

FORCE INVESTIGATIVE TEAM (FIT) INITIAL TRAINING

Cleveland Division of Police



Course Date: [June 9, 2021]
Current Revision Date: [May 13, 2021]
Course Hours: [Eight (8) *hours*]

Primary Audience: Chief of Police or his designee, Bureau of Special Investigations Commander, Homicide Unit, Superintendent of Internal Affairs, Internal Affairs Unit, Bureau of Compliance Commander, Inspections Unit, a representative from the Training Unit, and OPS.

Overall Course Goal: To instruct and train members assigned to the Force Investigative Team (FIT) as to their roles, duties and responsibilities in responding to Level 3 Uses of Force call-ups.

REFERENCES

Force Investigative Team (FIT) Manual
Internal Affairs Manual

COURSE MATERIALS

TEACHING AIDS

- ☒ Erasable Board/Markers ☐ Easel/Notepads
- ☒ Lectern/Table
- ☒ Other: digital presentation (power point) equipment (computer, projector, and screen)
- ☒ Student Handouts
- Handout #1: Power point slides
Handout #2:

INSTRUCTIONAL TECHNIQUES

- ☒ Lecture ☒ Group Discussion
- ☒ Demonstration ☒ Scenario-based Training
- ☒ Individual Exercise ☐ Hands-on Techniques
- ☒ Problem Solving

LEARNING OBJECTIVES

Instructional Goal/Course Objective: Upon completion of this course the officer will understand the role and purpose of the FIT. The officer will also understand their individual role, responsibility and duties as a member of the FIT.

Learning/Instructional Objectives: After four (4) hours of instruction, the Officer/student will be able to:

1. Understand the role, purpose, and responsibilities of the FIT within the Cleveland Division of Police.
2. Identify the roles and responsibilities of the Commander for the Bureau of Special Investigations and the Superintendent of Internal Affairs within the frame work of FIT.
3. Identify the roles and responsibilities of the Lieutenant OICs for Homicide and Internal Affairs within the framework of FIT.
4. Identify the roles and responsibilities for the members of the FIT criminal and administrative teams within the framework of FIT.
5. Define the circumstances in which a FIT call-up is made.
6. Understand what it means to “bifurcate” a FIT investigation, and the purpose and objectives behind “bifurcating” FIT investigations and conducting them concurrently.
7. Define and understand the definitions of the different levels of force.
8. Identify and understand the standard of review for use of force incidents and the standards for determining whether a use of force was within or not within policy.
9. Understand scene and evidence processing.
10. Understand the various techniques for objective fact-gathering and evaluation and the factors to consider when evaluating credibility.
11. Recognize the timeframes for completing an investigation and drafting an investigative report.

Officer Performance Objectives (SPOs)

1. The role of FIT within the Cleveland Division of Police.
2. The roles and responsibilities of every one on the FIT.
3. When a FIT callout is necessary?
4. The role of the criminal investigator [Homicide] in a FIT investigation.
5. The role of the administrative investigator [Internal Affairs] in a FIT investigation.
6. Scene and evidence processing at a FIT incident.
7. How to conduct an objective, bias free FIT investigation.
8. The standard of review for a FIT investigation.

I. PREPARATION

Instructor:

Background

Brief overview of the Course:

This is the initial training for members of the CDP's Force Investigative Team [FIT], and students will learn the expectations of each member on the FIT, and gain an understanding the FIT Manual and related GPOs. This is NOT a Use of Force Training, everyone on the FIT should have already received Use of Force training.

Documents necessary for FIT Training:

1. Copy of FIT Manual
2. GPO 2.01.01 – Use of Force Definitions
3. GPO 2.01.02 – De-Escalation
4. GPO 2.01.03 – Use of Force - General
5. GPO 2.01.04 – Use of Force – Intermediate Weapons
6. GPO 2.01.05 – Use of Force – Reporting
7. GPO 2.01.06 – Use of Force Supervisory Reviews and Investigations
8. GPO 1.07.8 – Bias Free Policing
9. GPO 1.3.16 – Bureau of Integrity Control Call-Up
10. GPO 2.01.06 - Supervisory Review and Investigation

II. LESSON PLAN

Module 1:

PPT #1

Introduction:

- A. Welcome everyone to Force Investigative Team [FIT] training.

No DN's were issued looking for volunteers for the FIT, you were selected to be a member of the FIT by Commander Connelly, Captain Pillow, Lt. Neidbalson, and myself. As a member of the FIT you will be called upon to investigate some of the most high-profile cases investigated by members of the Cleveland Division of Police and as such your conduct will be closely scrutinized by both the Division, the public and the media. So, I welcome each of you to this training, as each of you represent the best of the best. I hope that each of you here understand that it is an honor to be a member of the FIT and recognize your responsibility as a member of the FIT to the Division and the Community. I would like to draw each of your attention to two aspects of our Mission Statement:

Integrity: We uphold the public trust by being honest, competent, and consistent in our beliefs and actions. We hold ourselves accountable to the highest standards of moral and ethical conduct.

Excellence: We hold ourselves to the highest standards of law enforcement. We will continuously improve the quality of our services through education, training and development.

- B. Roll call/ensure that everyone has signed in.
- C. How long the training will be (4 hours)
- D. Explain to the class that this is NOT Use of Force training.
Officers selected to serve on the Force Investigative Team
(FIT) should have already received 2019 UOF training.

Housekeeping

- A. Cell phones on silent and put away
- B. If you have to answer the phone call, quietly leave the room
- C. Use of facilities as needed
- D. Clean up any mess you make

Overall Course Goals

To begin the process of instructing and training members assigned to the Force Investigative Team (FIT) as to their roles, duties and responsibilities in responding to FIT call-ups.

PPT #2

Learning Objectives

I would like to share briefly the learning objectives of this training:

1. Understand the role, purpose, and responsibilities of the FIT within the Cleveland Division of Police.
2. Identify the roles and responsibilities of the Commander for the Bureau of Special Investigations and the Superintendent of Internal Affairs within the frame work of FIT.
3. Identify the roles and responsibilities of the Lieutenant OICs for Homicide and Internal Affairs within the frame work of FIT.
4. Identify the roles and responsibilities for the members of the FIT criminal and administrative teams within the frame work of FIT.
5. Define the circumstances in which a FIT call-up is made.
6. Understand what it means to “bifurcate” a FIT investigation and the purposes and objectives behind “bifurcating” FIT investigations into criminal and administrative investigative units and conducting them concurrently.
7. Define and understand the definitions of the different levels of force.
8. Identify and understand the standard of review for use of force incidents and whether a use of force was within or not within policy.
9. Understand scene and evidence processing.
10. Understand the various techniques for objective fact-gathering and evaluation and the factors to consider when evaluating credibility.
11. Recognize the timeframes for completing an investigation and drafting an investigative report.

Module 2: Definitions of for the different Levels of Resistance and Levels of Uses of Force.

Before we actually engage in a discussion as to why and when FIT call-ups are initiated and the roles of all the members of the FIT, I want to briefly discuss the definitions for the different levels of: [a] subject resistance and [b] uses of force.

PPT #3

See: GPO 2.01.01 Use of Force - Definitions.

Definitions of Levels of Resistance

1. **Passive Resistance:** Refers to instances in which a subject does not comply with an officer's commands and is uncooperative but is nonviolent and prevents an officer from placing the subject in custody and/or taking control. Passive resistance may include but is not limited to standing stationary and not following lawful direction, falling limply and refusing to move (dead weight), holding onto a fixed object, linking arms to another during a protest or demonstration, or verbally signaling an intention to avoid or prevent being taken into custody.
2. **Active Resistance:** Refers to instances in which a subject takes physical actions to defeat an officer's attempts to place the subject in custody and/or take control, but is not directed toward harming the officer. Active resistance may include but is not limited to pushing away, hiding from detection, fleeing, tensing arm muscles to avoid handcuffing or pulling away from an officer who is using force in the lawful performance of their duties. Verbal statements alone do not constitute active resistance.
3. **Aggressive Physical Resistance:** Refers to instances in which a subject poses a threat of harm to the officer or others, such as when a subject attempt to attack or does attack an officer; exhibits combative behavior.

PPT #4

PPT #5

Discussion: What is the difference between Active Resistance and Aggressive Physical Resistance?

PPT #6

Definitions for types of uses of force:

Reportable Use of Force: Officers shall report to their supervisor all uses of force except de minimis force.

PPT #7

See: GPO 2.01.05: Uses of Force Reportable.

PPT #8

1. **De Minimis Force:** Physical interactions meant to guide and/or control a subject that does *not constitute reportable force*.

