their jobs safely and effectively. We found that patrol officers are sent out to perform dangerous jobs without the ability to effectively communicate with the Division or with each other. Consequently, all too often they are placed in a position where they do not have the ability to learn basic information about the civilians with whom they interact. Asking officers to perform their duties without adequate technology, an appropriate staffing plan, a sufficiently professional workspace, or routine and functioning equipment is dangerous to the officer, undermines public safety and is unfair. It also cannot help but drain officer morale and diminish their patience in dealing with the members of the public they encounter.

We recognize that City budgets are severely constrained and that police departments around the country must make difficult decisions about where they will allocate resources at the expense of other needs of the department. We realize that these financial realities have become worse in recent years and that Cleveland has been particularly hard hit. We do not underestimate the difficulty the City and the Division finds itself in, and we recognize that Division leadership struggles with these decisions and their potential ramifications for the hard working men and women of the Cleveland Division of Police. However, the City must provide adequate resources to allow for constitutional and effective policing. As much as any building, stadium, or other public works project, a well-run, professional and constitutional police presence is the foundation of a healthy city in our democracy. Moreover, the City and the Division must work together to ensure that limited resources are allocated thoughtfully and effectively.

An effective police force needs a staffing plan that distributes personnel based on the expected workload at various times during the day. The plan must be systematically designed to use resources effectively, balancing personnel between specialized units, taking advantage of officers with particular skills, and conserving resources by civilianizing certain positions. An effective staffing plan could also help alleviate some of the Division's budget problems. For example, many jobs that could be performed by civilians are currently occupied by sworn officers. These include administrative desk jobs and crime scene technicians.[63]

As described above, we found that field supervisors are failing in some of the most fundamental aspects of their responsibilities—reviewing and investigating the uses of force of the officers under their command, and correcting dangerous tactical choices that place the officer and others at risk. The number of officers a sergeant supervises—the sergeant's "span of control"—is a critical factor affecting the adequacy of supervision. Any span of control should take into account the level of activity and type of units being supervised. Additionally, law enforcement agencies such as CDP should deploy its staff to ensure "unity of command," a system in which officers report consistently to one sergeant, and, in most cases, officers and their supervisors have the same days off and the same schedules. That system is meant to ensure that supervisors know their subordinates' strengths and weaknesses, allowing them to better direct their work. CDP does not employ a unity of command structure and, because it has not conducted an adequate staffing study, it does not know whether its span of control is appropriate.

[63] We recognize that using civilians in these positions has been a sensitive issue in the past, resulting in litigation and a settlement agreement. Nevertheless, a comprehensive review of CDP's staffing plan should consider the advantages of using civilians in some jobs through the process outlined in that settlement agreement.

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An appropriate staffing analysis would allow the Division to know whether it needs more sergeants, or whether to deploy staff differently in order to allow for unity of command and a thoughtful span of control.

While CDP has taken some steps to improve the equipment it provides to officers—for example, it has provided officers with new portable radios relatively recently—other basic equipment is either outdated or nonexistent. For instance, officers lack effective zone car computers, called Mobile Data Computers ("MDCs"), which allow them to effectively access the computer-aided dispatch ("CAD") system. MDCs are essential tools for effective policing and for officer safety. When officers conduct a vehicle stop, officer safety requires that they run the license plate through the computer prior to approaching the vehicle to determine information about the vehicle and its likely driver—for example, whether the vehicle was stolen or involved in a crime, or whether its registered owner is wanted for a crime or has outstanding warrants. Not all of CDP's zone cars have computers and, of those that do, the computers do not all reliably work. Even the MDCs that do work properly do not give officers access to CAD or CDP's Records Management System. CAD includes vital information such as the nature of the call, whether anyone involved is armed, whether shots were fired, how many officers currently are on scene, a description of any suspects, direction of flight, and more. As a consequence, when officers make stops, they often cannot use their computers to obtain this critical information. Leadership reported that officers can request this information through dispatch. In reality, however, this solution is impractical. Officers reported that it takes far too long for officers to receive this type of information through dispatch. Moreover, the radio channel frequently is being used for more pressing and emergent situations, and officers are reluctant to intrude with these types of requests for basic information. One officer who does not have an MDC told us that she will not make traffic stops after dark because, without easily being able to run the license plate, she considers such situations to be too dangerous.

In part because they do not have functioning computers and access to the information in the CAD system, officers use their personal cell phones to communicate when in the field, to talk with their supervisors, to run checks on license places and suspects, to find locations, and to take photographs. The pervasive use of personal cell phones is problematic, particularly because CDP lacks any policy covering this subject. For example, when officers send text messages and take photographs, they potentially are creating evidence, and CDP has no protocol in place for how such evidence will be handled, preserved, or disclosed to prosecutors and defense attorneys. Nor is there any protocol for how this potentially important information will be transmitted to CDP's databases. It also interferes with CDP's ability to hold officers accountable for their actions, because it is impossible to discern what information officers had and when they had it.

The condition of officers' equipment and facilities also makes it difficult for them to comply with some policies and contributes to low officer morale. There are not enough computers at the district stations for officers to be able to easily write their reports, including use of force reports, in a timely manner. At the Fourth District, for example, there was until recently only one computer for all patrol officers. A second computer was added just before our April 2014 visit. Another serious equipment problem facing CDP officers is the condition of the force's vehicle fleet. Officers in all Districts stated that most of the cars are old and in poor repair. Many are out of service, or "bad ordered," at any given time, meaning that there are insufficient cars available to fully staff shifts. Because of the poor condition of CDP's vehicles,

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officers told us that some of them carry auto repair equipment and other maintenance materials which they have purchased at their own expense. These problems undermine CDP's ability to have sufficient supervisory review and places officers at risk.

Again, we acknowledge and understand the difficult financial strain on the City and the Division. However, the City must allocate its resources in a way that allows for constitutional policing. The City recently has chosen to spend a significant amount of money on body-worn cameras for some CDP officers. Body-worn cameras are an emerging technology that will likely be a very effective law enforcement tool and we applaud that decision. However, many officers do not even have working computers in their cars. There are many pressing concerns facing the Division, and a failure to thoughtfully assess the Division's needs and prioritize effectively affects officers' and supervisors' ability to do their jobs and erodes morale.

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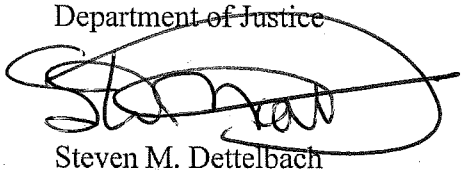
V. CONCLUSION

We recognize that many Cleveland officers have pursued their profession in order to effect positive change within the City and they make great sacrifices to do dangerous work. All of the residents of the City of Cleveland should recognize that as well. Respect and trust must go both ways. As the Sixth Circuit has noted, 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. *See Hayes v. Memphis Police Dep't*, 634 F.2d 350, 352 (6th Cir. 1980). However, any use of force must be within the confines of the Fourth 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 these significant problems is to reach a consent decree that provides for a monitor to oversee the 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, accountable police department that controls crime, ensures respect for the Constitution, and earns the trust of the public it is charged with protecting. Recent events have galvanized many in the community to join the public discourse over the future of the Cleveland Division of Police and its relationship with the community. We look forward to working with you, the Division, and the community to address our findings and to restore public trust and promote constitutional policing in Cleveland.

Sincerely,

Vanita Gupta
Acting Assistant Attorney General
Civil Rights Division
Department of Justice



Steven M. Dettelbach
United States Attorney
Northern District of Ohio