GPO 2.01.05, Use of Force Reporting, Procedures, Section II (A):
De Minimis Force does NOT have to be reported.

2. **Level 1 Use of Force:** Force that is reasonably likely to cause only transient pain and/or disorientation during its application as a means of gaining compliance, including pressure point compliance and joint manipulation techniques, that is not reasonably expected to cause injury, does not result in an actual injury and does not result in a complaint of injury. It does not include escorting, touching, or handcuffing a subject with no or minimal resistance. Un-holstering firearm and pointing it at a subject is reportable as a Level 1 use of force.

PPT #9

GPO 2.01.05, Use of Force Reporting, Procedures, Section III (A): Level 1 Use of Force must be reported by the involved officer[s] by the end of their tour of duty into Blue Team and forwarded to their reviewing investigating supervisor. The report must include: [1] complete description of the acts that preceded the use of force, to include attempts to de-escalate, [2] the level of resistance encountered, and [3] a complete and accurate description of every type of force used or observed.

3. **Level 2 Use of Force:** *Force that causes an injury, could reasonably be expected to cause an injury, or results in a complaint of an injury*, but does not rise to the level of a Level 3 use of force. Level 2 includes the use of a CEW, including where a CEW is fired at a subject but misses; OC Spray application; *weaponless defense techniques (e.g. elbow or closed-fist strikes, kicks, leg sweeps, and takedowns)*; use of an impact weapon or beanbag shotgun; and any canine apprehension that involves contact.

PPT #10

Reporting requirements the same as for a Level 1 Use of Force.

4. **Level 3 Use of Force:** Force that includes uses of deadly force; uses of force resulting in death or serious physical harm, *uses of force resulting in hospital confinement due to a use of force injury*; all neck holds; uses of force resulting in a loss of consciousness; canine bite;

PPT #11

more than three applications of a CEW on a an individual during a single interaction, regardless of the mode or duration of the application, and regardless of whether the applications are by the same or different officers; a CEW application for longer than 15 seconds, whether continuous or consecutive; and *any Level 2 use of force against a handcuffed subject.*

GPO 2.01.05, Use of Force Reporting, Procedures, Section III (B): Level 3 uses of force shall be completed as directed by the Officer-in-Charge of FIT. So as to not run contrary with the dictates of Garrity, most of the time the Blue Team entries be completed by a member of Internal Affairs.

Question: What one word or phrase best describes the differences between the different Levels of uses of force?

Discussion/Answer: Harm or injury. The seriousness of harm or injury or the potential for harm or injury. The more serious the harm or risk of harm, the higher the Level is for the use of force.

Question: Why is the use of force on a handcuffed subject elevated from a Level 2 use of force to a Level 3 use of force?

Discussion/Answer: The expectation is that a handcuffed subject is defenseless and any uses of force needs to be carefully scrutinized. Moreover, uses of force on a handcuffed individual tends to be more serious, that the same use of force on a non-handcuffed individual.

Note: I am not suggesting that uses of force cannot be used on a handcuffed subject, but the use of force must be objectively reasonable, necessary, and proportional.

You are acting either for Commander Connelly or Superintendent Bakeman and you respond to a call from an on-scene Sergeant who advises you that a subject was under arrest for Domestic Violence and the officer attempted to

handcuff the subject by using pressure point compliance and joint manipulation techniques. After securing the first cuff on the subject's wrist, the suspect successfully broke loose with only one wrist cuffed by swinging the cuffed arm in the Officer's direction and flees. The officer reengages the subject and uses a leg sweep to bring the subject to the ground. Both of the subject's wrist were then handcuffed.

Question: What levels of uses of force were used?

Discussion/Answer: The use of pressure points and joint manipulation is a Level 1 use of force. After the officer reengages the subject and uses a leg sweep to take the subject to the ground is a Level 2 use of force.

Question: In this scenario, is the Level 2 use of force with the leg sweep elevated to a Level 3?

Discussion/Answer: No, the subject was not fully handcuffed.

Continuing with the same scenario wherein the officer used the leg sweep prior to the subject being successfully handcuffed, we have a Level 2 Use of Force. The Officer escorts the subject to his/her zone car. The subject starts to complain about being dizzy and there is slight amount of blood coming from the back of the subject's head where he hit the ground due to the leg sweep. The subject is taken to the hospital and is admitted due to concussion. Is this still a Level 2 use of force?

Discussion/Answer: No, because of the admission into a hospital, the level of force becomes a Level 3.

Question: What if the subject, after he was successfully handcuffed, and the subject became aggressively physically resistant [ie: the subject head butts or bites the officer] and the officer uses a leg sweep to take the handcuffed subject to the ground, what Level of use of force was used by the Officer?

Discussion/Answer: The use of a leg sweep on the subject after he was handcuffed, elevates the use of force to a Level 3. This is not to say that the use of force was excessive. As we will discuss later, the use of force has to be analyzed in terms of necessity, proportionality, and objectively reasonableness as the framework in which you judge the use of force.

Module 3: Introduction to the Force Investigation Team (FIT)

Nearly everyone in here has been selected or will be selected going forward to serve on the Force Investigation Team (FIT). Everyone here, in advance

of this training received and hopefully reviewed the FIT Manual. You have been chosen because you all are among the best investigators within the Division of Police. As I said before, you will be required to participate in investigations into serious uses of force and critical incidents. The incidents that you will be investigating are those incidents that attract local and sometimes national attention. Public perception of the Cleveland Division, fairly or unfairly, is often judged by how well the FIT conducts its investigations. You know that the community will be carefully following your investigation. So, for all these reasons, it is important that FIT investigations are conducted by professionally well-trained officers. And that is what this training is all about.

PPT #12

In our previous section we learned and discussed the different levels of uses of force. So, let's turn our attention to what this training is all about. What types of uses of force does the FIT investigate, the purpose of FIT, and the roles of the individual members of the FIT.

What is the role of the FIT, what types of uses of force is the FIT called upon to investigate?

The purpose of FIT?

Many of you here today have participated in multiple FIT callouts. Anyone want to share what you believe to be the purpose of the Force Investigative Team? Discussion.

FIT is designed to ensure that certain use of force incidents outlined below are investigated fully and fairly by individuals with appropriate expertise, independence, training, and investigative skills to ensure that:

PPT #13

1. uses of force that are contrary to law or this Division's policy are identified,
2. training, tactical and equipment deficiencies related to the use of force are identified; and
3. investigations are timely, professional, thorough, comprehensive, objective, and bias free.

FIT is designed to ensure full, fair, and transparent investigations that satisfy the need of the public to have a police department that is accountable, trustworthy, and effective. The FIT is designed to ensure that CDP officers will be treated fairly, and that lessons learned from police-involved critical incidents will be identified and used to reduce the risk of the need to use serious and deadly force in the future.

What types of uses of force are FIT called upon to investigate?

FIT, where appropriate, investigates both criminal and administrative uses of force in the following situations:

PPT #14

1. With two notable exceptions [vehicle pursuits and a CDP officer's use of force that results in actual or anticipated death of a person], FIT investigates all Level 3 Uses of Force, including:

- a. uses of force resulting in death and/or serious physical harm;
- b. uses of force resulting in loss of consciousness;
- b. uses of force resulting in hospital confinement due to a use of force;
- d. canine bites;
- e. more than three [3] applications of a CEW; or an application for longer than 15 seconds;
- f. if a neck hold is applied; and
- g. where any hard object is used to strike the head or neck, regardless of whether it was intentional or unintentional.

NOTE: A hard object by definition does NOT include a closed fist; however, a closed fist with a gun, radio, etc, is included within the definition of a hard object even if the object [a gun, radio, etc.] itself, does not strike the head. The use of a closed fist with a hard object is to be examine in terms of the use of deadly force. The used of a closed fist without a hard object is to be examined in terms of necessity, proportionality and objectively reasonableness.

Exceptions to Level 3 Uses of Force:

1. The first exception is vehicle pursuits. An investigation into vehicle pursuits resulting in a fatality or a critical injury will be conducted by the Pursuit Investigation Team (PIT), and all other vehicle pursuits investigations will be conducted by the Accident Investigation Unit (AIU).
2. The second exception is when a CDP Officer's uses a Level 3 Use of Force, within the limits of the City of Cleveland, which involves actual or anticipated death of a person.

PPT #15

This exception is covered by a Memorandum of Understanding between the City of Cleveland, Division of Police and the Cuyahoga County Sheriff's Department dated July 8, 2019. Pursuant to this memorandum, in the event a member of the CDP uses force that involves actual or anticipated death of a person, the criminal investigation into that use of force will be conducted by the Cuyahoga County Sheriff's Department.

The reason for the MOU with the Sheriff's Department is to create transparency and avoid any real or potential conflicts of interest.

The Cuyahoga County Sheriff will be responsible for conducting a timely, independent criminal investigation and submit its findings to the appropriate prosecutor.

Key aspect to implementing this exception is that the use of force "results in actual or anticipated death of a person".

The fact that the Sheriff's Department is conducting the criminal investigation, a FIT CALLOUT IS STILL NECESSARY and the FIT [Internal Affairs] must still conduct an administrative investigation.

NOTE: A "full" FIT callout is required if a non-CDP officer is involved in any Level 3 uses of force, including the use of force that results in actual or anticipated death of a person. In this instance, Homicide will conduct the criminal investigation. Because it is a non-CDP involved officer, Internal Affairs does NOT conduct an administrative investigation into the use of force by the non-CDP officer.

So, except for vehicle pursuits and when a member of the Division uses force resulting in actual or anticipated death of a person, the FIT will respond to all Level 3 uses of force.

The FIT will also be called upon to investigate:

1. All Level 2 Uses of Force on a handcuffed individual.
2. The FIT investigates all uses of force involving potential criminal conduct by an Officer.
3. The FIT investigates all instance in which an individual died while in, or as an apparent result of being in CDP custody; and
4. The FIT investigates any uses of force assigned to it by the Chief.

Exercise:

Question: A CDP Officer engages in a shootout with a suspect and wounds the suspect in the arm. You are acting for either Commander Connelly or Superintendent Bakeman and receive the call from the Sector Sergeant. Do you initiate a FIT callout? Who conducts the criminal [Sheriff or Homicide] and administrative investigations?

Discussion/Answer: Yes, with Homicide conducting the criminal investigation and Internal Affairs conducting the administrative investigation.

Question: You are acting for either Commander Connelly or Superintendent Bakeman and you respond to a call from an on-scene Sergeant who advises you that the subject was under arrest for Domestic Violence and the officer attempted to handcuff the subject by using pressure point compliance and joint manipulation techniques. After securing the first cuff on the subject's wrist, the suspect successfully breaks loose with only one wrist cuffed by swing cuffed arm in the Officer's direction and flees. The officer reengages the subject and uses a leg sweep to that the subject to the ground. Then both of the subject's wrist are handcuffed.

We previously discussed that a leg sweep on partially handcuffed suspect is a Level 2 use of force, do you initiate a FIT callout?

Discussion/Answer: No.

Question: What if the subject was handcuffed, and the subject became aggressively physically resistant [head butts or bites the officer] and the officer used a leg sweep to take the handcuffed subject to the ground. If you are acting for Commander Connelly or Superintendent Bakeman, do you initiate a FIT callout?

Discussion/Answer: Yes, as we previously discuss that a leg sweep on a fully handcuffed subject was a Level 3 use of force, and a FIT callout is mandatory for all Level 3 uses of force.

Question: Continuing with the same scenario wherein the officer used the leg sweep prior to the subject being successfully handcuffed. We have a Level 2 Use of Force. The Officer escorts the subject to his/her zone car. The subject starts to use his head as a ramming rod, striking his head against the window and steel bar cage causing a large bump on his forehead as well as bleeding. The subject is taken to the hospital and is admitted due to a concussion.

Again, you are acting for either Commander Connelly or Superintendent Bakeman, do you initiate a FIT callout and why and if not, why not?

Discussion/Answer: No. We agreed that the leg sweep on a non-handcuffed subject is Level 2 use of force. The reason the subject was taken to the hospital was because of self-inflicted injuries. The use of force by the officer was not responsible for admission to the hospital, so a FIT callout is not required.

Who are the members of the FIT and their individual roles?

1. Commander, Bureau of Special Investigations:

Currently the Commander of the Bureau of Special Investigations, who needs no introduction, is Michael Connelly.

Commander Connelly will briefly describe the role of the BSI Commander in FIT callouts.

The BSI Commander, and/or his designee, is responsible in the first instance to determine whether a FIT callout is necessary. Second, if a FIT callout is necessary, the BSI Commander is responsible for initiating a FIT response and ensuring timely notification of all parties, including the Chief, Safety Director, Law Director, and the Cuyahoga County Prosecutor's Office.

PPT #16

PPT #17

The BSI Commander, in consultation with the Superintendent and depending on the circumstances underlying the incident requiring investigation, is responsible for ensuring adequate staffing of the FIT. See: FIT Manual, Section VI, A. The staffing of the FIT, as to any FIT callout, will be discussed at a later point.

If the Officer used deadly force or the force is likely to cause death, the BSI Commander is responsible for timely notifying the Cuyahoga County Sheriff's Department.

Further, the BSI Commander, following consultation with the appropriate prosecutors, is responsible for a monthly status report for all criminal investigations and prosecutions. This report will be provided to the IA Superintendent. In practice, this report is being prepared by the IA Superintendent.

2. Superintendent, Internal Affairs:

PPT #18

The Superintendent, and/or his designee, is the one who is ultimately responsible for determining if an incident requires a FIT investigation.

While I may be the one ultimately responsible for determining if an incident requires a FIT investigation, I have been blessed since day one to be surrounded by top notch officers such as Commander Mike Connelly, Captain Ali Pillow, and Lieutenants Brown and Neidbalson

I believe that the key to us getting it right is our close collaboration throughout the entire process as to all issues facing a potential FIT call-up from determining if a FIT callout is necessary to staffing issues, to whether or not an outside agency should be notified.

Superintendent's other duties include:

- a. Ensure the overall responsiveness, professionalism, and competency of the FIT and ensure investigations are completed by the FIT are unbiased, fair, and thorough.
- b. Ensure protocols are in place that CDP patrol supervisors are aware of the requirement that involved and witness officers are separated from each other.
- c. Ensure timely notification are made to the prosecuting attorney, OPS Administrator, and, if needed, an outside agency to conduct the criminal investigation.

- d. Provide a copy of the preliminary report to the OPS Administrator on a confidential basis.
- e. Ensure timely completion of FIT investigations and that extensions of time are in writing and approved by the Chief or his designee. If the report is not completed in a manner timely to investigate the reasons for the failure to complete the investigation in a timely fashion and to take necessary corrective actions to ensure future investigations are completed in a timely fashion.
- f. Within three [3] business days of receiving the complete [both criminal and administrative] FIT investigative report, either approve the recommendations and send the report to the Chief's Office or request that additional investigation be completed.
- g. Ensure that OPS, through the Police Review Board [PRB], that the complete investigative report is provided to the OPS Administrator.
- h. Cooperate with the CDP Inspector General by providing the Inspector with the monthly report prepared by the BSI Commander and with his review of CDP's process for conducting concurrent criminal and administrative investigations.

PPT #19

3. Lieutenant OIC Homicide Unit/Criminal FIT OIC:

When I started drafting this training, then Lieutenant Pillow was the OIC of Homicide. Now Captain Pillow is the Executive Officer for BSI and Lieutenant Maurice Brown is the OIC of Homicide. I will give Lt. Brown a break and have Capt. Pillow briefly describe the role of OIC Homicide in FIT callouts.

The Criminal FIT OIC, or his designee, is responsible for initiating the call-up for the members of Homicide who are FIT assigned. The Lieutenant is overall in charge of the scene [ensuring that access to the scene is controlled and properly processed] and the criminal investigation, if an outside agency is not called in to conduct the criminal investigation.

PPT #20

4. Lieutenant OIC Internal Affairs Unit/Administrative FIT OIC:

Again, no need for an introduction, but Lt. Neidbalson is currently the OIC of Internal Affairs.

The Administrative FIT OIC, or his designee, is responsible for initiating the call-up for the members of Internal Affairs who are FIT assigned. Also responsible for contacting members of Inspections who are FIT trained and assigned, if needed due to the demands for on scene coverage.

The Lieutenant is in charge of the administrative investigation. The Administrative FIT OIC is responsible for ensuring that the involved and witnessing officers are separated and orchestrating the asking of the Preliminary Questioning by Internal Affairs Sergeants. The OIC is responsible for ensuring that the Preliminary Garrity questioning is conducted in a safe and secure place. The Administrative FIT OIC is responsible for assisting the Criminal FIT OIC in making sure that access to the scene is controlled.

PPT #21

5. Select Detectives assigned to Homicide will conduct the criminal investigation, unless the investigation is assigned to an outside agency.

PPT #22

6. Select Sergeants assigned to Internal Affairs Unit will conduct the administrative investigation, unless the involved officer is a member of an outside agency and that agency will conduct the administrative investigation. Where the involved officer is member of an outside agency, the Internal Affairs sergeants will nevertheless still monitor the criminal investigation conducted by Homicide.

How are members of the Homicide, Internal Affairs and other Units selected to be members of the FIT?

PPT #23

Not every member of Homicide and Internal Affairs will be automatically members of the FIT. Further, members of the FIT may include members outside Homicide and Internal Affairs because of their particular training, experience, and expertise. The members of FIT will be experienced investigators who have demonstrated integrity, accuracy, and thoroughness in their investigations.

PPT #24

While the IA Superintendent has the ultimate authority to determine assignments to the FIT, the IA Superintendent, BSI Commander, and the FIT OICs are responsible for interviewing each candidate.

Each candidate must provide, for purposes of the selection process, an information packet that includes samples of their case investigative work, names of their current and previous supervisors, and a resume that includes training and assignment history.

7. Investigators from the Office of Professional Standards may assist in the on-scene administrative investigation [investigators must have a minimum of five [5] years of investigative experience and employed with OPS for at least one [1] year].

PPT #25

OPS investigators will not participate in criminal investigations but may assist, under the control and direction of the Administrative FIT OIC, in the on-scene administrative investigation which may include interviewing civilian witnesses and second chairing officer interviews. The OPS Administrator is entitled to a walk-through of the scene, a briefing about the incident, and the nature of the FIT [criminal] investigation.

8. Crime Scene Unit: Although not officially a member of the FIT, they are to be notified for all FIT callouts. Although CSU Supervisors are on scene, the CSU detectives answer to and receive assignments from the Criminal FIT OIC.

PPT #26

CSU's duties may vary/change if an outside agency is contacted to conduct the criminal investigation. Currently, the Cuyahoga County Sheriff contacts and the Bureau of Criminal Investigation [BCI] and requests that they process the scene.

9. Training Unit: Does not have an investigative role during the FIT investigation. However, they will provide advice on training issues, technical advice, and training records pertinent/relevant to the incident under investigation. The FIT OICs will provide initial briefing to the training representative at the start of the investigation and continue to consult with training representative as appropriate to discuss/review policy and training.

PPT #27

Staffing of a FIT callout:

FIT Manual, Section VI (A) states in relevant part that "the BSI Commander, in consultation with the IA Superintendent is responsible for ensuring adequate staffing of the FIT . . . depending on the circumstances underlying the incident requiring investigation". Generally speaking, regarding all uses of deadly force, the entire FIT is called out, including both Homicide and Internal Affairs, including those situations in which the Sheriff is called out and will be conducting the criminal investigation. Generally speaking, regarding all Level 3 uses of force on handcuffed individuals, only members of Internal Affairs are called out.

PPT #28

Factors that are generally considered in determining the number of FIT personnel required in a FIT callout, include but not limited to:

PPT #29

1. the scene, is it self-contained or spread out, are there multiple scenes;
2. the number of civilian witnesses;
3. the number of involved officers and witness officers; and
4. Personnel needed at a hospital to conduct interviews.

Note: It is the responsibility of the IA Superintendent, BSI Commander, and the FIT OICs to identify and select appropriate personnel to staff the Division's FIT from Homicide, Internal Affairs, and Inspections Unit. The selection process will be discussed later in this training session

Module 4: How is a FIT call up initiated and the rolls of the members of the FIT responding to the scene?

PPT #30

- 1. It all begins with the on-scene supervisor!** Supervisors notified of a Level 3 use of force are required to immediately notify the 30Communications Control Section (CCS) of the nature, location, and time of the incident that may fall within the jurisdiction of the FIT.

PPT #31

Note: Sometimes the on-scene supervisor is unsure of the level of force, particularly with handcuffed individuals and the Superintendent is notified. The Superintendent will obtain all relevant facts and contact the Commander. For the moment we will take the handcuffed situations off the table.

- 2. CCS then notifies the Commander of the Bureau of Special Investigations** and provides all available information.

- 3. The BSI Commander has three options.**

PPT #32

- a. FIT callout is necessary. Commander will give direction to the on-scene supervisor and initiate a FIT callout by contacting Lt. Brown and Superintendent Bakeman who in turn contacts Lt. Neidbalson.

Note: Following consultation with Superintendent and approval by the Chief, if an outside agency is needed to conduct the criminal investigation, the Commander will contact the outside agency.

- b. FIT callout is not necessary. Commander will document into the Division's force tracking software the facts used to make his decision and give direction to the on-scene supervisory. FIT Manual states that the facts will be provided to the Superintendent the next working day; however, in reality, these facts are discussed with the Superintendent as part of the process of making the decision to or not to initiate a FIT callout.
- c. Additional information needed. If the Commander needs additional information, the Commander will send at least one FIT Homicide detective to the scene to assess the situation. The detective will report back to the Commander and the Commander, in consultation with the Superintendent, will make the decision. The detective[s] who initially reported to the scene and the decision is made not to initiate a FIT callout, must within 72 hours document all facts into the Division's force tracking software.

Practice: As a practical matter, if there is any doubt as to whether or not to initiate a FIT callout, we will err on the side of initiating the callout and then send officers home if not needed. Starting with the on-scene officer, many times the question as to the necessity of initiating a FIT callout is what was the level of force used. Frequently, I received calls from the on-scene officer asking for guidance as to the level of force. As to my determination of the level of the force used, I will review that determination with Commander Connolly.

The process once the decision is made to initiate a FIT callout.

PPT #33

The duties of the first non-involved supervisor [Sector Supervisor] on scene:

1. Secure the scene. Make sure the perimeter is wide enough to cover all aspects of the incident. We can always reduce the size of the perimeter as the investigation plays out.
2. Separate witness officers from the involved officers and instruct the officers not to talk with each other about the incident. The involved and witness officers shall not be permitted to review WCSs prior to their initial FIT interview [17 Preliminary Questions] without permission from either FIT OICs. The supervisor shall also ascertain whether or not any officer [involved or witness] reviewed a WCS of the incident, and if so, the circumstances under which the WCS was reviewed. This protocol is intended to ensure a preliminary interview is untainted by the review of any external evidence.
3. Obtain a public safety statement which shall include any information that is necessary for public safety and obtaining medical care for injured persons, the securing and identification of evidence, and in furtherance of any criminal investigations involving the subject against whom force was used. In a Level 3 FIT callout, the Involved/Witnessing Officers shall provide the following information [Public Safety Statement] to the first responding non-involved supervisor:
 - a. a description of the scene that needs to be protected;
 - b. identification and location of involved parties/witnesses;
 - c. description of suspects still at large, to include direction of travel, how long ago, and whether or not suspects are armed;

PT #34 – Public Safety Statement Form

- d. direction of shots fired, if applicable;
- e. whether officer or anyone else is injured and their location;
- f. the type of force used by the officer and the threats presented by other involved parties; and
- g. any additional information that would help ensure officer and public safety and assist in the apprehension of suspects.

Upon arrival of the FIT, the investigation shall be bifurcated into two separate investigations: [1] criminal investigation conducted by Homicide, and [2] administrative investigation conducted by Internal Affairs. This holds true even if an outside agency is brought in to conduct the criminal investigation.

PPT #35

Question: As members of the FIT arrive, the investigation will be immediately “bifurcated.” What is the significance of this fact?

Discussion/Answer: In the context of FIT investigations, bifurcation simply means that two teams will conduct separate investigations with one team conducting the criminal investigation and the second team conducting the administrative investigation. These separate investigations will be conducted concurrently or in parallel with each other.

PPT #36

No part of the administrative investigation will be held in abeyance unless specifically authorized by the Chief in consultation with the criminal investigation team and the responsible prosecuting attorney.

Questions?

The duties of the FIT Criminal OIC on scene.

PPT #37

1. Upon arrival take control of the scene. Ensure that all persons who properly have access to the scene are properly logged in.
2. Take control of the criminal investigation and the criminal investigation team. Make sure that sufficient man-power is in place to conduct all the needed tasks of the Criminal FIT
3. Ensure that Public Safety Statement with the involved officers has been taken.
4. Making sure that involved and witnessing officers have been located and immediately segregated, if not already done, to prevent contamination or collusion.
5. Confirm that the involved or witnessing officer(s) have not reviewed any video or audio of the incident. If video or audio has been reviewed, ascertain the circumstances under which that review occurred.
6. Meet with the criminal investigators to discuss investigative strategies.
7. Will provide the Commander and Superintendent, as soon as possible, any information concerning any significant issues, including issues that may relate to investigatory bias or failure to follow best practices, and immediately address those concerns or confer with the Commander and Superintendent for guidance
8. Along with the Administrative FIT OIC, make sure that the criminal investigation is not tainted by a compelled statement obtained during the administrative investigation or any evidence derived from a compelled statement. The following steps will be taken to insure no taint:
 - a. The FIT will be immediately divided [bifurcated] into two teams, the criminal investigation team and the administrative investigation team.
 - b. IA sergeants taking the Garrity statement, if practical, will leave the scene or at a minimum take the officer to a secure area at the scene to complete the Preliminary Garrity statement.

PPT #38

- c. IA sergeants who conducted the Garrity interviews are not assigned tasks to include taking the involved officers to be drug tested. . . or to monitor the activities [interviews] of the homicide detectives, conducting canvasses, etc...
 - d. Within 24 hours, the Superintendent will notify, by email, both the Homicide OIC and Internal Affairs OIC who the lead investigators are for the criminal and administrative investigation, the names of the IA sergeants who obtained the Garrity statement[s], with specific instructions safeguarding the content of the Garrity statement. The email shall be conspicuously posted in each Unit's file.
9. Confirm that Employee Assistance Unit (EAU) has been notified and is arranging for a critical incident stress management response and/or referral for any involved officer or witness officer as appropriate.

Duties of the members of the FIT criminal investigative team.

PPT #39

- 1. Respond to the scene and if there before either FIT OIC is present, make sure that the scene is properly secured and that involved and witnessing members are separated.
- 2. Re-examine the subject for injury, and interview the subject for complaints of pain. If needed, ensure that the subject receives medical attention from an appropriate medical provider.
- 3. Accompanied by FIT administrative members, ensure a canvass is promptly completed for civilian witnesses and conduct recorded interviews when possible. If recorded interviews are not possible have witnesses complete signed written statements in their own words. Multiple canvassing efforts may be necessary.
- 4. Shall ensure a timely canvass for any privately-owned video that may have captured the incident and obtain a copy through consent or other lawful methods.
- 5. Shall ensure the collection of all 911 Audio, MDT and CDP Radio traffic related to the incident.
- 6. Shall secure all involved weapons and download involved officer's Taser data (if involved). All weapons and equipment in the possession of the involved officers shall be treated as evidence.

7. Shall ensure photographs of involved and witness officers [who were in the immediate area and witnessed the use of force]. Photographs should include close up photos of the officer's injuries, if any, or lack of injury, all duty equipment on the officer at the time of the incident, and any torn clothing and damaged equipment.
8. Shall ensure a scene sketch is completed and arrange for photographing of the scene.
9. Shall ensure the collection and processing of all evidence consistent with Homicide investigation protocols, related to the use of force incident to include conducting round counts and accounting for all shots fired.
10. Shall locate the subject of the use of force and seek a video or audio recorded interview. Advise the subject that the interview pertains only to the use of force and not to any underlying alleged crime and that the subject need not answer questions. Request a medical release. Attempt to photograph the subject's injuries, or lack of injury, and/or the area the subject is complaining of injuries. Photographs of the subject's features should be taken for identification purposes.
11. Respond to the Medical Examiner's Office to witness the autopsy.
12. Provide a copy of the criminal investigation to the Prosecuting Attorney's Office for review and potential Grand Jury determination.

Any questions?

PPT #40

PPT #41

The duties of the FIT Criminal OIC once the scene is cleared.

PPT #42

1. Within 24 hours, complete a preliminary report to be presented to the Police Chief, through the BSI Commander and the Internal Affairs Superintendent.
2. Continue to ensure that the criminal investigation is not tainted by any compelled statements.
3. Ensure that information developed during the criminal investigation is reviewed and forwarded to the FIT administrative investigators as soon as practical.
4. Ensure that reasonable efforts are made to resolve material inconsistencies in the evidence as it relates to the criminal investigation.
5. Ensure that the criminal investigative file, where a determination is made that one or more officers may have committed a criminal offense, is submitted to the prosecuting attorney for their review.
6. To follow-up with the CCSO to ensure, in the case of the death of the subject, that the criminal investigative file is submitted to the prosecuting attorney for review and possible grand jury determination.
7. Ensure, in the case of the prosecution of the subject, that the criminal investigative file is submitted to the prosecuting attorney for the identification of discoverable material.

PPT #43

The duties of the FIT Administrative OIC on scene.

PPT #44

1. Consult with the FIT Criminal OIC, and assist in controlling the scene.
2. Take control of the administrative investigation and the administrative team,
3. Meet with administrative investigators to discuss investigative strategies and conducting the Preliminary Garrity Questioning, and interviewing witness officer[s].
4. It is the responsibility of the FIT Administrative OIC to ensure that sufficient man-power is in place to conduct all the needed tasks of the Administrative FIT.
5. Making sure that involved and witnessing officers have been located and immediately separated, if not already done, to prevent contamination or collusion.
6. Assign members of the administrative team to conduct the Preliminary Garrity Questioning of the involved and witness officers. Ensure that the content of the Garrity statements are not shared with members of the criminal investigative team. To best ensure the content of the Garrity statements are not shared with members of the criminal investigative team, the Garrity questioning, as much as possible, should take place in a private and secured location, best away from the scene.
7. Shall request and conduct a scene walk through of involved and witnessing officers (Garrity issues).

PPT #45

Duties of the members of the FIT administrative investigative team.

PPT #46

1. Respond to the scene and if there before either FIT OIC is present, make sure that the scene is properly secured and that involved member and witness members are separated.
2. Unless exceptional circumstances exist, as soon as practical, transfer witnessing officers to an appropriate location for an interview. Witnessing officers will first be asked to provide a voluntary statement before being compelled and the interview is turned into a Garrity interview. The interview shall take place before the officer[s] go off duty. The interview shall be video and audio recorded.
3. Ensure that all officers who witness use of force complete a a witness statement before the end of their shift pursuant to GPO 2.1.05.
4. Ensure that all WCSs are downloaded.
5. Conduct the preliminary Garrity interview of involved officer[s] unless involved officer[s] suffers from injury resulting in prolonged medical treatment, or extreme fatigue, before the end of the officer's tour of duty.

NOTE: With the 17-question preliminary interview, the interviewing administrative officer is not permitted to ask follow-up questions. I have discussed with the Union circumstances wherein the answers to the preliminary questions were so inadequate that there may be situations that the Union may allow a few follow-up questions. This has happened in one case. Going forward, if you think you have such a situation, after asking all of your questions ask to speak with the Union alone to discuss the situation and what specific questions you want to ask. The Union is not required to allow any follow-up questions.

6. Conduct follow up scene walkthroughs with involved and witnessing officers as necessary.
7. FIT administrative investigators shall observe, monitor and record interviews conducted by the FIT criminal investigators. This has been discussed with the Sheriff's Department and they agree to allow FIT administrative investigators to monitor.

PPT #47

8. Accompanied by FIT criminal members, ensure a canvass is promptly completed for civilian witnesses and conduct recorded interviews when possible. If recorded interviews are not possible have witnesses complete signed written statements in their own words. Multiple canvassing efforts may be necessary.
9. In appropriate circumstance, shall respond to the Medical Examiner's Office to witness the autopsy and ensure all necessary evidence is collected and investigative issues are considered.
10. Ensure the collection of all duty reports, training records, and any relevant documentary evidence that may be in the possession of, or available to the CDP.
11. Ensure the collection of news coverage and social media videos and images (YouTube, etc.).
12. Shall meet periodically with Crime Scene and Record Unit and any FIT criminal investigators conducting a concurrent investigation of the incident to ensure the appropriate flow of information as necessary to accomplish the Division's goals.
13. Shall complete the Administrative investigation within 60 days unless the Chief approves an extension. The FIT investigator shall document the reasons for the delay.

Note: What are some of the non-exclusive acceptable reasons to justify the delay: [1] waiting for information from an outside agency, [2] injuries to witnesses or officer that prohibit an interview . . .

The duties of the FIT Administrative OIC once the scene is cleared.

PPT# 48

1. Continue to ensure that any Garrity material obtained during the course of the criminal investigation is not released to those persons engaged in the criminal investigation.
2. Ensure that all witness officers, pursuant to Use of Force Reporting GPO 2.1.05, have completed their narrative statement by the end of their tour of duty.
3. Within ten days of the incident, complete a thorough review of statements and use of force reports to determine sufficiency and if any additional information is needed.
4. Ensure that the administrative investigation is completed within 60 days unless an extension has been approved by the Chief or his designee in writing.

PPT #49

Question: What constitutes a completed investigation?

Discussion/Answer: The investigation must have explored all relevant evidence and lines of investigative inquiry to perform a thorough, fair, and completed investigation that provides subsequent decision-makers with the information necessary to adjudicate the incident fairly, thoroughly, and objectively. A complete investigation does not include any delayed Garrity statements.

Note: At the discretion of the Chief, in consultation with the IA Superintendent and the responsible prosecutor, an administrative investigation may be completed prior to the completion of the criminal investigation or proceedings.

5. Review the completed administrative investigation within seven days and make recommendations where appropriate, including issues regarding misconduct, policy and training.

Question: In making recommendations for administrative charges, what is the burden of proof?

Discussion/Answer: Preponderance of the evidence.

6. Ensure that the FIT Administrative investigator has uploaded all relevant case documentation and material into the use of force tracking software.
7. Ensure that reasonable efforts are made to resolve material inconsistencies in the evidence as it relates to the administrative investigation.
8. Ensure that the FIT Administrative investigator has completed a Force Investigation Report, contents of which will be discussed in a few minutes.
9. Within seven [7] days of the conclusion of an administrative investigation, including the completion of compelled interviews that have been delay, a final investigation report shall be completed.

Module 5: Tactics and strategies in conducting a professional, objective, transparent, and bias free investigation.

PPT# 50

What is an objective investigation?

PPT# 51

Objective means:

1. Undistorted by emotion or personal bias;
2. Relating to actual or external phenomena as opposed to thoughts, feelings, etc.;
3. Existing independently of perception or an individual's conceptions; and
4. Reality.

So, who is an objective investigator:

PPT# 52

1. A person who has no interest in the outcome of the investigation;
2. A person who has no pre-determined view of the conclusion or findings and, in the interests of fairness and respect for their responsibilities, are willing to go wherever the evidence leads them; and
3. Detachment.

What is an objective investigation?

PPT# 53

1. It is a fact-finding mission; and
2. A systematic collection of facts.

What is bias? What is bias free policing?**PPT# 54**

Everyone in this room has biases. So, the issue is not do we have biases, but can we put our biases aside and make our decisions based on facts. But the problem is when we are unaware of and make no effort to recognize and admit to our biases. In our Bias-Free Policing GPO 1.07.08, Implicit Bias is defined as attitudes that affect understanding, actions, and decisions in an unconscious and unintentional manner. These biases, which encompass both favorable and unfavorable assessments, are activated involuntarily and without an individual's awareness or intentional control.

True Story: Jury trial in federal court, long story short, jurors told the judge that they had no biases that would impact their ability to be fair. Defendant charged with crack possession and felon in possession of a gun. Defendant in possession of gun and money. Crack found in another room. Defendant basically concedes the gun violation and denies the drugs. I argued the weapon and money circumstantial evidence of the drug possession. While the jurors were deliberating, we heard very loud voices, almost yelling and screaming. All was then quiet and a few moments later, they sent a note to the judge that they had a verdict. We were all surprised and wondering what were the loud voices all about. Defendant was found guilty on all charges. Judge instructed the jurors to return to the jury room and she asked the jurors what were the loud voices all about. Several of the African-American jurors explained that they were upset that two of the white jurors (school teachers) said that all African-American young adults are carrying guns no big deal and was not evidence that the defendant was a drug dealer. The African-American jurors made their thoughts known that those beliefs were not true and several minutes later a unanimous verdict of guilty. I bet if we again asked those two white school teachers if they had any biases, they would again say no.

Lesson learned: We all have biases, teachers, clergy, lawyers, and police officers. For me, lesson learned, stay away from teachers as jurors!

Bias-Based Policing is defined as when a member of CDP takes a law enforcement action or makes a decision . . . motivated by discrimination on the basis of an individual's demographic category.

In the context of a FIT callout, and the officer uses deadly force. The offender/victim has an extensive criminal record. How can this factor creep into the Fit investigator's mind as the investigator proceeds with the investigation? Discussion. The Garcia use of deadly force with the victim of the use of force having an extensive criminal record and currently on bond for a pending criminal case.

Question: So, what are some of the inherent problems with a biased investigation?

Discussion/Answer: A biased investigation will reflect the beliefs of and perceptions of the investigator. A biased investigation will not ask the tough questions. A biased investigation may result in “confirmation bias:” which involved the tendency of an investigator to interpret new evidence as confirmation of one’s existing beliefs or theories, even if those existing beliefs or theories are incorrect.

Why is a systematic collection of facts important? The investigation must be systematic, that is the setting of priorities.

So, you are the lead FIT investigator for the criminal investigative team, what are your top three priorities?

PPT# 55

1. Be briefed by the senior/supervisor officer on scene [Sector Sergeant].
2. Secure the scene and potential witnesses.
3. Work with crime scene unit to identify, document, and collect physical evidence.

Question: Why should these be your top priorities?

Discussion/Answer: First, you need to know what you and your team are facing. Wind, rain, and people inadvertently tracking through the crime scene can lead to the loss or distortion of the physical evidence.

So, you are the lead FIT investigator for the administrative investigation, what are your top three priorities?

PPT# 56

1. Be briefed by the senior/supervisor officer on scene [Sector Sergeant].
2. Make sure that involved and witnessing officer[s] are separated and secured.
3. Assign sergeants to conduct the preliminary Garrity [17 questions] interview.

Can anyone tell me the four [4] what sources of evidence that facts are derived from?

PPT# 57

1. Testimonial evidence.

2. Documentary evidence [to include video and audio tapes, written statements, and today . . . electronic stored evidence from computers, cell telephones, etc.]
3. Physical evidence.
4. Demonstrative evidence [diagrams and photographs].

Conducting A FIT interview.

PPT# 58

1. Prior to conducting witness interviews, the FIT investigators shall confer with the FIT OICs concerning an interview plan, including what materials may be shown to the witness (to include involved and witnessing officers) and how such materials are to be introduced during the interview. FIT will ensure that the order and content of information presented during the interview is beneficial to the investigation and does not interfere with the objective collection of information from the interviewee (for instance by suggesting answers to questions).
2. There shall be no pre-interview discussion of the substance of the investigation or any dialogue with an involved officer discussing the substance of the investigation other than a public safety statement, preliminary interview, and a scene walk-through. The investigators may explain the process but shall not discuss the substance of the investigation.

Question: In strategizing the interview, what are the two critical elements in developing that strategy?

Discussion/Answer: First, the timing and order of interviews of witnesses is critical. One has to understand that just because you tell a witness not to discuss you meeting with law enforcement, does not mean that the first thing a witness may do is tell another witness all about your meeting. Second, deciding on what can be and cannot be shown to the interviewee. For example, if conducting an administrative interview and you believe that showing WCS footage may be critical to the interview, you have to run that by those conducting the criminal investigation. Criminal investigators may believe that the showing of the WCS may unnecessarily compromise the criminal investigation. Thus, we are back to timing and order of interviews.

3. No leading questions. A FIT investigator once said, after I raised the question as to why so many leading questions, the investigator said that the officer was so clueless that, in order to get the facts, he felt compelled to ask leading questions. I understand that feeling in theory, but in reality, by asking leading questions you are not getting facts but setting the table with what you believe the facts are or should be.

PPT# 59

What is a leading question? A leading question is a question that incorporates the answer into the question. For example: You used your Taser because you were in fear for your own safety and the safety of others? VERSUS What was the subject doing/acting when you used the Taser? Tell us why you used your Taser on the subject? Also, questions calling for a yes or no answers are usually leading questions.

PPT# 60

Example from an actual FIT call out:

Q: How long have you been a Sergeant?

A: Since 2001.

While technically a leading question, I am not going to raise an issue with leading questions that are preliminary in nature and scene setting.

However . . .

Q: Prior to encountering Mr. -----, did you have reason to believe he may be armed or become violent toward citizens or law enforcement?

A: Yes.

Better question, What did you know about Mr. -----, as you approached him?

Q: Did you perceive Mr. ----- as a threat to law enforcement or citizens when he pointed his firearm?

Better question: What were you thinking or what was going through your mind as Mr. ----- pointed his firearm?

4. Need to ask follow-up questions. Nothing frustrates me more than asking a question and not listening to the answer and failing to follow-up.

PPT# 61

Example:

An Officer in their Garrity statement stated that his Supervisor said it was okay to use “x”.

PPT# 62

The following question was asked of the Supervisor . . .

Q; Do you recall every advising [name of officer] to use “X” to protect themselves?

A: No, not officially, ah . . . not saying we . . . no basically no.

The supervisor was stuttering and pausing as he answered. There were no follow-up questions to that answer. For example . . .

Q: What did you mean by “not officially”, what did you tell the officer “unofficially”? Talk about stuttering. The supervisor was let off the hook.

5. When conducting the canvass, make sure that the officers conducting the interviews have a check list to make sure that all the officers are asking the same questions and covering the same topics.

Interviewing involved officer[s].

PPT# 63

- a. On scene, a preliminary Garrity statement [17 questions] are asked of the involved officer by an Administrative FIT investigator. No follow-up questions allowed.

Note: In rare and exceptional circumstances, the Union may permit a few follow-up questions.

- b. Internal Affairs will complete a Blue Team entry on behalf of the involved officer[s].

IA investigators will use the Preliminary Garrity statement and WCS to complete the Blue Team. The Blue Team will be forwarded to the IA OIC so that other CDP members, including the involved officers and officers conducting the criminal investigation will not have access to the Garrity statement. Once the criminal investigation is complete the IA OIC will populate IA Pro with the Garrity statement. This process will best ensure that the criminal investigation is NOT tainted by the Garrity statement.

- c. A full Garrity statement is taken from the involved officer[s] within 48 to 72 hours. Officers shall first be asked to provide a voluntary statement before issuing Garrity.
- d. Material differences between the objective evidence and the subject officer's perceptual statement should be explored at the time of the initial interview and may also be explored through follow-up interviews.

Question: What if the officer's recollection is inconsistent with his WCS, is there anything in the FIT Manual that provides guidance in these situations?

Answer: VI, B, 2, j [page 15 of the Manual . . .]

Differences between perception and "objective" sources such as video may be explicable due to the limits of human perception and memory (e.g., selective focus, influence of adrenaline, fight or flight response, tunnel vision) and expanded capacity of video sources (e.g. wider field of vision and consistent focal range). An officer may only be disciplined for a discrepancy between his or her perceptual statement and objective evidence if the Division finds that the officer made intentional misrepresentations or where the officer fails to fully cooperate with a perceptual interview.

Real case scenarios:

- a. Officer climbs the stairs to the attic and turns his head both to his left and right to see what is in the attic without turning his body. The WCS did not capture the 180 degrees plus that the officer was able to see by turning/pivot his head from one direction to another. The WCS and the officer's perception are different.
- b. The suspect was non-compliant, running away from the officer, and clearly, as picked up on the WCS, with the right hand under the left arm points a gun at the officer. Subject continues to be non-compliant, refuses to drop the gun, stumbles bend down and . . . here is where things become muddy . . . the officer stated that he clearly saw the subject with the gun in his right hand on the ground, point the gun at him and fires . . . the WCS, because of all the debris on the ground it is difficult to make out the gun.

Discussion. Difference between WCS and the Officer's observation may be explained due to selective focus.

- e. Extreme caution must be taken to ensure that the preliminary questions, Blue Team, and the full Garrity statements are not accessible to the members of the criminal FIT. IA Superintendent or his designee, as Case Master, will continuously screen the information contained in the administrative investigation to make sure that nothing is sent to the criminal team that will compromise its investigation.
- f. FIT investigators may call involved officers back for a follow-up interview. Same rules apply.

Interviewing witness officer[s]:

PPT# 64

- 1. Witness officers are required to complete a written narrative statement before the end of their shift in accordance with the Use of Force Reporting GPO 2.1.05.
- 2. Witness officers are required to provide a statement, either voluntarily (the most preferred option) or under Garrity if not provided voluntarily. As to witness officers[s] who provide a Garrity statement, said statement shall not be shared with the criminal investigators without first consulting with the appropriate County prosecutor.

Evidence/Scene processing:

PPT# 65

Evidence/Scene processing is the responsibility of the Crime Scene Unit [CSU] under the direction of the Criminal FIT OIC.

- 1. Crime Scene processing shall include:
 - a. Initial overall scene photos will be taken first, including photos of items of evidentiary value;
 - b. Evidence placarding: After the initial photos are taken, items of evidentiary value will be marked with numbered evidence placards or evidence markers and photographed with these markers.

- c. Digital photography: The scene will be photographed using a digital camera, with all resulting images uploaded into the Digital Evidence Management System (DEMS);
 - d. Scene measurement and diagramming: Selected CS&R detectives will be responsible for a basic scene diagram that shows the location of significant items of evidence, as well as the basic details of the scene, including all relevant physical measurements.
 - e. Involved and witness officers may be compelled to submit to non-invasive forensic evidence collection such as collection of clothing and equipment, and swabbing for gunshot residue (GSR), blood, or other forensic evidence as applicable. Officers may also be requested to submit to blood alcohol and drug testing in accordance with department policy. See: FOP contract provides that for “post incident testing for an employee involved in a use-of-deadly-force incident”. CPPA, when requested, voluntarily allows its officers to undergo alcohol and drug testing following the use of deadly force.
 - f. GSR, blood, DNA and trace evidence collection and testing may be ordered where they may have probative value in evaluating the incident[s] under investigation.
2. Upload all relevant case documentation and material into the use of force tracking software.
 3. All video evidence will be uploaded into the Digital Evidence Management System (DEMS). This includes all applicable HFV/WCS as well as any privately-owned video.
 4. Taser downloads; CEW data will be downloaded for officers involved in the use of force that were carrying a CEW at the time of the incident, regardless of whether the Taser was applied.
 5. Medical releases and resulting documentation of injuries will be requested from all injured parties and attached to the case file.

PPT# 66

Within 14 business days of the incident, FIT and Crime Scene and Records representatives will debrief each incident as a constructive critique of the interaction between and among them at the incident scene and during the initial hours of the investigation.

FIT Investigation Report

FIT Manual, Operations – FIT Use of Force Investigations, pursuant to Section [B] [FIT – Investigator Responsibilities], subsection 3b states in pertinent part:

Upon . . . completion of the FIT administrative investigation: b) complete a Force Investigation Report that includes, when applicable the following:

1. A complete description of the manner in which the team was notified, the information received, any notifications made, the deployment of resources, and any direction provided to team
2. A detailed statement of the involved personnel, to include their current and past assignments, training, disciplinary, and use of force history;
3. A scene description and diagram and photographs at the time of arrival;
4. Detailed witness and video canvass, to include how the canvass was conducted and by whom, and the identification of private and public video and the steps taken to secure that evidence;
5. A complete identification of the involved subject to include prior contacts with the CDP and criminal history information;
6. Witness information that includes both the identification and contact information of the witness, and the steps taken to preserve their initial statements;
7. Injuries properly preserved by photographic or video evidence, and attempts to acquire the release of relevant medical/treatment records;
8. The recovery, documentation, and preservation of evidence related to the incident to include, but not limited to, biological and forensic evidence, physical evidence, testimonial evidence, circumstantial evidence, and any and all laboratory analysis related to such evidence, and the manner and process in which such evidence was recovered.

PPT# 67

PPT# 68

PPT# 69

The report shall include findings and recommendations as to the following:

PPT# 70

1. Whether the use of force was within policy or not;
2. Whether any underlying police action was consistent with policy, training, and legal standards;
3. Whether different tactics should or could have been employed; and
4. Whether there were any equipment issues.

Module 6: Every FIT investigation will have its findings reviewed for criminality and administratively for policy compliance.

PPT# 71

Review for Criminality.

PPT# 72

Every FIT investigation will be reviewed by the appropriate prosecutor for criminality on the part of the involved officer.

The prosecutor reviews the officer's use of force under the "objectively reasonable" standard, first articulated in Graham v. Connor, 490 U.S. 386 (1989).

What does Objectively Reasonable mean?

PPT# 73

Reasonableness is the lynch pin in this whole analysis

So, what does "reason" mean within the context of use of force?

1. Being in accordance with reason, and
2. Not excessive or extreme

Synonyms: rational, logical, sensible, and sound

This is all consistent with our Use of Force GPO 2.01.03, in which it states, "Reason and sound judgement will dictate the force option to be deployed.

Next, the reasonableness inquiry with respect to force is an objective one. Stated differently, objective modifies reasonableness. So, what does "objective" mean?

Objective means involving or deriving from sense perception or experience with actual objects, conditions, or phenomena. It is your senses, what you see (subject with a gun), what you hear (I'm going to kill you), what you taste, and what you smell.

PPT# 74

"I was scared for my life" . . . while that may be a reason to use force, the reason may NOT be objectively reasonable. You have to articulate why you were scared for your life. I saw the subject with a gun pointed directly at me.

Why? Discussion.

So, an "objectively reasonable" use of force is a level of force that is appropriate when analyzed from the perspective of a reasonable officer on scene, NOT with 20/20 hindsight. Objectively reasonableness takes into account, where appropriate, the fact that officers must make rapid decisions regarding the amount of force to use in tense, uncertain, and rapidly evolving situations.

PPT# 75

Objectively reasonable conduct is to be judged in light of the facts and circumstances confronting a reasonable officer and known to the officer at the time of the incident. These factors include, but not limited to the following, see GPO 2.01.03, Use of Force – General, Section IV:

PPT# 76

1. The severity of the crime[s] at issue;
2. Whether the subject is actively resisting arrest or attempting to evade arrest by flight; and
3. Whether the subject poses an immediate threat to the safety of the officer[s] or others.

Officers shall consider the following officer/subject factors and circumstances when choosing a force response, See: GPO 2.01.03, Use of Force – General, Section IV:

PPT# 77

1. The influence of drugs and/or alcohol;
2. Known or reasonably apparent mental illness, developmental disability or crisis incident;
3. Known or reasonably apparent physical disability or other medical or physical condition, including visual or hearing impairment;
4. Limited English proficiency or other language barrier;

5. The time available to an officer to make decisions;
6. The availability of officers/resources to de-escalate the situation;
7. The proximity or access to weapons by the subject;
8. Differences between the following officer and subject characteristics: [1] age, [2] gender, [3] body size, [4] skill level, [5] relative strengths, and [6] injury or exhaustion;
9. Officer's and subject's position [e.g. being on the ground];
10. The officer's distance from the subject[s];
11. The Officer's special knowledge or training; and
12. The degree to which the subject is already restrained [handcuffed, physically controlled by other, or whose mobility has been otherwise severely compromised].

PPT# 78

As previously stated, prosecutors review for criminality and the use of force under the "objectively reasonable" standard. Any "objectively unreasonable" use of force may subject an officer to criminal prosecution.

Administrative Review

PPT# 79

GPO 2.01.03 states in pertinent part that, "[a]ny use of force that is not necessary, proportional, and objectively reasonable and does not reflect reasonable de-escalation efforts, when safe and feasible to do so, is prohibited and inconsistent with Divisional policy". Accordingly, Internal Affairs reviews officer use of force not only under the "objectively reasonable" standard but also under two additional factors: necessity and proportionality.

What is Necessity?

PPT #80

First, Officers can use force only as necessary, meaning only when no reasonable effective alternative to the use of force appears to exist. See: GPO 2.01.03, Section II (B).

Second, Officers shall use only the amount of force necessary to achieve a lawful objective. Meaning only when no reasonable effective alternative to the use of force appears to exist, and then only to the degree which is reasonable to affect the intended lawful objective. See: GPO 2.01.03 (A) and (C)

Force has a lawful objective when it is used for any of the following:

PPT# 81

1. To effect a lawful arrest or detention of a subject;
2. To gain control of a combative subject;
3. To prevent or terminate the commission of a crime;
4. To intervene in a suicide or self-inflicted injury; and
5. To defend or protect an officer or an individual from the violent or resistant physical acts of another.

Necessity and the use of deadly force.

PPT# 82

First, as to necessity, an officer may use deadly force only if the subject, through their own actions, poses an imminent threat of death or serious physical harm to an officer or another.

Second, again as to necessity, deadly force may only be used to prevent escape of a fleeing subject only when an officer would reasonably believe under the circumstances that it is necessary, and where feasible, some warning has been given, and there is probable cause to believe that:

PPT# 83

[a] the subject is in the process of committing or has committed a violent felony involving the infliction or threatened infliction of serious physical harm or death, **and** the subject would pose a continuing imminent threat of serious physical harm, either to the officer or others; **or**

[b] the escape of the subject would pose an imminent danger of death or serious physical harm to the officer or to another if the subject is not apprehended without delay.

What is Proportionality?

PPT# 84

All force shall be proportional to the level of the subject's resistance. To be proportional, the level of force applied must reflect the totality of the circumstances known to the officer at the time force was applied. Generally, only the amount of force required to control the subject shall be used by the officer. See: GPO 2.01.03, Section III.

Summary:

1. Use of force must be both: [a] objectively reasonable, [b] necessary, and [c] proportional. In other words, objectively reasonable, necessity, and proportionality are separate factors with each factor having to be dealt with individually.
2. If the use of force is not objectively reasonable, the Officer may be subject to criminal prosecution.
3. If the use of force is not objectively reasonable, necessary, and proportional, the officer may be subject to administrative sanctions.
4. Use of force decisions are dictated by the actions of the resistant or combative subject, the law, Division policy, tactics, and training.
5. Reasonable and sound judgment will dictate the force option to be used.

Why so much time spent on the working definitions of objectively reasonableness, necessity, and proportionality? These are the three questions that every FIT investigator must answer when conducting an objective, professional, and bias free FIT investigation.

So, as we previously discussed, the first thing that the OICs and FIT investigators must do at the scene is to plan the investigation in a manner that will answer these questions:

Was the use of force objectively reasonable?

Was the use of force proportional?

Was the use of force necessary?

Discussion: Watch the following WCS and be prepared to discuss should there be a FIT callout and why, necessity, and proportionality.

Question: Should a FIT callout be initiated?

Answer: Yes. The use of a CEW. Although neither officer used their CEW more than three (3) times, collectively they use the CEW more than three (3) time on an individual in a single interaction.

PPT# 85 and 86

PPT# 87

PPT# 88

Question: Was the use of the CEW necessary?

Answer: Yes. The subject was “Aggressive physical resistant” (does attack an officer; exhibits combative behavior] and the officers had the need to gain control of the subject to prevent harm either to themselves or to the subject. The use of an intermediate weapon [CEW] to interrupt a subject’s threatening behavior so that officers may take control of the subject with less risk of injury to the subject or officer than posed by other force applications. No other reasonably effective alternative to the use of force appears to exist, and its use in this case was only to the degree which was reasonable to effect the intended lawful objective [to arrest the subject]. See: GPO 2.01.01 – Use of Force Definitions; and 2.01.03 – Use of Force – General.

Question: Was the use of the CEW proportional?

Answer: Yes. The subject was significantly larger than both officers and together the officers could not control the subject’s combative behavior. The officers used only that amount of force required to control the subject.

Any questions?

PPT #89 and 90

Module 7: Future mandatory and elective training for every FIT investigator.

All members of the FIT are to receive the following mandatory training:

1. Basic Officer Involved Shooting course
2. Basic Scene and Evidence processing course
3. Crisis Intervention training, at least 8 hours
4. Administrative Investigation training, at least 8 hours
5. Bio-mechanics of police use of force incidents
6. Cognitive and other interviewing techniques, at least 12 hours

PPT# 91 and 92

Elective training may include the following:

1. Investigative skills training
2. Advanced interviewing

III. EXERCISE/PROBLEM SOLVING

A. Practice

PPT # 93

Now let's put our training into effect with the following not so hypothetical situation.

Explanation. Before we watch the WCS, a brief explanation of what led up to the incident. **PPT # 94**

Officers return to zone cars following a call for assistance.

A car speeds past them at a clearly excessive speed, zone cars start to follow and the suspect car turns down a dead-end street. Passenger exits car, police believing that they are in a foot pursuit, exit their vehicles. The driver/suspect instead turns his car around and heads back toward the officers on foot. Officer fires at the fleeing vehicle. After traveling a short distance and striking a police car, the fleeing vehicle comes to a stop. The subject is ordered to exit the car. The subject, as he is exiting his car, reaches down with his right hand toward the area of the center console and seat belt latch. Officer fires his weapon as the subject is exiting his car. Subject is not injured.

Show the WCS.

You are the Sector Sergeant who first arrives on scene. What is the first thing that the on scene supervisor does? **PPT # 95**

Answer: Call CCS

Question: What does the Sector Sergeant do next?

Answer: Secures the scene, examine all parties for injuries.

CCS calls Commander Connelly.

Question: Does Commander Connelly initiate a FIT call-up? If so, why?

Answer: Yes, there is a Level 3 use of force by a CDP Officer.

As the Lt. OIC Homicide, what are your first steps upon your arrival?
Discussion.

PPT # 96

As the Lt. OICF Homicide, what is your investigative strategy?
Discussion.

What issues do you believe need to be resolved for purposes of having the case reviewed for criminality?
Discussion.

As the Lt. OIC Internal Affairs, what are your first steps upon your arrival?
What is your investigative strategy?

PPT # 97

Discussion.

As a member of the Criminal FIT, what do you believe some of your assignments may be? **PPT # 98**

Discussion.

As a member of the Administrative FIT, what do you believe some of your assignments may be?

PPT #99

Discussion.

As a member of the Administrative FIT, what policy, training issues do you see?
Discussion.

PPT #100

Any questions?

CONCLUSION/SUMMARY

PPT #101